

*review should only take place after the decision maker has concluded that a federal action has the potential to significantly affect the environment.*

**b. Effects;**

*Again, the effect must be within federal jurisdiction. NEPA does not expand federal jurisdiction and an interpretation which would, for example, allow consideration of the construction of a facility which is beyond the agency's jurisdiction would be contrary to the clear intention that agencies' jurisdiction should not be affected. A proper interpretation of this requirement would be consistent with NEPA's original intent and would greatly simplify its application.*

**c. Cumulative Impact;**

*Effects to be considered in cumulative impact analysis must be subject to federal regulatory authority. For example, if the federal government is prohibited from restricting the export of crude oil, crude oil exports should not be the subject of cumulative impact analysis. Cumulative effects, like other effects, must be within in an agency's jurisdiction in order to merit consideration in the environmental review process.*

**d. Significantly;**

*Under the Act, the decision maker must exercise discretion, subject to judicial review, to decide whether the a proposed federal action may have an effect, within her or his agency's jurisdiction, which has the potential to be "significant" As noted above, limitation of this requirement through improper application of the "categorical exclusion" is inappropriate and counterproductive. The "significantly" definition might be amended to make clear that the decision maker retains this authority.*

**e. Scope;**

*Environmental reviews must focus precisely on the foreseeable direct and indirect effects subject to federal regulation of the proposed federal action or reasonable alternatives to the federal action. Alternatives which are not within federal jurisdiction need not be assessed. The No Federal Action alternative need not be addressed unless the agency has discretion to take no action.*

8. Should any new definitions of key NEPA terms, such as those noted below, be added, and if so, which terms?

- a. Alternatives;
- b. Purpose and Need;
- c. Reasonably Foreseeable;
- d. Trivial Violation; and

f. Other NEPA terms.

9. Should the provisions in CEQ's NEPA regulations relating to any of the types of documents listed below be revised, and if so, how?

a. Notice of Intent;

b. Categorical Exclusions Documentation;

*As noted above, the "categorical exclusion" methodology is being misapplied in many agencies to impose additional limits on decision makers' discretion rather than to provide a "safe harbor" to be relied upon by decision makers facing decisions on close questions. It needs to be made clear that categorical exclusions do not preclude the exercise of agency discretion regarding the question of whether a "major federal action" is proposed and that extensive documentation and public comment is not required. Otherwise the CATEX functions essentially as a redundant environmental assessment. The millions and perhaps billions that have been spent by agencies in adopting CATEX regulations will have been wasted. Finally the exception in many agencies' CATEX regulations for matters involving substantial public interest or opposition essentially defeats the purpose of CATEXs. Those exceptions should be eliminated.*

c. Environmental Assessments;

*We need to know what Environmental Assessments cost, in both federal and private sector dollars and in project delay costs. Since nearly all EAs result in FONSI the cost benefit ratio of this process may be subject to question. Fortunately, the EA process should be amenable to radical attenuation through the application of modern technology. That potential should be explored intensively.*

d. Findings of No Significant Impact;

c. Environmental Impact Statements;

e. Records of Decision;

*As noted in the attached report, all of these elements of the NEPA review process have become unnecessarily complex and stylized. Digitization of the review process will provide an opportunity to enhance clarity and predictability. CEQ must take full advantage of that opportunity; and*

f. Supplements;

*The role of supplements should be clarified. There is no need for supplementation where there is no continuing federal oversight or periodic permitting. Where there is continued oversight or regulatory engagement, periodic updating should be a matter of course. Scoping and public participation requirements for supplements are likely very different from those for original EISs and should be tailored accordingly.*

10. Should the provisions in CEQ's NEPA regulations relating to the timing of agency action be revised, and if so, how?

*Addressing at the earliest practicable date is important and should be rigorously enforced. Particularly in adjudicatory proceedings, environmental documentation should be available prior to finding and application to be complete, certainly prior to commencement of the proceeding. Any necessary environmental review should be integrated into the proceeding and certainly should not be a basis for reopening a proceeding after the record is closed. There is no need for FEIS or ROD when a judicial decision is issued after a trial type proceeding. Time limits for final approval should be provided.*

11. Should the provisions in CEQ's NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised, and if so, how?

*Existing procedures for third party preparation of environmental review documents are cumbersome, create perverse incentives and should be eliminated. Reasoned review of applicant prepared documents should be a fully accepted protocol.*

12. Should the provisions in CEQ's NEPA regulations relating to programmatic NEPA documents and tiering be revised, and if so, how?

*Programmatic documentation is extremely useful and should be more effectively utilized. It should be made clear, however, that there is not a moratorium on permit issuance during the pendency of programmatic review and reviews should be completed within a reasonable time period. Digitization and data analytics will allow continuous input to programmatic review processes and would greatly improve the usefulness of this tool.*

13. Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised, and if so, how?

*Alternatives which are not within the regulatory purview of the reviewing agencies should be eliminated. Where an agency lacks authority to withhold action based on public interest considerations, the "no action" alternative is not available. Agency regulations restricting consideration of "mitigation" in choosing among alternatives or requiring selection of the "least impact" alternative should be examined to determine their statutory basis.*

**General:**

1. Are any provisions of the CEQ's NEPA regulations currently obsolete? If so, please provide specific recommendations on whether they should be modified, rescinded, or replaced.

*As noted above, the NEPA regulations require a comprehensive overhaul to enable full utilization of modern technology.*

2. Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient?

*As noted, we believe a comprehensive review of the entire process is required.*

3. Are there additional ways CEQ's NEPA regulations should be revised to promote coordination of environmental review and authorization decisions, such as combining NEPA analysis and other decision documents, and if so, how?

*Reliance on relevant State Environmental Review Documents should be mandatory.*

4. Are there additional ways CEQ's NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA, and if so, how?

*The Regulations should include a specific expedited review procedure with time limits for priority projects identified pursuant to E.O. 13766.*

5. Are there ways in which the role of tribal governments in the NEPA process should be clarified in CEQ's NEPA regulations, and if so, how?

6. Are there additional ways CEQ's NEPA regulations should be revised to ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible, and if so, how?

*Although it is clear that delays in permit issuance can have environmental consequences as adverse and severe as those of imprudent permit issuance, there are few consequences or disincentives for unnecessary or unreasonable delays in permit issuance. CEQ should work to provide appropriate performance metrics, cost monitoring and related mechanisms for providing a more appropriate balance.*

7. Are there additional ways CEQ's NEPA regulations related to mitigation should be revised, and if so, how?

*While the basic concept of mitigation may be relatively well understood, the details are not. Is it appropriate to require mitigation when the statute does not allow for a broad "public interest" determination? (We think the answer should be "No"). Should mitigation be taken into account in determining the "best" environmental alternative?<sup>3</sup> (We think the answer must be "Yes".) There are a number of these kinds of questions which must be answered in order to achieve fair and predictable results in this context.*

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<sup>3</sup> In circumstances where environmental review is linked with a substantive finding such as the Corps of Engineers LEDPA determination on water projects the question of how mitigation should be taken into account is critical. The provision in the Corps' guidance to the effect that mitigation cannot be taken into account in LEDPA determinations is unauthorized by law and counterproductive. In general, the basis for agency authority to require mitigation need to be clarified.

Blueprint 2025 greatly appreciates the opportunity to submit these comments and is, of course, available to clarify or expand upon them at your convenience.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'Norman Anderson', with a long horizontal stroke extending to the right.

Norman Anderson  
President

## **Blueprint 2025 Position Paper Modernizing the NEPA Environmental Review Process**

Over the last fifty or so years (since enactment of the National Environmental Policy Act “NEPA”) serious deficiencies have developed in the way the U.S. Government goes about the planning and authorization of infrastructure projects. This unnecessarily burdensome administrative process delays decisions on critical infrastructure projects, severely restricting our country’s ability to modernize infrastructure to enable the technologies of the future or even to maintain the infrastructure which is now in place.

China and our other competitors have in place not only programs to plan and prioritize the infrastructure to be built, but highly efficient computer aided approaches for individual projects beginning with the early planning stages and continuing throughout their development. Though the governance systems of these major competitors might be more conducive to efficient management of the development process than is our “rule of law” system, it should be possible to at least narrow the gap by simplifying and improving the U.S. system as it has evolved (or devolved) over the last 50 years and enabling the use of modern technology to make the authorization process work more efficiently. This note outlines possible steps toward that end.

### ***The Process for Achieving NEPA’s Goals is Outmoded and Inefficient***

Despite the well-intentioned goals of NEPA to help public officials make decisions based on an informed understanding of environmental consequences, there is a large and growing number of actors in both the public and private sectors that feel the Act has evolved into an unintended project-stalling process of administrative hurdles. What was originally designed to encourage simple informed decision making has become a burdensome and expensive process resulting in undue delays, loss of investment and, perhaps, even environmental harm.<sup>1</sup>

According to this view:

- Environmental analyses are routinely conducted for actions that reasoned judgment would conclude are not major and should not be subject to such onerous agency oversight.
- Though the act was intended to facilitate public input and participation, the environmental review process as it currently exists is esoteric and inaccessible to the average citizen who might like to weigh in. Data on the average length of an EIS is lacking, but it is not uncommon for these reports to span in excess of 1,000, 2,000, and

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<sup>1</sup> See *Modernizing NEPA for the 21<sup>st</sup> Century: Oversight Hearing Before the H. Comm. on Natural Resources*, 115<sup>th</sup> Cong. (2017) (statement of Philip Howard, Chairman Common Good).

even 3,000 pages, though CEQ regulations state that the text of final EIS reports should “normally be less than 150 pages and for proposals of unusual scope or complexity ... be less than 300 pages.”<sup>2</sup> This added complexity often means that participation only comes from well-funded organizations or experts in a particular field. While expert comments are appreciated, and encouraged, the process was meant to invite participation on a much broader scale.

- While agencies do not routinely track data on the cost of completing NEPA analyses, it is clear that the cost of an environmental review process for a single project can run into the millions of dollars. For instance, the Department of Energy (DOE) tracks limited cost data associated with NEPA analyses, specifically, funds the agency pays to contractors to prepare NEPA analyses. According to DOE data, the average payment to a contractor to prepare an EIS from calendar year 2003 through calendar year 2012 was \$6.6 million, with the range being a low of \$60,000 and a high of \$85 million.<sup>3</sup> DOE’s median EIS contractor cost was \$1.4 million over that time period.<sup>4</sup>

Though the extent and impact of these problems may be subject to debate, it seems clear that there is a great deal of room for improvement in order to mitigate what many interpret to be excessive delay, cost, and complexity.

As a recent House Natural Resources Committee hearing on the need to modernize NEPA highlighted, there remains broad support for the act’s basic objective of informing agency decision makers.<sup>5</sup> However, there seems to be a consensus that the process is plagued by the kinds of problems outlined here and that as a result, NEPA has failed to fulfill the basic purpose for which it was enacted, resulting in unintended adverse impacts on the U.S. economy, the quality of our infrastructure, and in fact, on the environment itself. Solutions like those suggested at the hearing, by former CEQ General Counsel, Dinah Bear, that more and better-trained federal employees are needed—are both unrealistic and rooted in the past.<sup>6</sup> NEPA, like other elements of our infrastructure, needs to be updated and brought into the 21<sup>st</sup> century. New tools including data analysis, artificial intelligence, and even virtual reality modeling can and should be effectively utilized to expedite and simplify the NEPA process, making it more accessible to ordinary citizens and yielding superior analytical results.

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<sup>2</sup> 40 C.F.R. § 1502.7.

<sup>3</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-14-370, NATIONAL ENVIRONMENTAL POLICY ACT: LITTLE INFORMATION EXISTS ON NEPA ANALYSES 13 (2014) (According to DOE, the cost for the \$85 million Hanford Tank Closure and Waste Management EIS includes the costs for three major EISs—waste management, high-level waste tank closure, and disposition of a nuclear reactor—that were started separately and ultimately integrated into one document spanning 3,600+ pages including agency responses to public comments).

<sup>4</sup> *Id.*

<sup>5</sup> See 42 U.S.C. § 4321 (NEPA’s congressional declaration of purpose states that the purposes of the act are “to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.”).

<sup>6</sup> See *Modernizing NEPA for the 21<sup>st</sup> Century: Oversight Hearing Before the H. Comm. on Natural Resources*, 115<sup>th</sup> Cong. (2017) (statement of Dinah Bear, Former General Counsel, Council on Environmental Quality).

## *Current Process Dynamics*

NEPA requires federal agencies to analyze both the nature and the extent of a project's potential environmental effects and, in many cases, document these analyses.<sup>7</sup> While much has been said about the merits of this process in furthering a public dialogue and improving the quality of decision making at the federal level, CEQ regulations make explicit the need for a level of analysis that is timely, efficient, and genuinely useful. For instance, under the CEQ's own articulation of NEPA's purpose, "NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail."<sup>8</sup> "NEPA's purpose is *not* to generate paperwork—even excellent paperwork—but to foster excellent action."<sup>9</sup> "Ultimately, it is not better documents but better decisions that count."<sup>10</sup> The regulations go on to include specific instructions targeted at two additional goals: (i) to reduce paperwork and (ii) reduce delay.<sup>11</sup> These instructions highlight the needs for agencies to reduce the length of environmental impact statements (EIS); emphasize the portions of the EIS that are useful to decision makers and the public; integrate NEPA requirements with other environmental review and consultation requirements; require comments to be as specific as possible; eliminate duplication with state and local procedures by providing for joint preparation; emphasize interagency cooperation before the EIS is prepared; establish appropriate time limits for the EIS process; and use accelerated procedures for proposals for legislation.<sup>12</sup>

Title 41 of the "Fixing America's Surface Transportation" Act ("FAST Act") --- establishes a new interagency committee (the Federal Permitting Improvement Steering Council "FPISC"), which is directed to ensure use of most efficient and timely processes for environmental review, and establishment of performance schedules for the completion of the environmental reviews. Title 41 thus both confirms the basic principles outlined above and augments them by a requirement that the Council established by the Act must ensure that "best technology" will be fully utilized in the environmental review process. The Title 41 mandate requires timely action to integrate modern technology into the NEPA process. An approach to such an effort is roughly outlined below.

### **The Process Now in Place**

NEPA is primarily a procedural statute. It does not require an agency to pursue the least environmentally harmful alternative, only that the agency give adequate consideration to the potential benefits and harms of the proposed action in order to demonstrate informed decision making.<sup>13</sup>

Over the last 50 years, NEPA practitioners and the courts have developed a well choreographed set of procedures designed to fulfill these procedural requirements.<sup>14</sup>

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<sup>7</sup> Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (CEQ regulations), 40 C.F.R. Parts 1500-1508, set out the level of analysis and documentation for complying with NEPA. The scope and form of these analyses can take the form of a Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS).

<sup>8</sup> 40 C.F.R. § 1500.1(b).

<sup>9</sup> *Id.* at § 1500.1(c) (emphasis added).

<sup>10</sup> *Id.*

<sup>11</sup> See 40 C.F.R. §§ 1500.4-1500.5.

<sup>12</sup> *Id.*

<sup>13</sup> See *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989); *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978).

- Identify the need for action in connection with a proposal.
- Determine whether the action is a federal action subject to NEPA review.
- Determine whether the proposed action is a “major federal action” i.e. could it have direct or indirect effects which have the *potential* to significantly affect the quality of the human environment.<sup>15</sup>
  - If “yes,” determine whether the project qualifies for a categorical exclusion (CE).
  - If significant environmental effects are uncertain and the action fails to qualify for a CE, then agencies must move forward with an environmental assessment (EA) providing for public involvement to the extent practicable.<sup>16</sup>
- Determine whether the EA reveals a potential for significant environmental effects.
  - If “no,” then agencies must issue a Finding of No Significant Impact explaining the reasoning for their decision.
  - If, however, in the process of completing the EA, it is determined that significant environmental effects *are* likely to result, a notice must be published in the federal register of intent to prepare an Environmental Impact Statement (EIS).
- A public process to determine the “scope” of the EIS must be conducted.
- A draft EIS will be prepared and published, with a minimum 90-day period for public review and further comment.
- After addressing public input, a final EIS is published (no time limit).
- Finally, a Record of Decision is issued by the lead agency detailing its decision to move forward with the proposal or not.

### NEPA for the 21<sup>st</sup> Century

Clearly there is ample room for this process to benefit from the economies and efficiencies associated with the digitization, data analytics and networking available to us in 2018, **but**, unfortunately, much of the analysis and “streamlining” attempted to date, whether pursuant to the FAST Act or the several Trump Administration executive orders in furtherance of those objectives,

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<sup>14</sup> See COUNCIL ON ENVIRONMENTAL QUALITY, A CITIZEN’S GUIDE TO THE NEPA: HAVING YOUR VOICE HEARD 8 (2007).

<sup>15</sup> See 40 C.F.R. § 1508.27.

<sup>16</sup> There is no statutory basis for the position taken by some agencies that there must be environmental review unless there is an applicable categorical exclusion. The mandatory C.E exercise is **unduly** cumbersome and **unduly** restricts the exercise of reasoned judgment by the agency head in determining whether an action is “major” An intelligent computer aided approach to this analysis could provide the equivalent of reasoned judgment based on the thousands of relevant factors which might affect a reasoned human decision.

has been developed by consensus among multiple agencies and predicated on traditional “paper trail” oriented administrative processes. It has failed to take into account the advances achievable through use of modern technology.

As a result, the environmental review process has yet to embrace the efficiencies associated with software development and technological integration. While people who wish to comment on a draft EIS can now do so through online portals instead of having to mail in written comments, there are additional opportunities to take the choreographed stages of review and introduce coordination that is currently missing.

Under the framework of a modern, digital, analytic protocol, there would be opportunities to introduce disciplines for reviewing some of the mistakes and inefficiencies embedded in the existing regulations and guidance, and perhaps even codify and replace the countless pages of existing guidance proven to be redundant or unnecessary. Just as important, broad use of interactive digital platforms would enable the development of a broadly accessible national environmental data network which would limit the need to “reinvent the wheel” in environmental reviews of previously studied areas. The result might be creation of a comprehensive environmental database that includes subject specific information capable of being drawn upon to inform future projects. For example, U.S. Fish and Wildlife has a rudimentary system for archiving conservation plans across the country. It’s not terribly user-friendly but it does allow landowners and developers a chance to see what’s been done before and what they might reasonably expect going forward in similar situations. Artificial intelligence and networking capabilities ought to be employed to compile something that is (i) informative; (ii) comprehensive; (iii) user-friendly; and (iv) capable of cutting down redundancy with previous work.

In addition to introducing efficiencies that could cut down on delay and associated development costs, there is reason to believe that digitization and analytics could not only provide a quality of analysis currently lacking in NEPA review but could also substantially reduce Government costs. Two NEPA-related studies completed by federal agencies show clearly that there is no current “handle” on the total governmental cost of NEPA compliance. A 2007 Forest Service report on competitive sourcing for NEPA compliance stated that it is “very difficult to track the actual cost of performing NEPA. Positions that perform NEPA-related activities are currently located within nearly every staff group, and are funded by a large number of budget line items.

There is no single budget line item or budget object code to follow in attempting to calculate the costs of doing NEPA.”<sup>17</sup> Similarly, a 2003 study funded by the Federal Highway Administration evaluating the performance of environmental “streamlining” noted that NEPA cost data would be difficult to segregate for analysis.”<sup>18</sup> Since, as noted the *outside contractor cost* of environmental review of a single proposal can range to \$85 million or beyond it is clear that the overall cost of NEPA review is very, very substantial. , Digitization could introduce analytics that break down the silos of knowledge described in the Forest Service report and allow us to know, at least, what NEPA is costing.

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<sup>17</sup> U.S. FOREST SERVICE, COMPETITIVE SOURCING PROGRAM OFFICE, *Feasibility Study of Activities Related to National Environmental Policy Act (NEPA) Compliance* (Washington, D.C., Aug. 10, 2007).

<sup>18</sup> U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, *Evaluating the Performance of Environmental Streamlining: Phase II* (Washington, D.C. 2003).

Even more important, the use of modern communications and analytical technologies can allow us to obtain more effective reviews, more expeditiously and at a much lower cost. Witnesses at a recent hearing before the Senate Environment and Public Works Committee estimated that NEPA related delays in permitting processes may be inflating our nation's infrastructure costs by as much as 50% and there is at least some evidence to suggest that estimate is on the low side. There is little doubt that inefficiencies in environmental review processes, in addition to handicapping our country's ability to keep pace with global competition, are resulting in costs well into the billions and possibly beyond.

### ***Conclusion***

Over the past several decades, we've split the atom, we've spliced the gene, and we've harnessed the modern electron. New science and new technology is fostering change at a breakneck pace and we are at a crossroads. The need to bring NEPA — arguably one of the most influential pieces of environmental legislation ever enacted — up to speed in a way that's attendant to the needs of 21<sup>st</sup> century development is not a partisan issue. This was recognized in the FAST Act by specifically including a title designed to improve the timeliness, predictability, and transparency of the Federal environmental review and authorization process for covered infrastructure projects.<sup>19</sup> President Trump has issued executive orders which further support the FAST 41 objectives and has targeted nearly a trillion dollars in infrastructure packages across the country given the state of our bridges, highways, and waterways. We are in a unique position to leverage knowledge available from actors in both the public and private sectors to bring to bear the full measure of our know-how on environmental review. Now is the time to bring the full resources of the federal government and the full reach of our collective expertise to this fundamental goal: we must modernize the NEPA environmental review process.

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<sup>19</sup> See 42 U.S.C. § 4370m *et seq.*

## RE: HQ Unified Federal Review Interagency Work Group Meeting (Bi-monthly)

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**Date:** Fri, 27 Jul 2018 09:29:22 -0400

**Attachments**  
: UFR Work Group Meeting Minutes\_071118.docx (34.89 kB)

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All – Meeting minutes from our July 11<sup>th</sup> UFR Interagency Work Group meeting are attached. Please feel free to send any edits.

**Sara Upchurch, AICP**

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-----Original Appointment-----

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**Sent:** Tuesday, March 13, 2018 11:54 AM

**To:** Federal-Unified-Review; Fretwell, Therese J; cathy.tortorici@noaa.gov; Bresnick, William; Hass, Jennifer; Chang-Cimino, Irene; Esposito, Frank CIV; Sugarman, Shelly CIV; Weinhouse, Amy; Drummond, Michael; 'Holly Herod'; Amy.S.Klein@usace.army.mil; Vaughn, Charlene; dstephens01@fs.fed.us; Boling, Ted A. EOP/CEQ (b) (6); 'Hummel, Edward (Federal)'; Fontenot, Kristin; 'Jeanette Harriz'; 'jloichinger@achp.gov'; jroberson@doc.gov; Ketchum, John; kyle.j.dahl.civ@mail.mil; 'Capron, Patricia (Ranel)'; sharyn.lacombe@dot.gov; Megan W. Blum (megan.blum@dot.gov); Hitchcock, F; 'basia.howard@wdc.usda.gov'; 'ben\_thatcher@fws.gov'; 'Boone, Nancy E'; 'carol\_braegelmann@ios.doi.gov'; Vaillancourt, Dana - NRCS, Washington, DC; 'daniel\_odess@nps.gov';

'Elizabeth.Patel@dot.gov'; Farmer, Kevin - NRCS, Washington, DC; 'James Gavin'; 'jbenz@eda.gov'; 'john.pavek@wdc.usda.gov'; jomar.maldonado@dot.gov; Katherine.Andrus@faa.gov; Kieber, Rabi; 'Marcel.K.Tchaou@hud.gov'; McNamara, Lauren B; 'Musumeci, Grace'; 'patrice\_ashfield@fws.gov'; 'Peter.McVeigh@usdoj.gov'; 'Rima.Oueid@Hq.Doe.Gov'; 'Schopp, Danielle L'; 'stephanie\_nash@fws.gov'; 'Terence.Plaskon@dot.gov'; Teresa Fish; Rountree.Marthea@epa.gov; Ferris.John@epa.gov; Nell.Fuller@wdc.usda.gov; Upchurch, Sara; Frye, Sandra L; Griffin, Gregory M; Polacek, Steve - RD, Washington, DC; Gilson, Kristine (MARAD); Potosnak, Ryan; Ross, Portia; Carrino, Sarah; Audin, Michael; Alexander, Benjamin; Dawson, John; chelsea.tucker@faa.gov; david.cohen@dot.gov; 'Solomon, Rhonda (OST)'; Mulligan, Sarah; Horter, Ben - FSA, Washington, DC

**Cc:** Roberson, Jeffrey (Federal)

**Subject:** HQ Unified Federal Review Interagency Work Group Meeting (Bi-monthly)

**When:** Wednesday, July 11, 2018 1:00 PM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).

**Where:** Conference Call: 1-800-320-4330; Pin: 967038

**\*\* Adjusted times on Final Agenda. Meeting starts at 1pm. \*\***

All – Final Agenda for today's meeting is attached. Also attached is the email you should have received with the Public Assistance PEA, which we will brief out on during today's call.

<< Message: HQ UFR Interagency Work Group Meeting >>

<< File: FINAL UFR Work Group Meeting Agenda\_071118.pdf >>

**FEMA UFR Team**

**Ryan Potosnak**

National Unified Federal Review Coordinator

**Sara Upchurch, AICP**

UFR Liaison to Council on Environmental Quality (CEQ)

**Allison Coutts**

UFR Information Management Specialist

**Unified Federal Review (UFR) Work Group Meeting  
Wednesday, July 11, 2018 / 1:00 p.m. – 2:00 p.m. (ET)**

**Meeting Minutes**

**1:00 p.m. Call to Order/Attendance**

Agency	Component	Name
ACHP		Jaime Loichinger
DHS	FEMA – HQ	Sara Upchurch
DHS	FEMA – Region 2	Michael Audin
DHS	FEMA – Region 2	John Dawson
DHS	USCG	Frank Esposito
DOI	BLM	Ranel Capron
DOI	FWS	Terri Fish
DOT		Rhonda Solomon
DOT	FAA	Katherine Andrus
DOT	FAA	Chelsea Tucker
DOT	FHWA	James Gavin
DOT	FTA	Megan Blum
DOT	MARAD	Kris Gilson
EOP	CEQ	Michael Drummond
EPA		Grace Musumeci
EPA		Rabi Kieber
HUD		Nancy Boone
HUD		Therese Fretwell
HUD		Lauren McNamara
HUD		David Storms
USDA	NRCS	Dana Vaillancourt
USDA	RUS	Steve Polacek

**1:05 p.m. CEQ Updates**

**Michael Drummond, Deputy Associate Director for NEPA (CEQ)**

CEQ has issued an Advance Notice of Proposed Rulemaking (ANPRM) to assist in considering updating its NEPA implementing regulations:

- CEQ solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process.
- The comment period has recently been extended an additional 31 days to August 20, 2018.
- Comments have been requested on specific aspects of the regulations via 20 questions supplied in the ANPRM. CEQ also requests that commenters provide specific recommendations on additions, deletions, and modifications to the text of CEQ's NEPA regulations and their justifications in answering these 20 questions.
- The public has been asked to submit comments through the Federal eRulemaking portal (<https://www.regulations.gov>). (b) (5) [REDACTED]

(b) (5)

- If CEQ decides to proceed with rulemaking based on comments received, the next step would be a Notice of Proposed Rulemaking.

#### Executive Order 13807 and One Federal Decision requirements:

- This EO applies to infrastructure projects that develop “the public and private physical assets that are designed to provide or support services to the general public” for various infrastructure sectors.
- Many of the provisions of the EO apply to “major infrastructure projects,” defined in the EO as “projects for which multiple Federal authorizations are required to proceed with construction, the lead Federal agency has determined that it will prepare an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., and the project sponsor has identified the reasonable availability of funds sufficient to complete the project.”
- For each major infrastructure project, agencies will work together to develop a single Permitting Timetable for the necessary environmental review and authorization decisions, prepare a single environmental impact statement (EIS), sign a single record of decision (ROD), and issue all necessary authorization decisions within 90 days of issuance of the ROD, subject to limited exceptions.
  - E.O. 13807 sets a goal for agencies of reducing the time for completing environmental reviews and authorization decisions to an agency average of not more than two years from publication of a Notice of Intent (NOI) to prepare an EIS.
- Agencies signed an MOU in early April 2018 (<https://www.whitehouse.gov/wp-content/uploads/2018/04/MOU-One-Federal-Decision-m-18-13-Part-2.pdf>), which includes concurrence points during the environmental/historic review process.
- Agencies will likely use the “back end” (i.e. non-public facing) Permitting Dashboard to track and communicate project details.

#### 1:15 p.m. Unified CATEX Sub-Work Group Update

FEMA UFR stood up a UFR sub-work group to explore a unified set of categorical exclusions for Puerto Rico (short-term) and disaster recovery in general (longer-term).

- Two Interagency Sub-Work Group Meetings held so far: May 31<sup>st</sup> & June 22<sup>nd</sup>
- Participants: DHS, DOT, EPA, HUD, DOI, NPS, FSA, NRCS

On-going efforts/options considered:

- **Programmatic EA:** This would be developed to consider a unified set of CATEXes to provide coverage for a set of actions via FONSI for agencies who wish to adopt it.
- **‘Broad CATEX’:** As a short-term solution we are exploring adopting a CATEX which may allow agencies to use other agencies’ CATEXes if they are co-funding an action and/or if the agency which ‘owns’ the CATEX approves use.
  - We have not yet fleshed out details of how this might be implemented and realize it does not provide coverage in a situation where FEMA or another agency may want to use a CATEX belonging to another agency, when that other agency is not also involved in the action.
  - We will be exploring this or some version of this type of CATEX with CEQ in the near future.

- Ideally, other agencies funding recovery actions for Puerto Rico or elsewhere could also adopt a similar CATEX to provide additional flexibility for UFR actions; please let us know if this is something you would like to pursue as a joint effort.
- **Gap Analysis:** We are using the CE Catalog supplied by CEQ to find 'best in class' CATEXes for certain categories of disaster recovery actions. We are considering inclusion of mitigation / building to a higher or better standard as we look through the CATEXes. We hope to have a summary of our initial findings in the next couple of weeks.
- **Summary of FEMA CATEX Use:** FEMA is mining our own NEPA data to get a better idea of which CATEXes are used most frequently (i.e. have the broadest applicability) across the country.

#### **1:25 p.m. Status of HUD CDBG-DR for 2017 Disasters**

**Lauren McNamara, Program Environmental Clearance Officer (HUD)**

##### **Texas:**

- \$5 Billion Action Plan has been approved by HUD
- There is a separate Action Plan each for Houston & Harris County (\$1.1 Billion each)
- HUD POCs are David Storms and Zach Carter

##### **Florida:**

- Action Plan for \$616 million approved by HUD
- Focus is on housing repair and reconstruction, also addresses workforce housing funding
- HUD POCs are Chuck Melton and Debbie Peavler-Stewart cover from the Seattle office

##### **USVI:**

- \$243 million Action Plan approved; additional Action Plan expected.
- Focus is on housing, economic development, energy, hospitals, and port expansion
- HUD POC for USVI/Puerto Rico is Therese Fretwell
- The HUD team will be traveling to USVI in August to work with the Responsible Entity (RE) there

##### **Puerto Rico:**

- The HUD team will be traveling to Puerto Rico in August to work with the Responsible Entity (RE) there
- The Action Plan for \$1.5 Billion of the full \$28 Billion is under review at HUD and should be approved soon.
- The Focus of this initial action plan is on rehabilitation, new construction, and relocation.

#### **1:35 p.m. Programmatic Environmental Assessment (PEA) for FEMA's Public Assistance (PA) Program**

**Sarah Mulligan, FEMA Public Assistance**

- Over the past eight months FEMA has been working on a Draft Programmatic Environmental Assessment (Draft PEA) to cover permanent work activities funded under our Public Assistance Program, primarily evaluating new construction between one and five acres, which expands upon existing DHS/FEMA Categorical Exclusions that allow for less than one acre of disturbance.
- This document would provide nationwide coverage for activities analyzed and includes a checklist to determine the need to tier additional analyses from this PEA.
- FEMA Public Assistance and the Office of Environmental Planning and Historic Preservation (OEHP) hope is that this document will help to streamline environmental reviews, allowing us and our partner agencies to focus efforts on those actions with a greater potential for significant impacts.

- This is a pre-draft which we are reviewing concurrently, but also wished to share with the UFR interagency at this early stage to both get feedback on the application of the PEA streamlining tool and also to see if other agencies would want to utilize a similar avenue for their own disaster recovery environmental/historic preservation reviews.
- FEMA plans to release a draft for public review later this year.
- Sarah Mulligan ([sarah.mulligan@fema.dhs.gov](mailto:sarah.mulligan@fema.dhs.gov)) is the POC (copy to UFR Team) with questions or comments. **We request comments by Friday, July 20<sup>th</sup>.**

#### 1:45 p.m. UFR Operational Updates

- **Texas (Sarah Carrino)**
  - Held **Harvey Workgroup Meeting** on 21-June, which will transition to a Texas Workgroup as Sarah returns to R6 in Denton.
    - Rethinking how and what information is being reported and shared, e.g. exploring opportunities to leverage GIS support (explore the use of dashboards, visual aids, and map products that more effectively tell the story of what's happening and where and how that ties back to EHP compliance and what we are doing.)
    - Revising the meeting tempo and summit design. Shifting way from monthly meeting towards quarterly meetings and annual summits versus bi-annual while we join forces with the PA Critical Infrastructure Work Group
  - FEMA and other UFR WG members will begin attending the **USACE standing "Pre-Application Meetings and Pre-Construction Meetings"**. Both the Fort Worth District and Galveston District have confirmed these meetings options are available to Applicants.
    - In the future, looking to bring the various districts in Texas together to learn more and explore how FEMA might leverage this service and or replicate a similar model across the board.
  - **Memorandum on FEMA's UFR process for Texas** is currently being drafted to share with interagency partners. Memo will likely cover:
    - Role as Lead or Joint Lead Agency
    - Using CDBG-DR Funding for Local Match
    - Transmitting EHP Reviews (e.g. data sharing)
  - Sarah Carrino briefing out on UFR for Texas at **the Regional Interagency Recovery Coordination Group** meeting on Thursday, 12-July.
- **Florida (Benjamin Alexander)**
  - UFR Coordinator, Benjamin Alexander, has returned to FEMA Region 4 offices in Atlanta and working on After Action Report for Florida activation for Irma response/recovery.
  - Supporting the **Southeast Natural Resources Leadership Group** (SNERLG) as member of the Executive Committee (EPA, USDA, FWS, NOAA-NMFS, USACE, FHWA, BOEM, etc.)
  - Moving **USACE Information Sharing Protocol** forward with the South Atlantic Division.
  - Visiting five USACE districts at their offices this summer, as well as traveling to HQ, R6 and R2 during 'blue skies' in an effort to meet partners, continue building tools (e.g., information sharing protocol), gather information on other disaster operations, and prioritize UFR efforts for Region 4.

- **USVI (John Dawson)**
  - John will be demobilizing at the end of July. Working on UFR transition and reach-back support protocol.
    - The National Disaster Recovery Support (NDRS) deployments and Federal Disaster Recovery Coordinator (FDRC) deployment are projected to end by end of August.
    - FDRC is now exploring extending the Mission Assignments in USVI for the RSFs past August and is working with the field coordinators and their home agencies.
  - Governor in USVI is up for reelection, which may affect the pace of recovery as departments work with competing priorities.
  - USVI has liquidity concerns, which means program funding tied to a cost share or which is reimbursable is difficult to utilize.
  - Comparing multiple project lists for territorial priorities and overlap in submissions.
    - CDBG-DR Action Plan, 404 Mitigation Notices of Intent submissions, project submissions to EDA, USDA, and FEMA
  - HMGP (404) up to 100% federal share of funding which may mean less coordination with HUD RE on global match.
  - Tracking the **Bipartisan Budget Act of 2018**, which affects current USVI and Puerto Rico disasters.
  
- **Puerto Rico (Michael Audin / Allison Coutts)**
  - Governor's Plan:
    - Supplemental Appropriation Bill requires Puerto Rico and U.S. agencies to give Congress economic and disaster Recovery Plan
    - Governor of Puerto Rico's 180-day Plan (developed by the government of Puerto Rico, Homeland Security Operational Analysis Center (HSOAC) with support from RAND released for RSFLG review (July 8<sup>th</sup>). RSFLG **comments due July 17; initial comments specific to COAs due July 12**. Final report to be submitted to GPR & FEMA July 28. Report due from Governor to Congress August 8.
    - This plan is the Governor's vision for recovery and is focused on the whole of PR economy and infrastructure. It has some rough costs, but is not a commitment of funding and does not/should not include a full BCA.
    - **HSOAC will publish supporting analytic documents later in August or early September.**
    - The PMO is working with OMB and RSFLG departments and agencies at all RSFLG levels to construct outcome indicators and measures of recovery.
  - UFR:
    - Allie Coutts has replaced Michael Audin as the UFR Advisor.
    - Held 2<sup>nd</sup> Interagency Meeting on June 14<sup>th</sup>. Presented status of streamlining efforts and the idea of holding project-specific review meetings as well as continuing to host larger work group meetings.
    - The PR UFR team will be holding the first Puerto Rico UFR Work Group (WG) meeting this month. The group performs two inter-related team functions: The UFR team Coordinates across agencies and the environmental review team reviews specific complex projects to identify regulatory issues and possible paths forward.

- First UFR WG meeting scheduled for July 16<sup>th</sup> will continue to build those teams with local PR representatives as well as those from other agencies.
- Ongoing work on streamlining measures:
  - Updates to FEMA **Section 106 Programmatic Agreement** with SHPO. Complete and other agencies can sign-on to it.
  - Creation of an **Endangered Species Act (ESA) Matrix** for Puerto Rico and the US Virgin Islands with USFWS.
  - Negotiation of **Coastal Zone Management Act (CZMA) exemptions** to coastal consistency review for recovery actions. With PR Planning Board for review. Available for other agencies to sign-on to.
  - Development of **Programmatic Environmental Assessment template/PEAs** for FEMA and other agencies to use.
  - **Disaster-Specific MOU** – an agreement that defines EHP roles and responsibilities during a specific disaster recovery effort (includes data sharing/standards).

2:00 p.m. Meeting Adjourned

**KEY DATES:**

- **July 20, 2018:** Comments on pre-draft of Public Assistance PEA
- **September 11, 2018 (2-3pm):** Next UFR Interagency Work Group Meeting

# [EXTERNAL] CEQ ANPR Response- August 20th

---

**From:** "Smalls, James -FS" <jsmalls@fs.fed.us>  
**To:** "Boling, Ted A. EOP/CEQ" (b) (6) "Drummond, Michael R. EOP/CEQ" (b) (6)  
**Date:** Mon, 20 Aug 2018 14:21:34 -0400  
**Attachments** USDA Forest Service \_Initial Comments\_ CEQ ANPRM\_August202018.docx (69.62 kB)

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Ted, Michael

Thank you for requesting input concerning the revisions to 40 CFR 1500-1508. (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

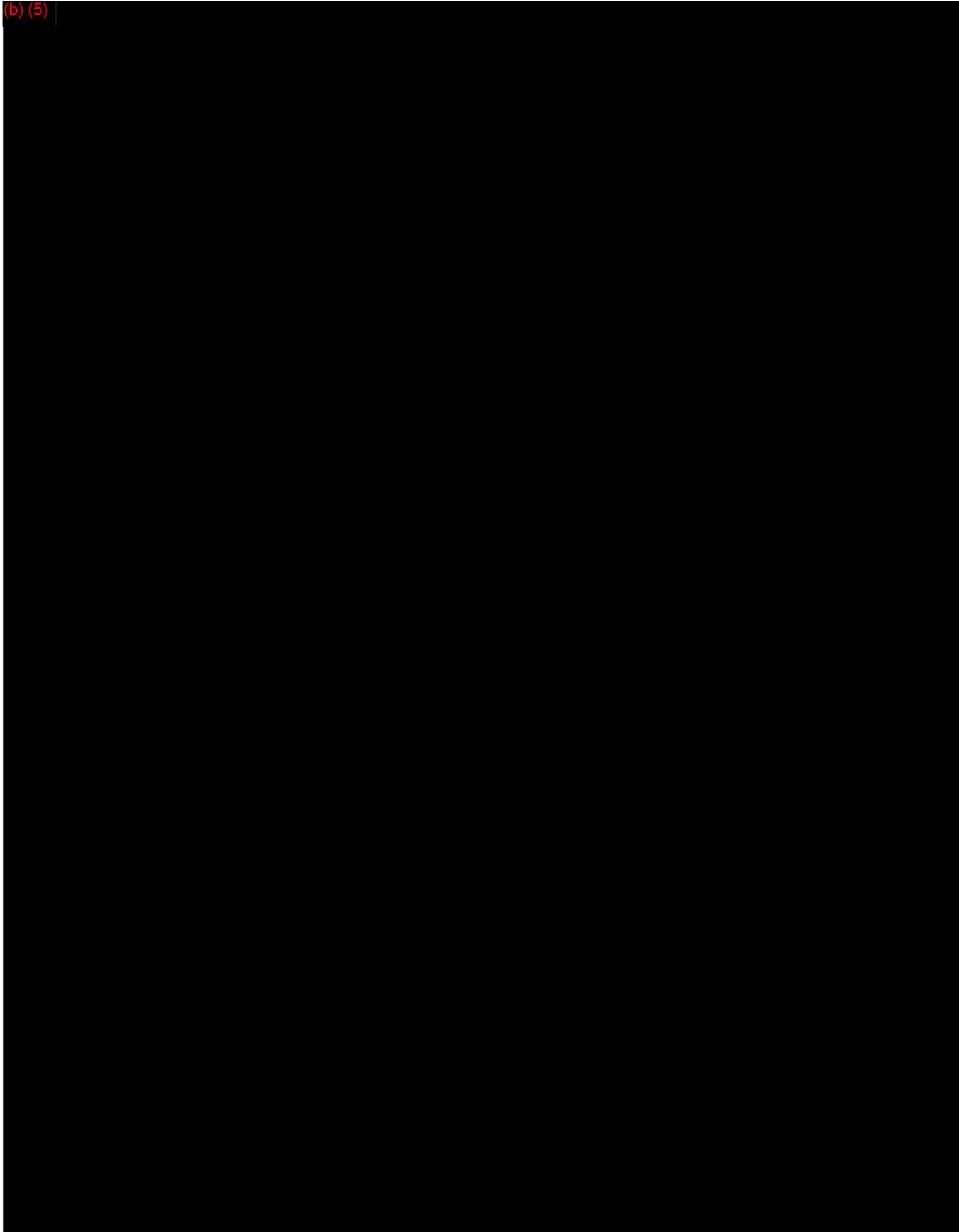
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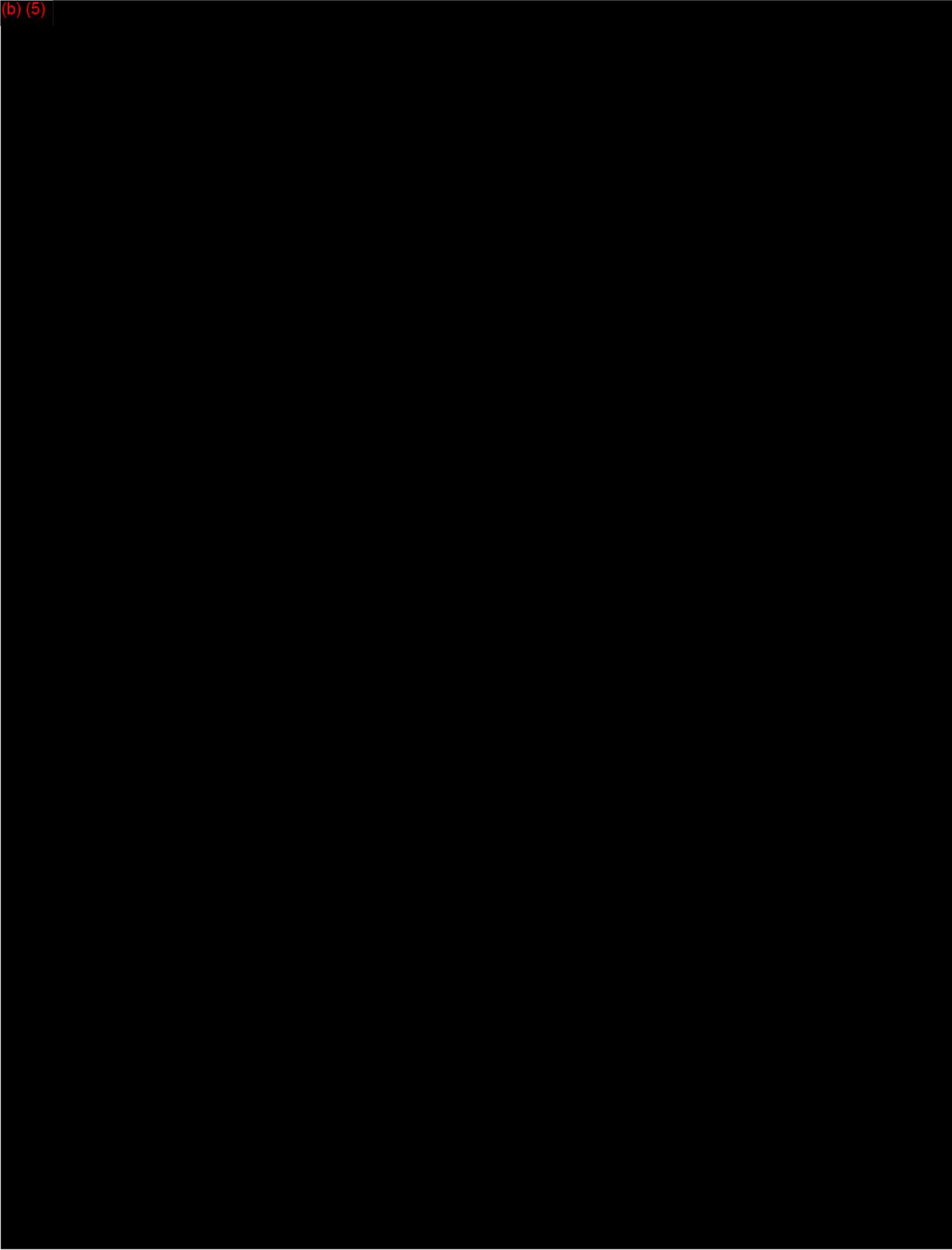
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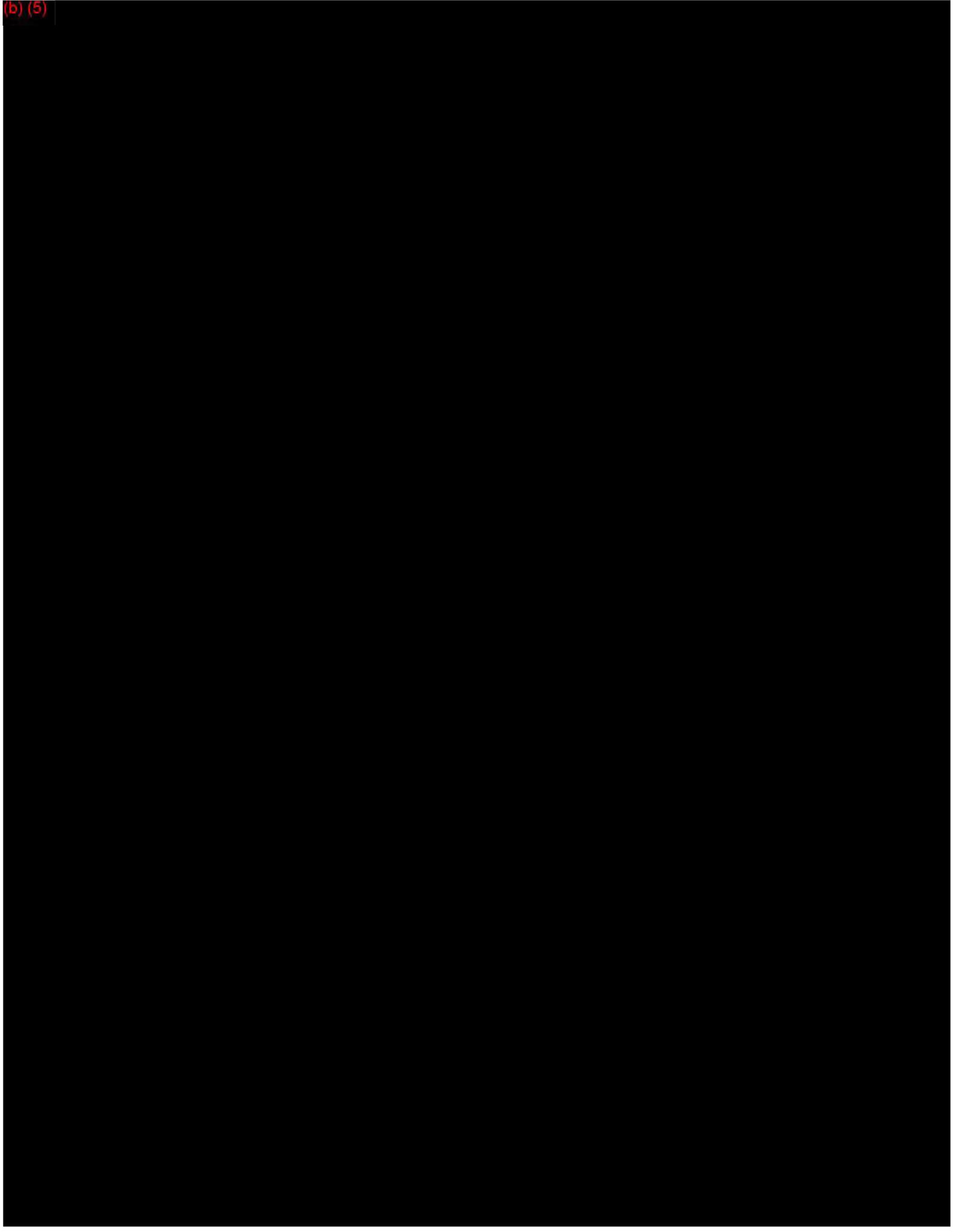
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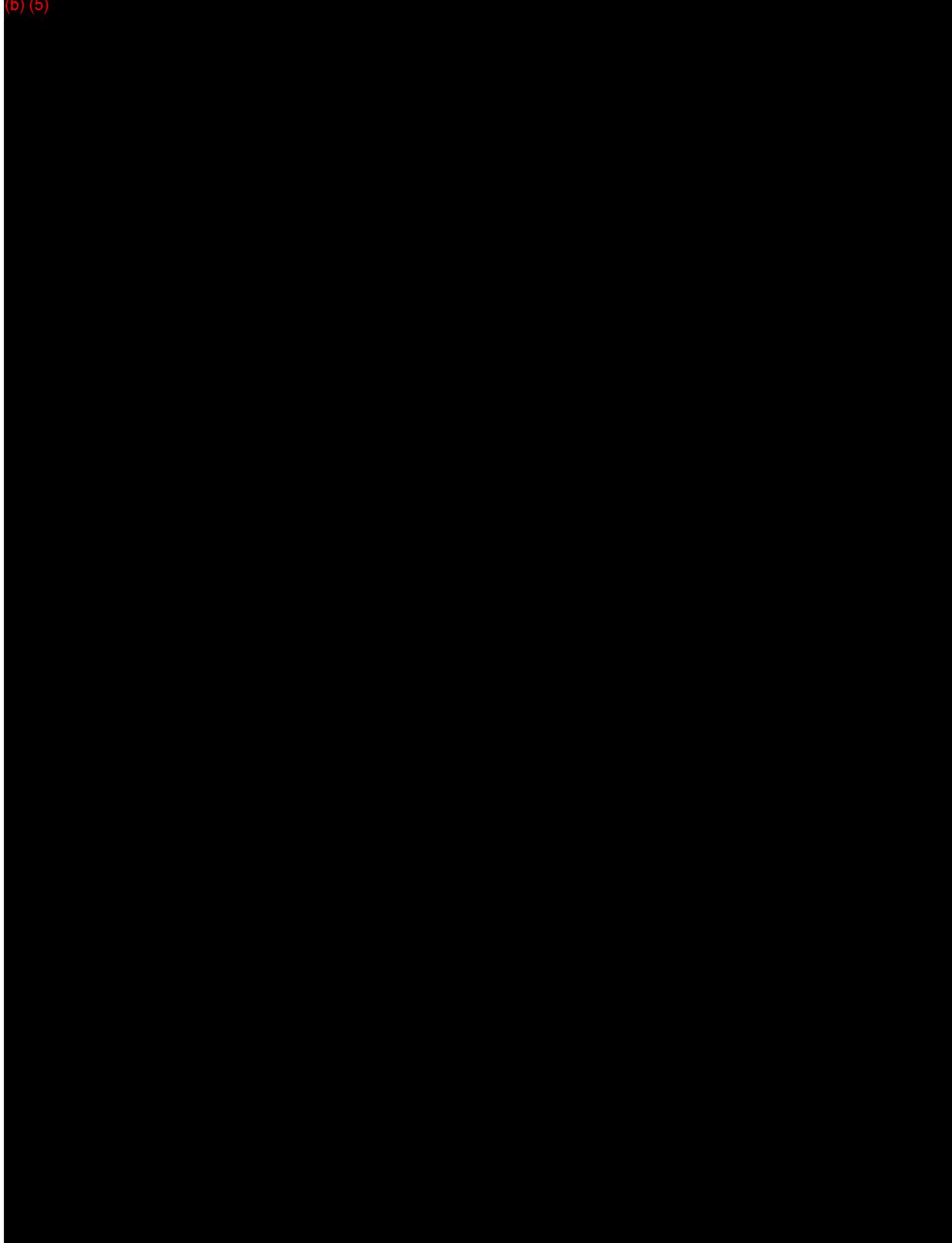
If you have any questions or comments please do not hesitate to contact me. Thanks.

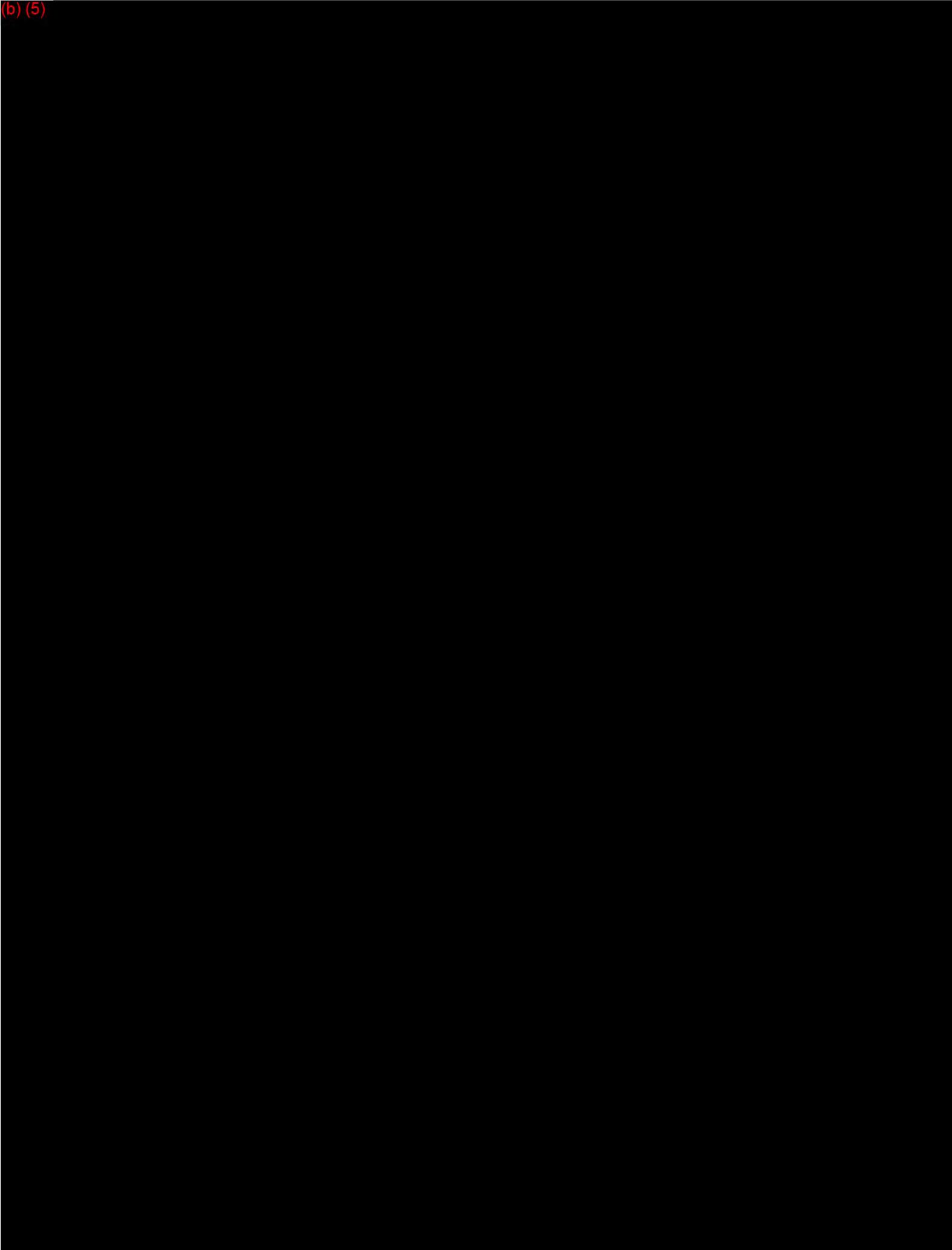
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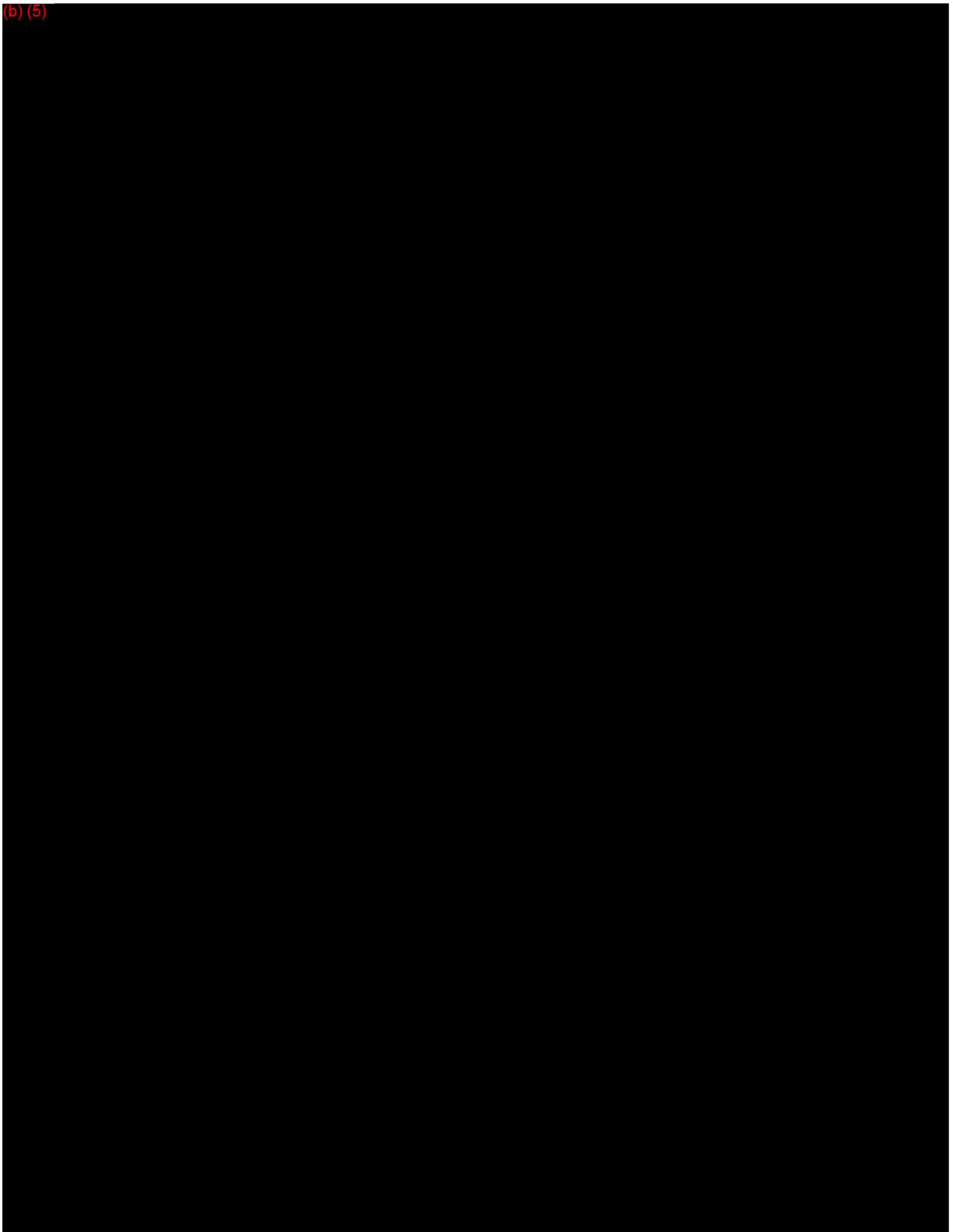


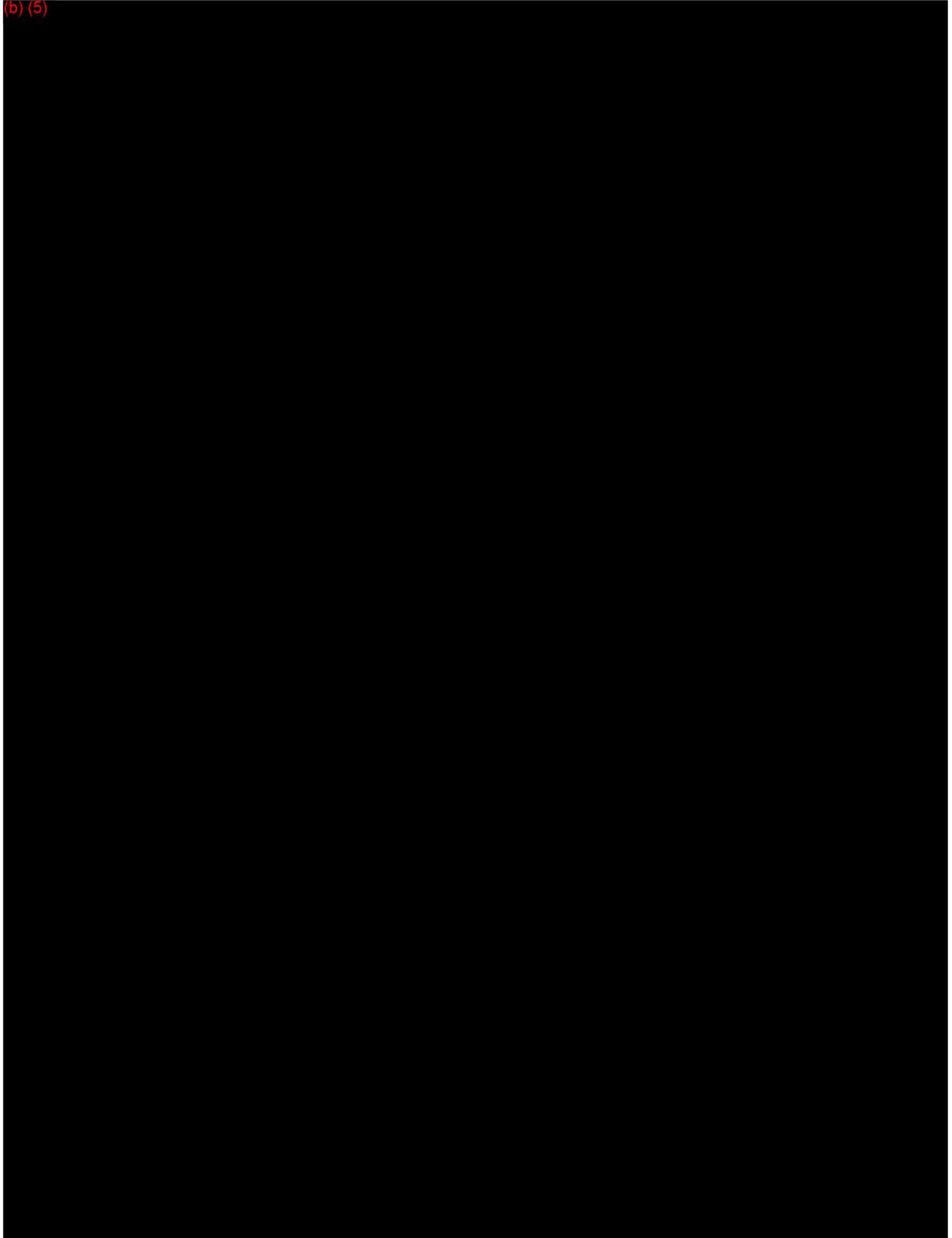


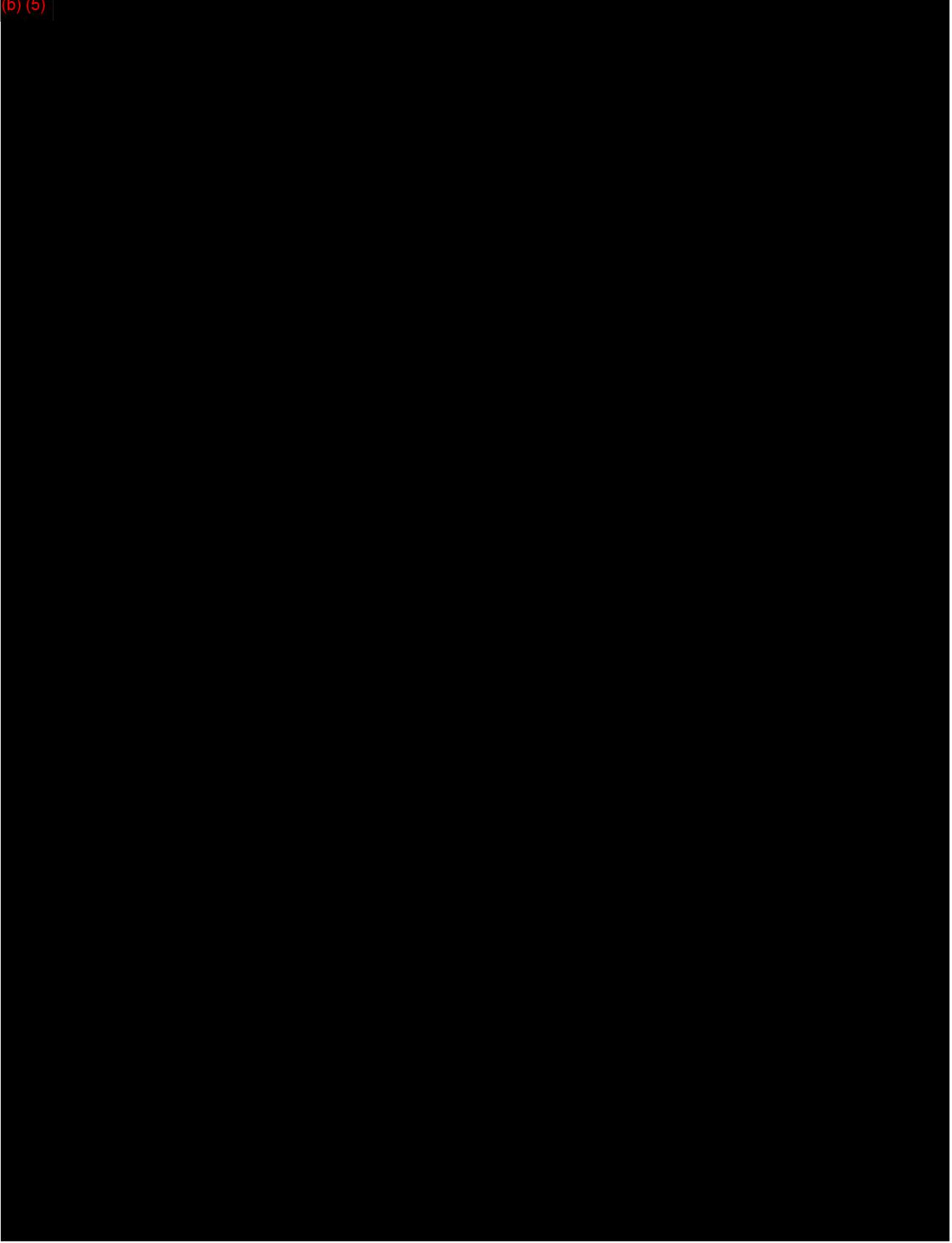


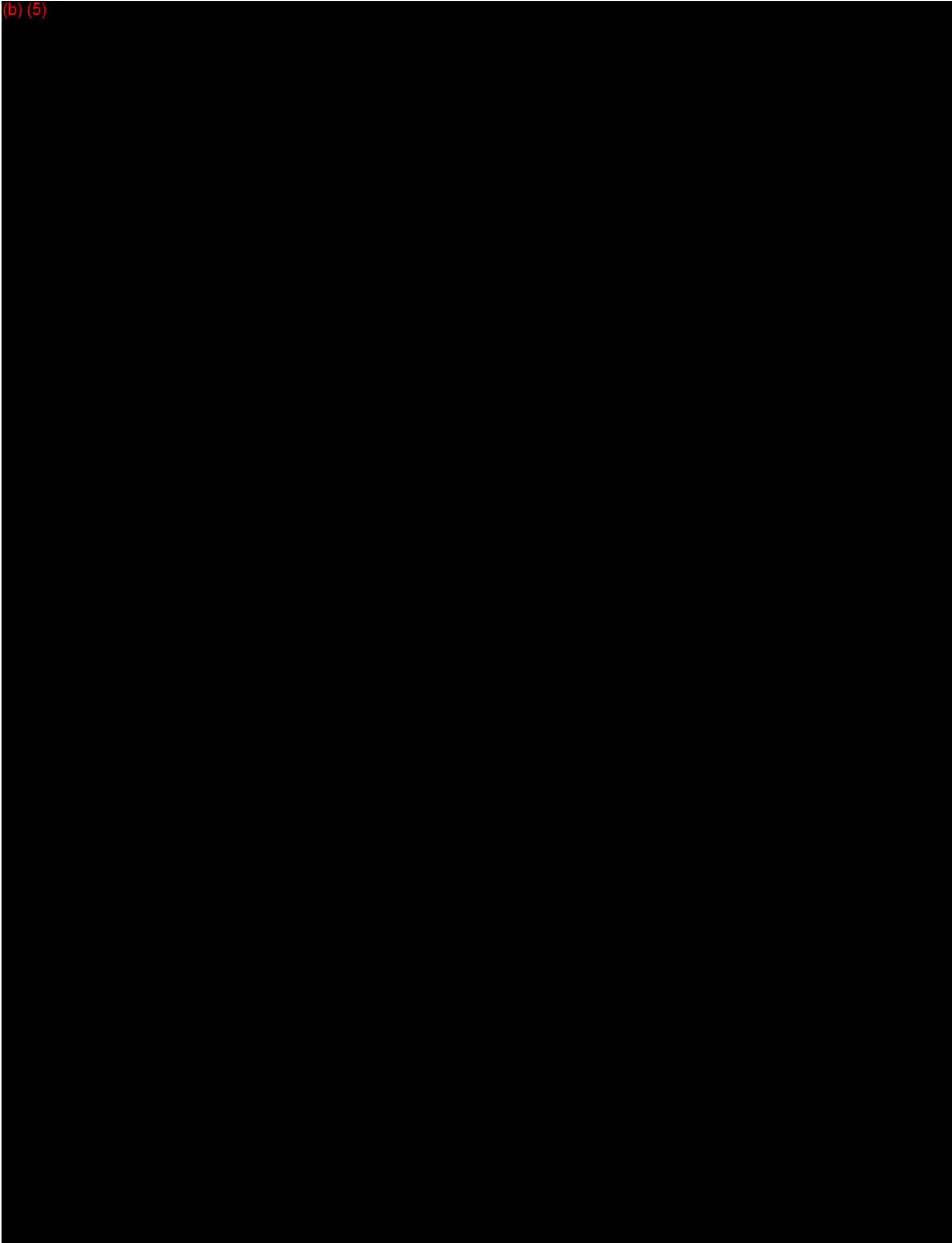












## Draft response letter to Sen. Carper for review

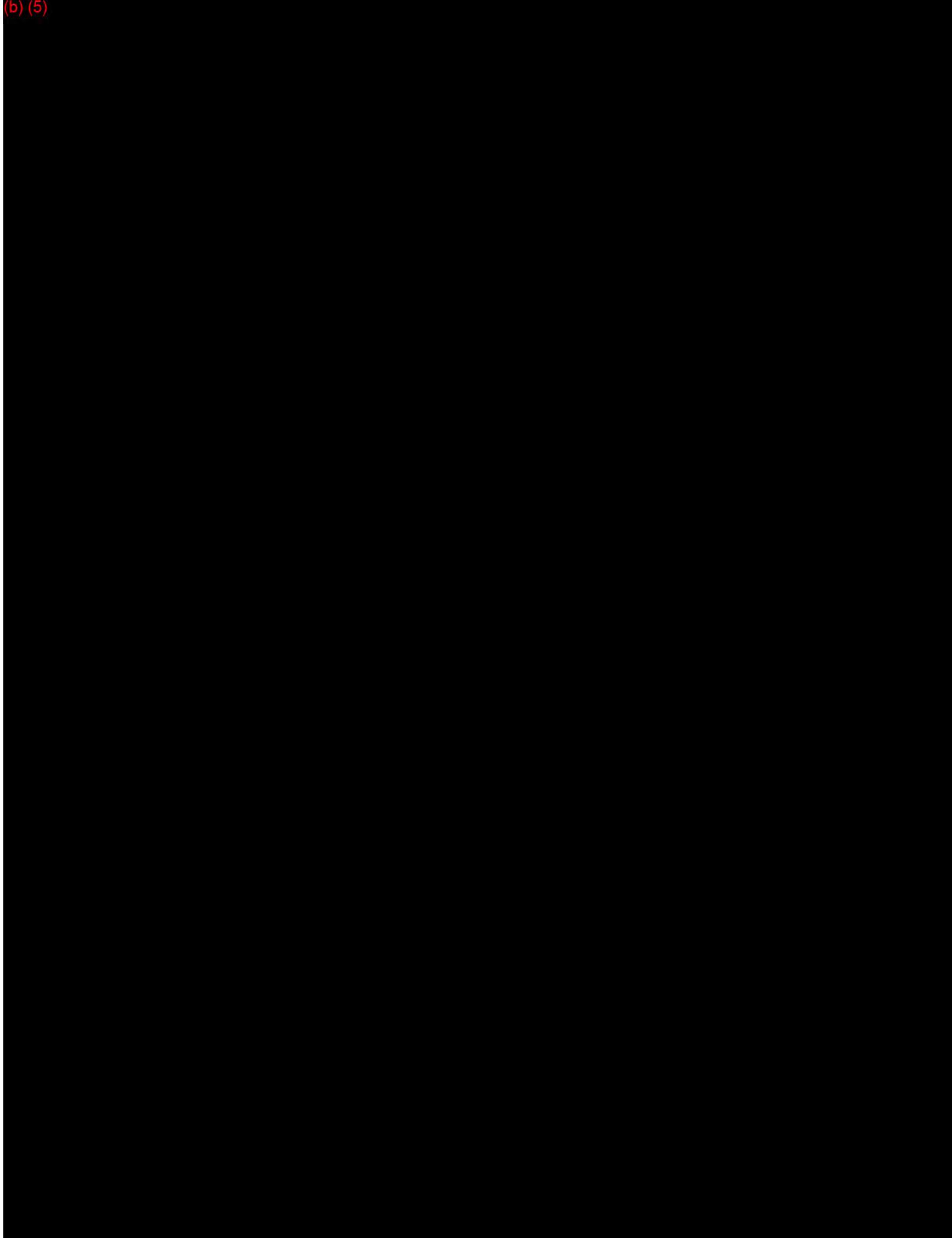
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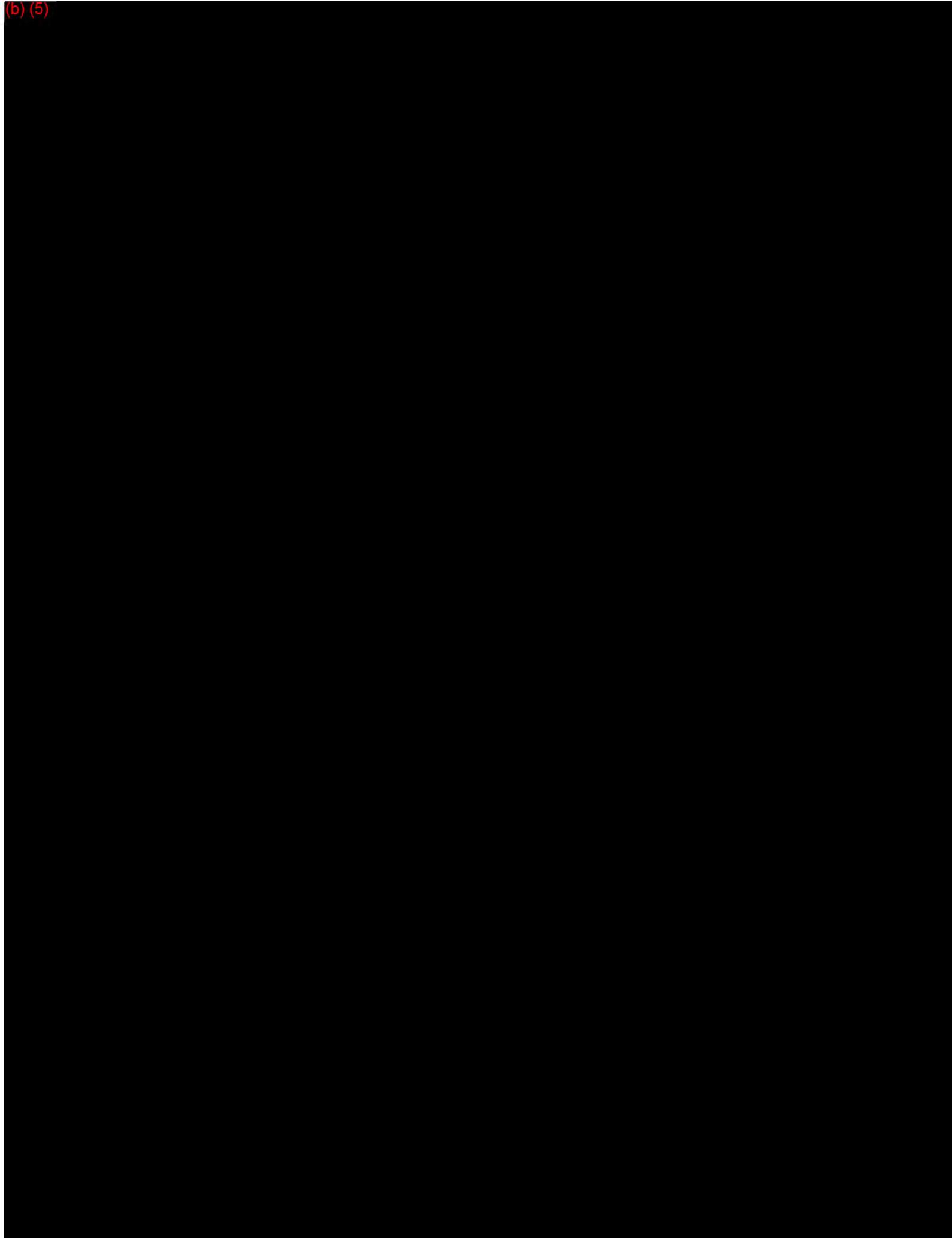
**From:** "Pettigrew, Theresa L. EOP/CEO" <(b) (6)>  
**To:** "Moran, John S. EOP/WHO" <(b) (6)>  
**Cc:** "Neumayr, Mary B. EOP/CEQ" <(b) (6)> "Seale, Viktoria Z. EOP/CEQ" <(b) (6)>  
**Date:** Wed, 15 Aug 2018 10:24:32 -0400  
**Attachments** 08.03.17 Senator Carper to Neumayr CEQ Follow-up Letter.pdf (679.21 kB); DRAFT  
: Response to Senator Carper letter - 081518.docx (64.92 kB)

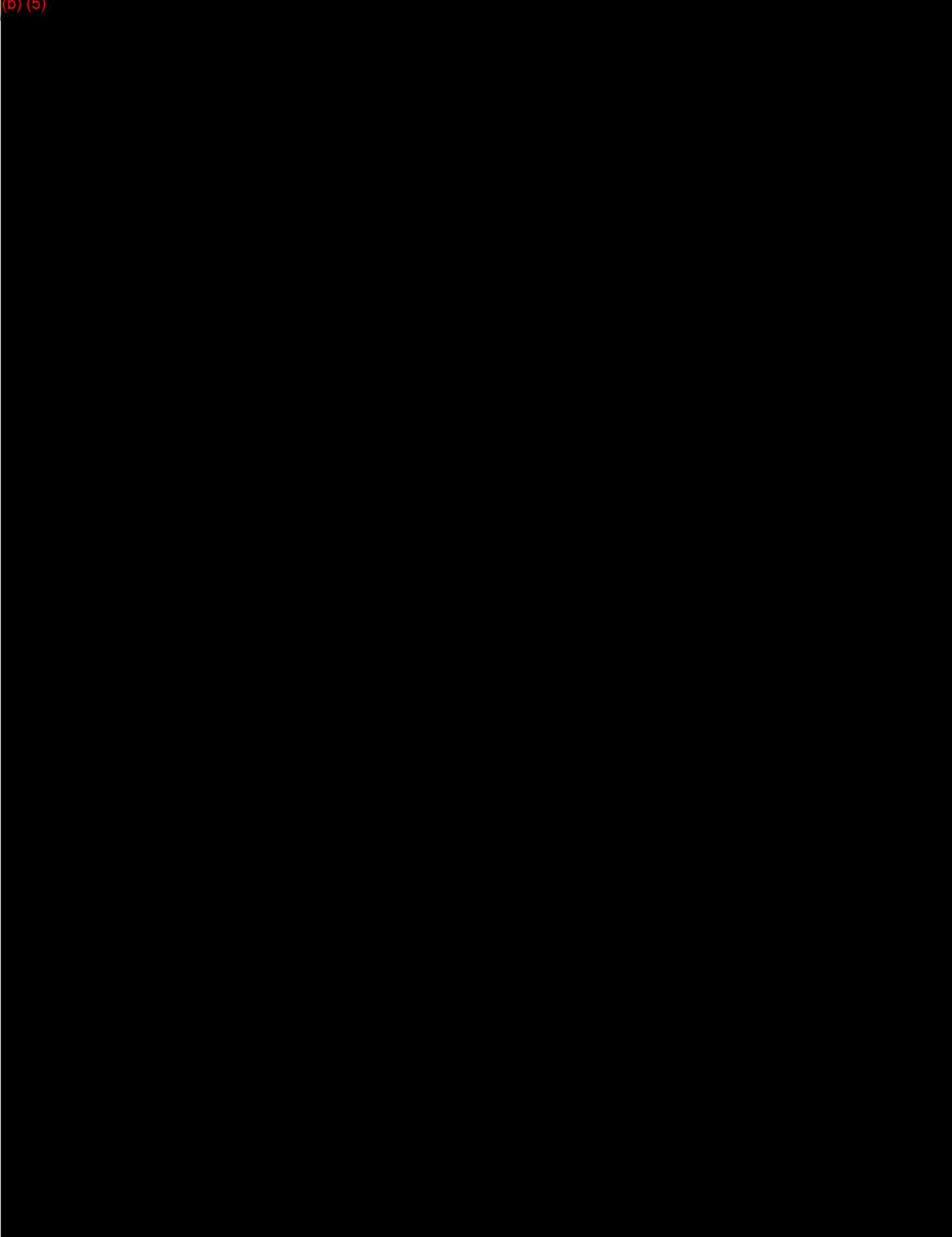
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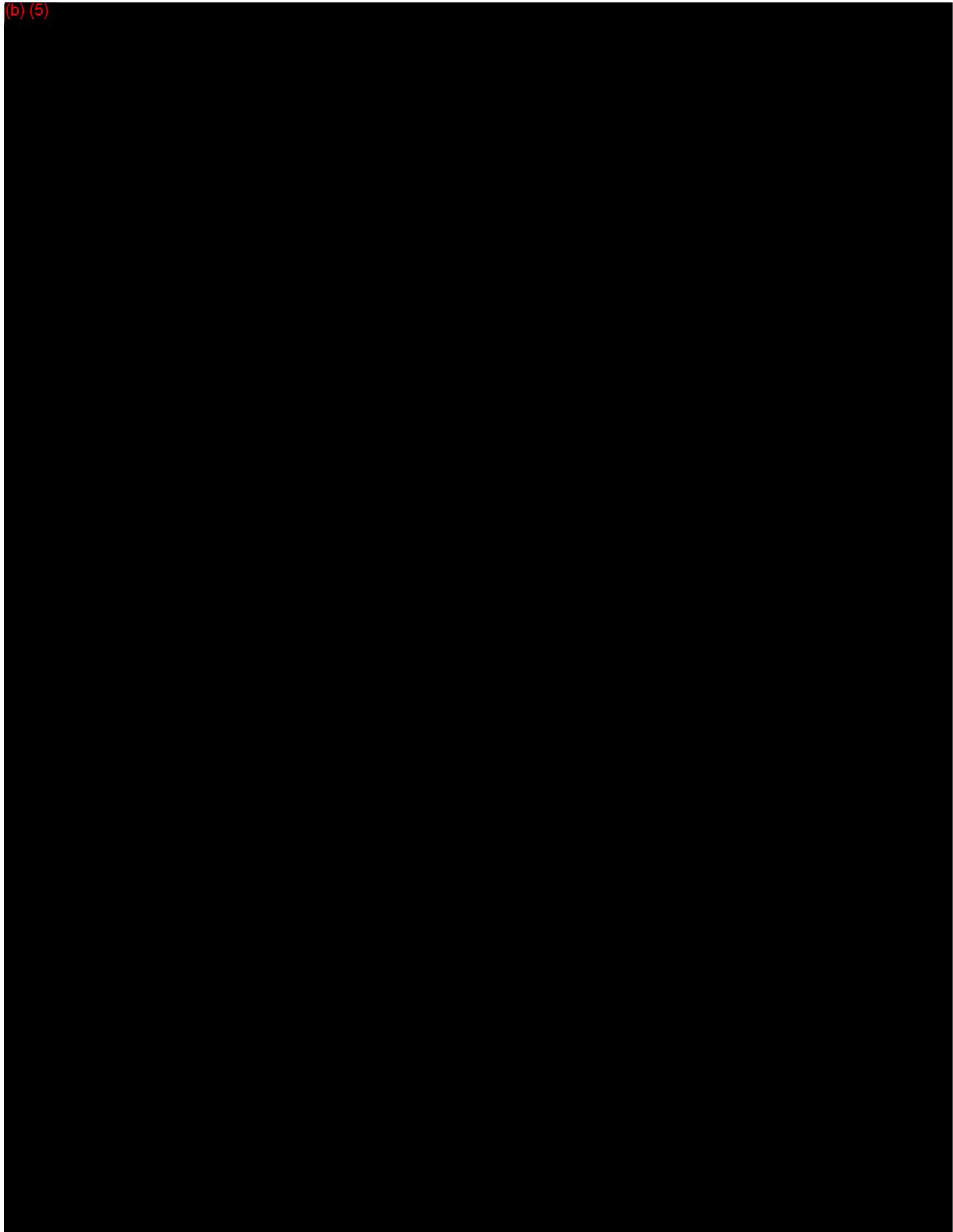
John,  
Here is the letter Sen. Carper sent to Mary, and a draft letter with additional responses to his questions.  
Thank you for taking a look.  
Sincerely,  
Theresa

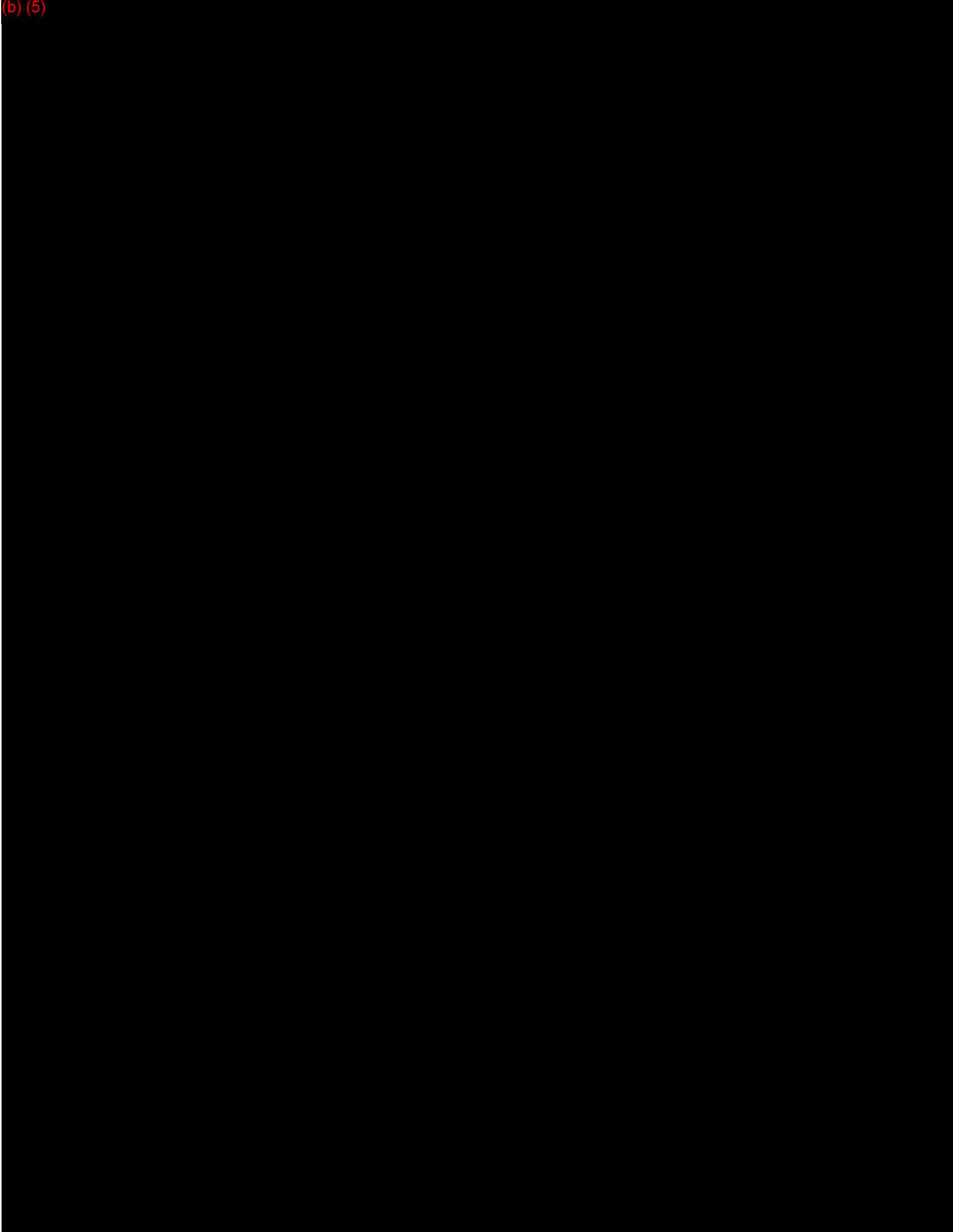
Theresa L. Pettigrew  
Associate Director for Legislative Affairs  
Council on Environmental Quality  
(b) (6) (direct)

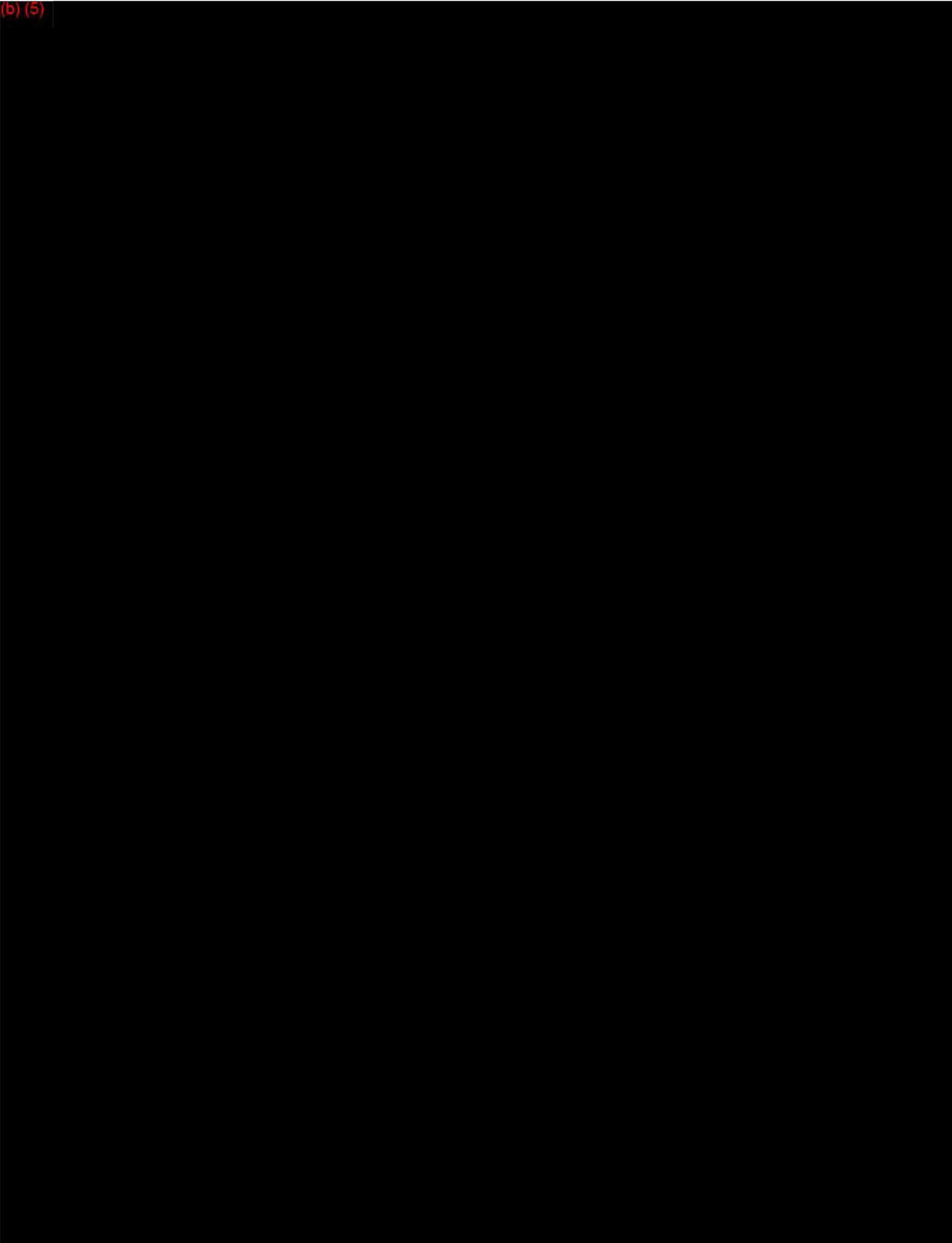


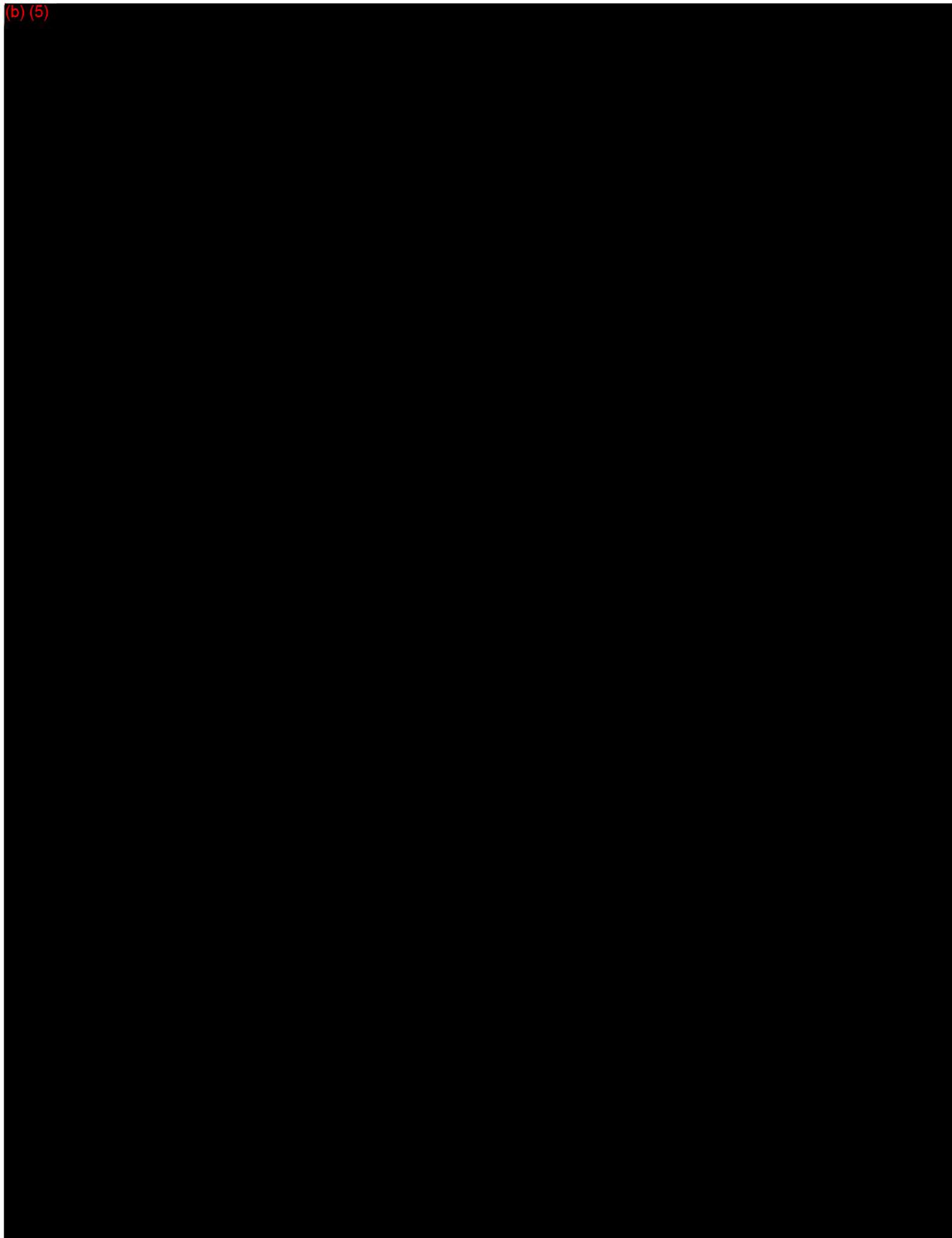


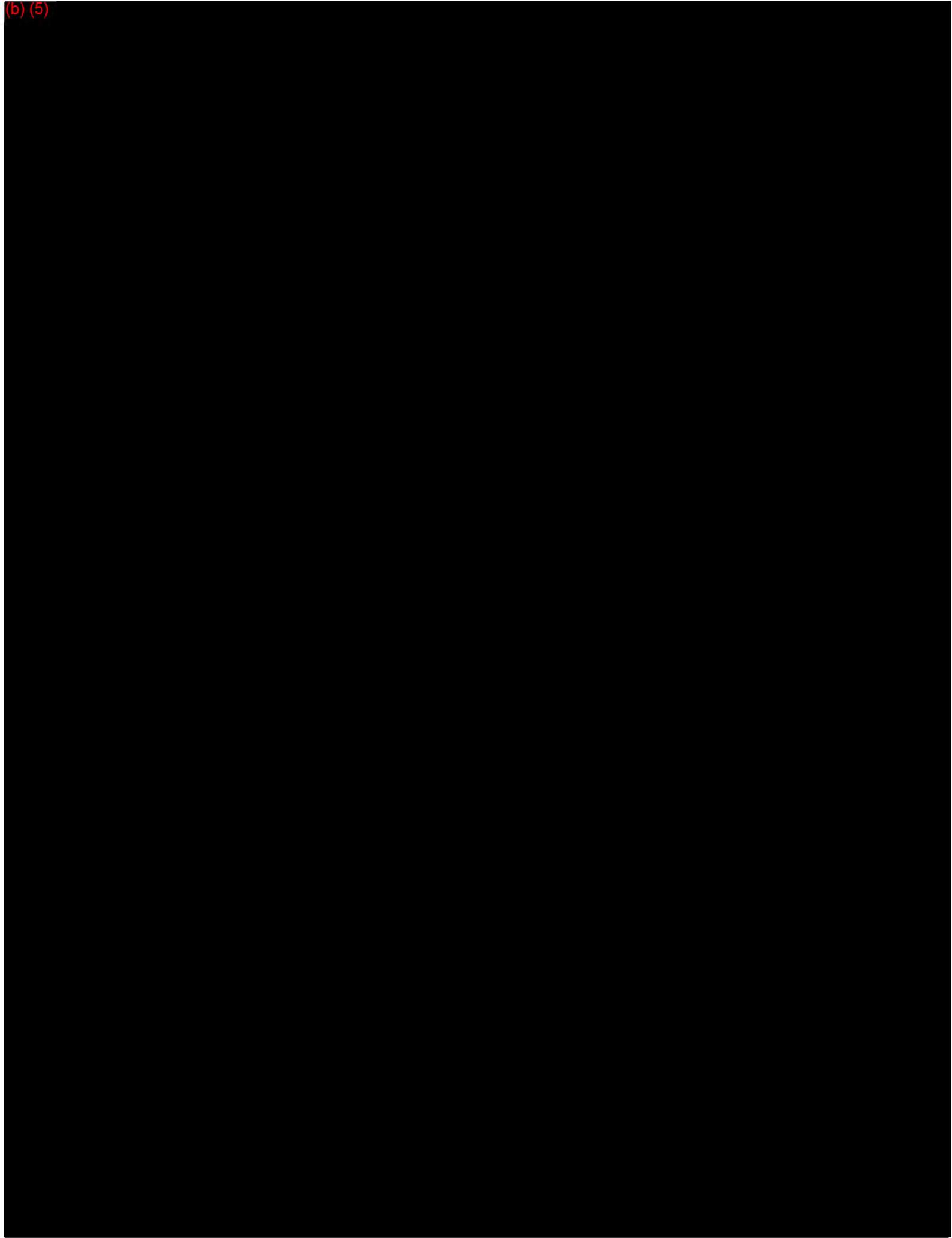


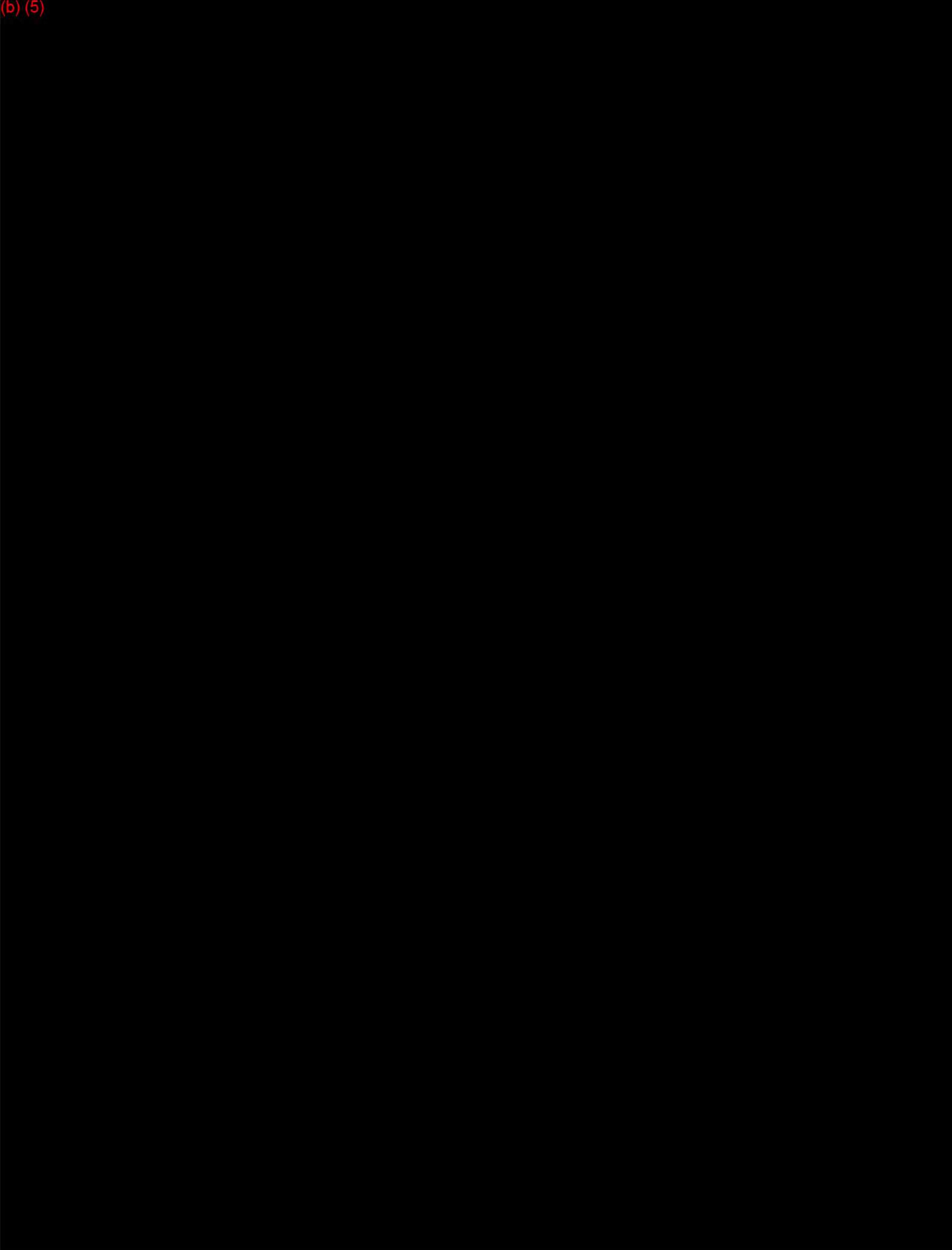


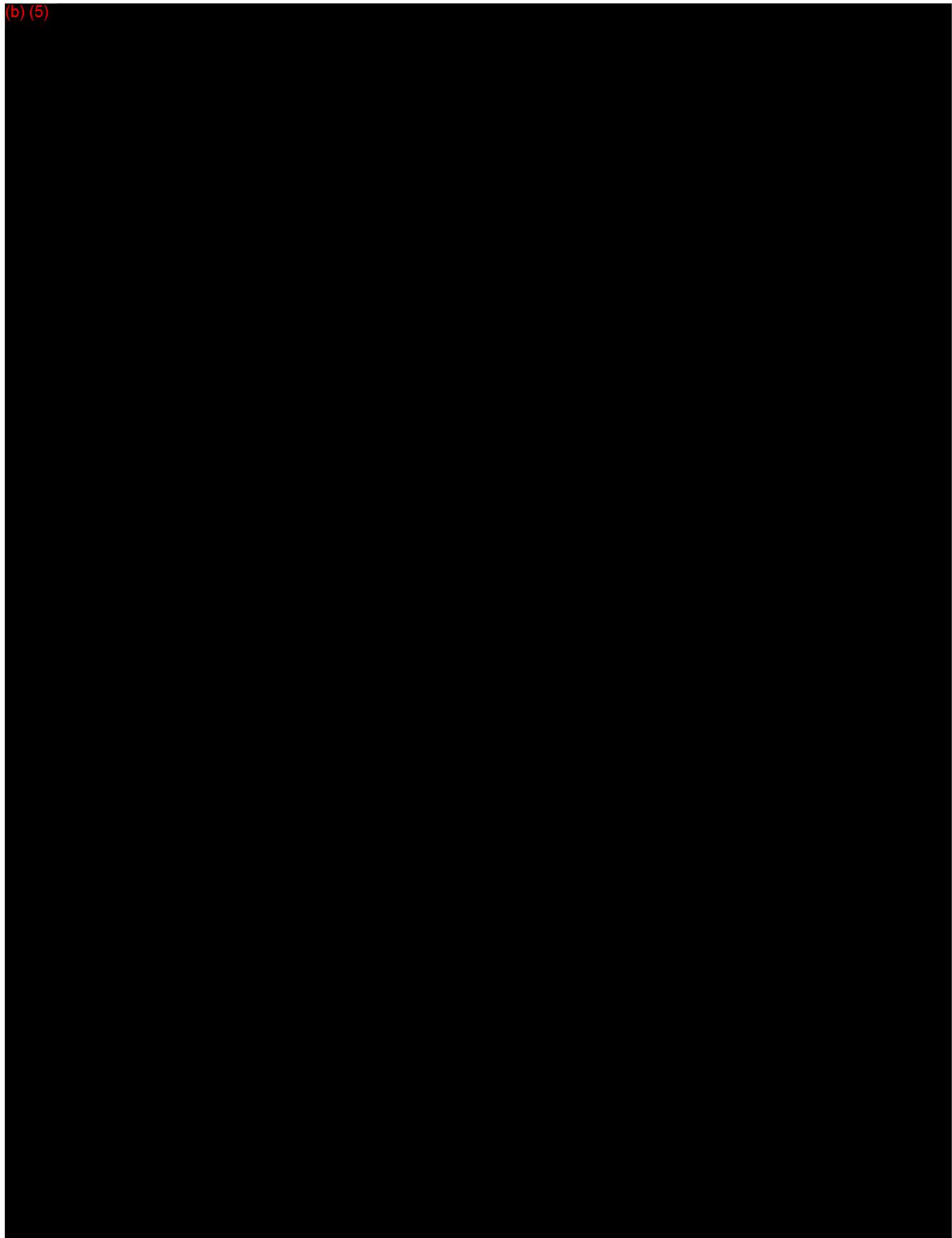


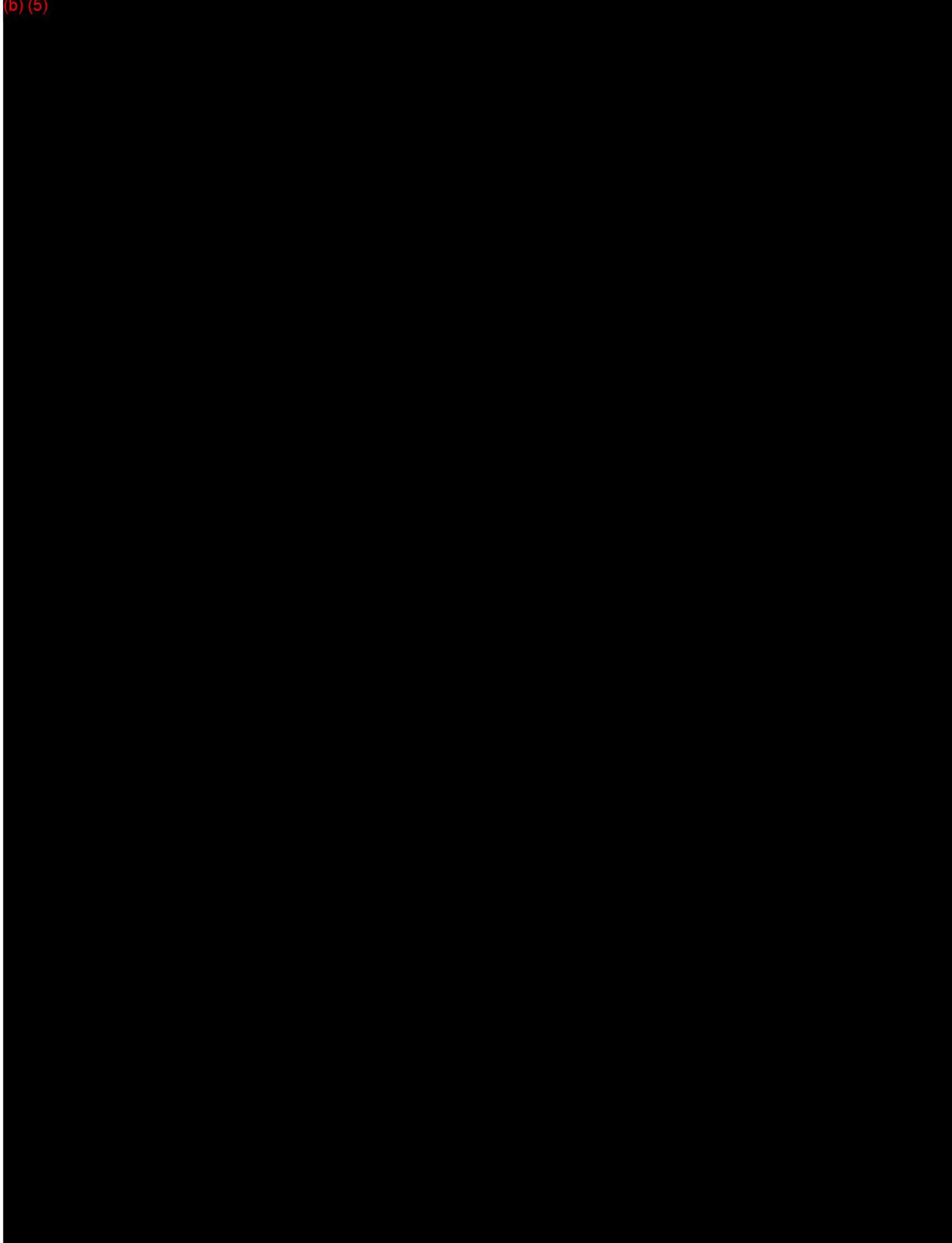


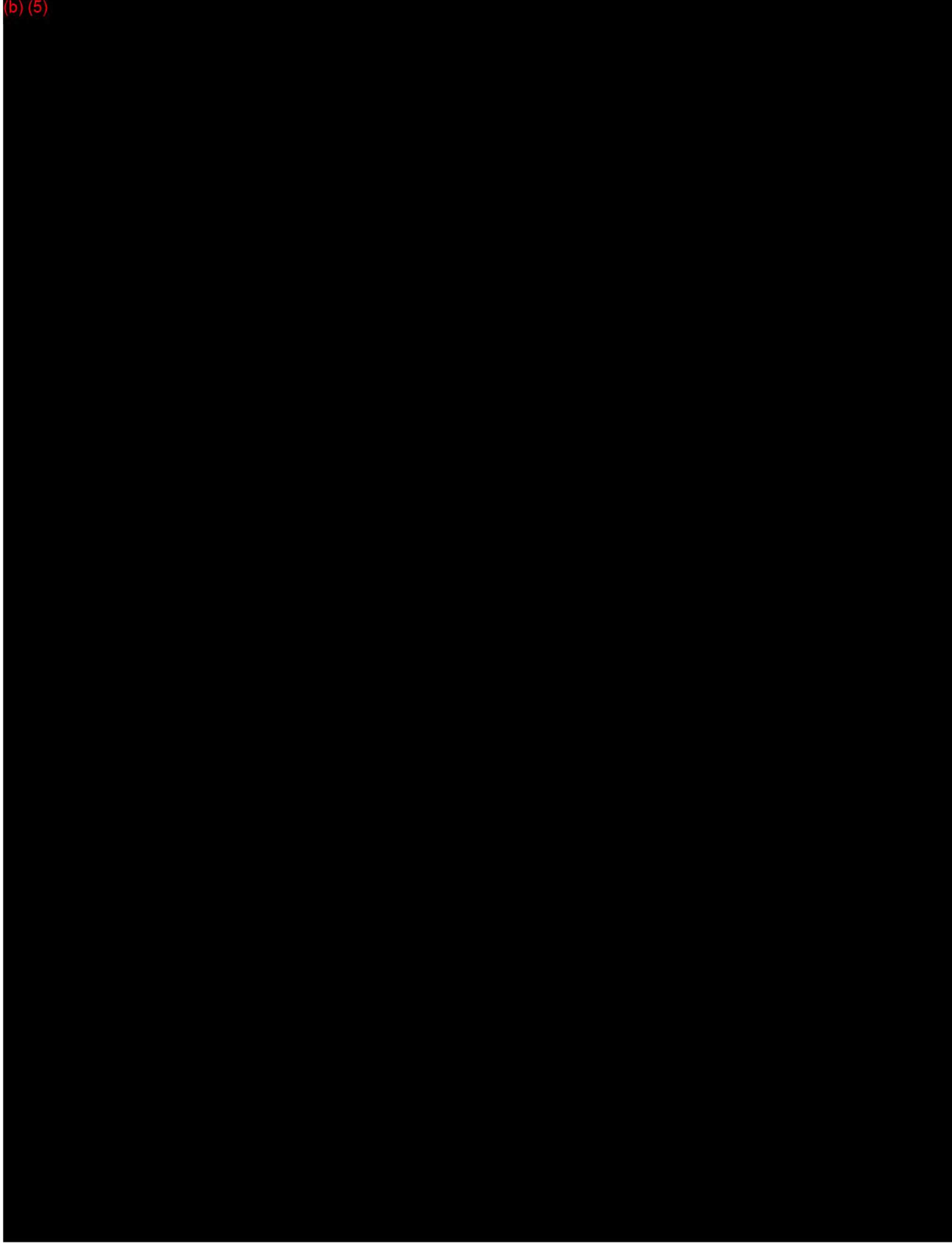


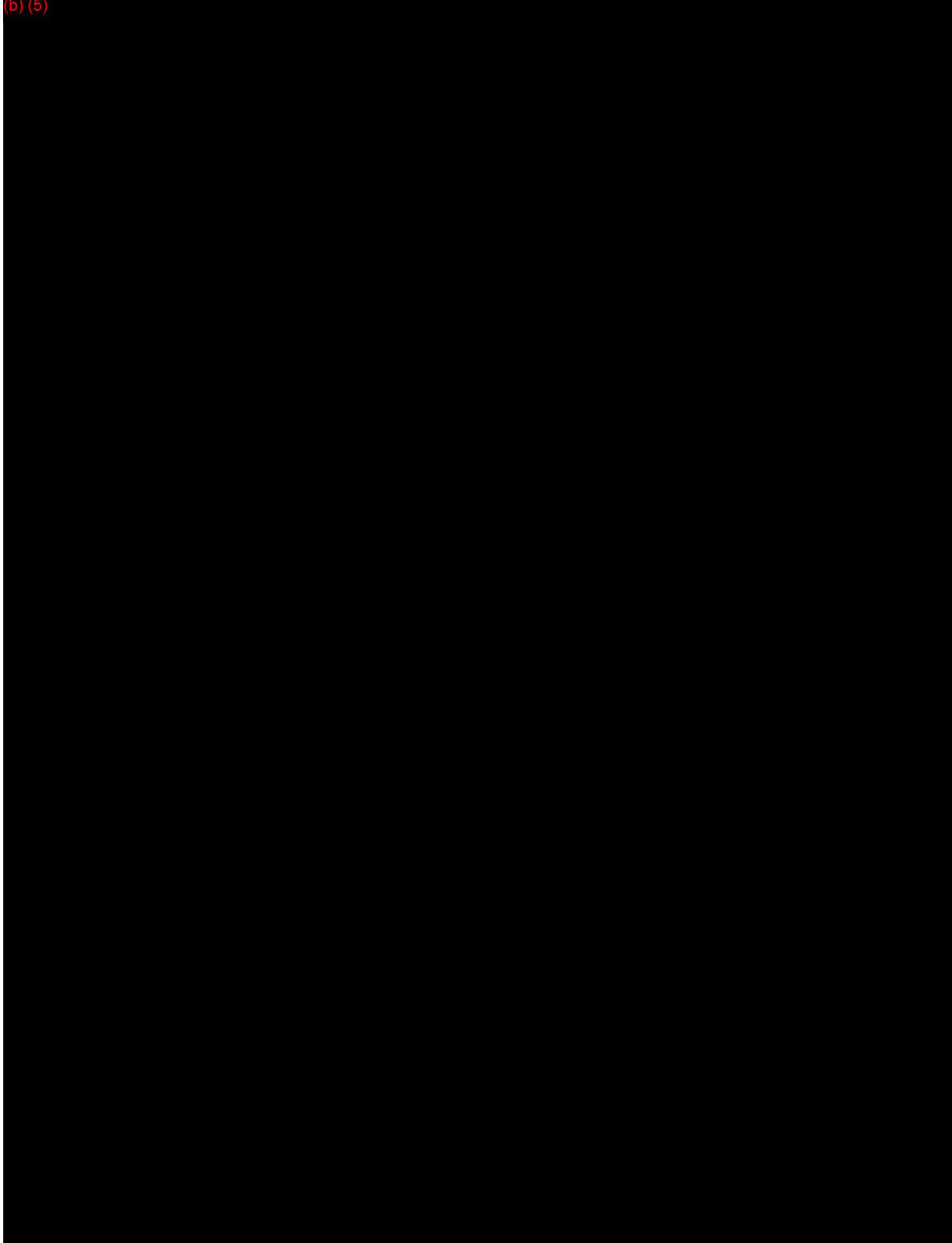


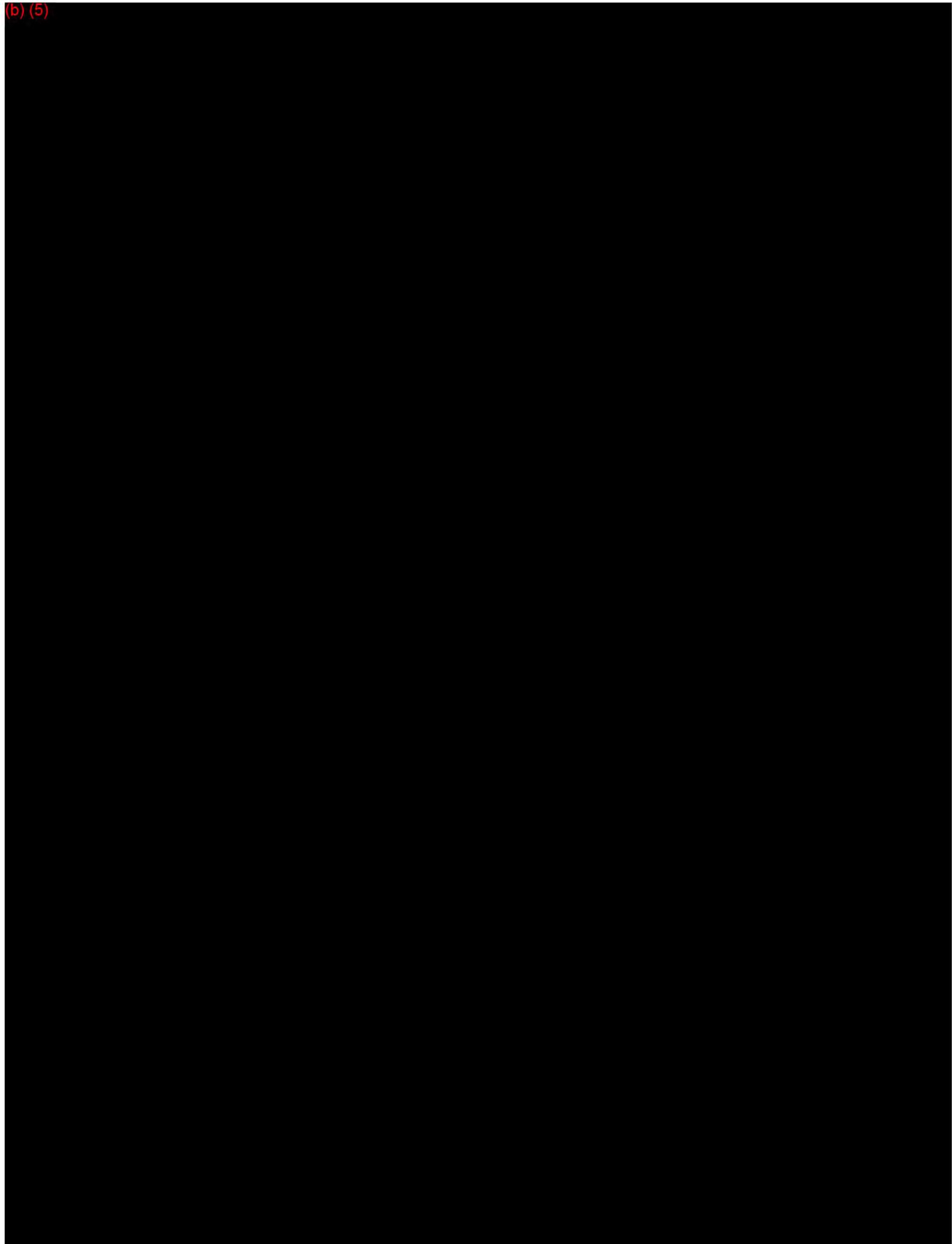


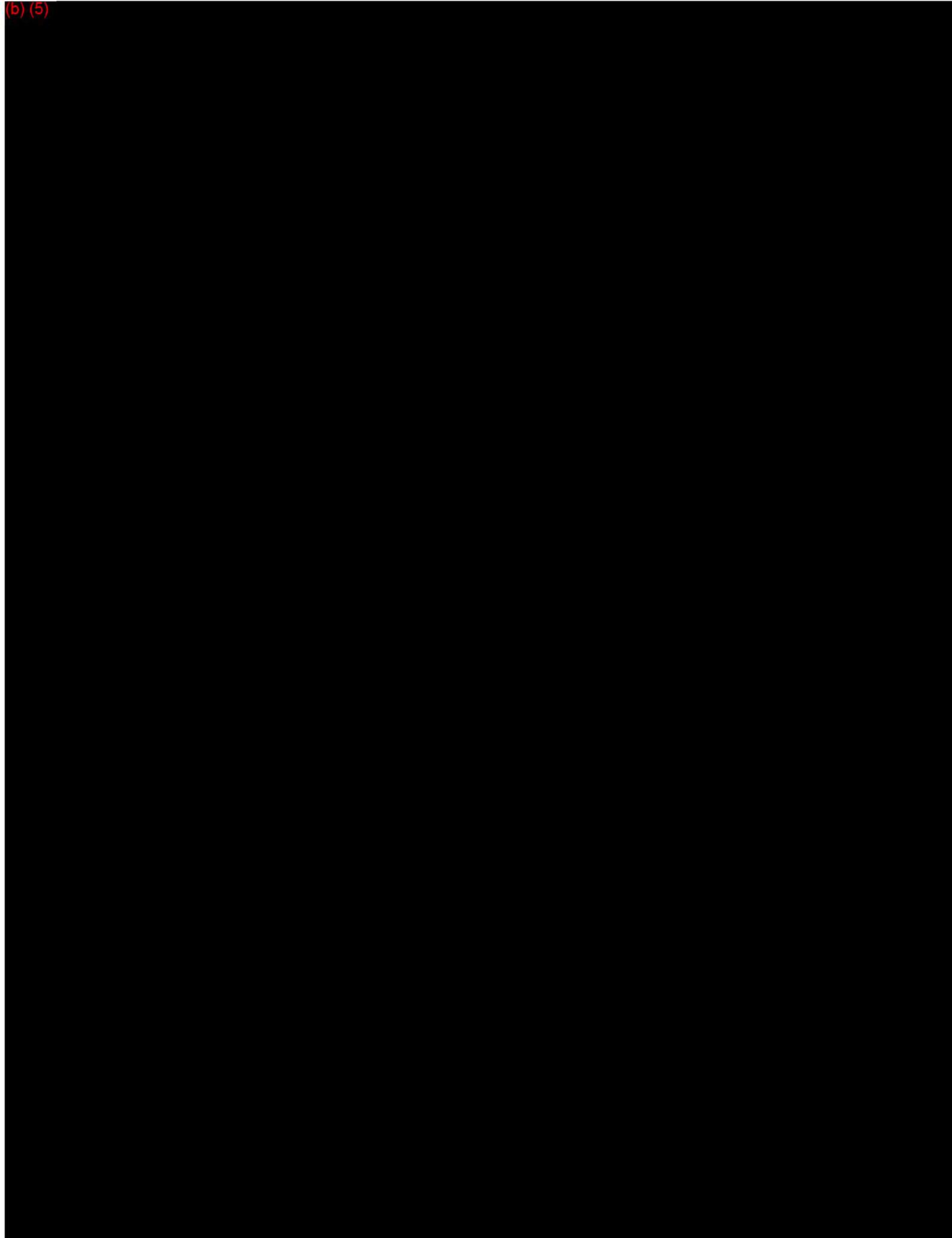


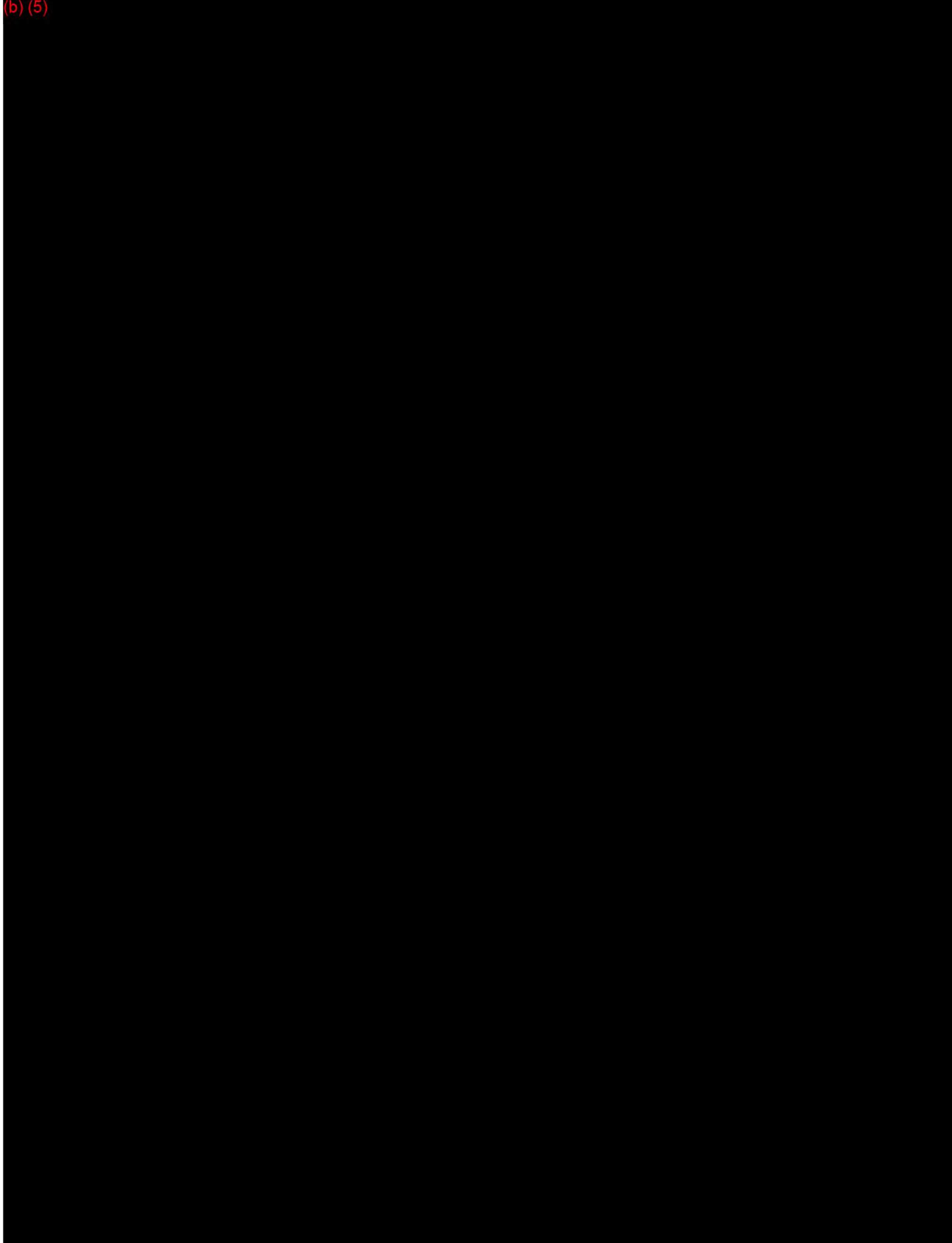


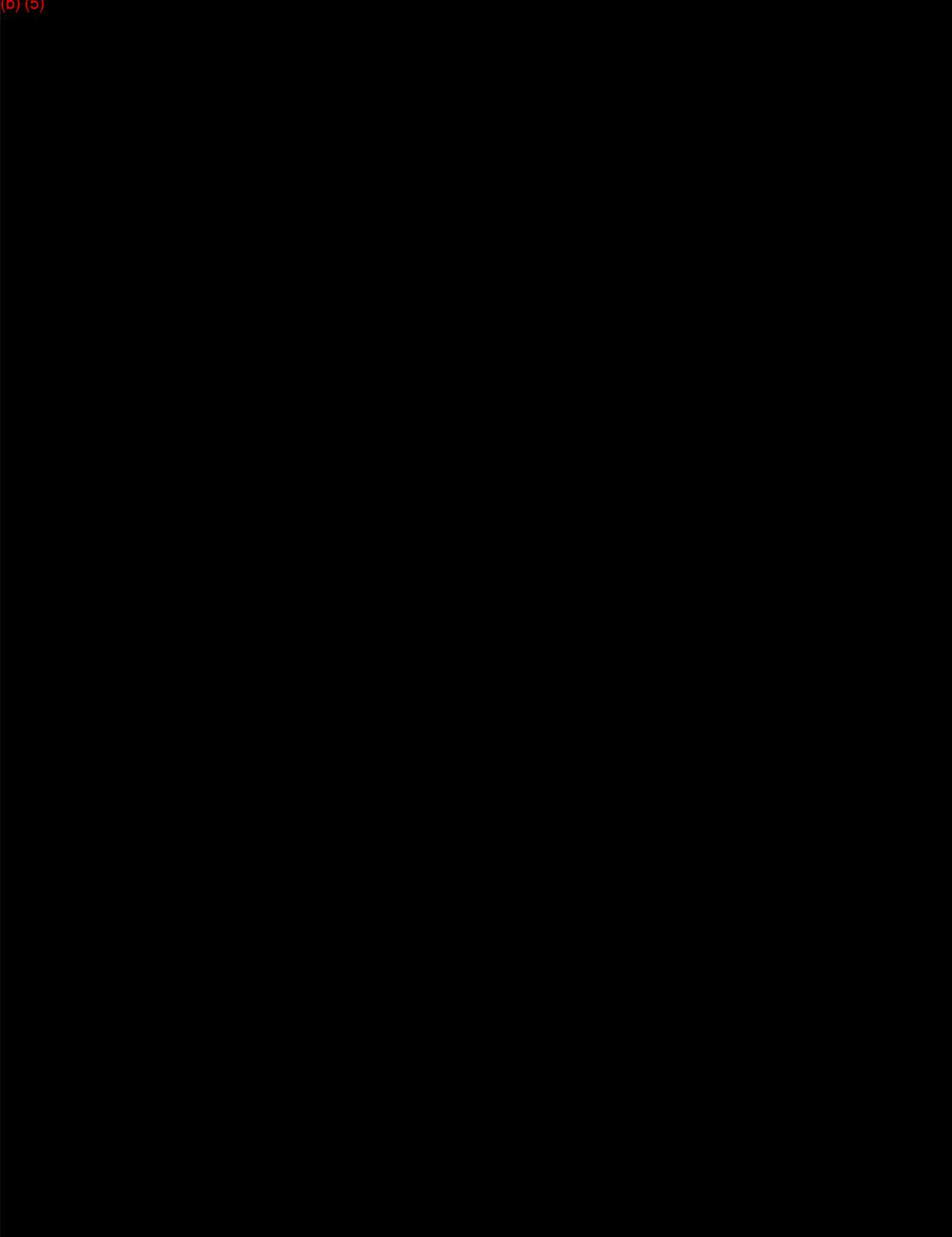


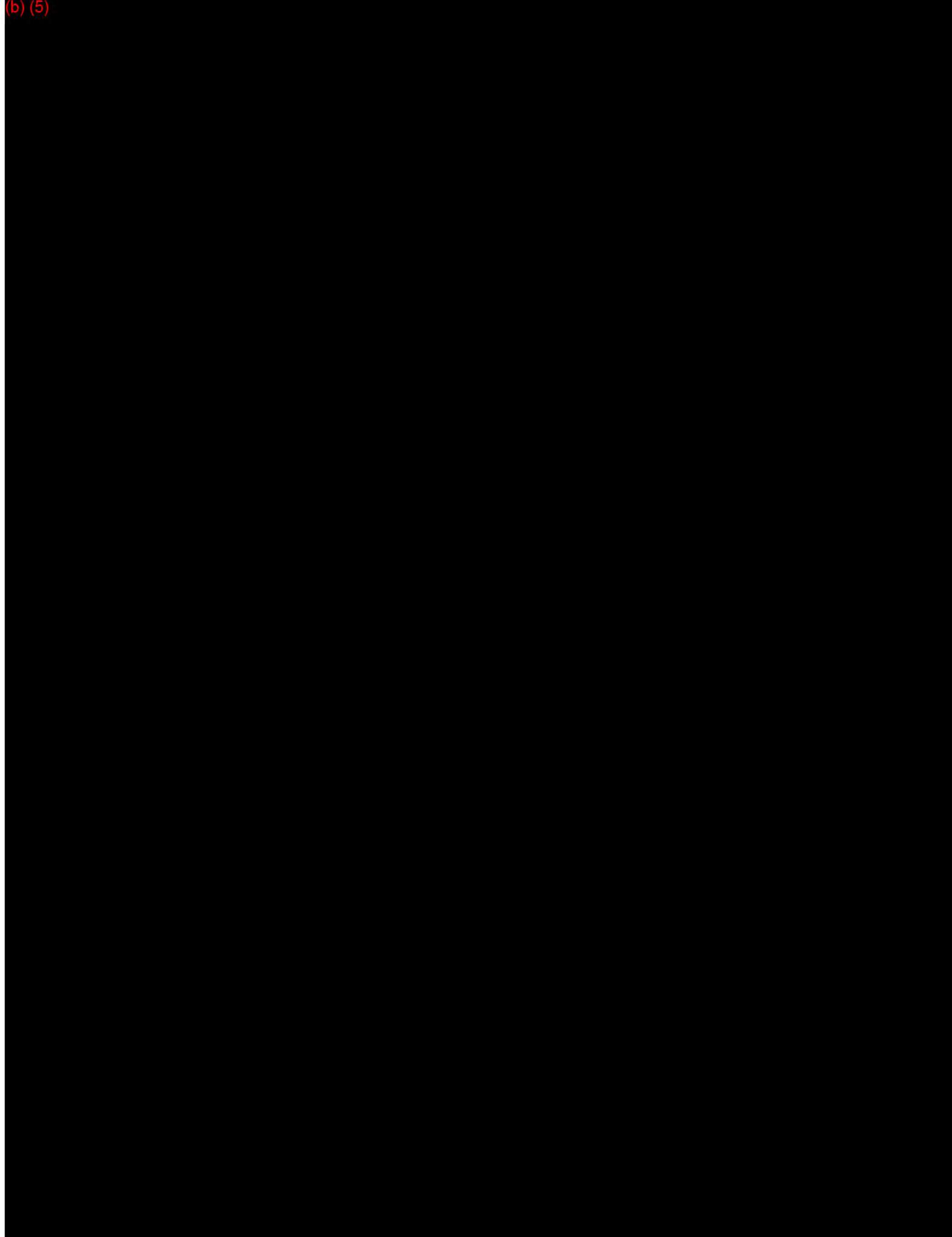












JAMES M. INHOFE, OKLAHOMA  
SHELLEY MOORE CAPITO, WEST VIRGINIA  
JOHN BOOZMAN, ARKANSAS  
ROGER WICKER, MISSISSIPPI  
DEB FISCHER, NEBRASKA  
JERRY MORAN, KANSAS  
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DAN SULLIVAN, ALASKA  
RICHARD SHELBY, ALABAMA

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CORY A. BOOKER, NEW JERSEY  
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TAMMY DUCKWORTH, ILLINOIS  
CHRIS VAN HOLLEN, MARYLAND

## United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR  
MARY FRANCES REPKO, MINORITY STAFF DIRECTOR

August 3, 2018

Ms. Mary Neumayr  
Chief of Staff  
Council on Environmental Quality  
730 Jackson Place NW  
Washington DC 20503

Dear Ms. Neumayr,

Thank you for taking the time to talk with several members of my EPW Committee staff and me earlier this week about your nomination to be Chair of the Council on Environmental Quality (CEQ). As I mentioned in our conversation and reiterated at the Senate Committee on Environment and Public Works' (EPW) business meeting on Wednesday, I was disappointed by several of your responses to my questions for the record, which kept me from supporting your nomination in committee. I am writing today to give you another opportunity to answer these questions and to highlight several areas where I hope you can commit to working with my staff and me.

As you know, the Chair of CEQ has enormous responsibility to advocate within the Executive Office of the President and throughout the federal government for environmental protections and to use his or her judgement to evaluate the impact that all major Federal actions will have on our environment. That includes ensuring that the National Environmental Protection Act (NEPA) is implemented in a manner that protects vulnerable resources. To fill this critical role, I believe anyone who is nominated to serve as Chair of CEQ must show that she or he will make the environment a priority, not an afterthought.

After your July 19, 2018 confirmation hearing, my colleagues and I asked for additional responses from you on a variety of topics as part of the questions for the hearing record. I was surprised at the content of these responses, as I felt you did a good job answering questions during the actual hearing. I understand that you were facing short timeframes to provide written responses before the business meeting this week, therefore I would like to ask you again to review the following questions and provide more fulsome responses, which my colleagues and I will consider prior to a floor vote. These questions are fairly straightforward:

- Do you agree that for the vast majority of highway projects, NEPA approvals do not constitute a significant burden? (Q7)

- Do you agree with the conclusions from non-partisan government entities such as the Government Accountability Office and Congressional Research Service, as well as academia and private studies, all of which indicate that the primary causes of project and permitting delay are not related to the NEPA process? (Q11)
- When CEQ undertook regulatory reviews in 1978, 1981, 1985, and 1997, it held public meetings to solicit additional input of private citizens and stakeholders, whether for the release of studies, guidance, or regulations. Please submit responses to each sub-part of our questions regarding additional public input should CEQ move forward with a Notice of Proposed Rulemaking. (Q15)
- At the roundtable on FAST-41 provisions of the FAST Act that was held on June 27, 2018, several members of the Senate and your staff, citing CEQ, said that FAST-41 has saved a billion dollars. Would you please present documentation supporting that assertion? (Q21)
- NOAA reported this year that extreme weather events have cost our nation more than \$425 billion over the past five years. It will be your responsibility to help prepare the American public for the grave challenges of climate change and to provide tools that communities can use to protect themselves and increase their resilience to flooding and other disasters. In your answers, you've failed to answer what, if any, role you personally had in revoking the resiliency Executive Orders; if you commit to reinstating the resiliency Executive Orders; and if repealing the Federal Floodplains Risk Management Standard (FFRMS) is a security threat and makes our infrastructure more vulnerable to flooding. Please submit responses to each sub-part of our questions regarding your views on the resilient Executive Orders. (Q30 and Q31)
- In a *per curiam* opinion, the U.S. Circuit Court of Appeals for the District of Columbia affirmed the Endangerment Finding and the U.S. Supreme Court declined to issue a writ of certiorari on the D.C. Circuit's decision. The Endangerment Finding set in motion EPA's legal obligations to set greenhouse gas emissions standards for mobile and stationary sources, including those established by the Clean Power Plan in August 2015. I asked if you agreed with the courts that EPA has an obligation to address CO<sub>2</sub>? If not, why not? You stated that "Any reconsideration of the Endangerment Finding by the EPA would be subject to the Administrative Procedure Act." It is unclear from this answer if you believe EPA has an obligation to address CO<sub>2</sub> or merely can stop regulating if it goes through a rule making process. Please clarify your answer to (Q37).

We very much look forward to working with you should you be confirmed. Please provide your assurances that we will be able to work together on the following items:

- 1) Throughout your tenure, I will exercise vigilant oversight to ensure that, consistent with precedent, my office has a commitment to have a process that is commensurate with the scope of undertaking updates to the National Environmental Policy Act (NEPA) and that complies with the spirit of public input that NEPA embodies. For the immediate future, please commit to my specific request that if CEQ does propose

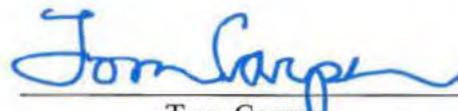
revisions to the NEPA regulations, then CEQ will hold public meetings throughout the country, including at least one meeting in the Mid-Atlantic area.

- 2) Please commit to work with my office on reinstatement of the Federal Floodplain Risk Management Standard, or a comparable standard, to hold new infrastructure projects to more resilient standards.
- 3) Please commit to reinstatement of provisions to prepare the United States for the impacts of climate change and to improve federal sustainability, which are comparable to the provisions in Executive Orders 13653 (Preparing the United States for the Impacts of Climate Change) and 13693 (Planning for Federal Sustainability in the Next Decade).

Please do not hesitate to contact me or Michal Freedhoff, a member of my EPW Committee at [Michal\\_Freedhoff@epw.senate.gov](mailto:Michal_Freedhoff@epw.senate.gov), should you have any questions or need further clarification on any of these requests. Thank you in advance for your attention to these questions.

With best personal regards, I am

Sincerely yours,



---

Tom Carper  
Ranking Member

## [EXTERNAL] RE: Following up on our call last week

---

**From:** "Stoimenova, Yordanka (CEAA/ACEE)" <yordanka.stoimenova@canada.ca>  
**To:** "Boling, Ted A. EOP/CEQ" (b) (6)  
**Cc:** "Hynes, Aaron (CEAA/ACEE)" <aaron.hynes@canada.ca>, "Rooney, Audrey (CEAA/ACEE)" <audrey.rooney@canada.ca>  
**Date:** Tue, 28 Aug 2018 09:46:47 -0400

**Attachments**  
: CEAA comments to ANPR CEQ's NEPA regulations.docx (23.31 kB)

Good morning Ted,

Apologies for the delay in getting back to you, I was away yesterday.

Please find attached Canadian Environmental Assessment Agency's comments on the Council of Environmental Quality's (CEQ) regulations for implementing the procedural provisions of the National Environmental Policy Act. We appreciate your flexibility in accepting our submission.

With regard to BBNJ, the Agency supports Global Affairs Canada on EIA-related topics. I participated in the discussions at the Preparatory Committee and will be representing the Agency during the upcoming BBNJ IGC negotiations. Are you going to be directly involved in this work?

Best regards,  
Yordanka

**Yordanka Stoimenova**  
Policy Analyst, Policy Analysis Division  
Canadian Environmental Assessment Agency / Government of Canada  
[yordanka.stoimenova@canada.ca](mailto:yordanka.stoimenova@canada.ca) / Tel: 613-793-7086

Analyste des politiques, Direction de l'analyse des politiques  
Agence canadienne d'évaluation environnementale / Gouvernement du Canada  
[yordanka.stoimenova@canada.ca](mailto:yordanka.stoimenova@canada.ca) / Tél. : 613-793-7086

---

**From:** Boling, Ted A. EOP/CEQ [mailto:(b) (6)]  
**Sent:** August 27, 2018 1:52 PM  
**To:** Stoimenova, Yordanka (CEAA/ACEE)  
**Subject:** \*\*\*\*\*SPAM\*\*\*\*\* Following up on our call last week

Yordanka,

I haven't seen any comments from CEAA yet, so I'm hoping that you can send them to me directly. Also, is anyone from CEAA working on the Biodiversity Beyond National Jurisdiction negotiations that will start next week at the U.N.?

Regards,  
Ted

Edward A. Boling  
Associate Director for the  
National Environmental Policy Act  
Council on Environmental Quality  
730 Jackson Place  
Washington, DC 20503

**Canadian Environmental Assessment Agency comments on the potential revisions to the Council of Environmental Quality's (CEQ) regulations for implementing the procedural provisions of the *National Environmental Policy Act* (NEPA)**

The Canadian Environmental Assessment Agency (the Agency) appreciates the opportunity to provide comments on the potential revisions to update and clarify the Council of Environmental Quality's (CEQ) regulations for implementing the procedural provisions of the *National Environmental Policy Act* (NEPA).

The Agency's general comment is related to the inclusion of specific provisions in the CEQ's NEPA regulations for consideration of potential transboundary impacts as part of the NEPA review of proposed federal actions. Such provisions would clarify that NEPA applies to transboundary impacts that may occur as the result of a proposed federal action in the U.S. and would ensure greater consistency among the federal agencies in applying these requirements.

In response to some of the specific questions set out in the Advance Notice of Proposed Rulemaking, the following are our specific comments on considering transboundary impacts:

- *Question 5. Should CEQ's NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decision-makers and the public, and if so, how?*

The Agency recommends that a specific requirement to consider and analyze transboundary impacts of actions in the U.S. be incorporated in the CEQ's NEPA regulations (e.g. in §1501.7).

In particular, if a proposed federal action has a potential to significantly impact resources, environmental components or human health across international borders, the lead federal agency should be required to consider these impacts in the NEPA review, notify potentially affected foreign governments and provide them with opportunities to review and comment on related environmental impact statement (EIS) documents.

The CEQ 1997 Guidance on Transboundary Environmental Impacts directs federal agencies to include analysis of reasonably foreseeable transboundary effects of proposed actions in their analysis of proposed actions in the U.S. However, the Agency has noted a gap in the application of these directions by the federal agencies in considering potential impacts to Canada of activities in the U.S. including such provisions in the CEQ NEPA regulations could help address this gap by setting firm requirements for federal agencies to consider transboundary impacts in their NEPA reviews and possibly develop steps in their respective environmental review procedures that reflect this requirement.

For example, under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012), as well as its proposed replacement, the Impact Assessment Act, the authority responsible for assessing a designated project is required to consider, among other effects, changes to the environment that would occur outside of Canada.

In addition, the Agency has established a consistent approach for engaging with U.S. officials on environmental assessments of designated projects with potential transboundary effects. Since the coming into force of CEAA 2012, there have been several projects, mainly in British Columbia and Ontario, for which the Canadian government had to take into account the potential for transboundary effects in the U.S. For those projects, the federal government:

- notifies the U.S. federal and state agencies about a proposed project that may have transboundary environmental impacts ;
- provides them with relevant information about the federal environmental assessment process; and
- provides them with the opportunity to participate in the assessment process and provide comments.

➤ *Question 6. Should the provisions in CEQ's NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?*

Similar to the comments to Question 5, the Agency recommends revisions to the CEQ's NEPA regulations (e.g. in §1503.1) to require the lead agency to invite comments on a draft EIS from the public of a foreign country that may be affected by transboundary impacts of a proposed federal action.

Such a requirement would facilitate Canadian stakeholders' participation in the review of federal actions in the U.S. that may have transboundary impacts in Canada. Procedures or guidance on how to operationalize such a requirement could be developed subsequently as needed.

Transboundary coordination and cooperation in environmental impact assessment is an area of mutual interest for our two countries. We acknowledge that the above comments are high level and we look forward to further engaging with the CEQ and EPA in exploring options for information-sharing and consultation on projects with potential transboundary impacts.

# DO OUTS for August 28, 2018 NEPA Implementing Regulations Working Group Meeting

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**From:** "Szabo, Aaron L. EOP/CEQ" <(b) (6)>  
:  
"Barnett, Steven W. EOP/CEQ" <(b) (6)> "Boling, Ted A.  
EOP/CEQ" <(b) (6)> "Drummond, Michael R. EOP/CEQ"  
<(b) (6)> "Loyola, Mario A. EOP/CEQ"  
<(b) (6)> "Mansoor, Yardena M. EOP/CEQ"  
**To:** <(b) (6)> "Pettigrew, Theresa L. EOP/CEQ"  
<(b) (6)> "Schneider, Daniel J. EOP/CEQ"  
<(b) (6)> "Seale, Viktoria Z. EOP/CEQ"  
<(b) (6)> "Sharp, Thomas L. EOP/CEQ"  
<(b) (6)> "Smith, Katherine R. EOP/CEQ"  
<(b) (6)>  
**Cc:** "Szabo, Aaron L. EOP/CEQ" <(b) (6)>  
**Date:** Wed, 29 Aug 2018 17:22:11 -0400

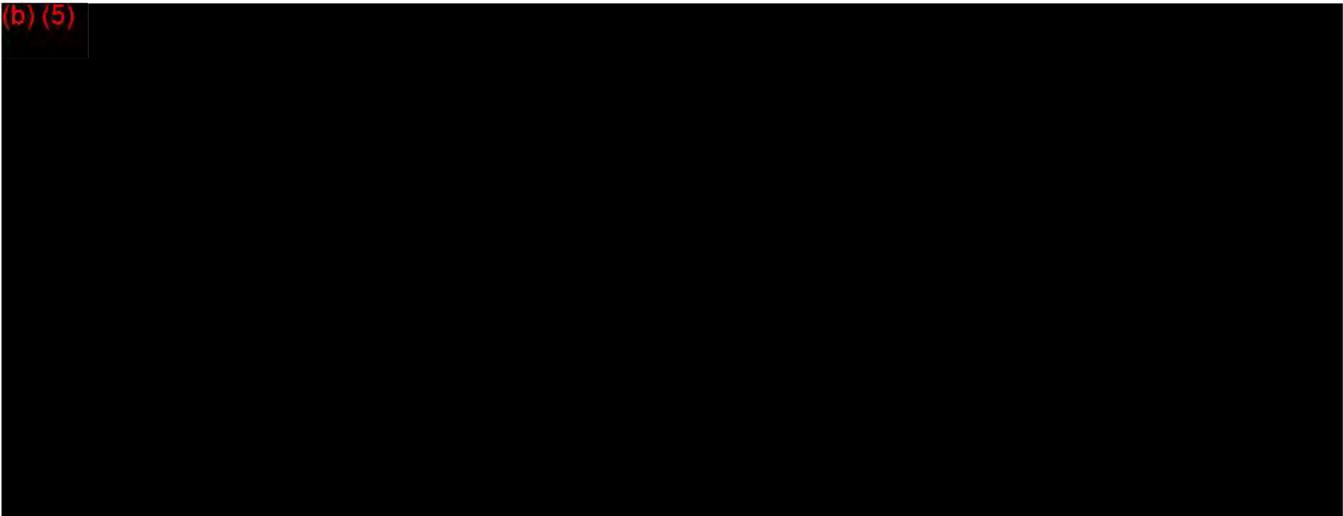
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WG,

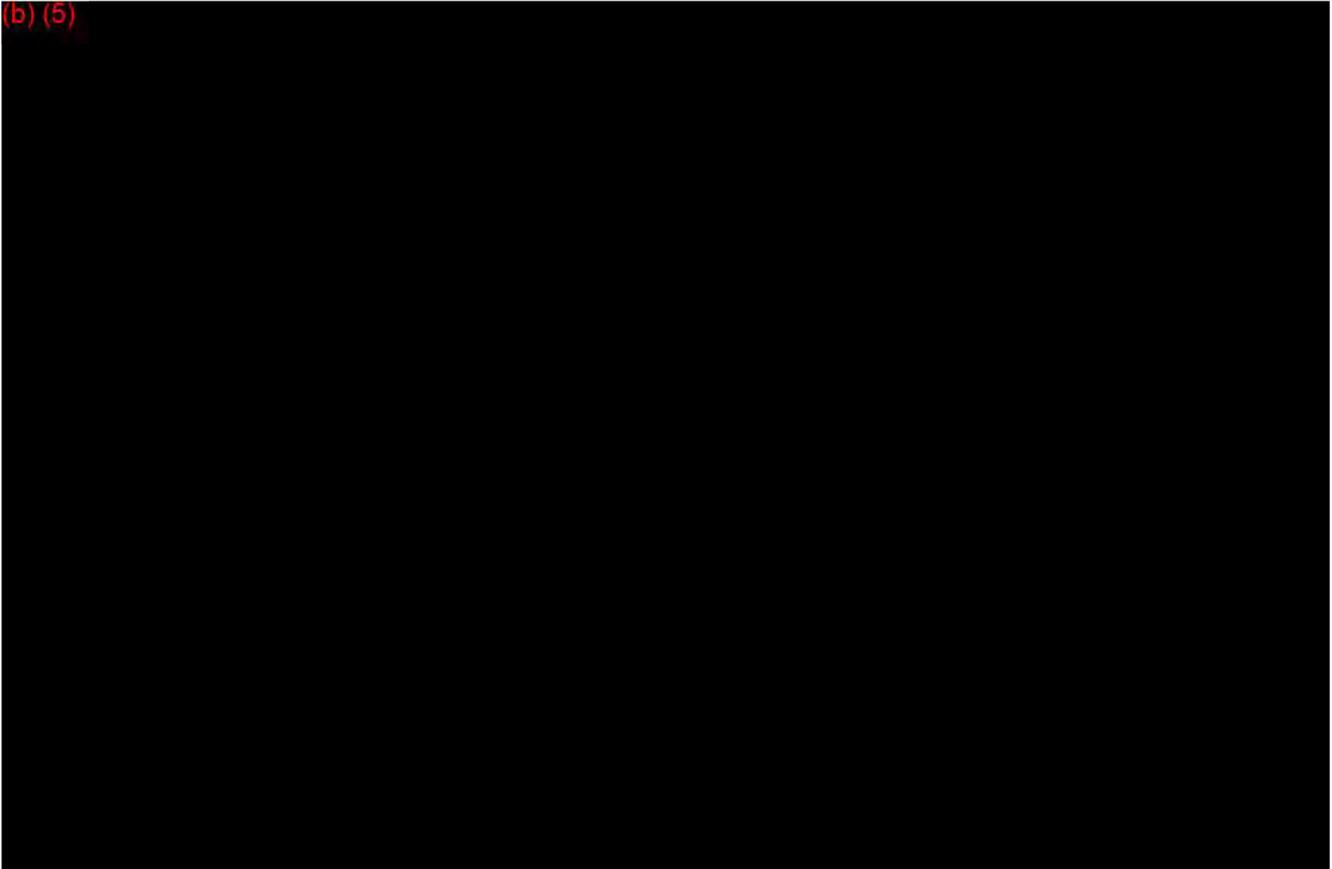
As discussed in the meeting today, I will try and provide "Do Outs" for everyone in writing by close of business of the day of our WG meeting.

For the meeting, I have the following Do Outs:

(b) (5)



(b) (5)



Thank you very much. If you need additional time on your Do Outs, please let me know as soon as possible.

**Aaron L. Szabo**  
Senior Counsel  
Council on Environmental Quality

(b) (6) (Desk)

(b) (6) (Cell)

(b) (6)

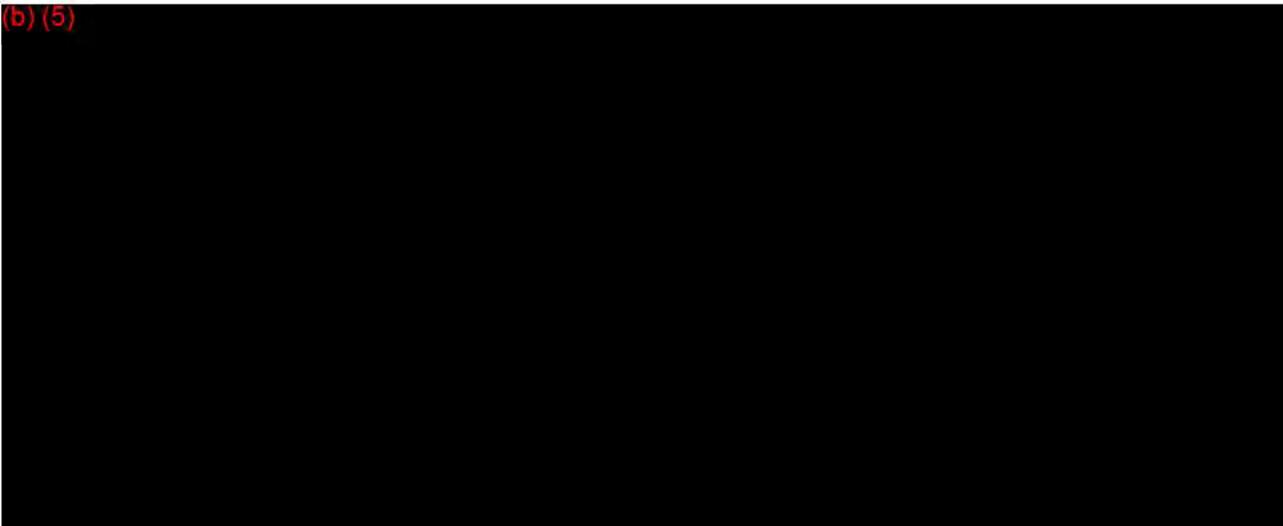
# RE: DO OUTS for August 28, 2018 NEPA Implementing Regulations Working Group Meeting

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**From:** "Szabo, Aaron L. EOP/CEQ" <(b) (6)>  
:  
"Barnett, Steven W. EOP/CEQ" <(b) (6)> "Boling, Ted A. EOP/CEQ" <(b) (6)> "Drummond, Michael R. EOP/CEQ" <(b) (6)> "Loyola, Mario A. EOP/CEQ" <(b) (6)> "Mansoor, Yardena M. EOP/CEQ" <(b) (6)> "Pettigrew, Theresa L. EOP/CEQ" <(b) (6)> "Schneider, Daniel J. EOP/CEQ" <(b) (6)> "Seale, Viktoria Z. EOP/CEQ" <(b) (6)> "Sharp, Thomas L. EOP/CEQ" <(b) (6)> "Smith, Katherine R. EOP/CEQ" <(b) (6)>  
**To:**  
**Cc:** "Szabo, Aaron L. EOP/CEQ" <(b) (6)>  
**Date:** Thu, 30 Aug 2018 12:53:11 -0400

WG,

(b) (5)



Thank you very much and let me know if you have any questions.

**From:** Szabo, Aaron L. EOP/CEQ  
**Sent:** Wednesday, August 29, 2018 5:22 PM

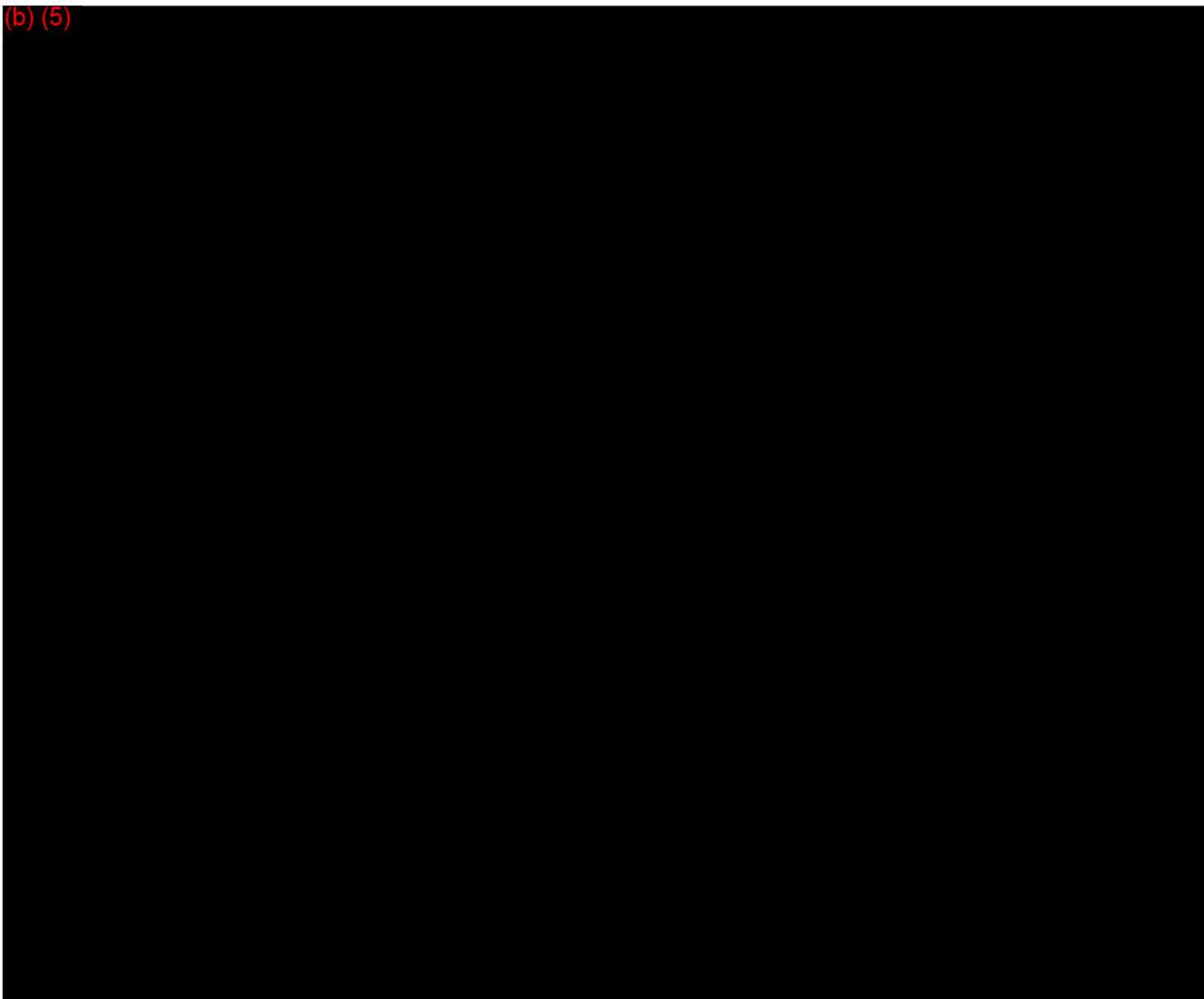
To: Barnett, Steven W. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ  
<(b) (6)> Drummond, Michael R. EOP/CEQ  
<(b) (6)> Loyola, Mario A. EOP/CEQ <(b) (6)>  
Mansoor, Yardena M. EOP/CEQ <(b) (6)> Pettigrew, Theresa L. EOP/CEQ  
<(b) (6)> Schneider, Daniel J. EOP/CEQ <(b) (6)>  
Seale, Viktoria Z. EOP/CEQ <(b) (6)> Sharp, Thomas L. EOP/CEQ  
<(b) (6)> Smith, Katherine R. EOP/CEQ <(b) (6)>  
Cc: Szabo, Aaron L. EOP/CEQ <(b) (6)>  
**Subject:** DO OUTS for August 28, 2018 NEPA Implementing Regulations Working Group Meeting

WG,

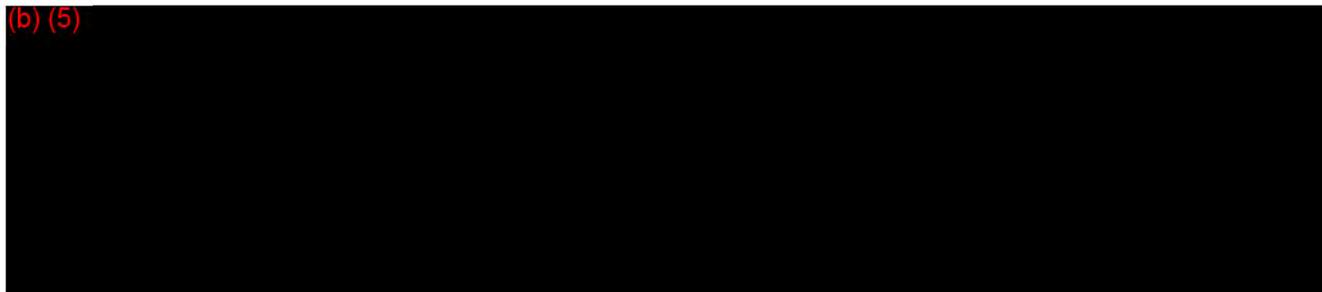
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For the meeting, I have the following Do Outs:

(b) (5)



(b) (5)



Thank you very much. If you need additional time on your Do Outs, please let me know as soon as possible.

**Aaron L. Szabo**  
Senior Counsel  
Council on Environmental Quality

(b) (6) (Desk)

(b) (6) (Cell)

(b) (6)



## ANOPR reading list

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**From:** "Boling, Ted A. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=eae5b047f871428b9b46baf8afd1176a-bo">

**To:** "Mansoor, Yarden M. EOP/CEQ" <(b) (6)>

**Date:** Fri, 31 Aug 2018 13:52:37 -0400

**Attachments**  
: Representative Significant Comments - TOC.docx (16.48 kB)

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Edward A. Boling  
Associate Director for the  
National Environmental Policy Act  
Council on Environmental Quality  
730 Jackson Place  
Washington, DC 20503

## Representative Significant Comments

Commenter	Docket #
<b><i>State and Local Government</i></b>	
American Association of State Highway and Transportation Officials	CEQ-2018-0001-8267
Virginia Department of Transportation	CEQ-2018-0001-12179
Wyoming County Commissioners Association	CEQ-2018-0001-11266
North Carolina Department of Transportation	CEQ-2018-0001-12044
Western Urban Water Coalition	CEQ-2018-0001-0026
State of Louisiana (CPRA)	CEQ-2018-0001-11129
Utah (Office of Governor – Public Lands Policy Office)	CEQ-2018-0001-12116
AGs of CA, IL, MD, MA, NJ, NY, OR, VT, WA, et al.	CEQ-2018-0001-11812
Utah (Department of Transportation)	CEQ-2018-0001-11463
National Association of Counties	CEQ-2018-0001-12285
Western Pacific Regional Fisheries Management Council	CEQ-2018-0001-12382
American Association of Port Authorities	CEQ-2018-0001-11797
New York State Department of Environmental Conservation	CEQ-2018-0001-11974
<b><i>Companies and Trade Associations</i></b>	
Women’s Mining Coalition	CEQ-2018-0001-8255
U.S. Chamber of Commerce	CEQ-2018-0001-11941
Nuclear Energy Institute	CEQ-2018-0001-11895
American Road & Transportation Builders Association (ARTBA)	CEQ-2018-0001-8370
American Fuel & Petrochemical Manufacturers (AFPM)	CEQ-2018-0001-12266
Federal Forest Resource Coalition	CEQ-2018-0001-11713
Oglethorpe Power Corporation	CEQ-2018-0001-12115
National Hydropower Association	CEQ-2018-0001-11847
National Association of Manufacturers	CEQ-2018-0001-11931
Interstate Natural Gas Association (INGAA) et al	CEQ-2018-0001-11709
Duke Energy (posted by Nathan Craig)	CEQ-2018-0001-11135
Edison Electric Institute	CEQ-2018-0001-11910
Ecological Restoration Business Association	<a href="https://www.regulations.gov/document?D=CEQ-2018-0001-12306">https://www.regulations.gov/document?D=CEQ-2018-0001-12306</a>
<b><i>NEPA Experts</i></b>	
Nicholas Yost	<a href="https://www.regulations.gov/document?D=CEQ-2018-0001-10400">https://www.regulations.gov/document?D=CEQ-2018-0001-10400</a>
Dina Bear	<a href="https://www.regulations.gov/document?D=CEQ-2018-0001-12056">https://www.regulations.gov/document?D=CEQ-2018-0001-12056</a>
Mark Febrizio (GWU Regulatory Studies Center)	CEQ-2018-0001-9917
Jessica Wentz (Columbia University)	CEQ-2018-0001-9722
National Association of Environmental Professionals	CEQ-2018-0001-11898
Ray Clark (River Crossing Strategies)	<a href="https://www.regulations.gov/document?D=CEQ-2018-0001-12161">https://www.regulations.gov/document?D=CEQ-2018-0001-12161</a>
Blueprint 2025	CEQ-2018-0001-11375
58 Law Professors (David E. Adelman, et al)	CEQ-2018-0001-11832
Thomas F. King	CEQ-2018-0001-1486
Lucinda Low Swartz	CEQ-2018-0001-3760
Horst Greczmiel	CEQ-2018-0001-12381

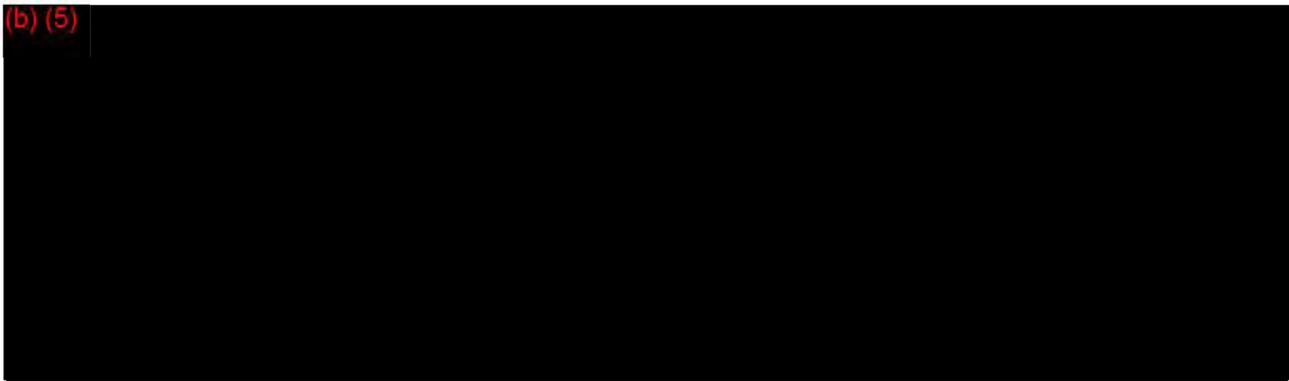
<b><i>Advocacy Groups</i></b>	
National Wildlife Federation	CEQ-2018-0001-3660
Rocky Smith and various Advocacy Groups	CEQ-2018-0001-8509
Environmental Defense Fund	CEQ-2018-0001-1036
Environmental Protection Network	CEQ-2018-0001-3773
Partnership Project, et al (341 public interest organizations)	<a href="https://www.regulations.gov/document?D=CEQ-2018-0001-9786">https://www.regulations.gov/document?D=CEQ-2018-0001-9786</a>
Delaware Riverkeeper Network	CEQ-2018-0001-9723
Pew Charitable Trusts	CEQ-2018-0001-9482
Natural Resources Defense Council	CEQ-2018-0001-9761
Southern Environmental Law Center	CEQ-2018-0001-11215
Center for Biological Diversity	CEQ-2018-0001-11169
Friends of the Sonoran Desert (Multiple comments attached)	CEQ-2018-0001-10560
<b><i>Tribes</i></b>	
Federated Indians of Graton Rancheria	CEQ-2018-0001-0482
Alaska Institute for Justice	CEQ-2018-0001-0498
Shoshonc-Bannock Tribes	CEQ-2018-0001-0529
National Congress of American Indians	CEQ-2018-0001-11763
Port Gamble S'Klallam Tribe	CEQ-2018-0001-12043

# Update RE: DO OUTS for August 28, 2018 NEPA Implementing Regulations Working Group Meeting

---

**From:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
**To:** "Szabo, Aaron L. EOP/CEQ" <(b) (6)>  
"Loyola, Mario A. EOP/CEQ" <(b) (6)> "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**Cc:** "Boling, Ted A. EOP/CEQ" <(b) (6)>  
**Date:** Tue, 04 Sep 2018 14:34:57 -0400

(b) (5)



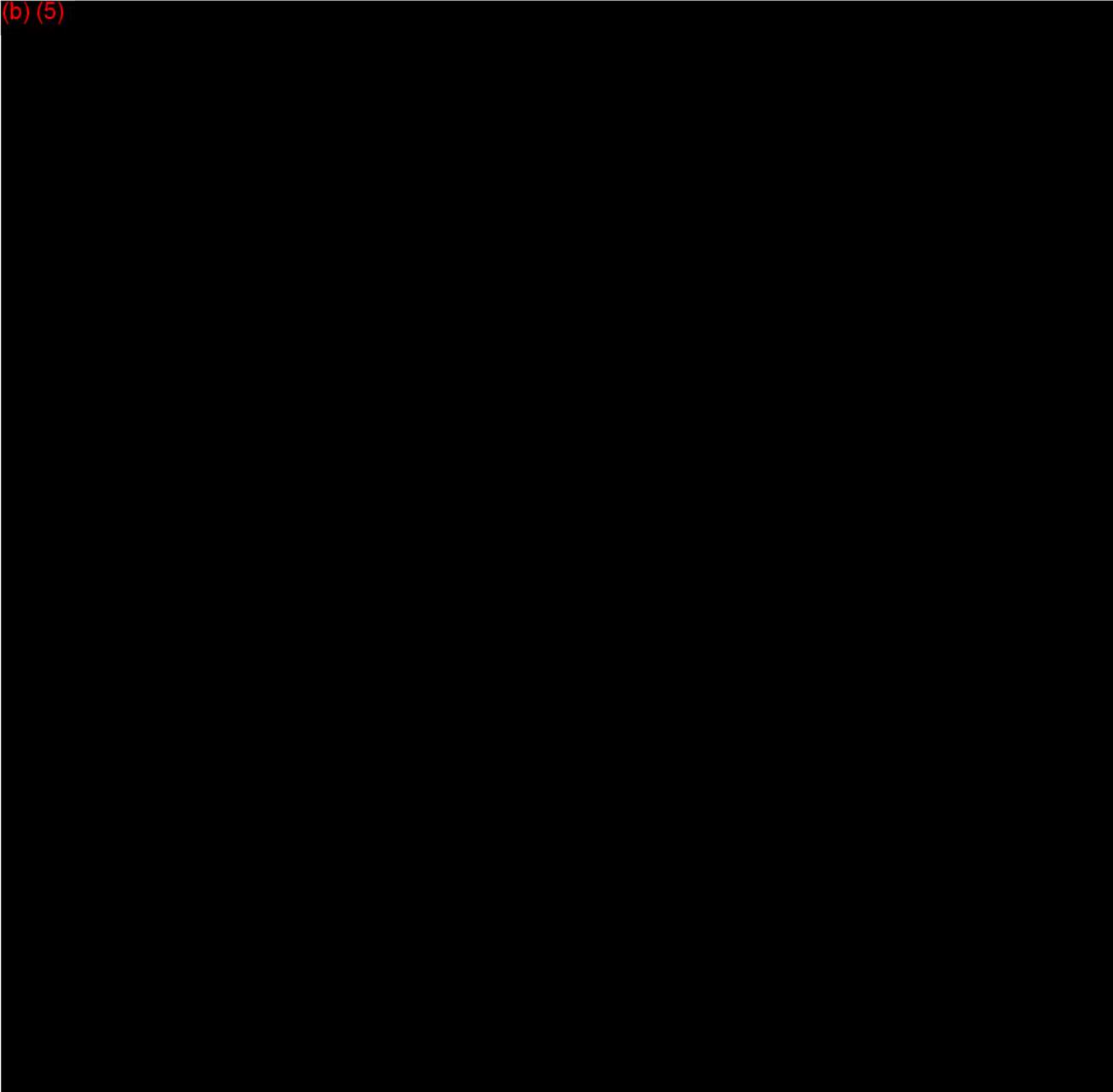
**From:** Szabo, Aaron L. EOP/CEQ  
**Sent:** Wednesday, August 29, 2018 5:22 PM  
**To:** Barnett, Steven W. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)> Drummond, Michael R. EOP/CEQ <(b) (6)> Loyola, Mario A. EOP/CEQ <(b) (6)> Mansoor, Yardena M. EOP/CEQ <(b) (6)> Pettigrew, Theresa L. EOP/CEQ <(b) (6)> Schneider, Daniel J. EOP/CEQ <(b) (6)> Seale, Viktoria Z. EOP/CEQ <(b) (6)> Sharp, Thomas L. EOP/CEQ <(b) (6)> Smith, Katherine R. EOP/CEQ <(b) (6)>  
**Cc:** Szabo, Aaron L. EOP/CEQ <(b) (6)>  
**Subject:** DO OUTS for August 28, 2018 NEPA Implementing Regulations Working Group Meeting

WG,

As discussed in the meeting today, I will try and provide "Do Outs" for everyone in writing by close of business of the day of our WG meeting.

For the meeting, I have the following Do Outs:

(b) (5)



Thank you very much. If you need additional time on your Do Outs, please let me know as soon as possible.

**Aaron L. Szabo**  
Senior Counsel  
Council on Environmental Quality

(b) (6) (Desk)

(b) (6) (Cell)

(b) (6)

## Use this attachment RE: Revised combined draft

---

**From:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
**To:** "Loyola, Mario A. EOP/CEQ" (b) (6) "Boling, Ted A. EOP/CEQ" <(b) (6)> "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**Date:** Tue, 04 Sep 2018 14:04:26 -0400

**Attachments**  
: Draft NPRM Background-History 2018-09-04 YM v2 ML.docx (60.58 kB)

Here is the same document, with the page numbering fixed.

**From:** Loyola, Mario A. EOP/CEQ  
**Sent:** Tuesday, September 4, 2018 2:01 PM  
**To:** Boling, Ted A. EOP/CEQ <(b) (6)> Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Cc:** Mansoor, Yardena M. EOP/CEQ <(b) (6)>  
**Subject:** Revised combined draft

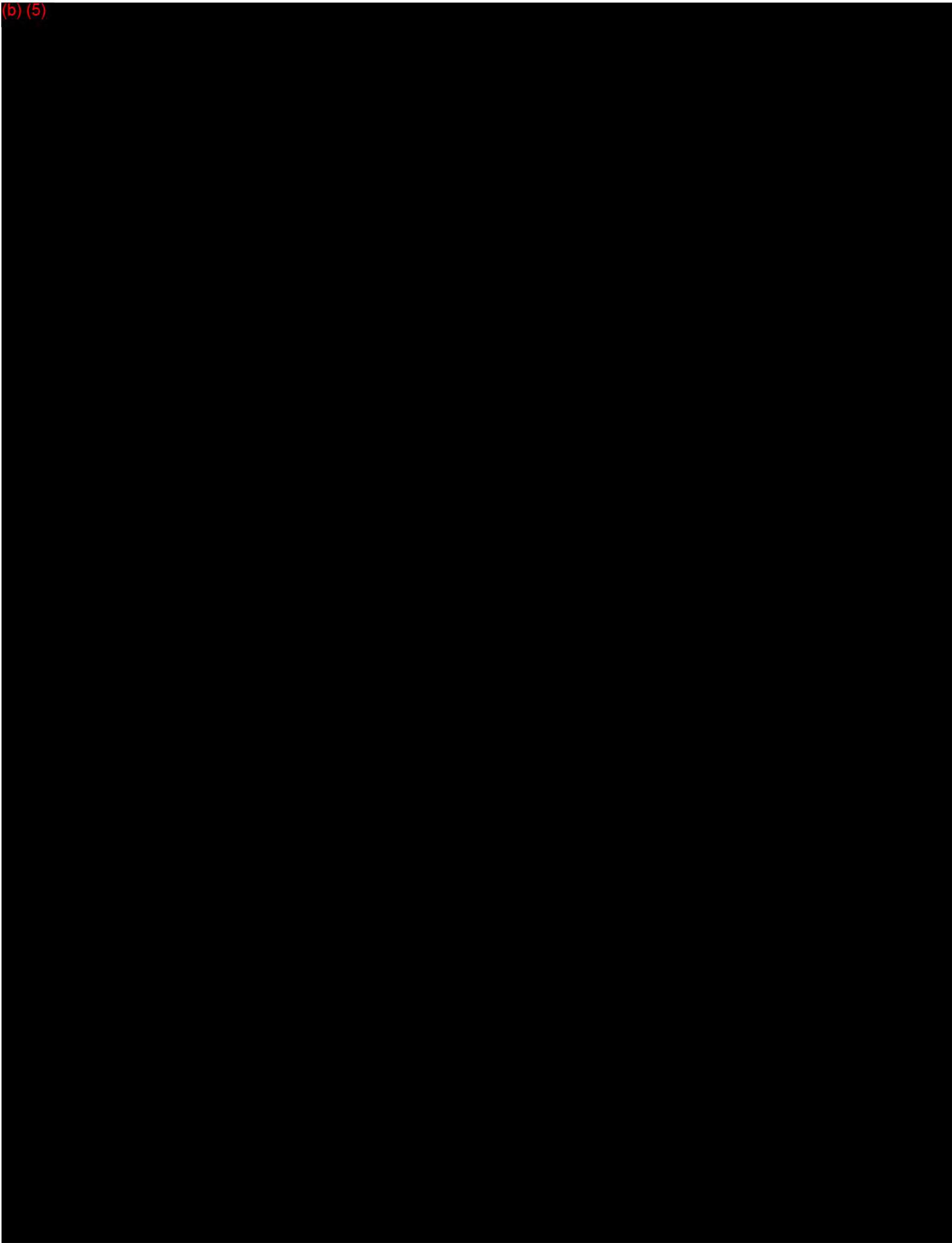
Dear Ted, Mike, and Yardena – (b) (5)

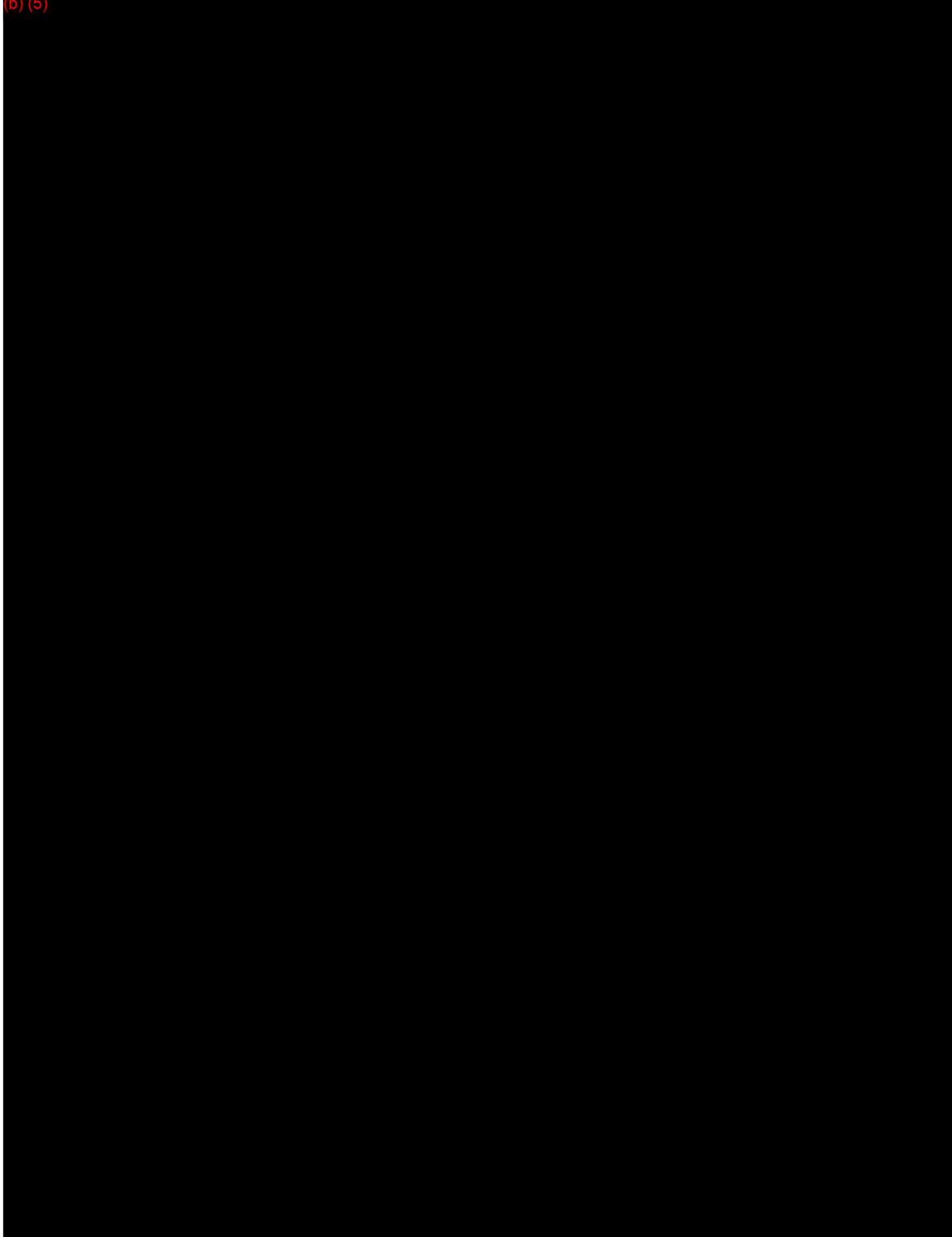
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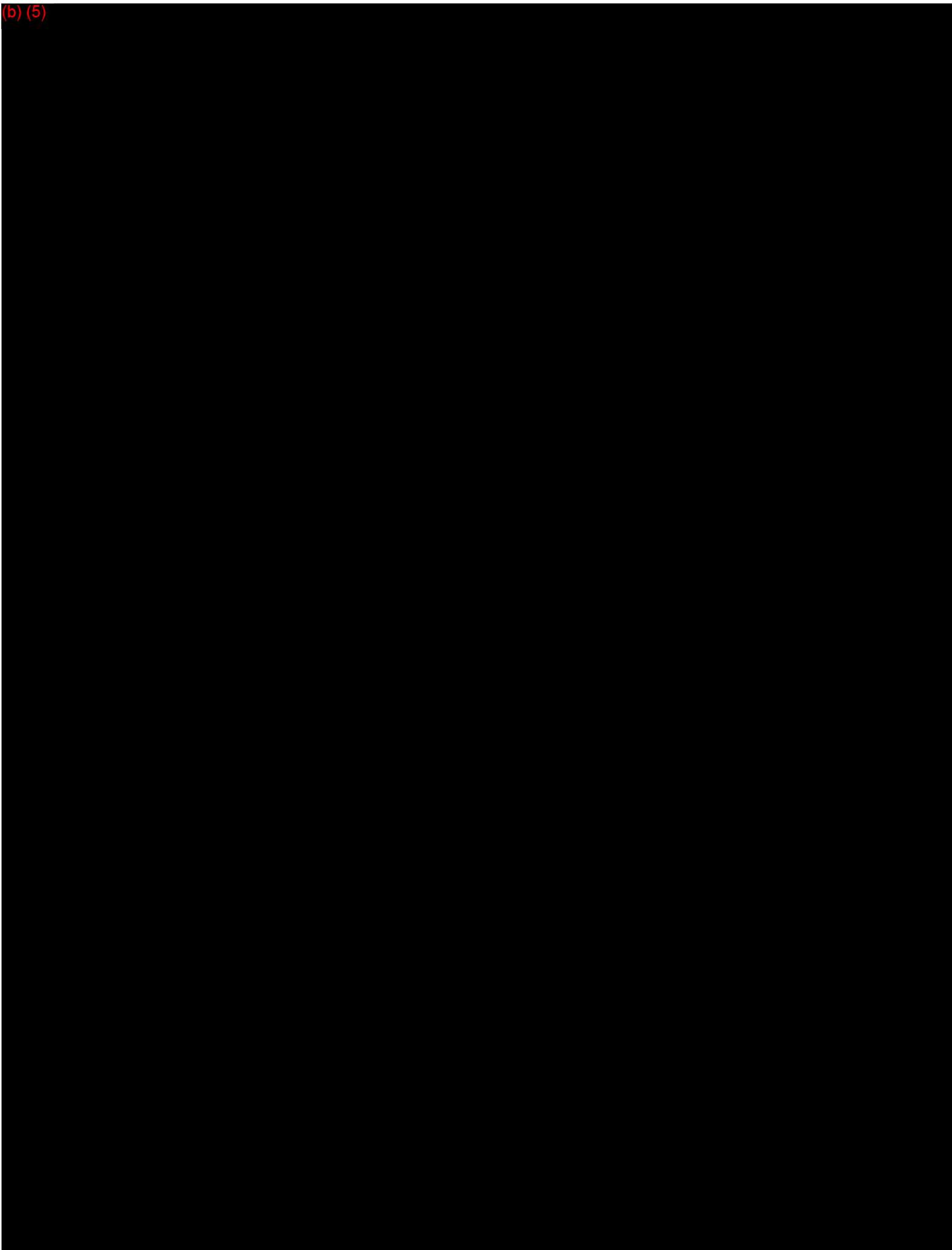
Thanks.

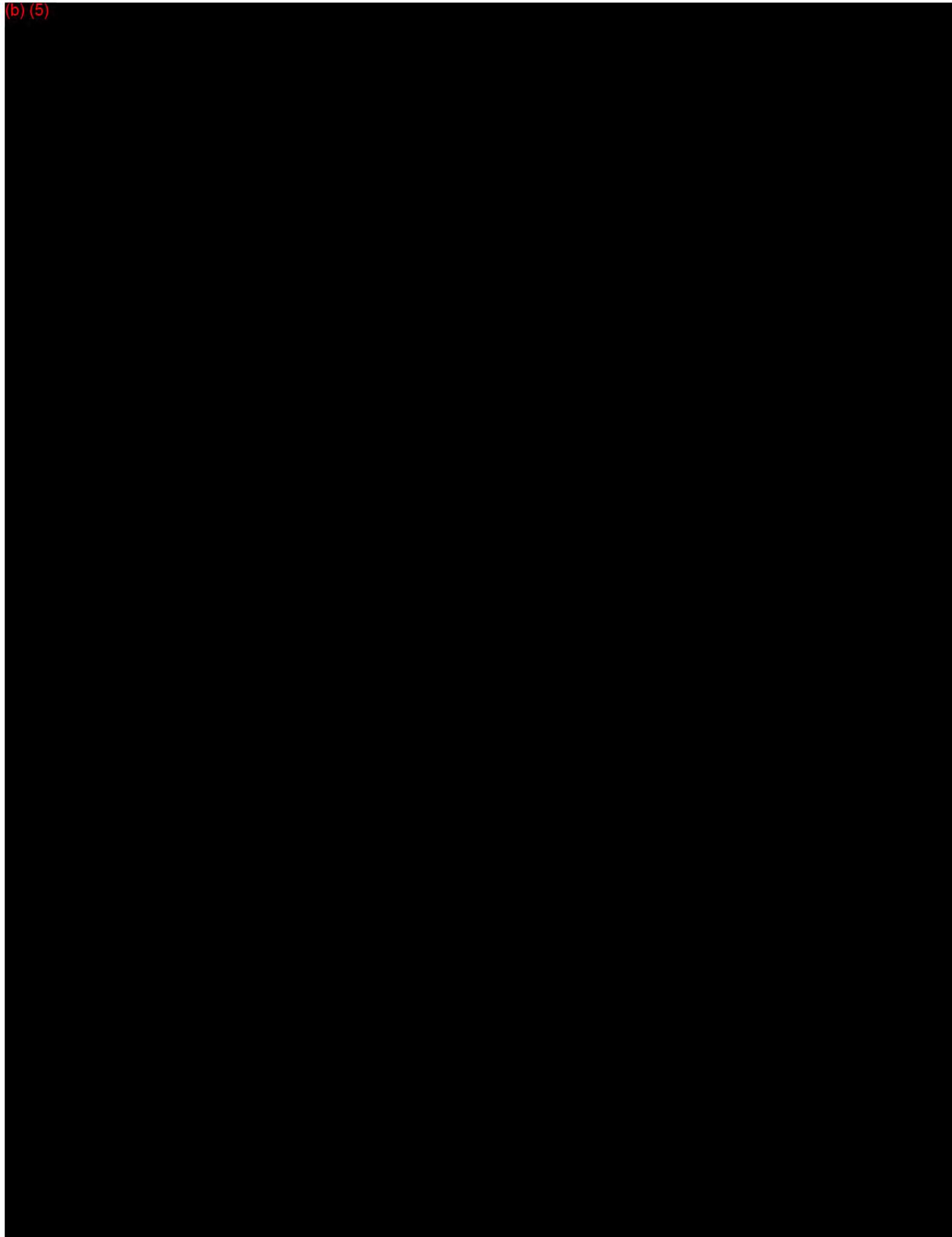
Mario Loyola  
Associate Director, Regulatory Reform  
White House Council on Environmental Quality  
(o) (b) (6) | (c) (b) (6)

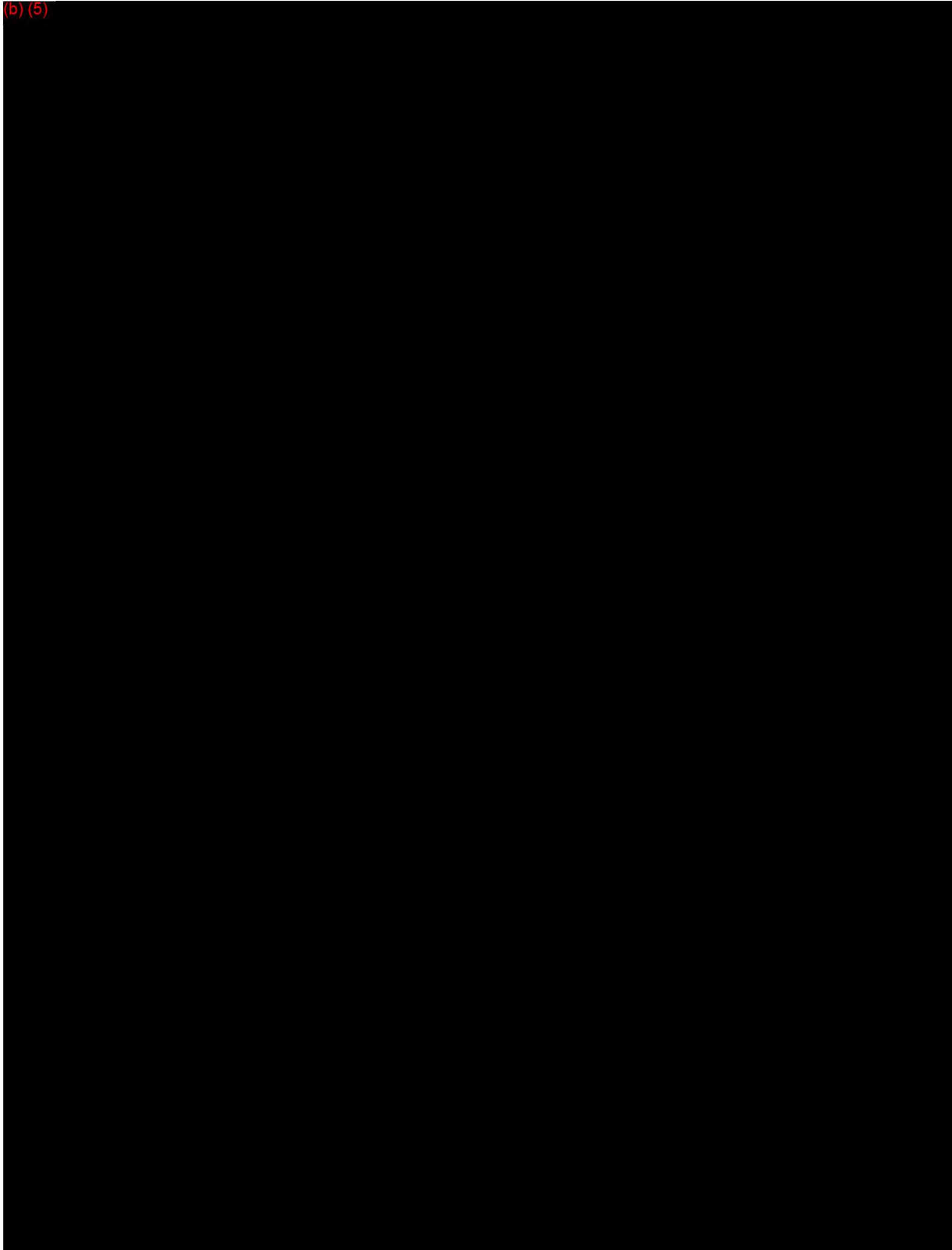


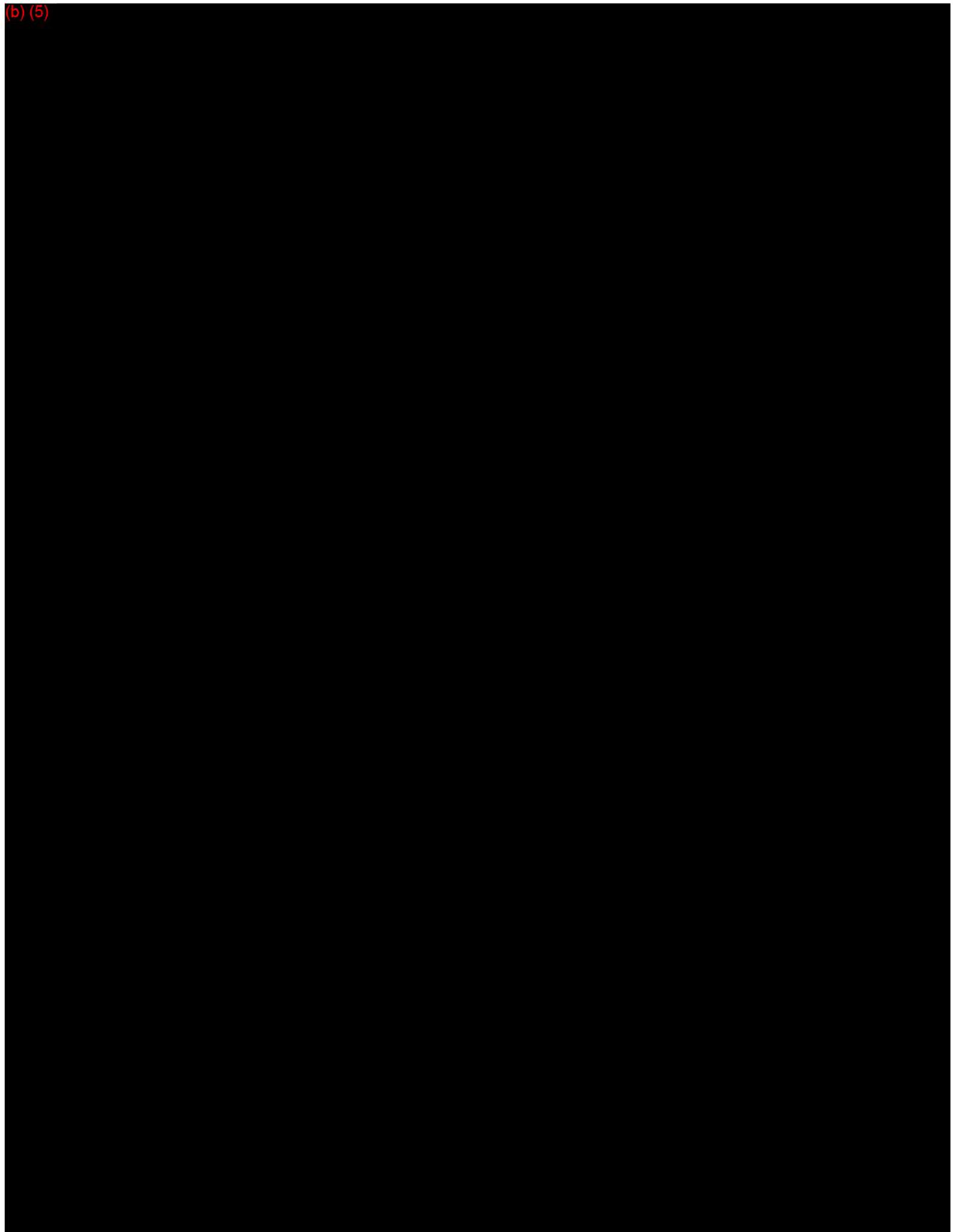


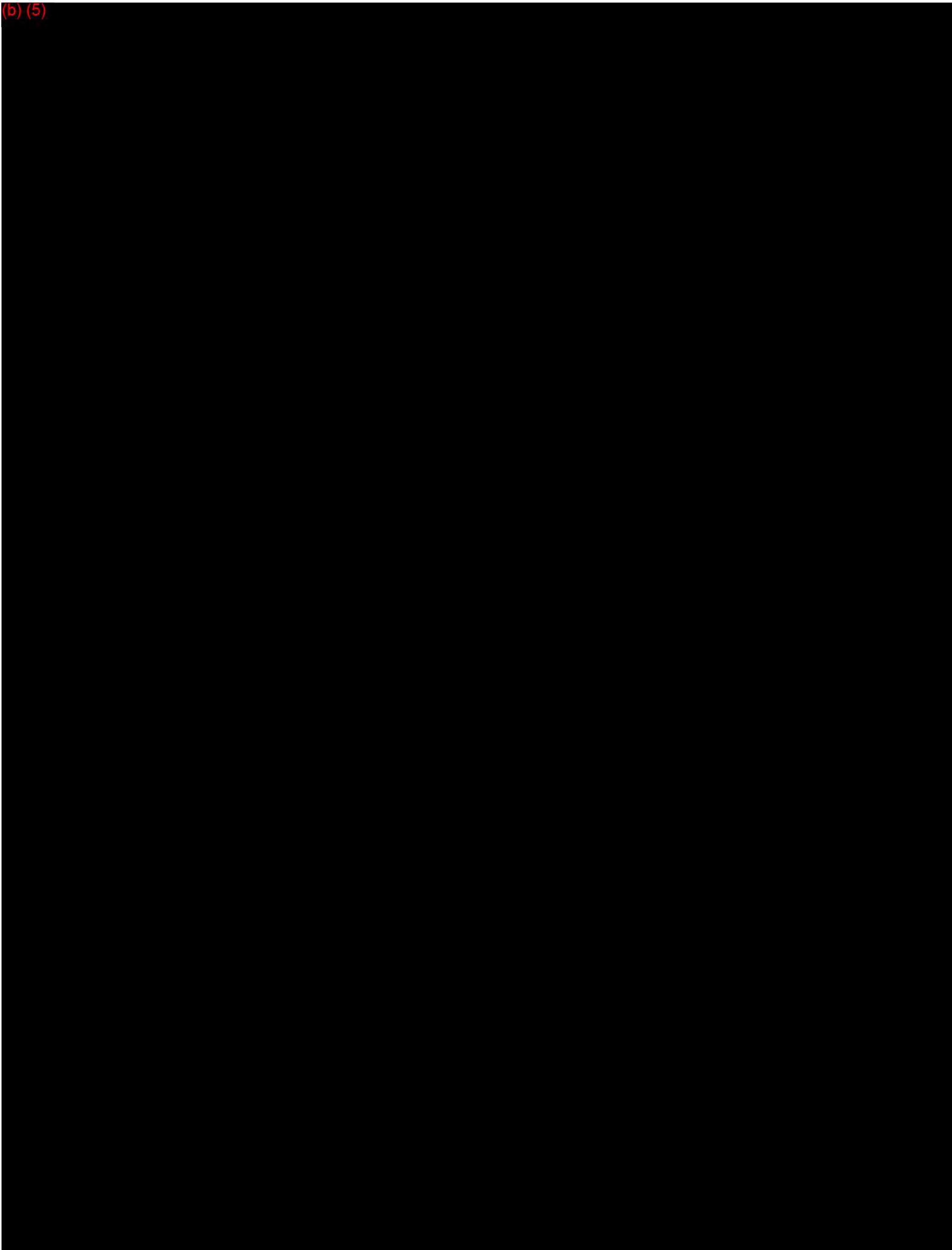


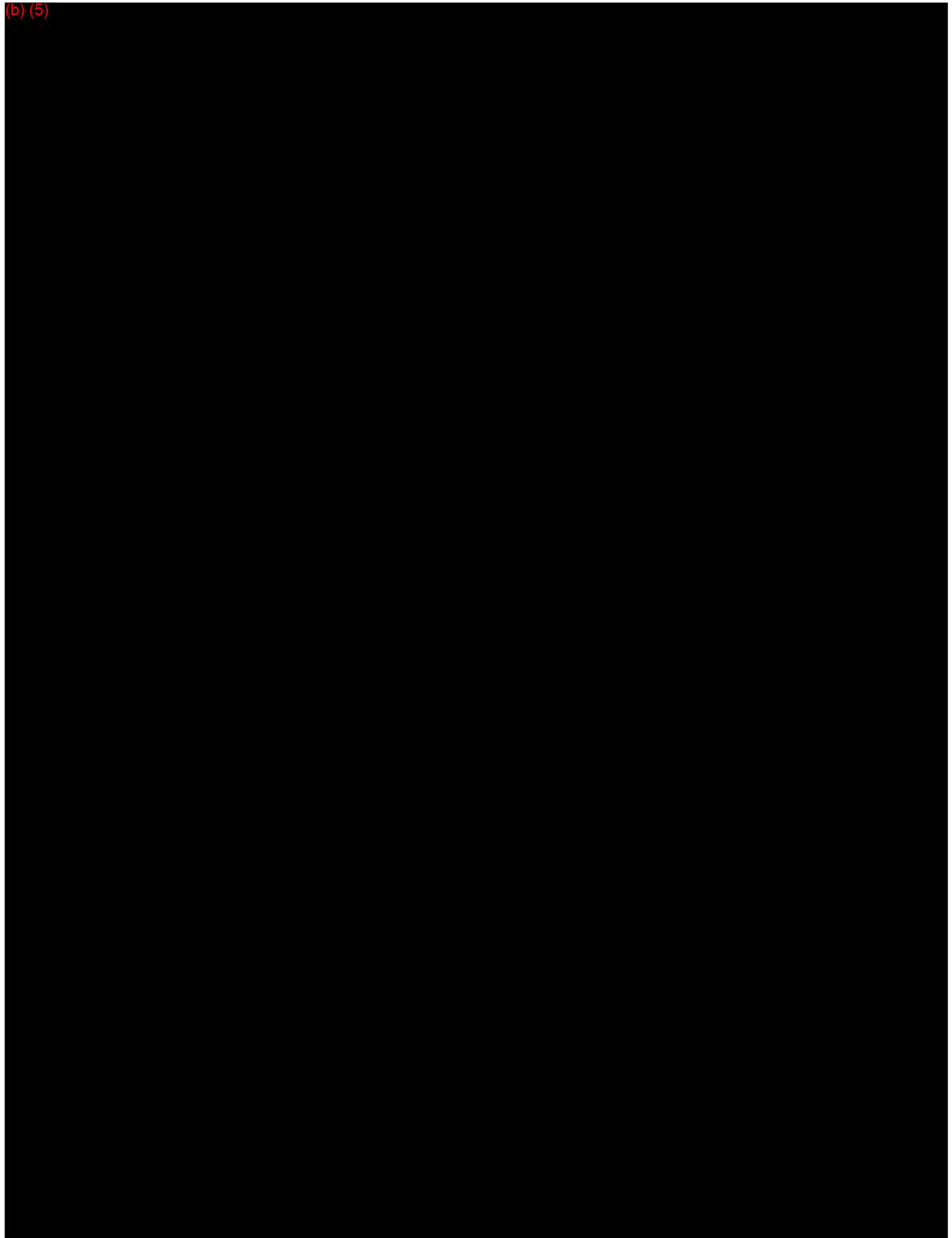


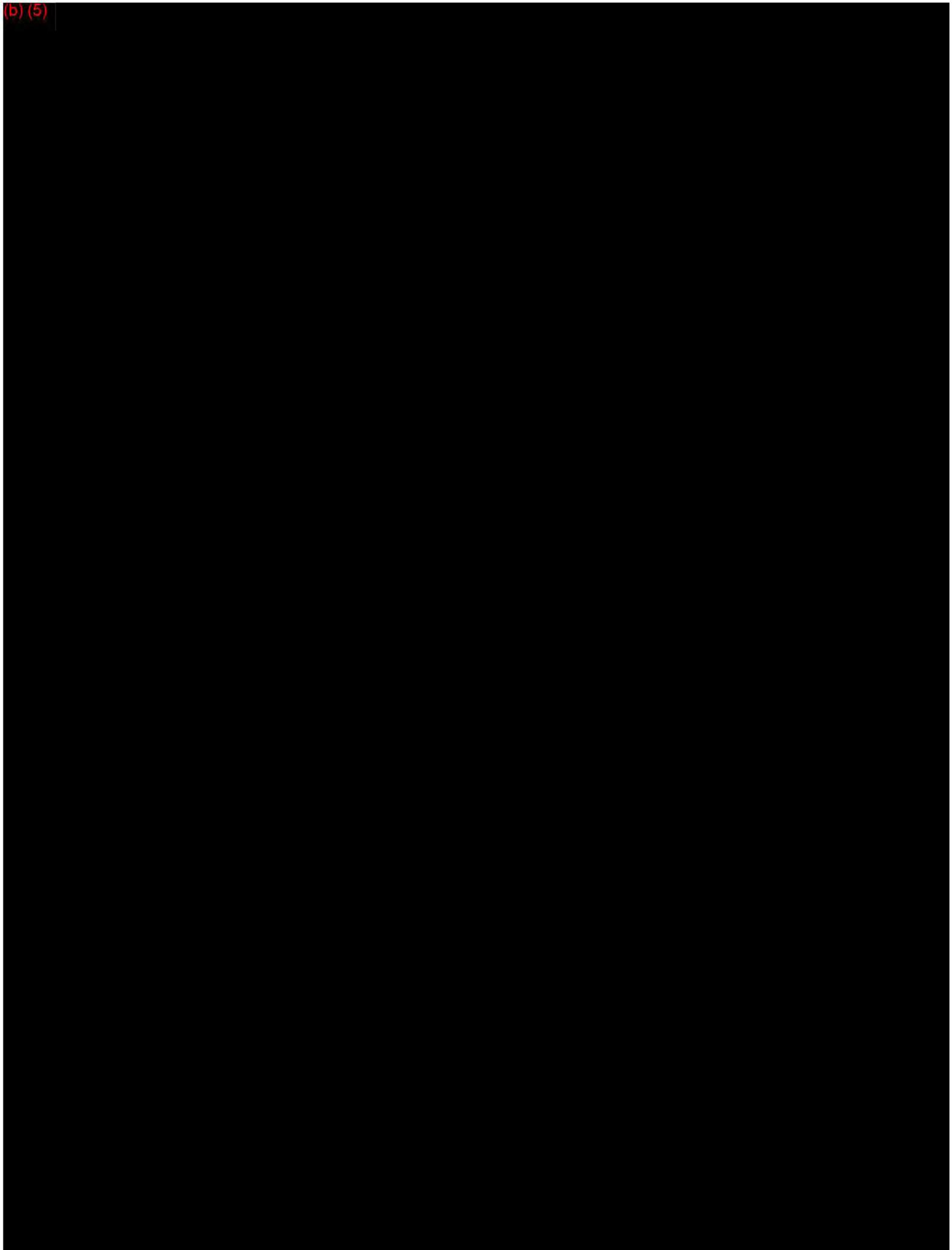


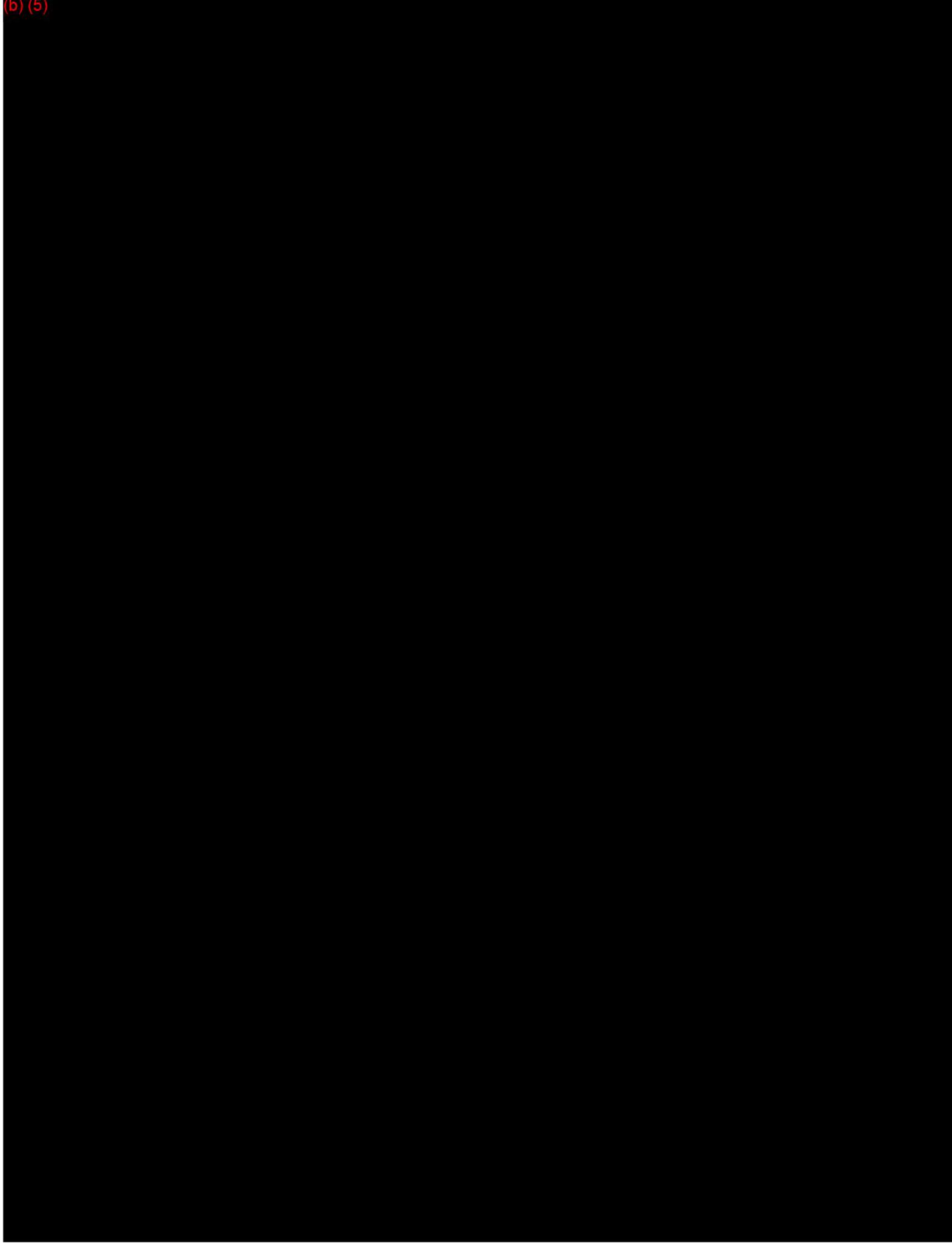


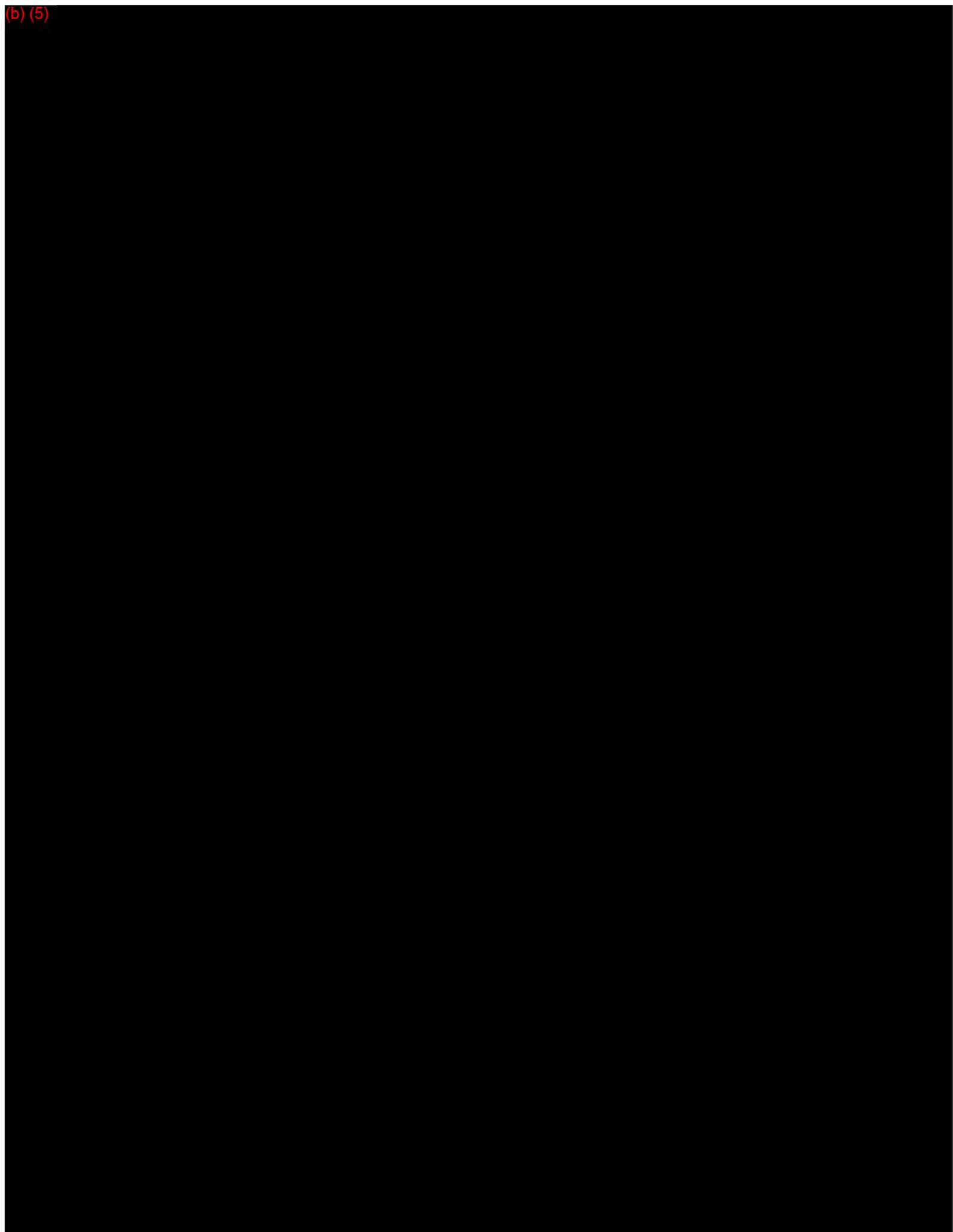


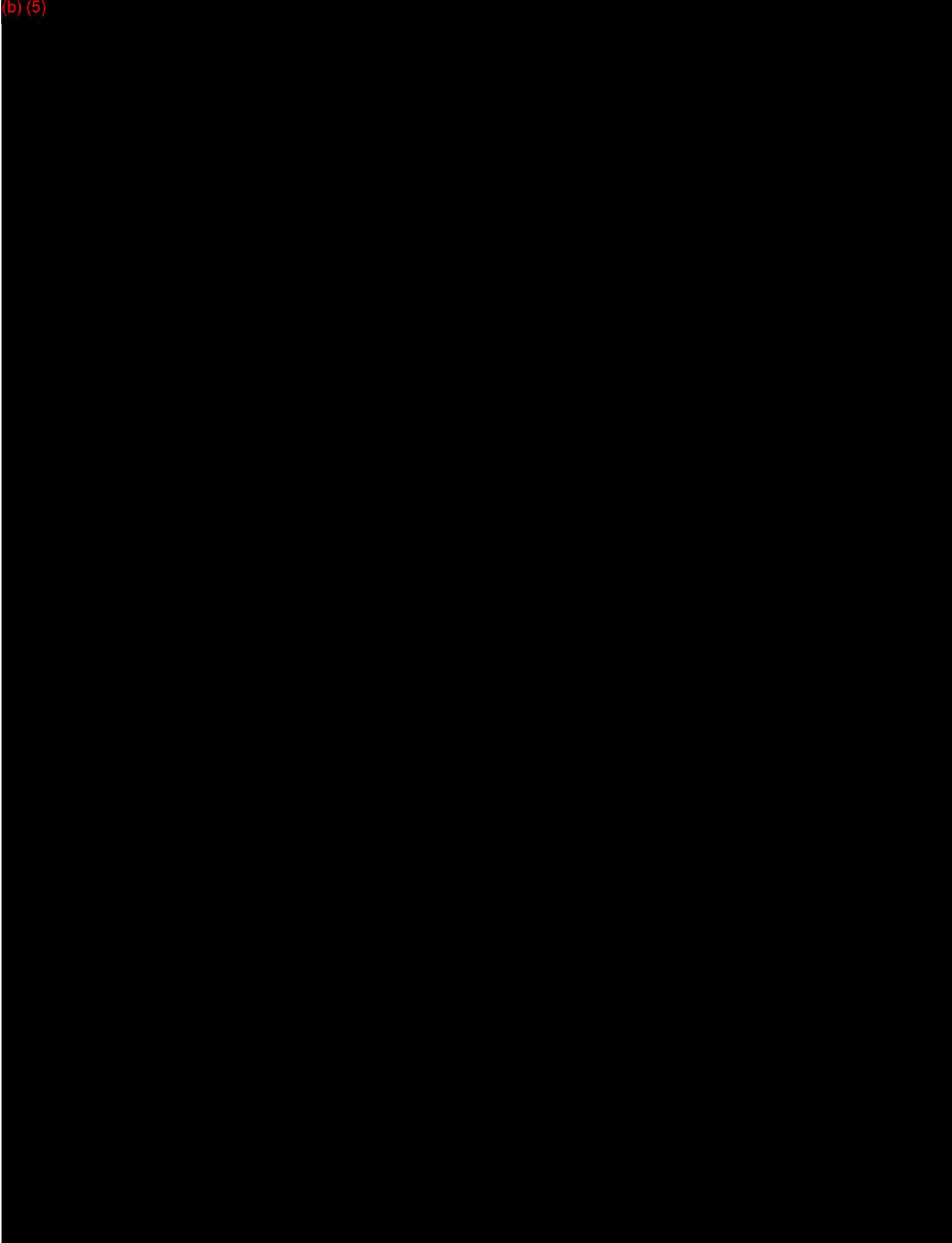


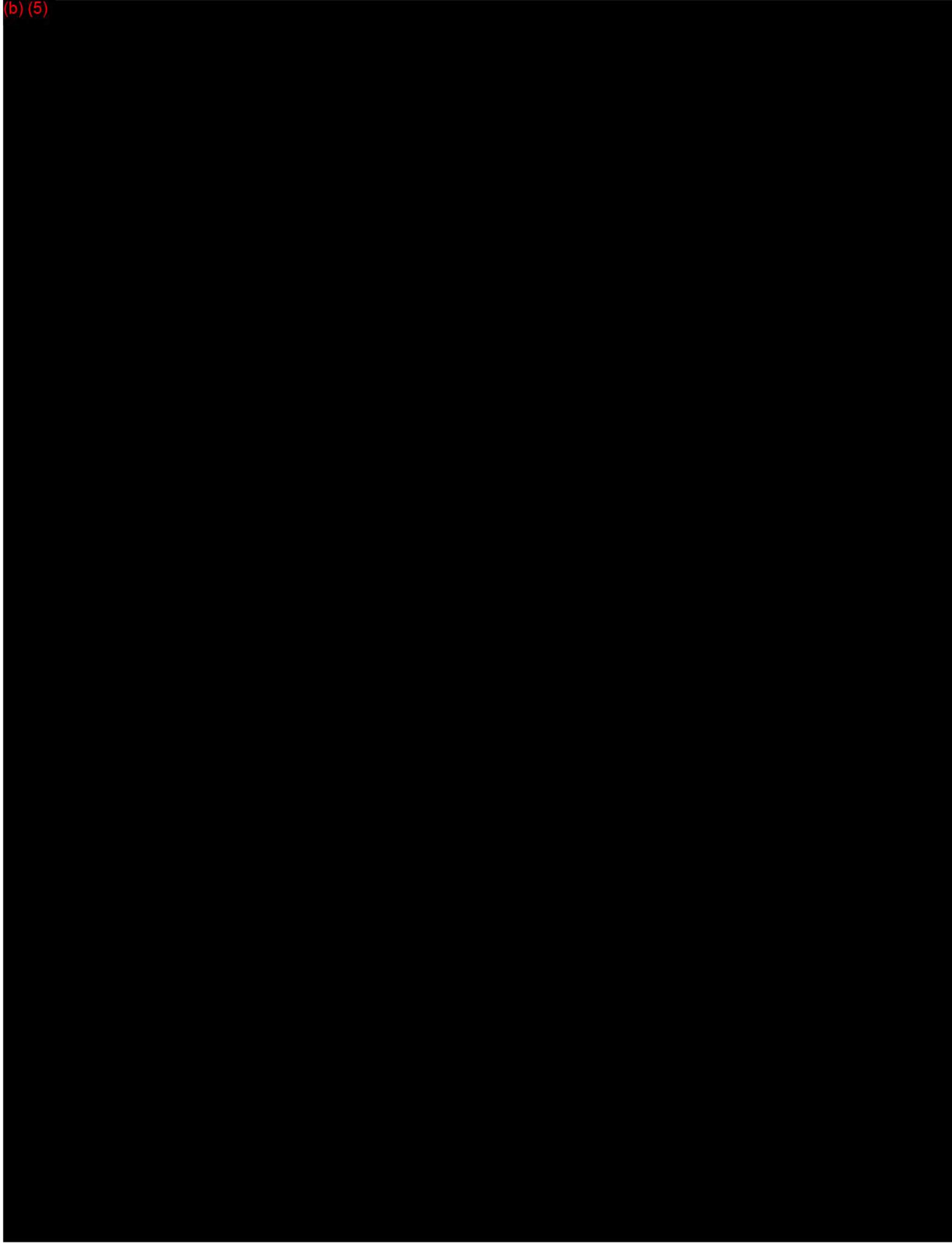


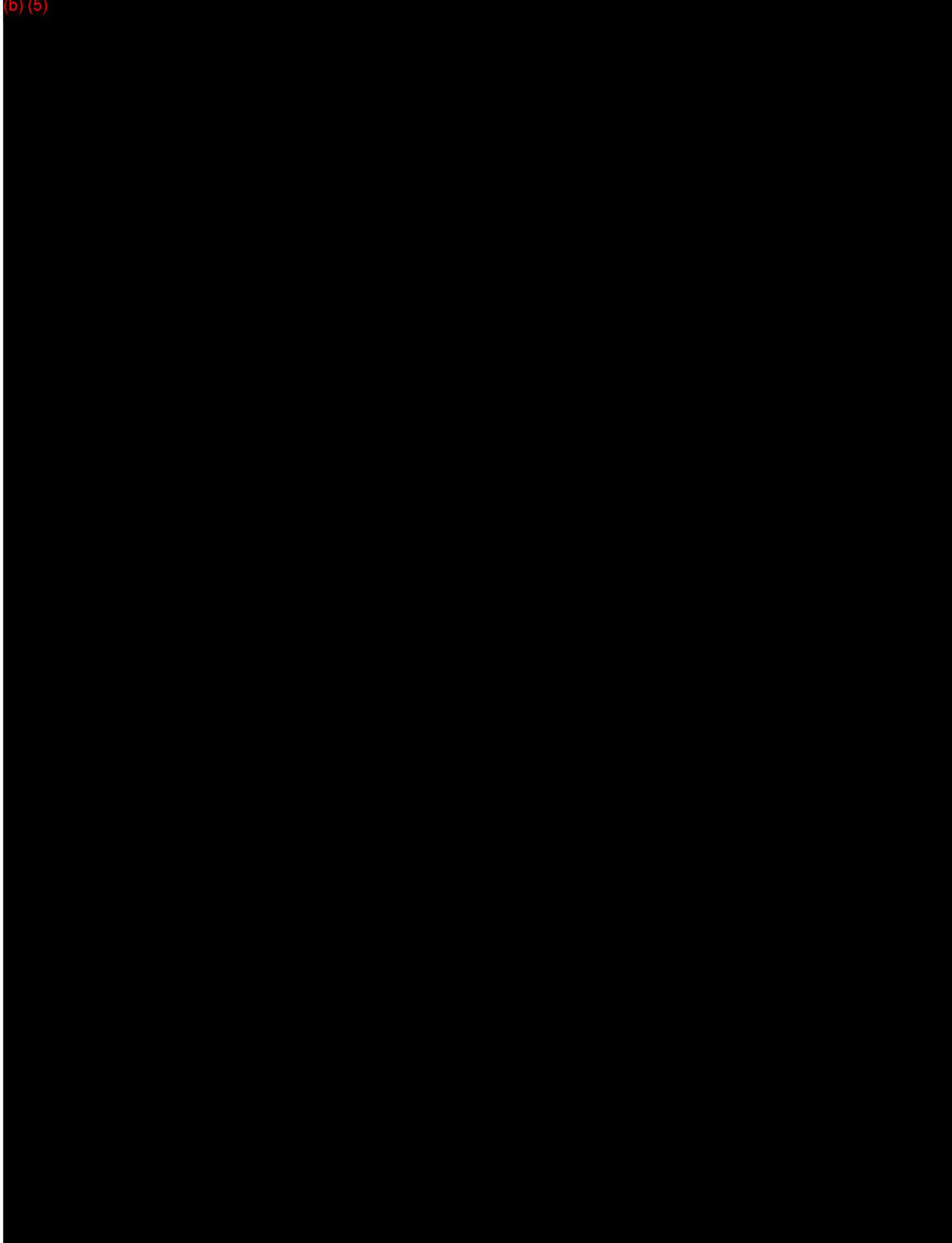


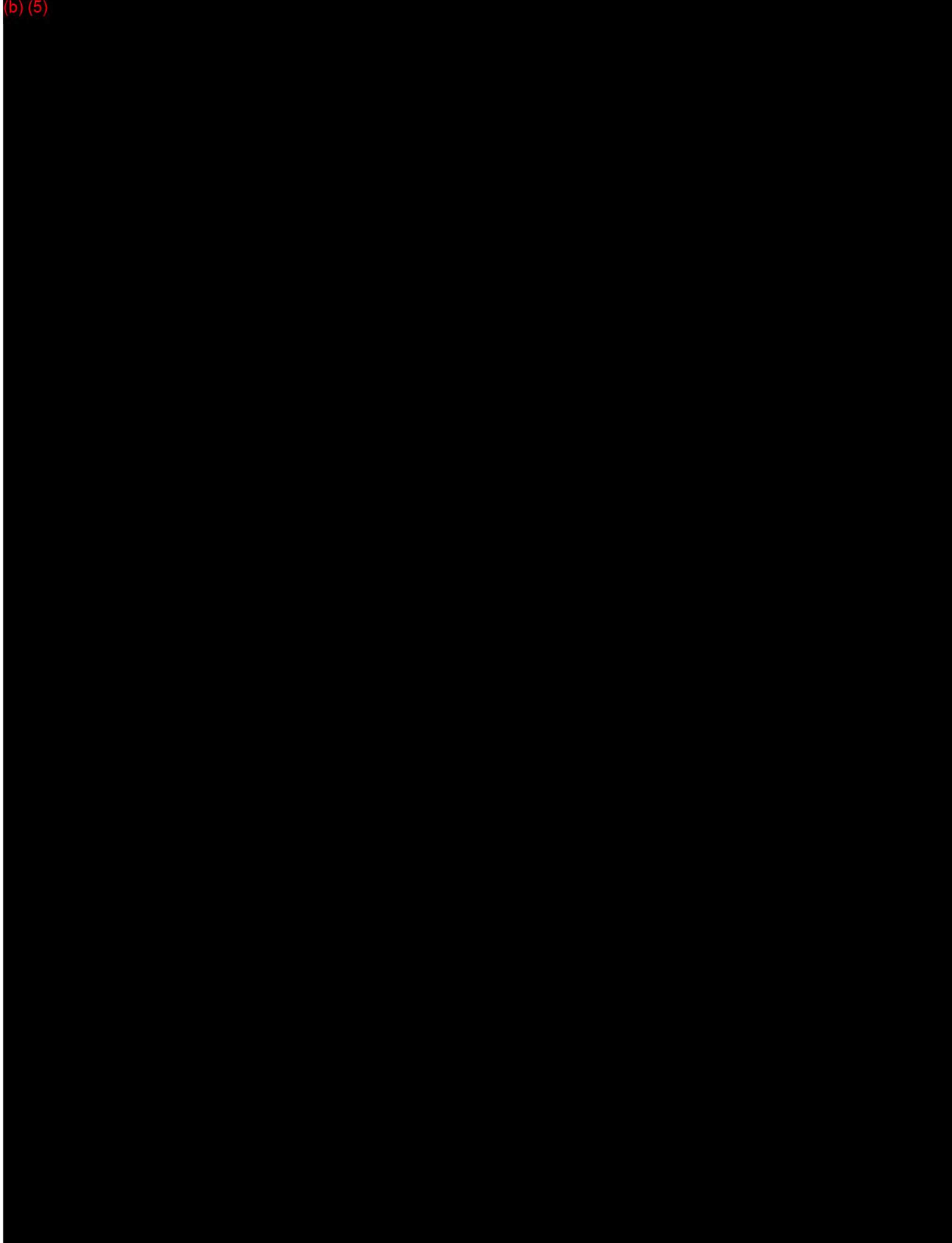


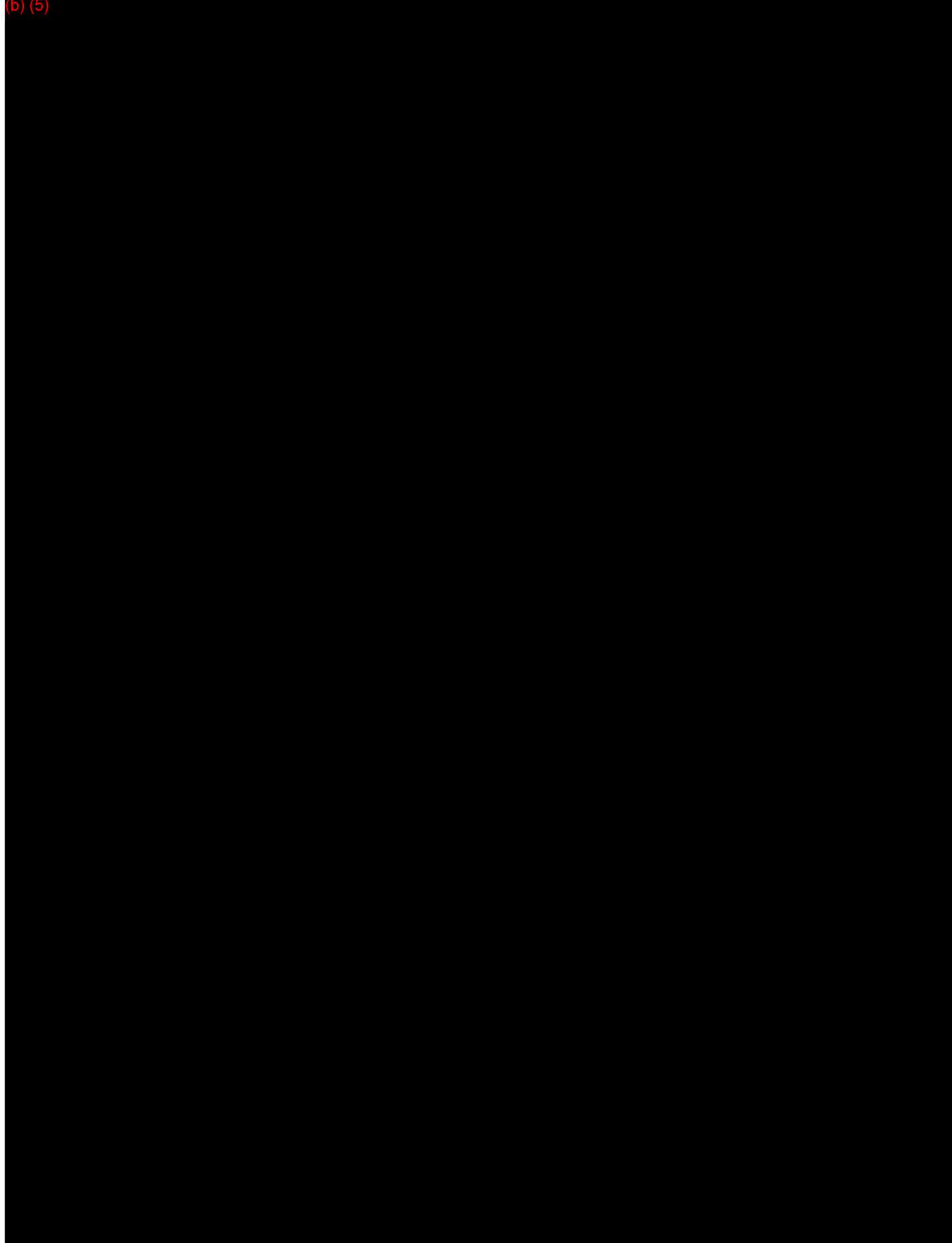


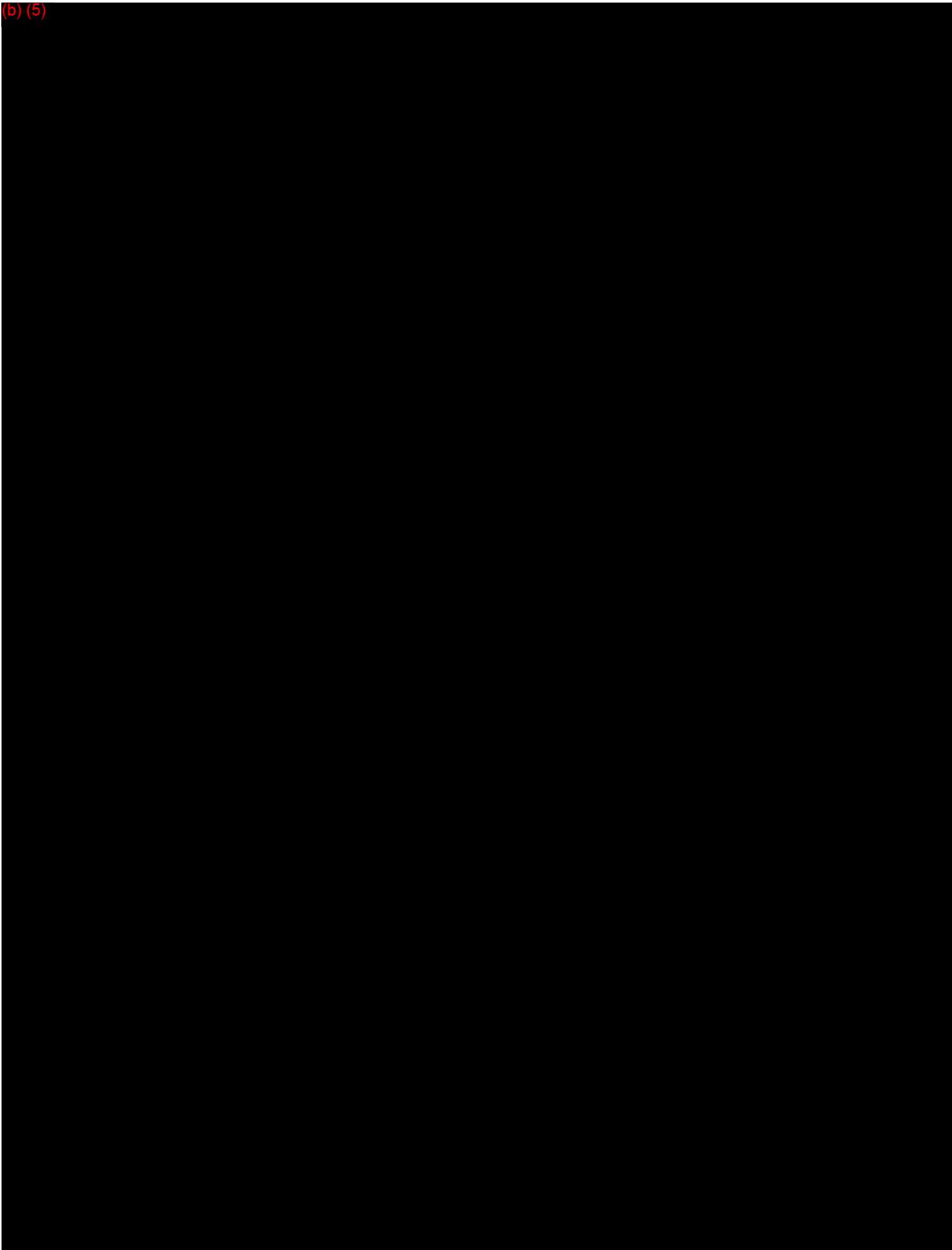


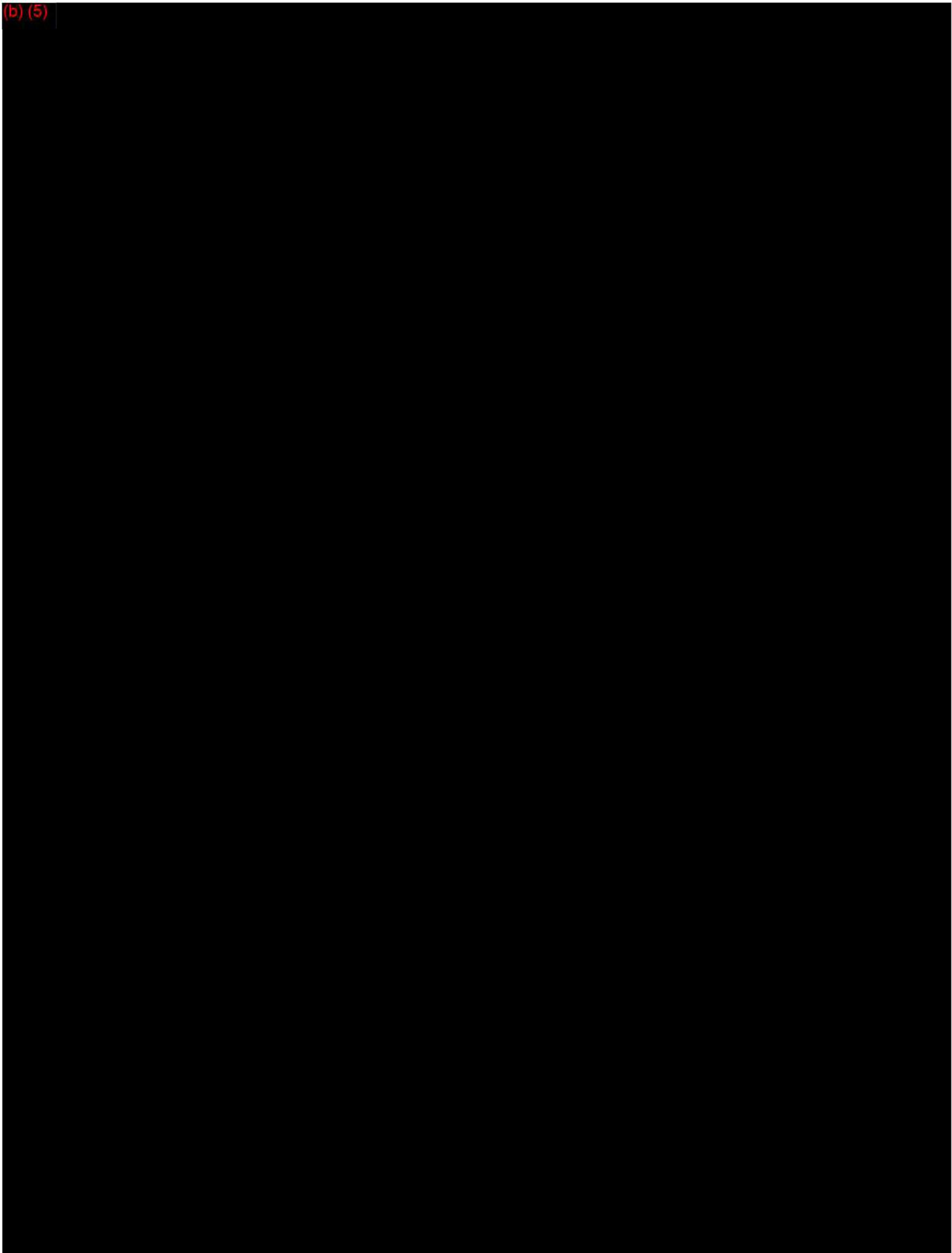


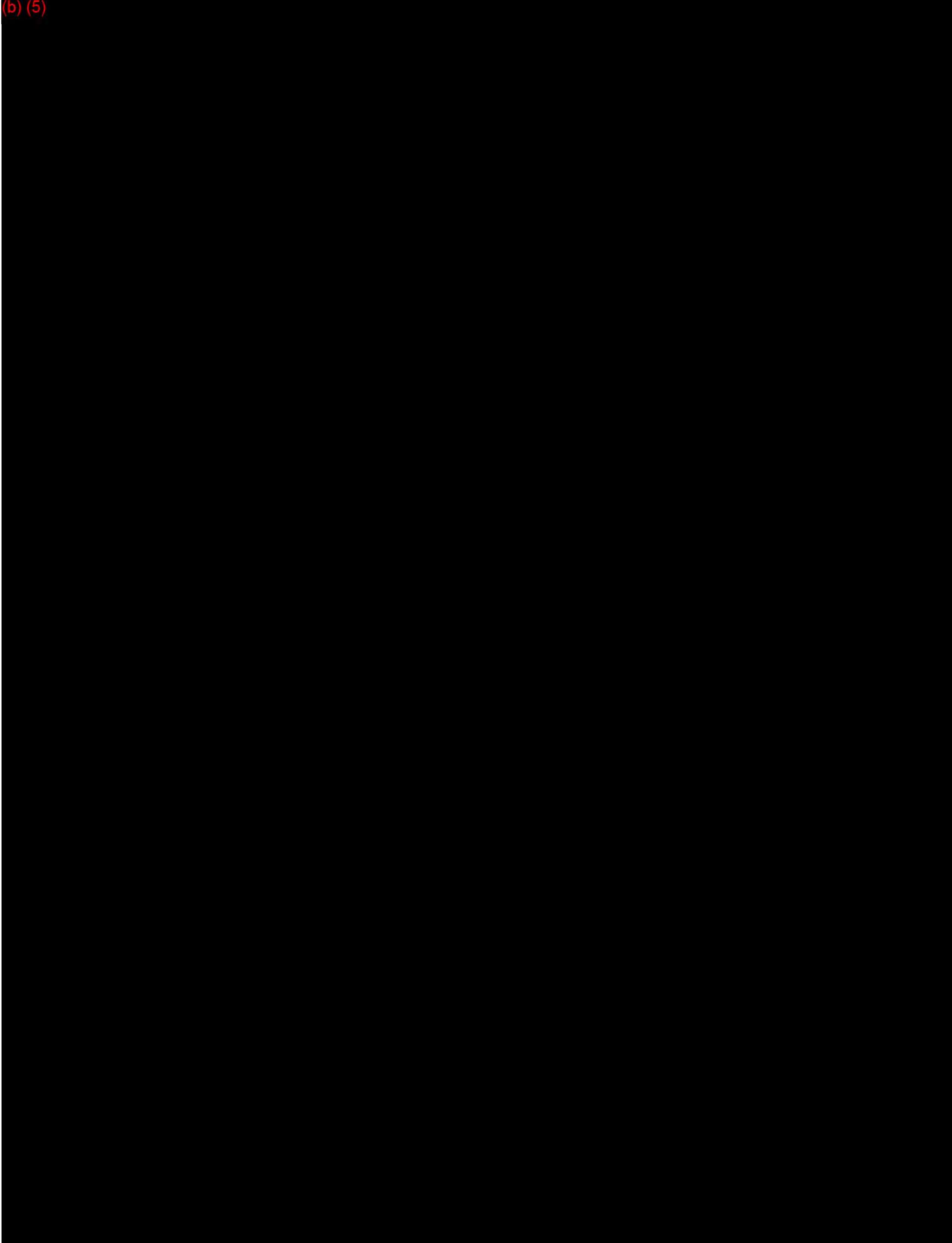


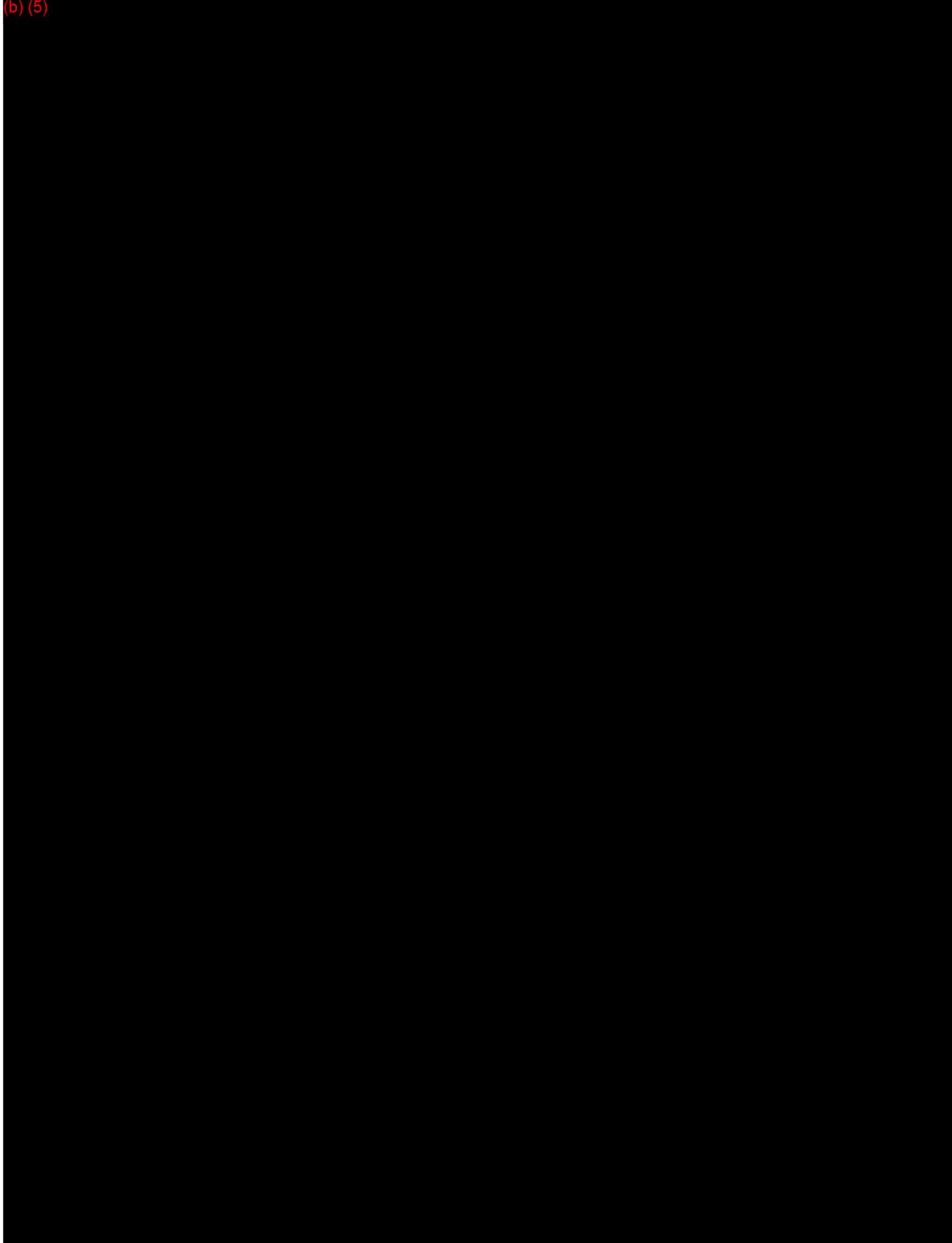












## Revised combined draft

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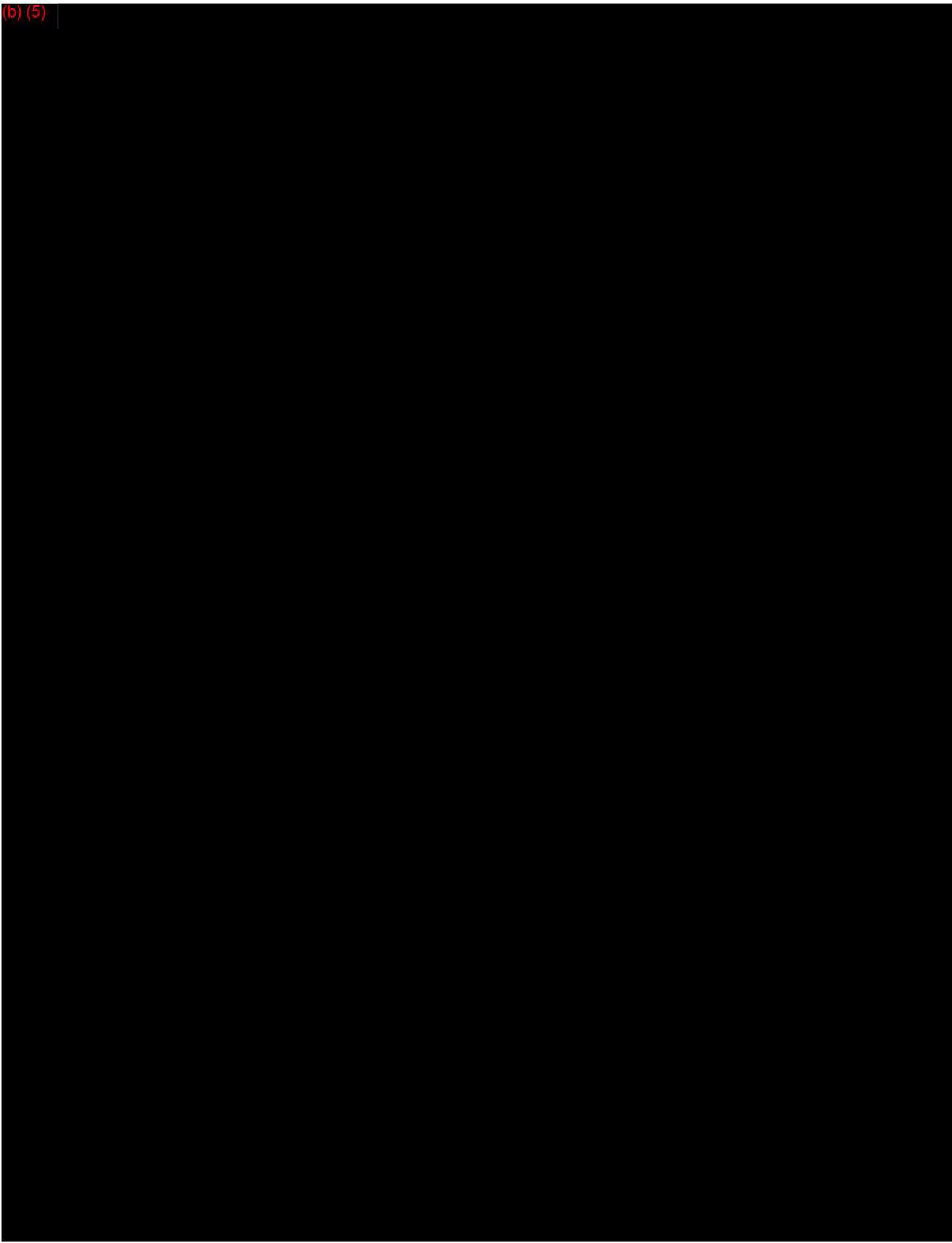
**From:** "Loyola, Mario A. EOP/CEQ" <(b) (6)>  
**To:** "Boling, Ted A. EOP/CEQ" (b) (6) "Drummond, Michael R. EOP/CEQ" (b) (6)  
**Cc:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
**Date:** Tue, 04 Sep 2018 14:01:01 -0400  
**Attachments**  
: Draft NPRM Background-History 2018-09-04 YM v2 ML.docx (57.97 KB)

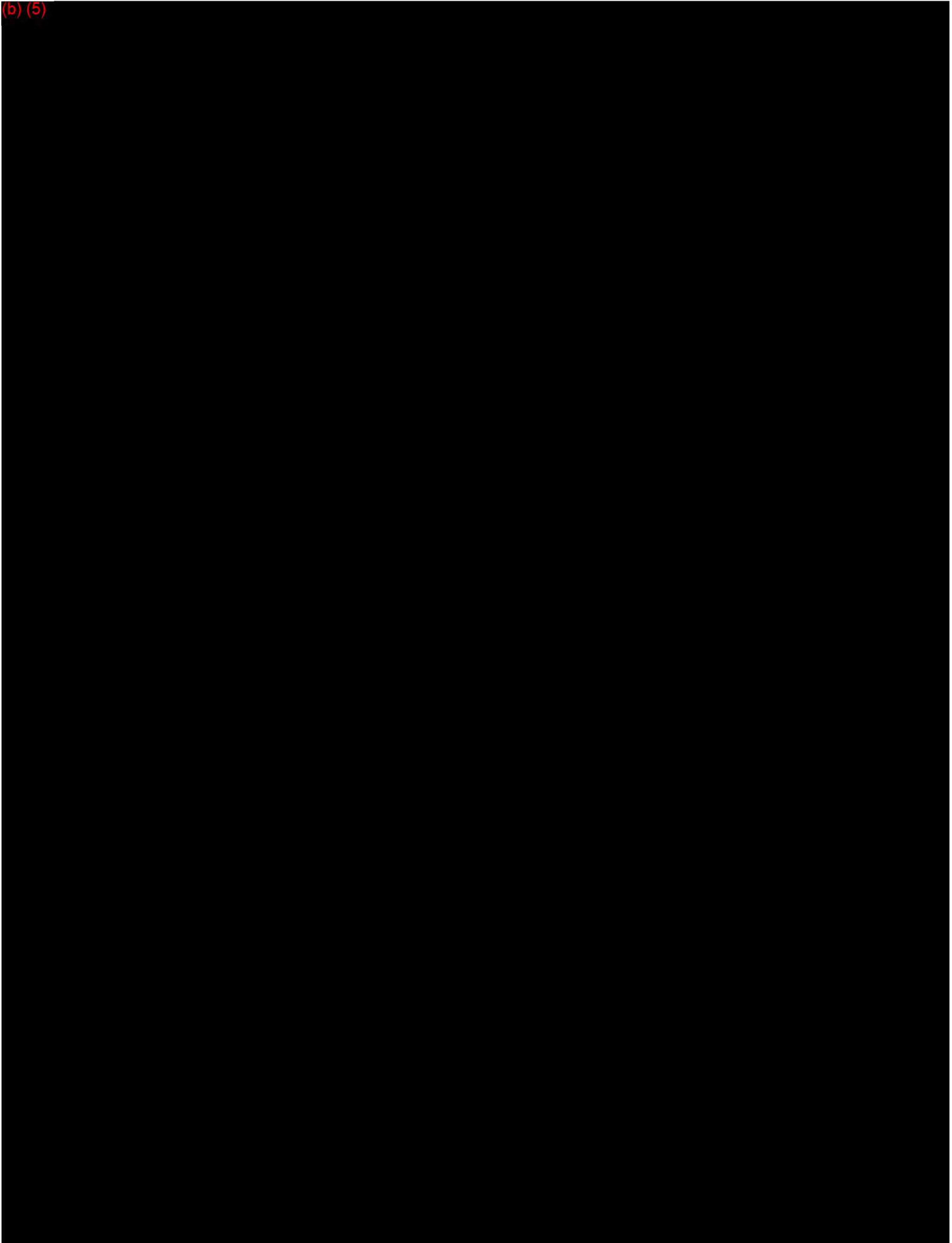
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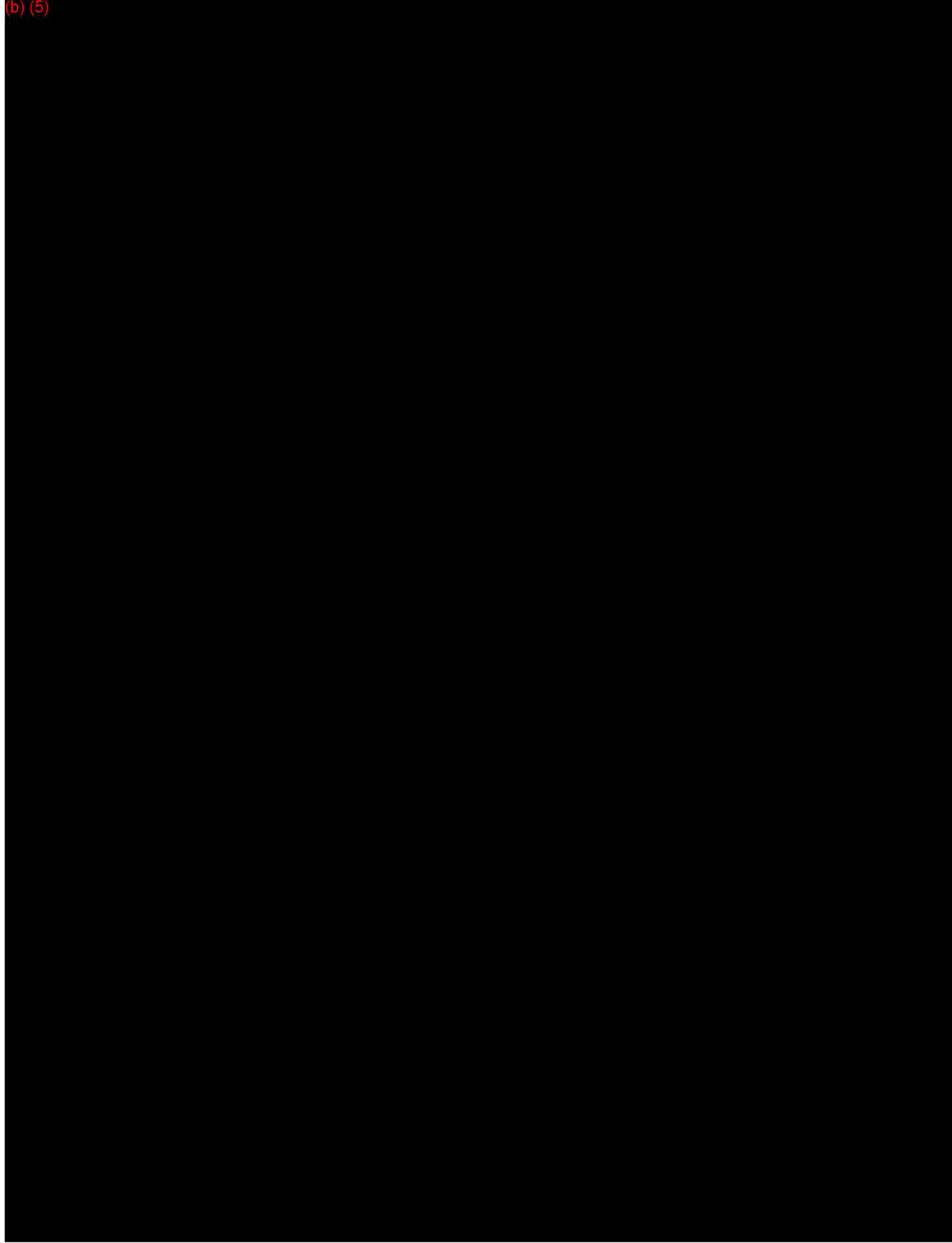
Dear Ted, Mike, and Yardena – (b) (5)

Thanks.

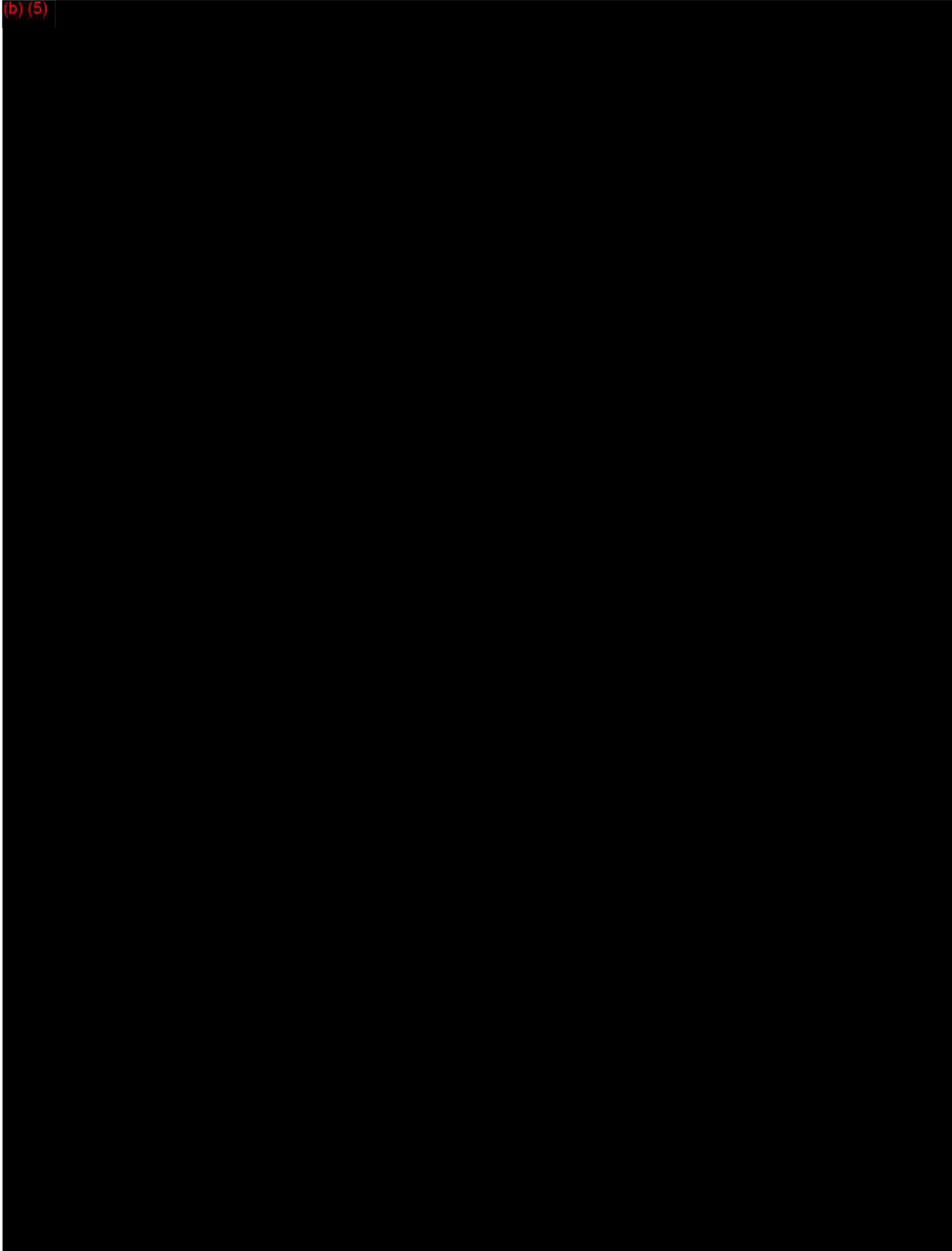
Mario Loyola  
Associate Director, Regulatory Reform  
White House Council on Environmental Quality  
(o) (b) (6) | (c) (b) (6)

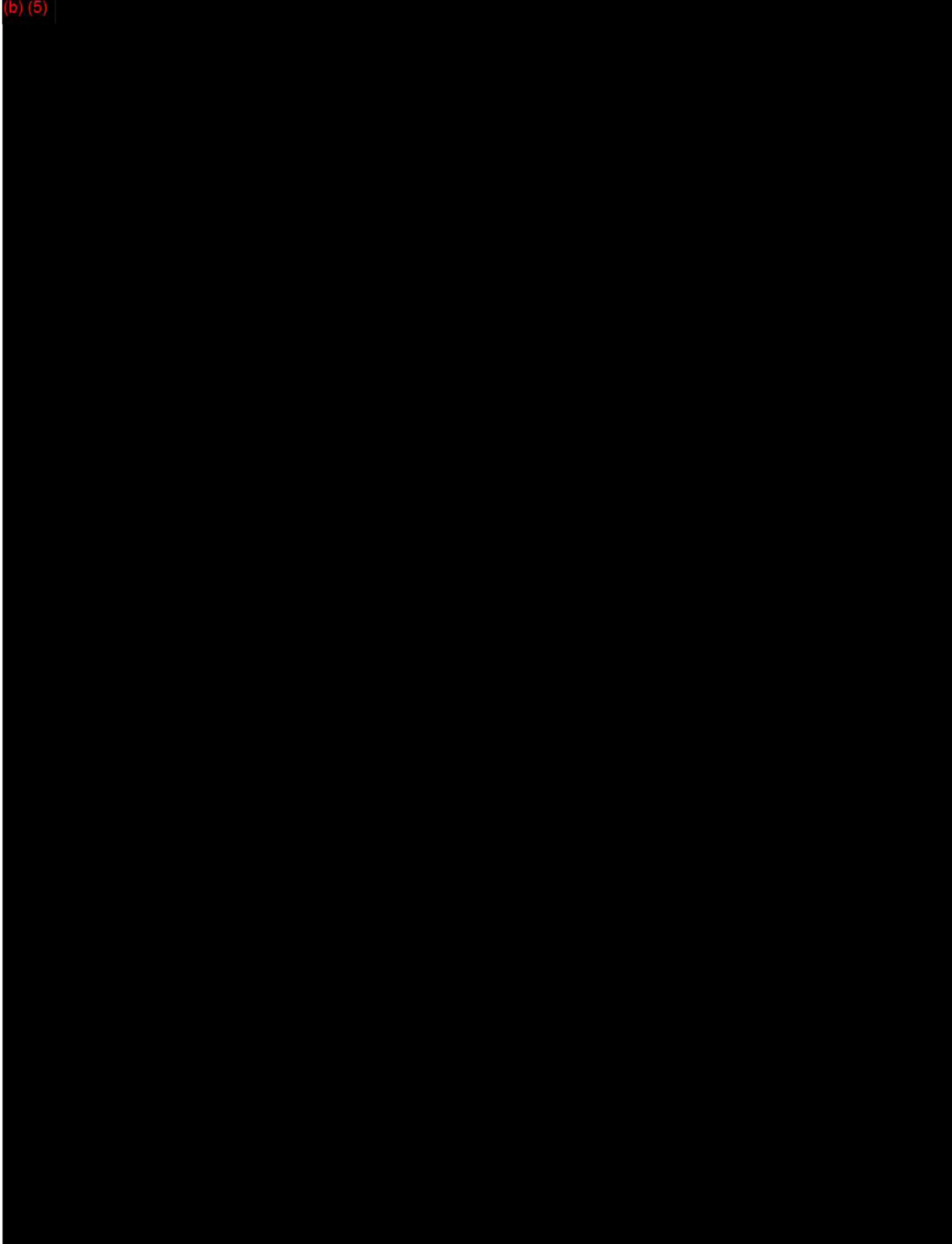




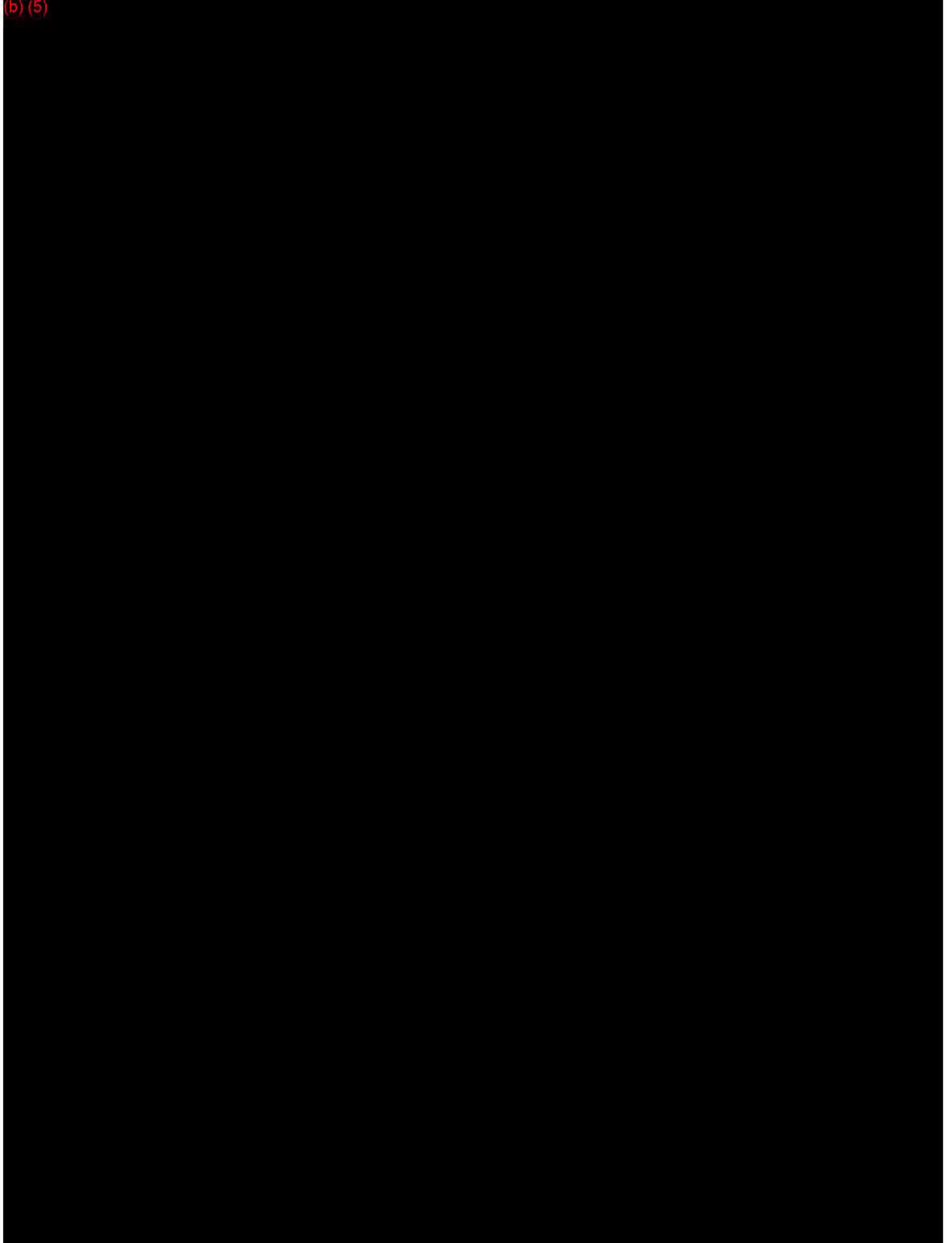


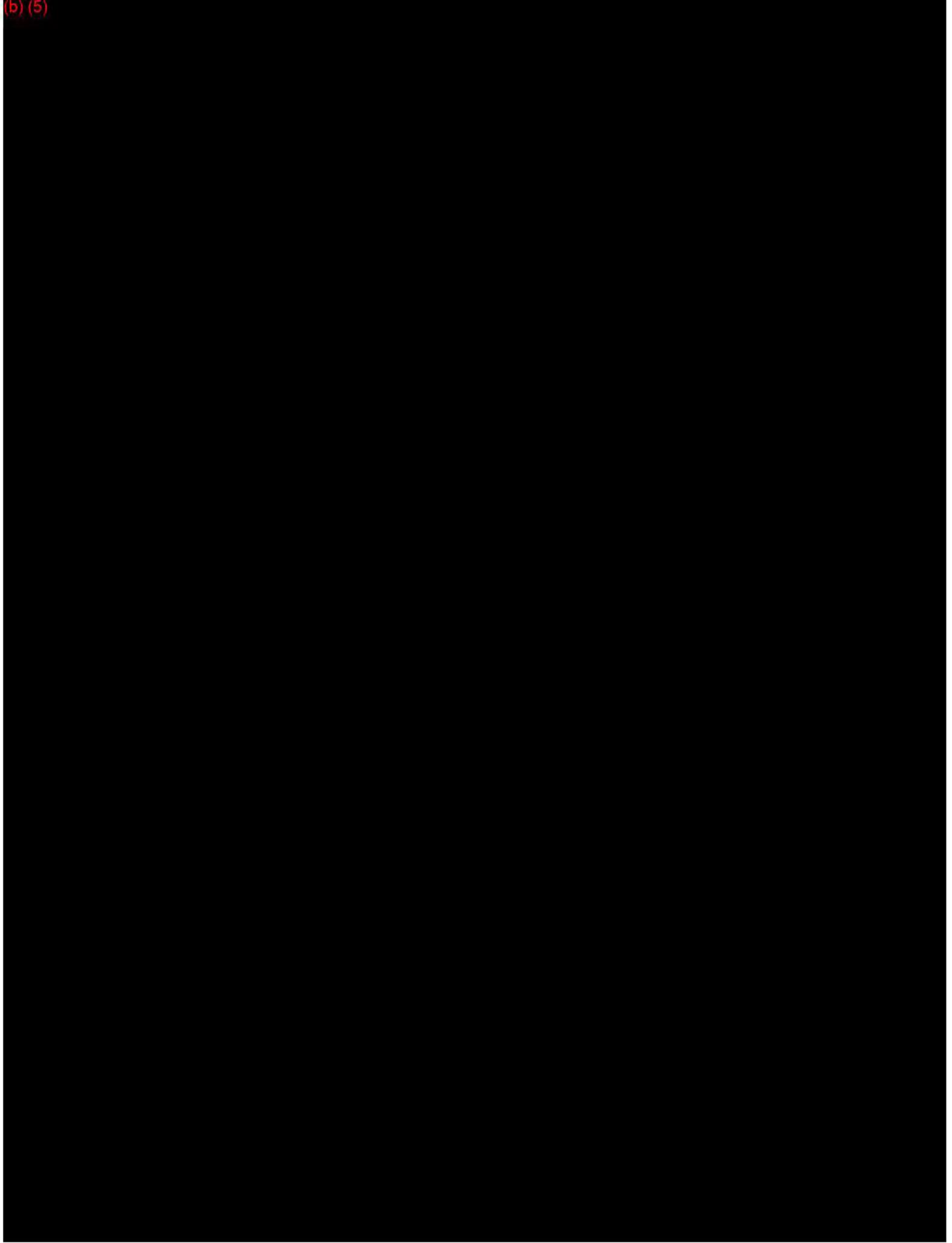


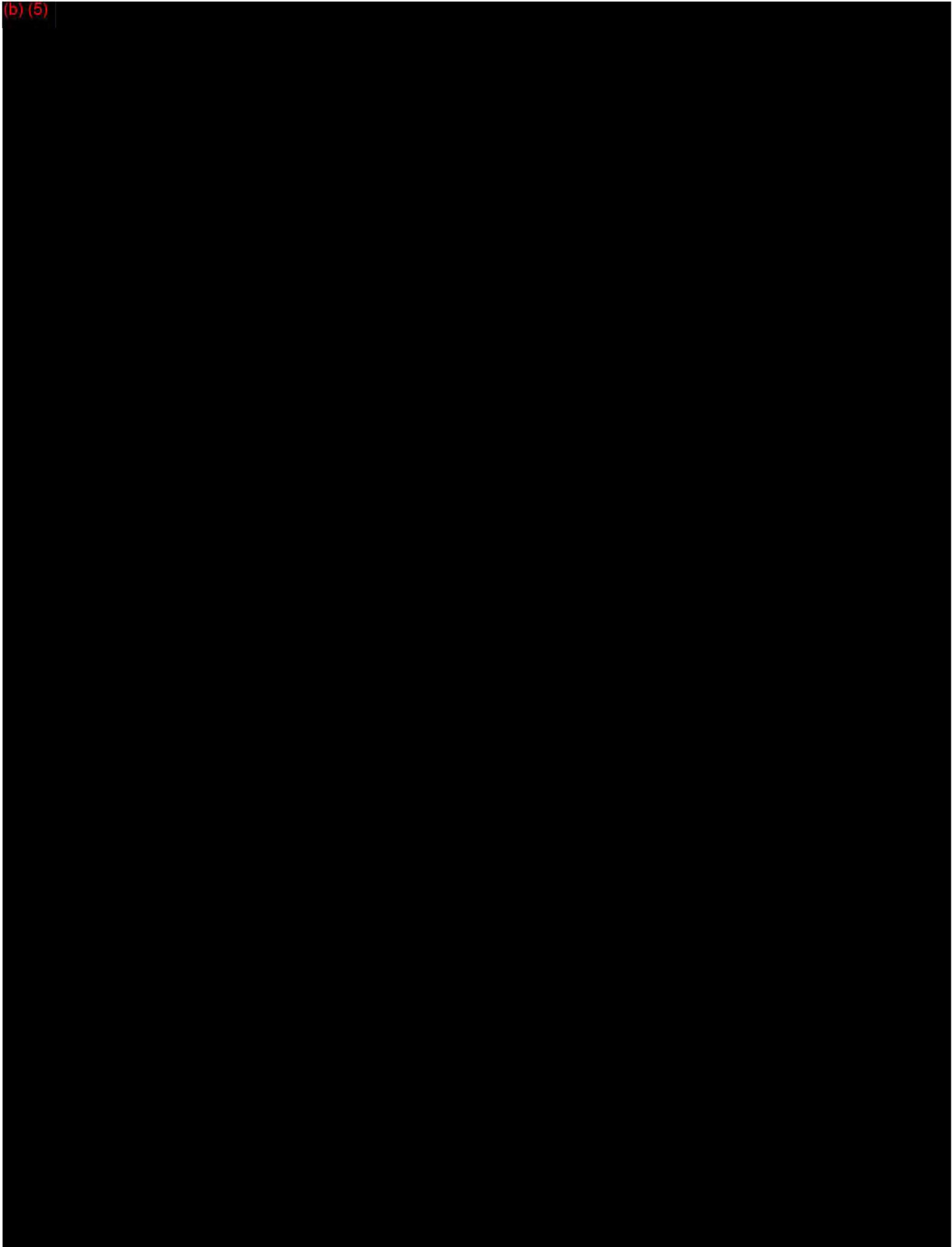


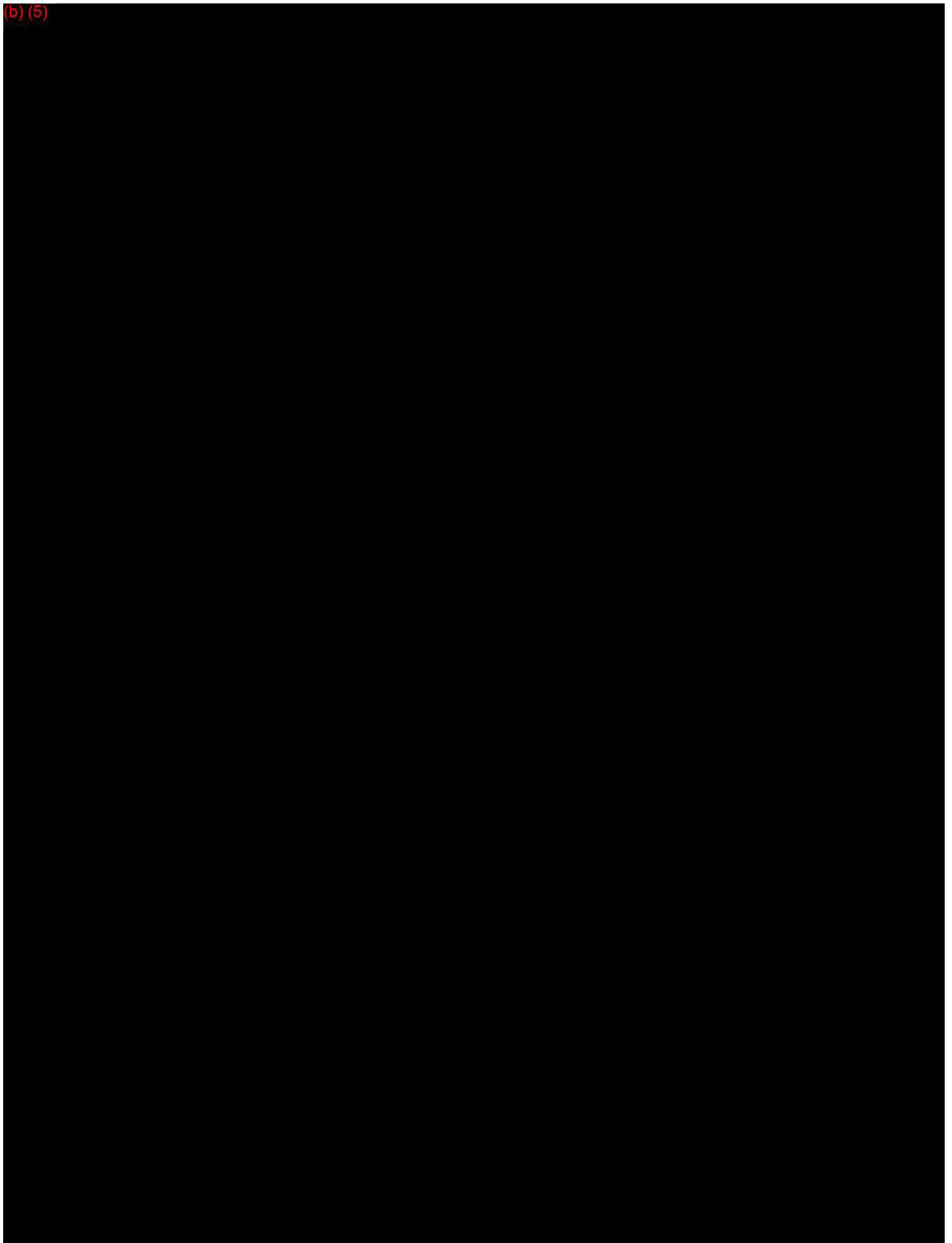


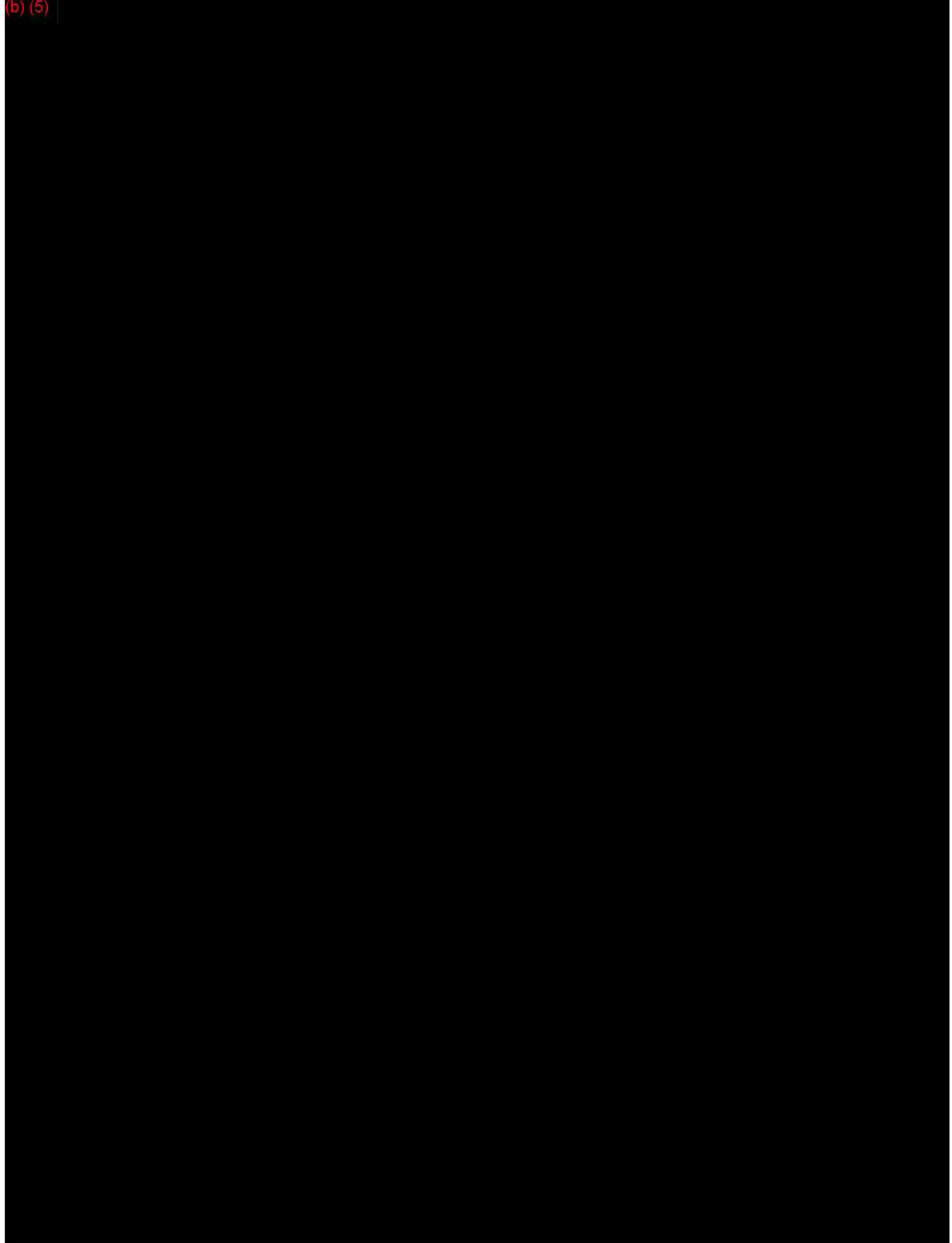


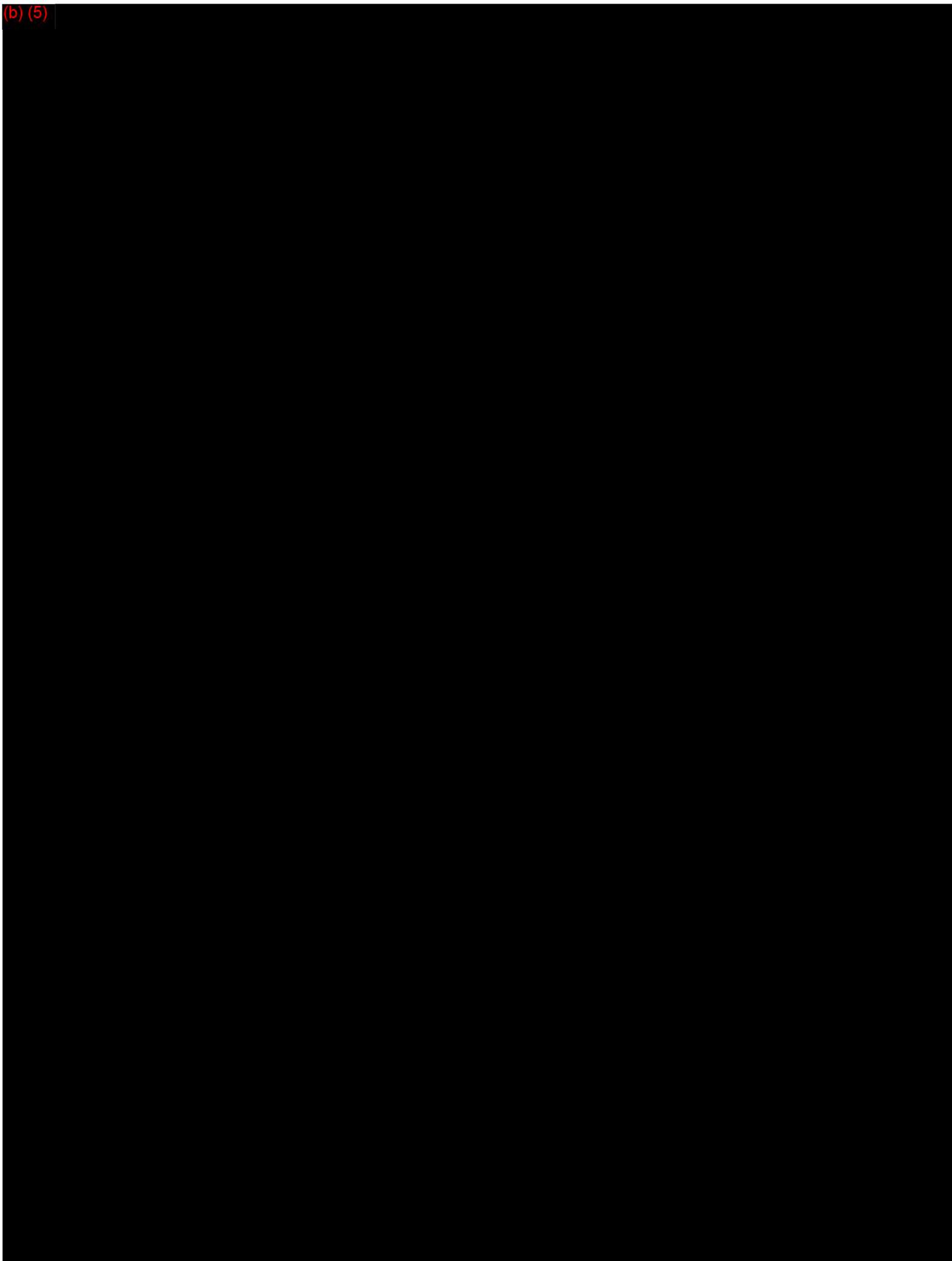


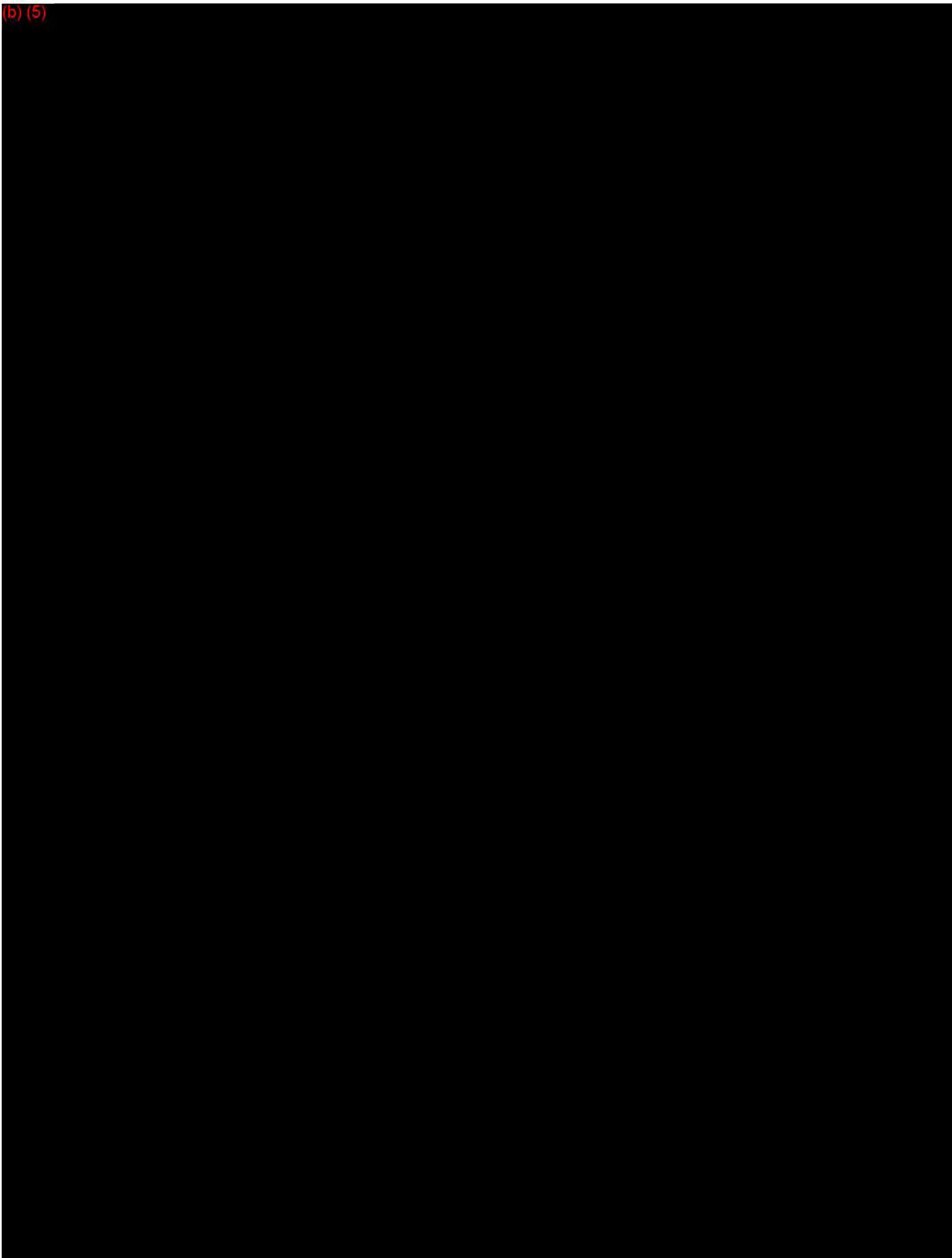


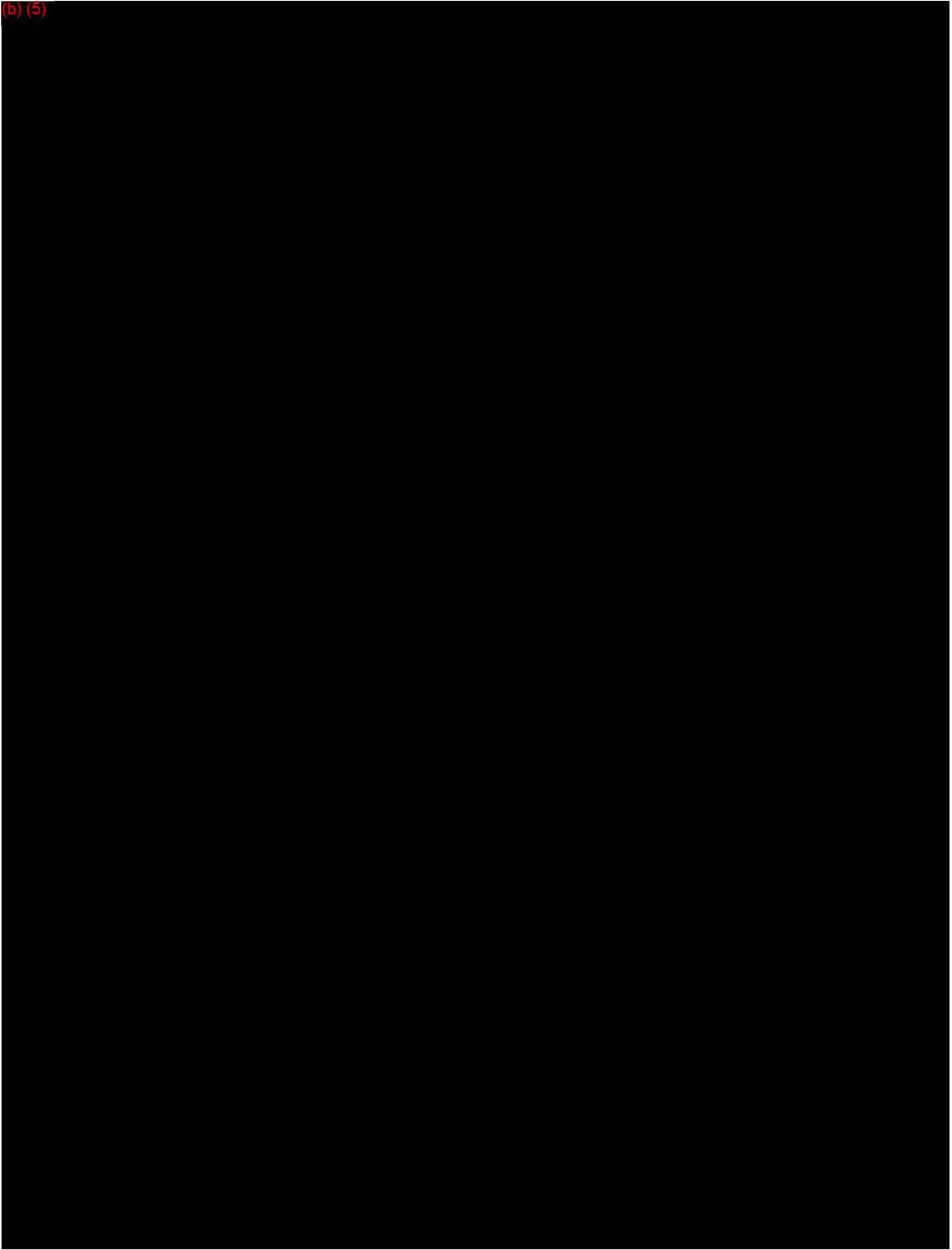


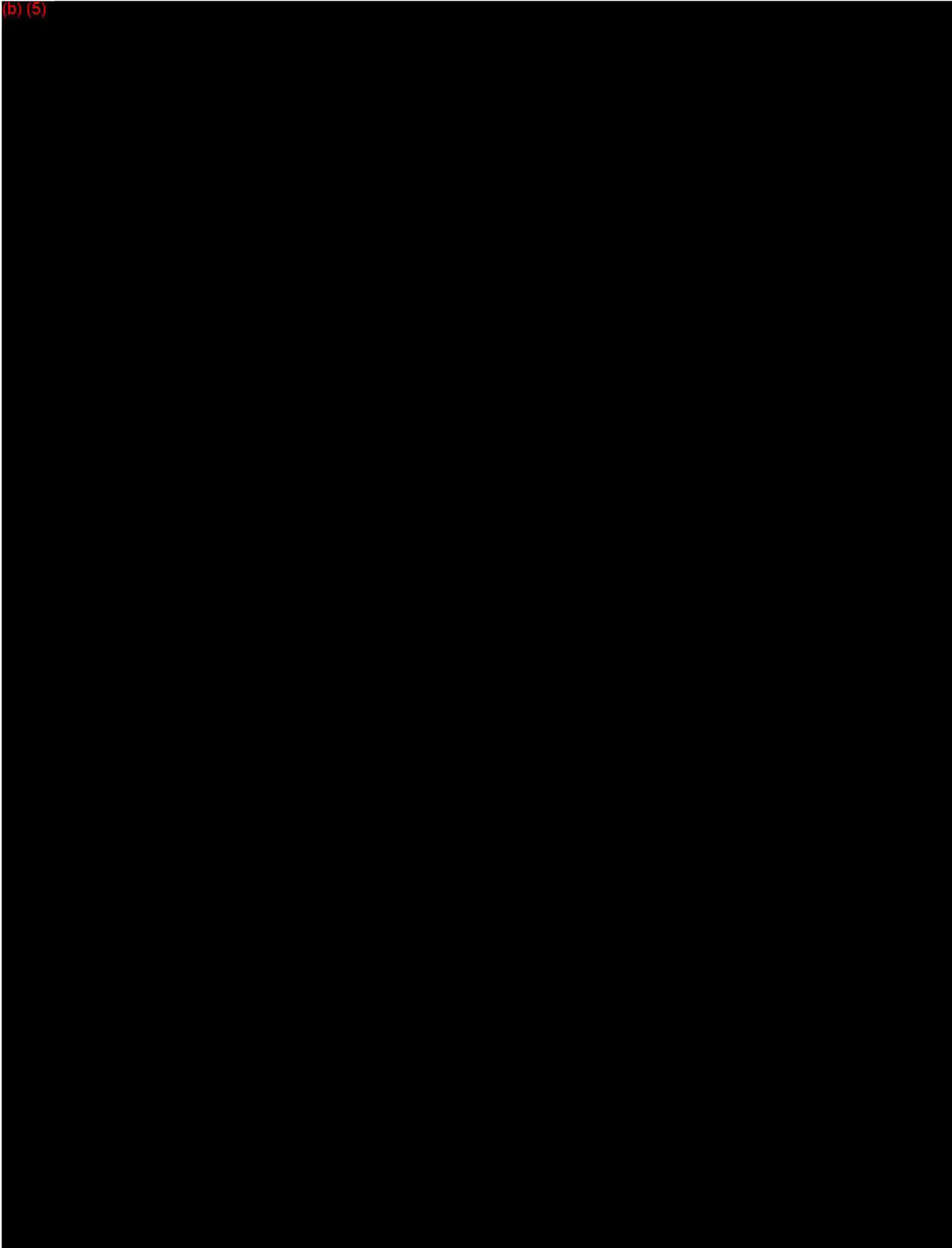


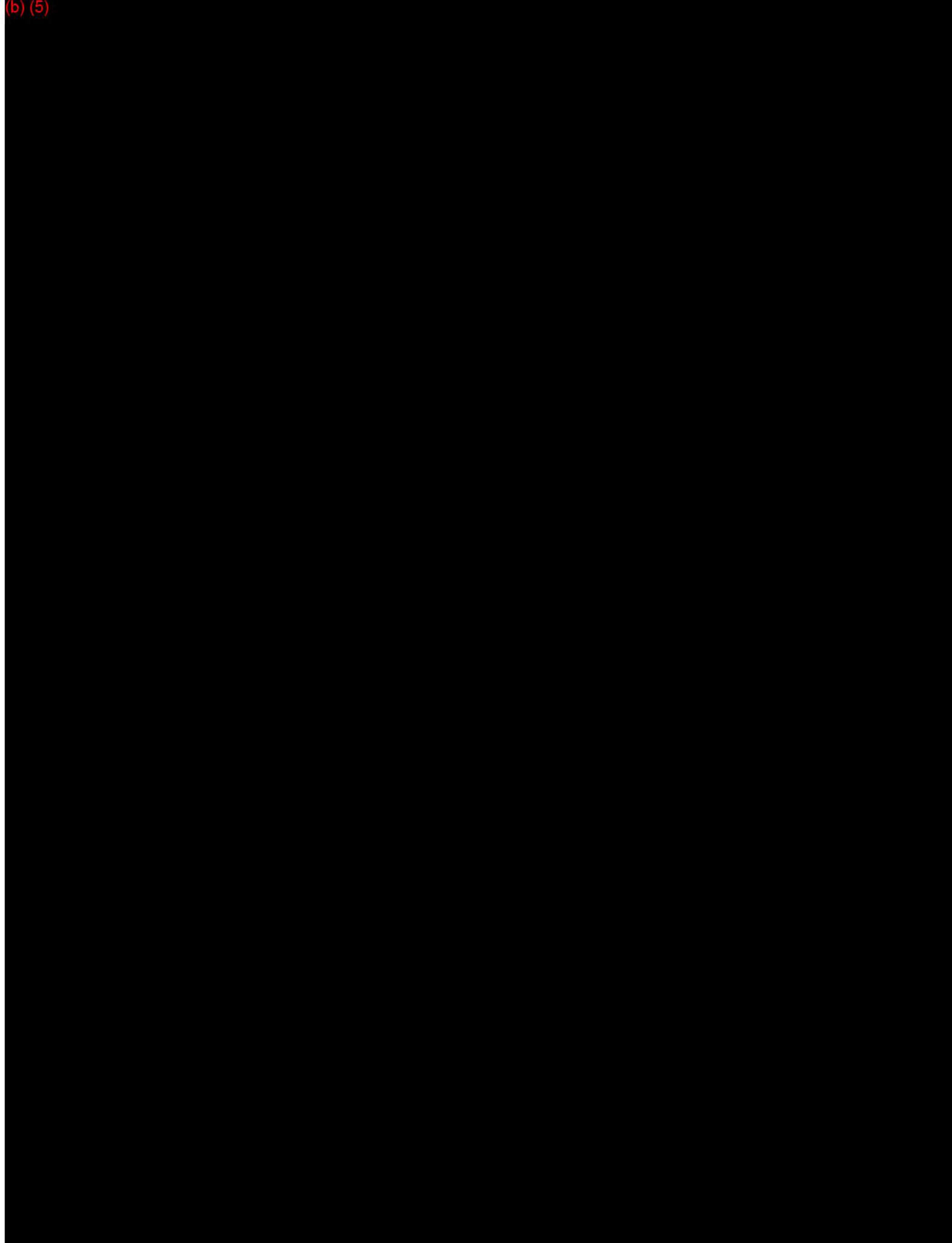


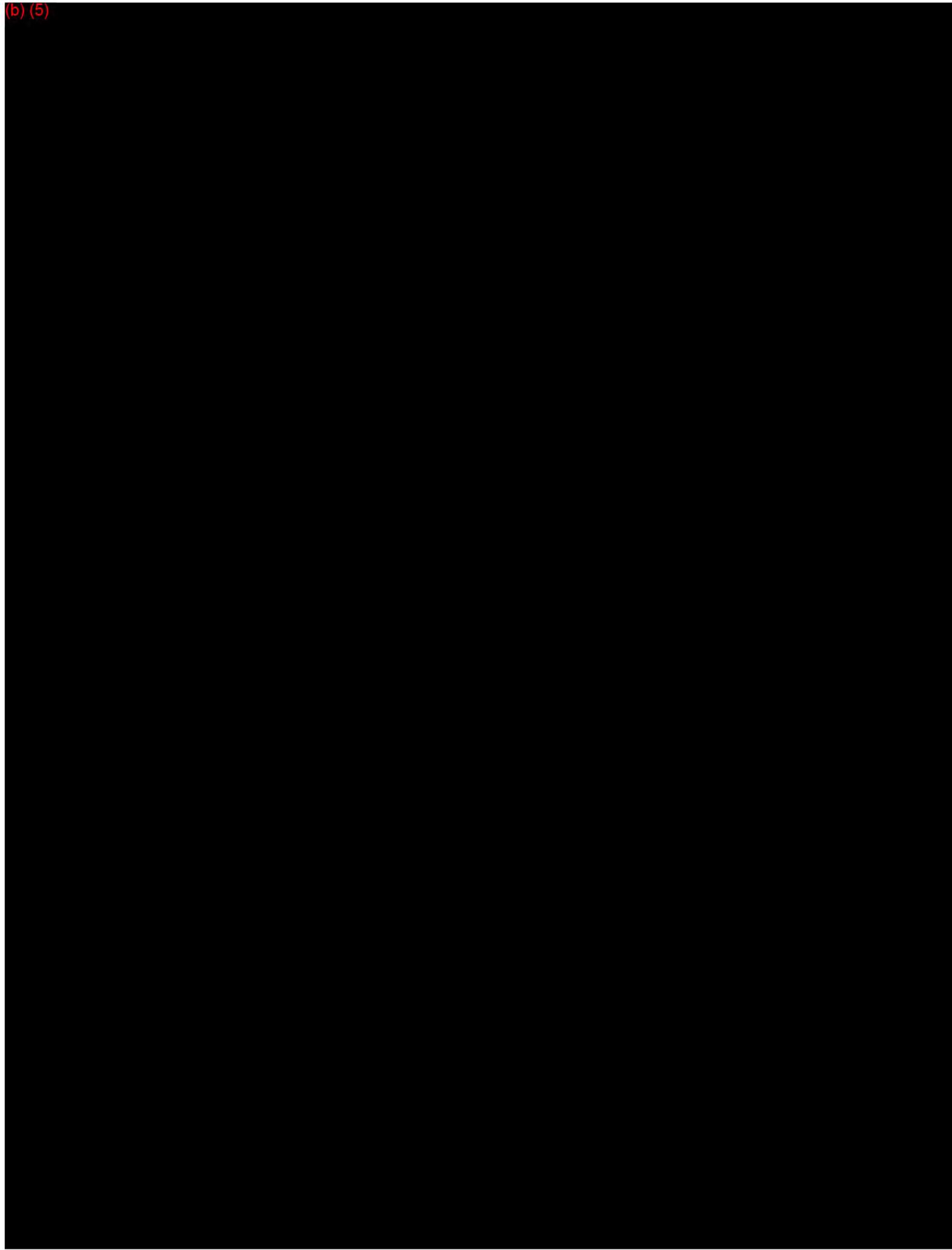


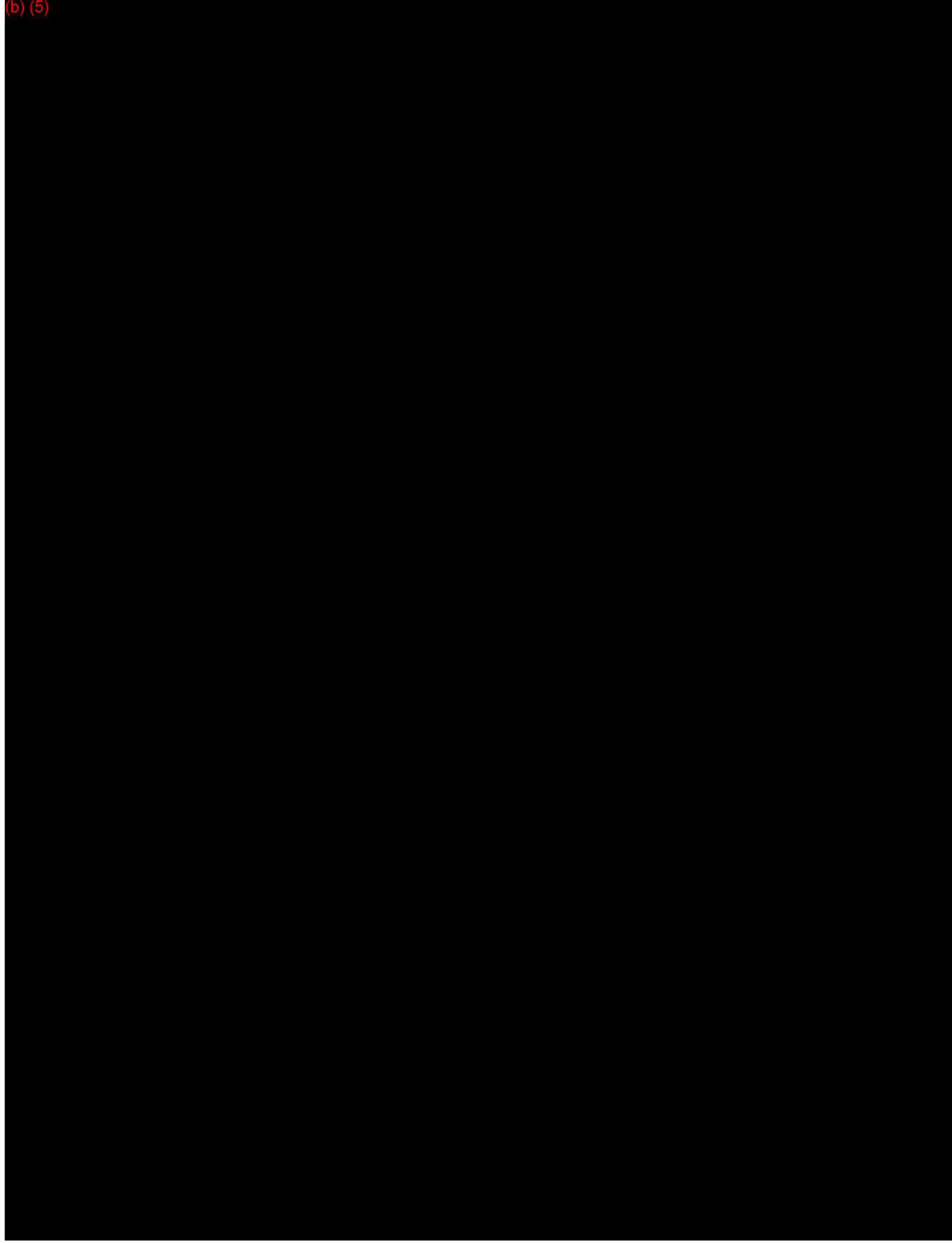


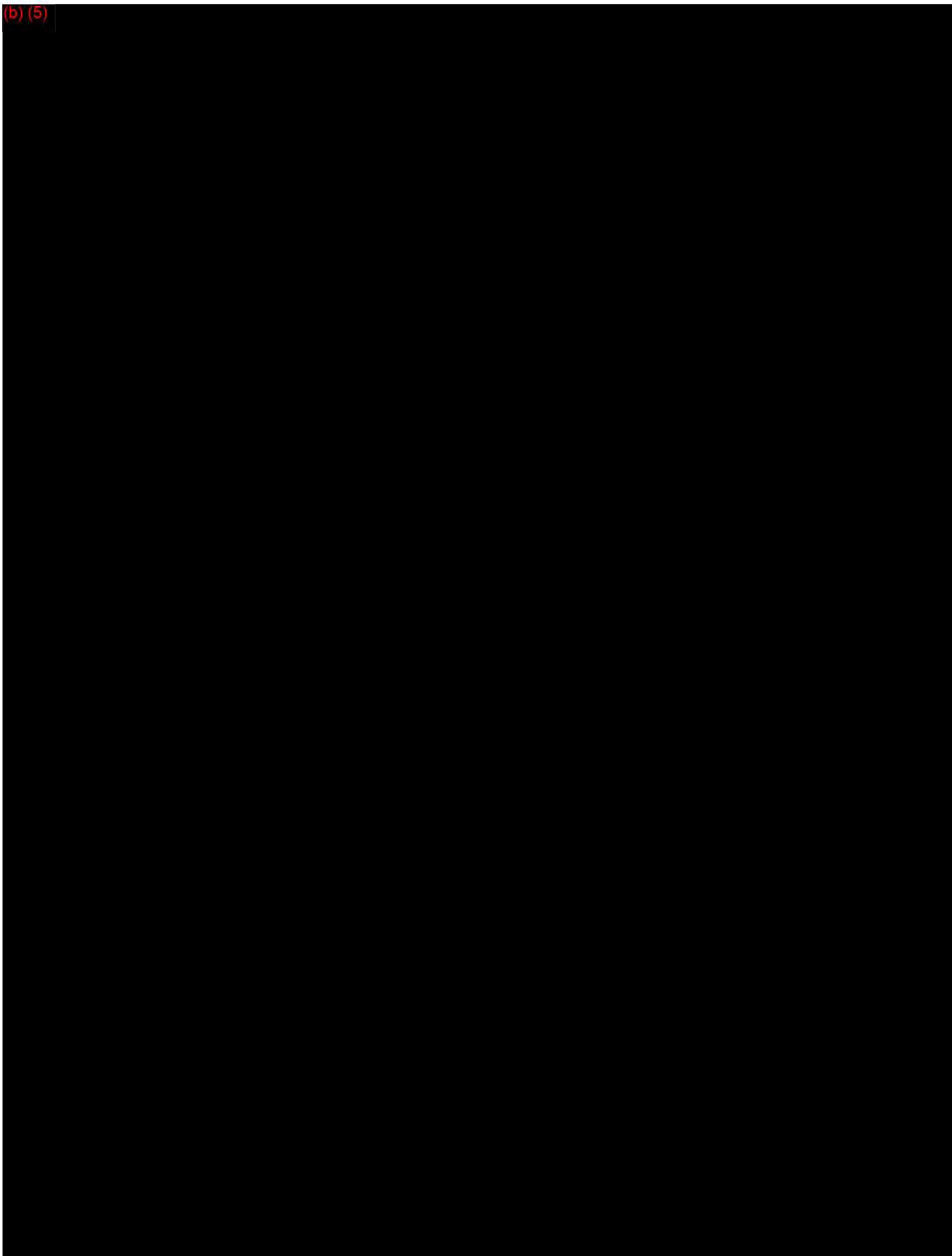












## Draft background for NPRM

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**From:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
**To:** "Loyola, Mario A. EOP/CEQ" <(b) (6)>  
**Cc:** "Drummond, Michael R. EOP/CEQ" (b) (6) "Boling, Ted A. EOP/CEQ" <(b) (6)>  
**Date:** Tue, 04 Sep 2018 12:26:50 -0400  
**Attachments** Draft NPRM Background-History 2018-09-04 YM.docx (53.08 kB); Draft NPRM Background-History (guidance and initiatives section) 2018-09-04.docx (31.09 kB)

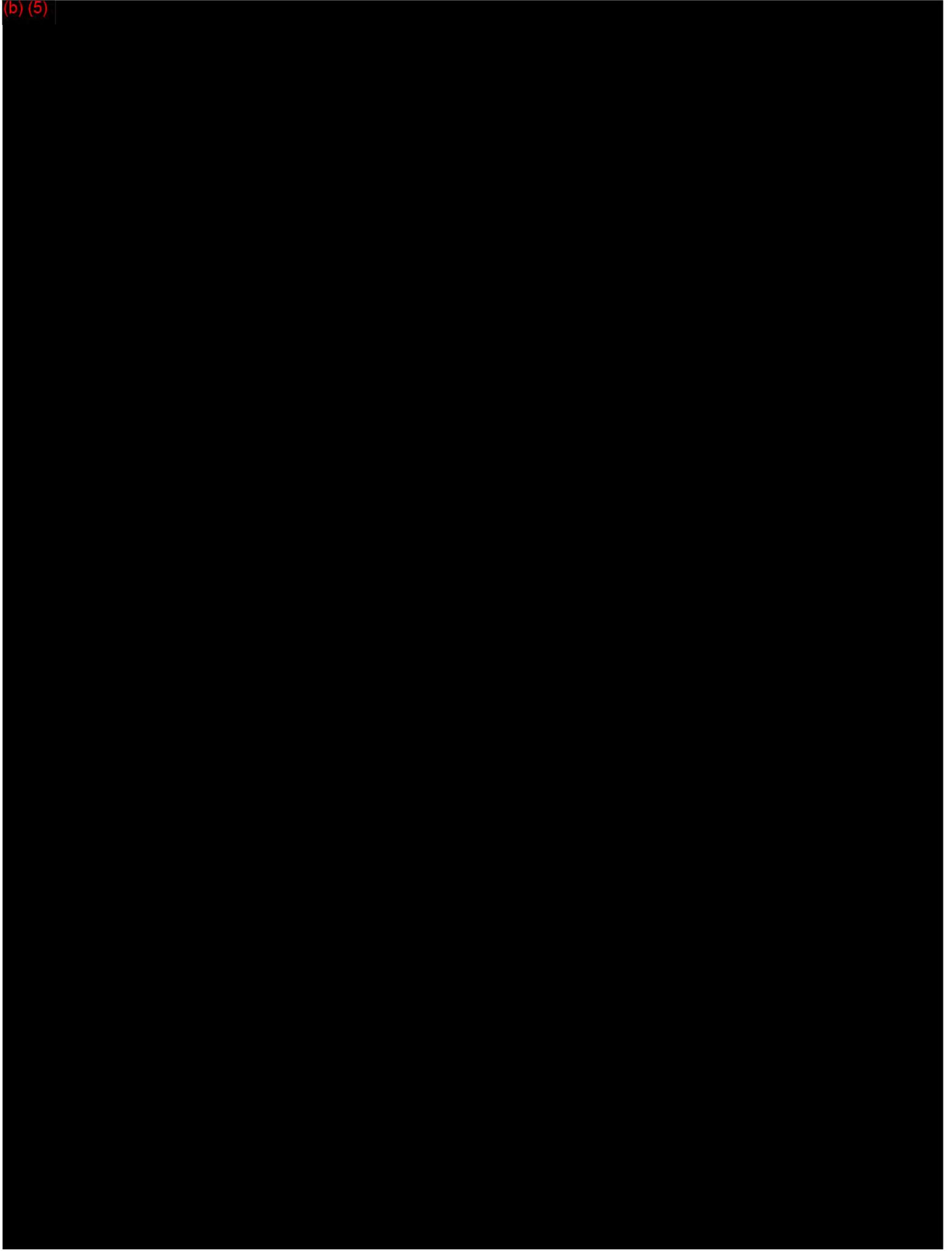
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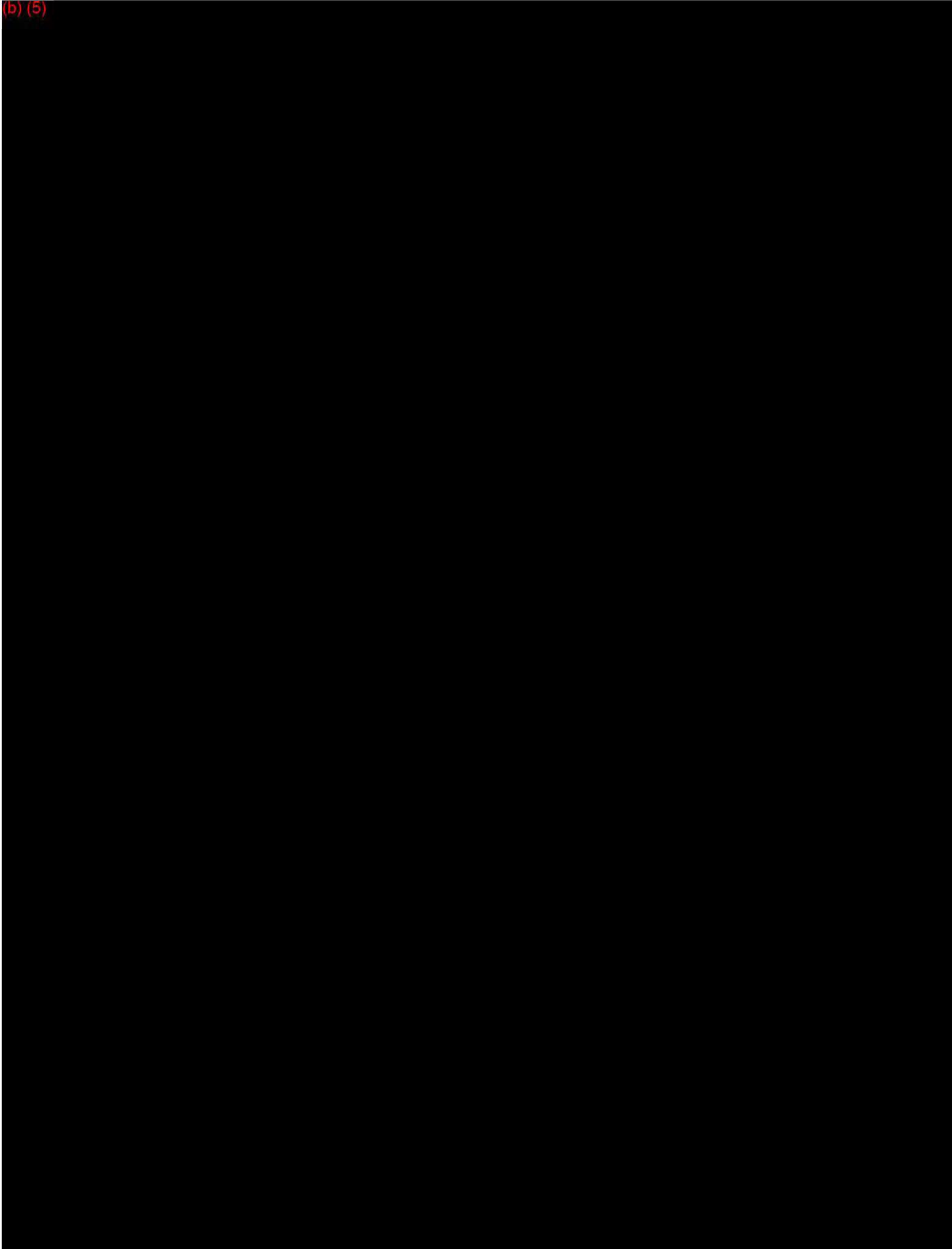
Here is the draft responding to the task list item due today, for your review.

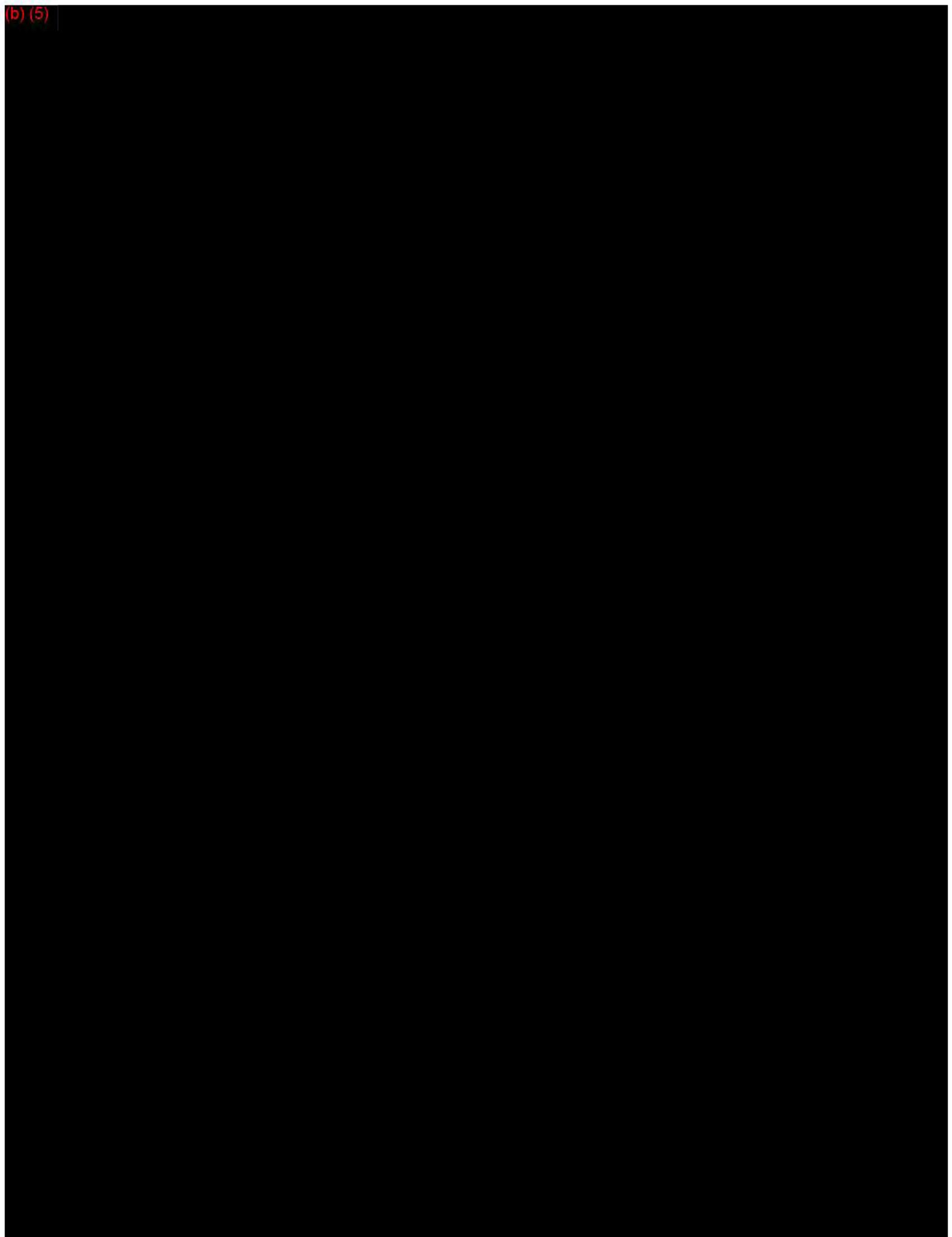
Some notes:

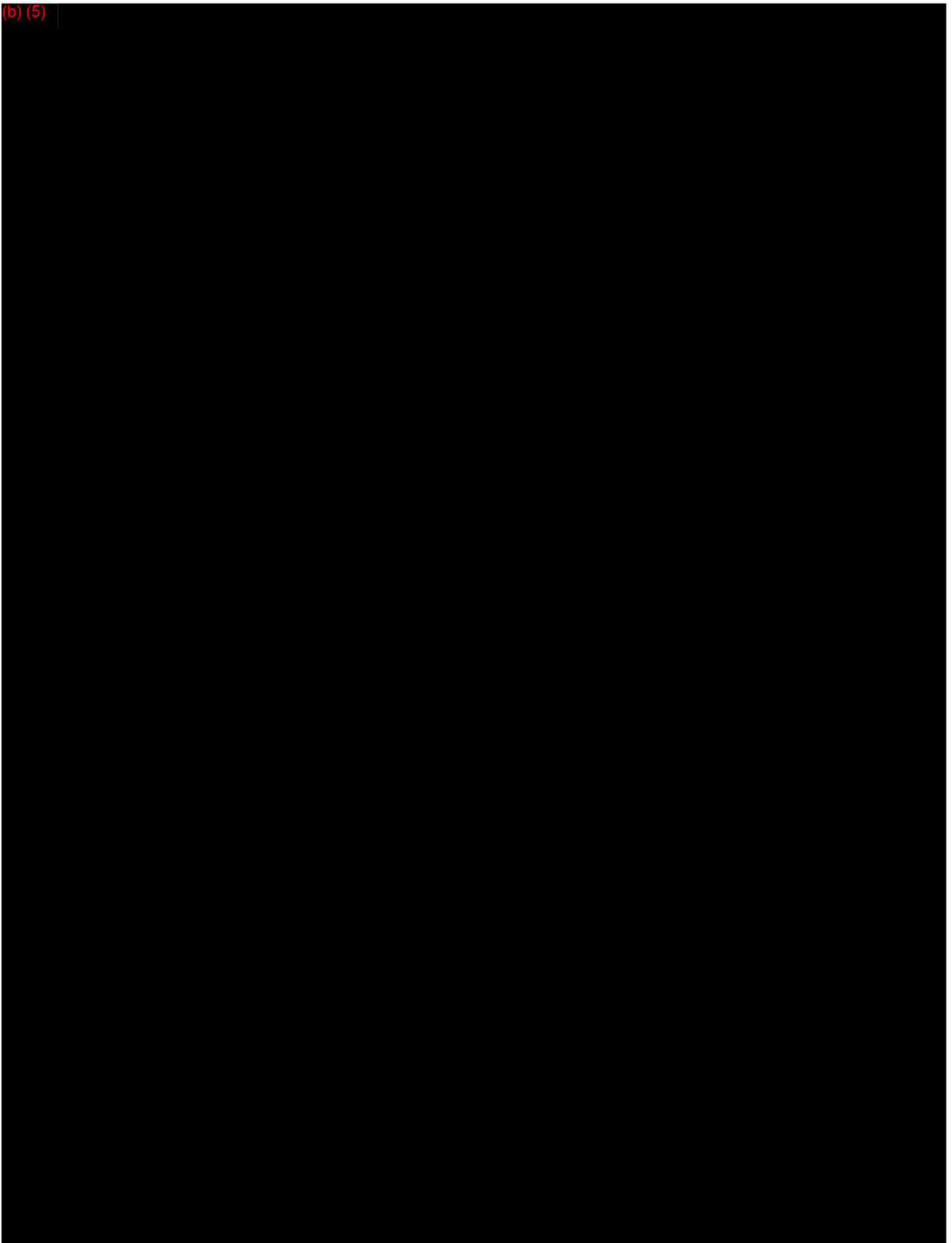
- (b) (5) [Redacted]
  - [Redacted]
- 

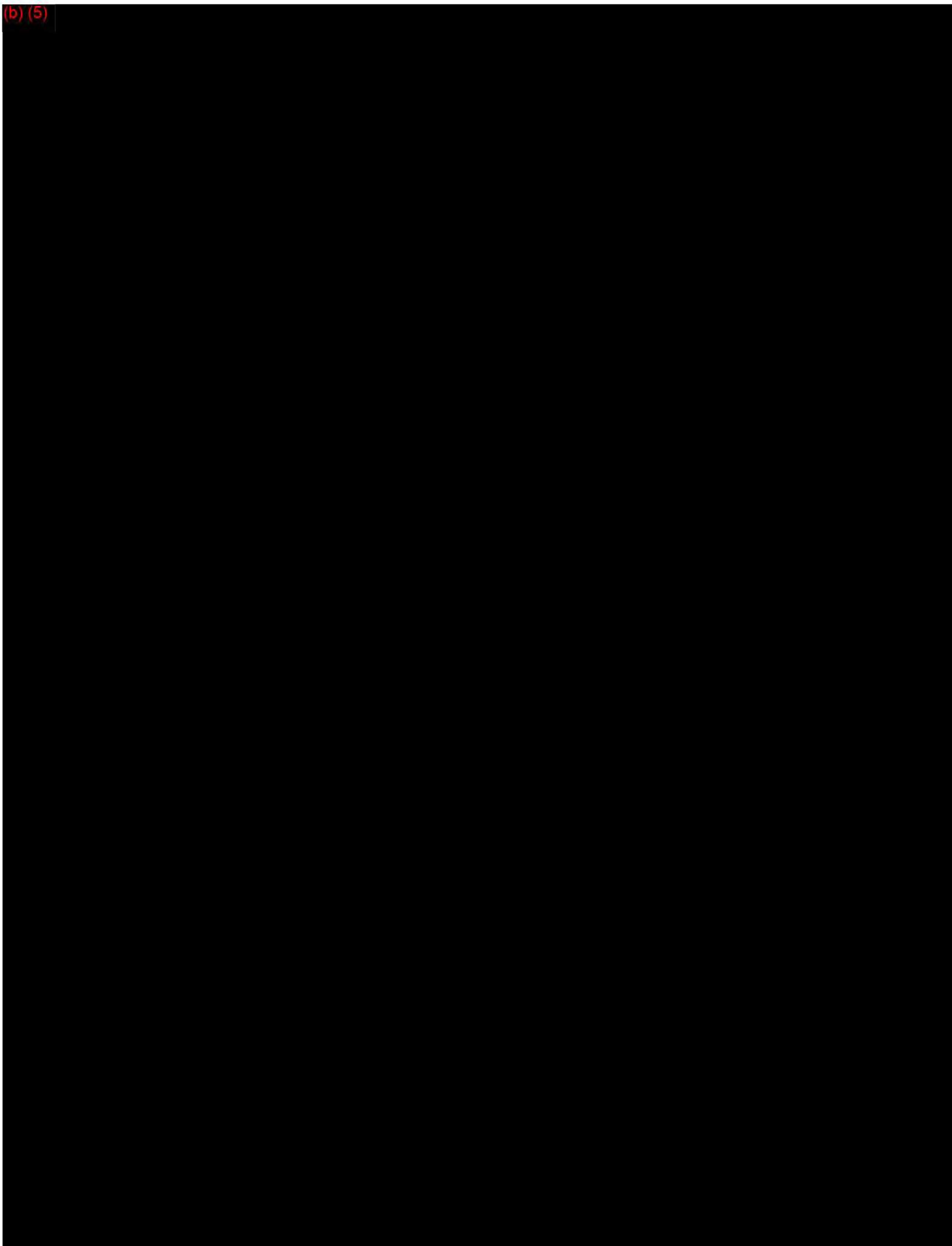
Yardena Mansoor  
Deputy Associate Director for NEPA  
Council on Environmental Quality  
(b) (6) / (b) (6)

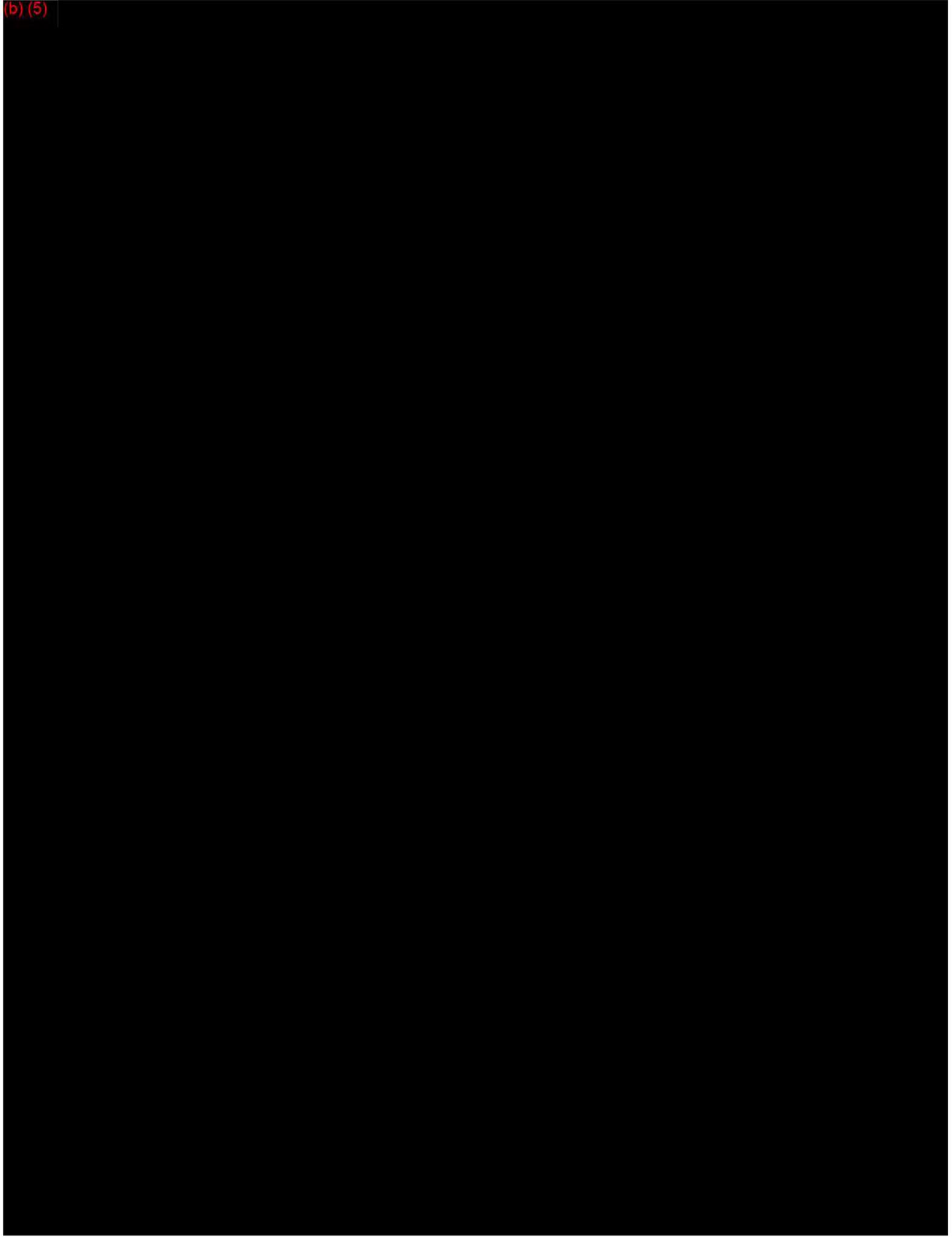


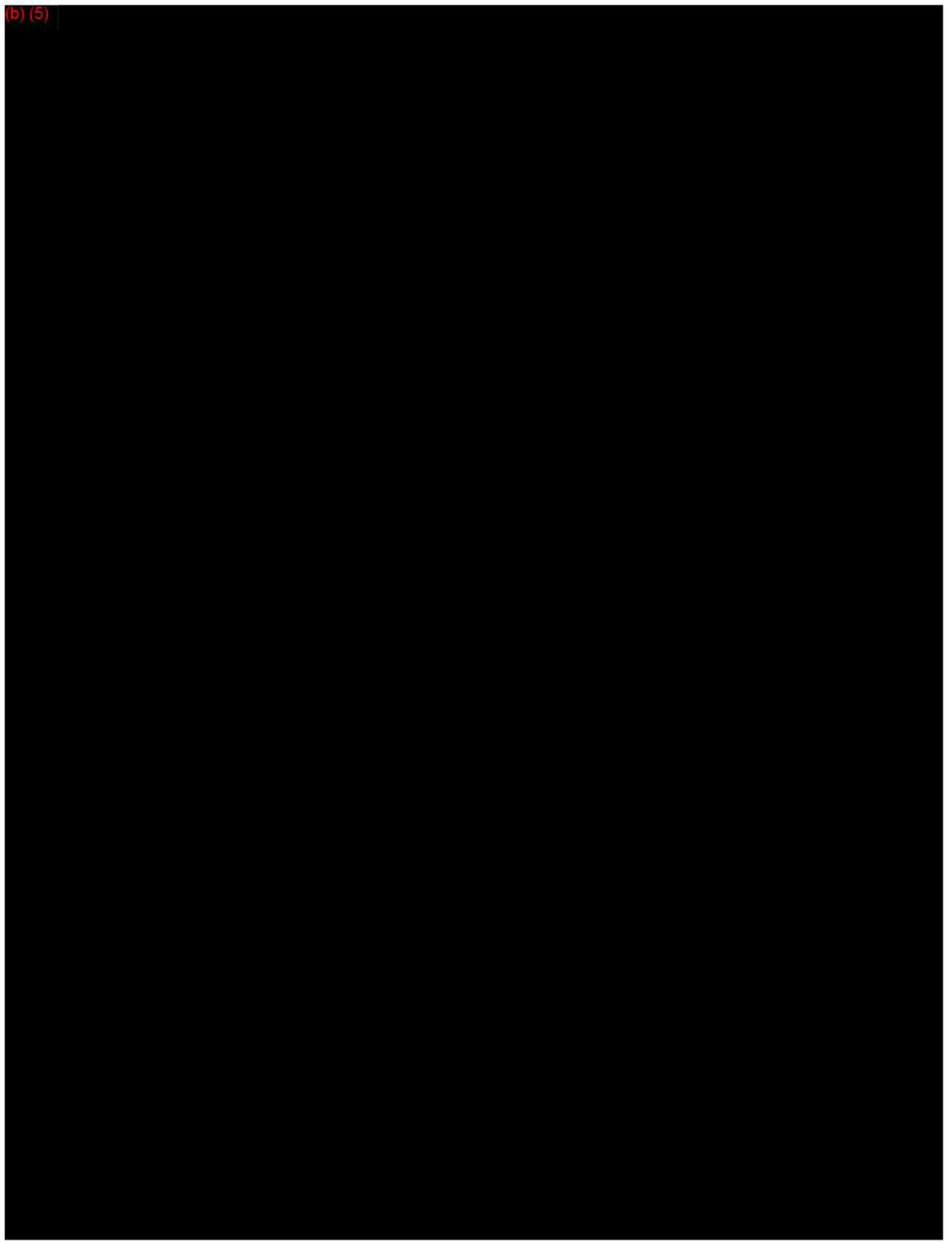


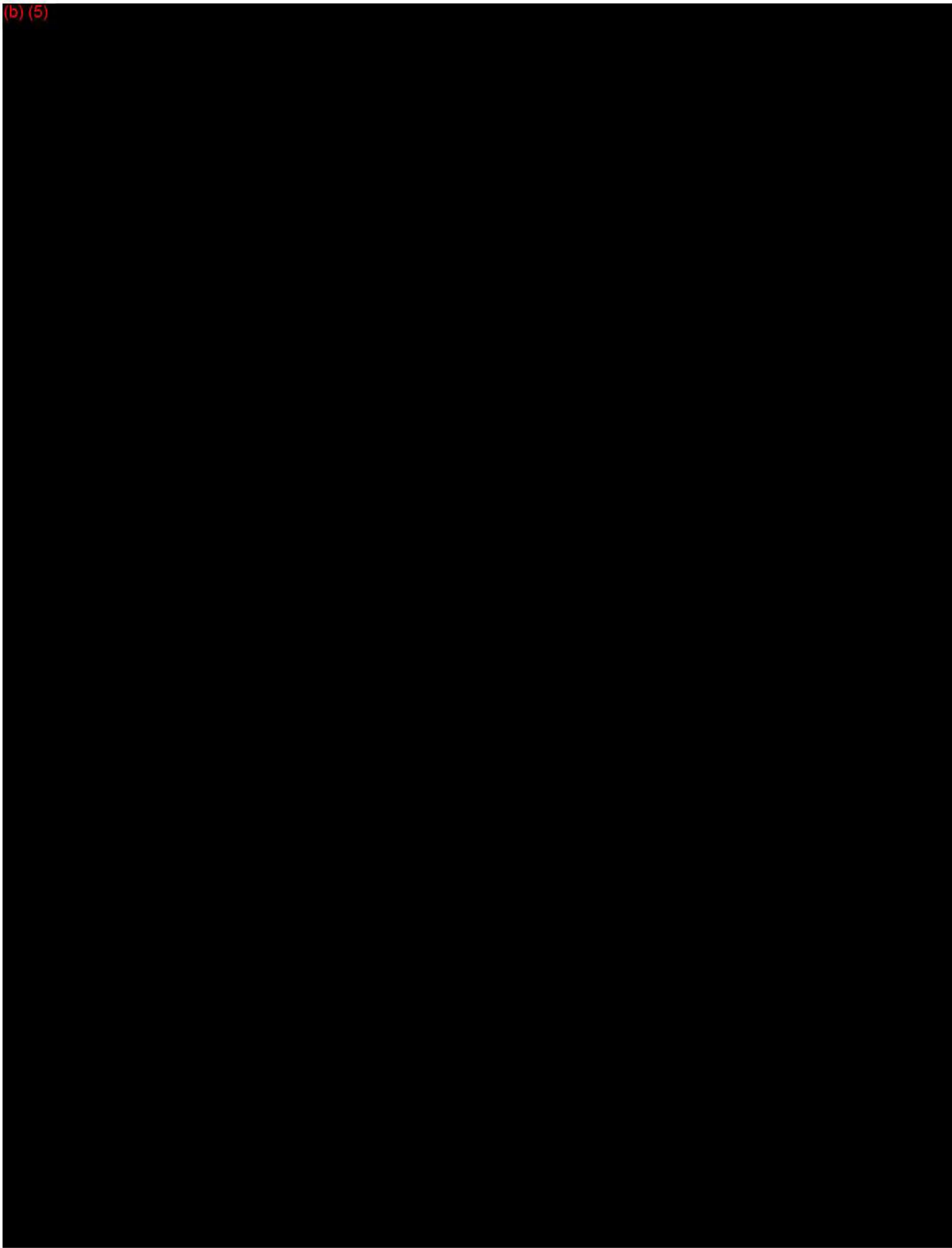


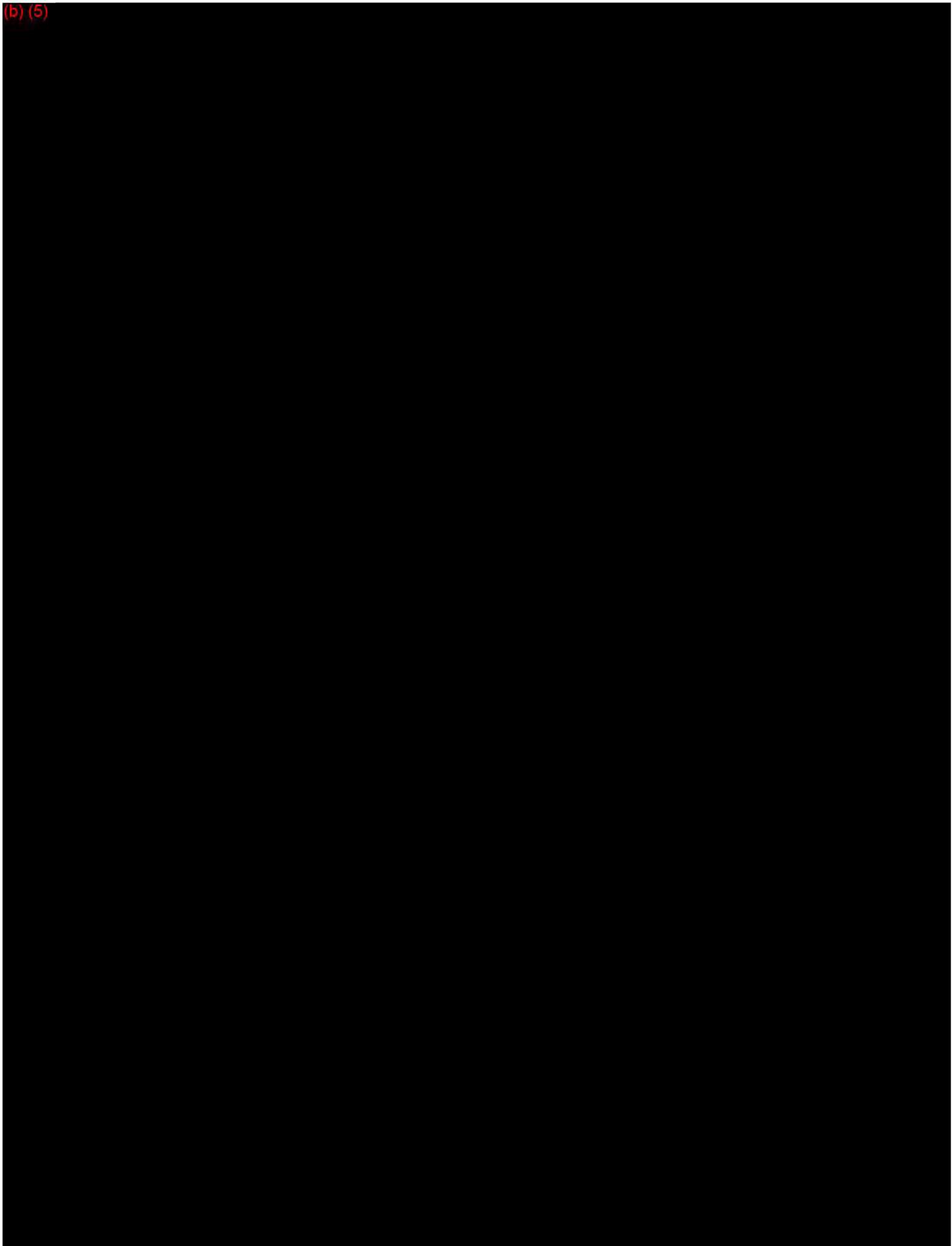


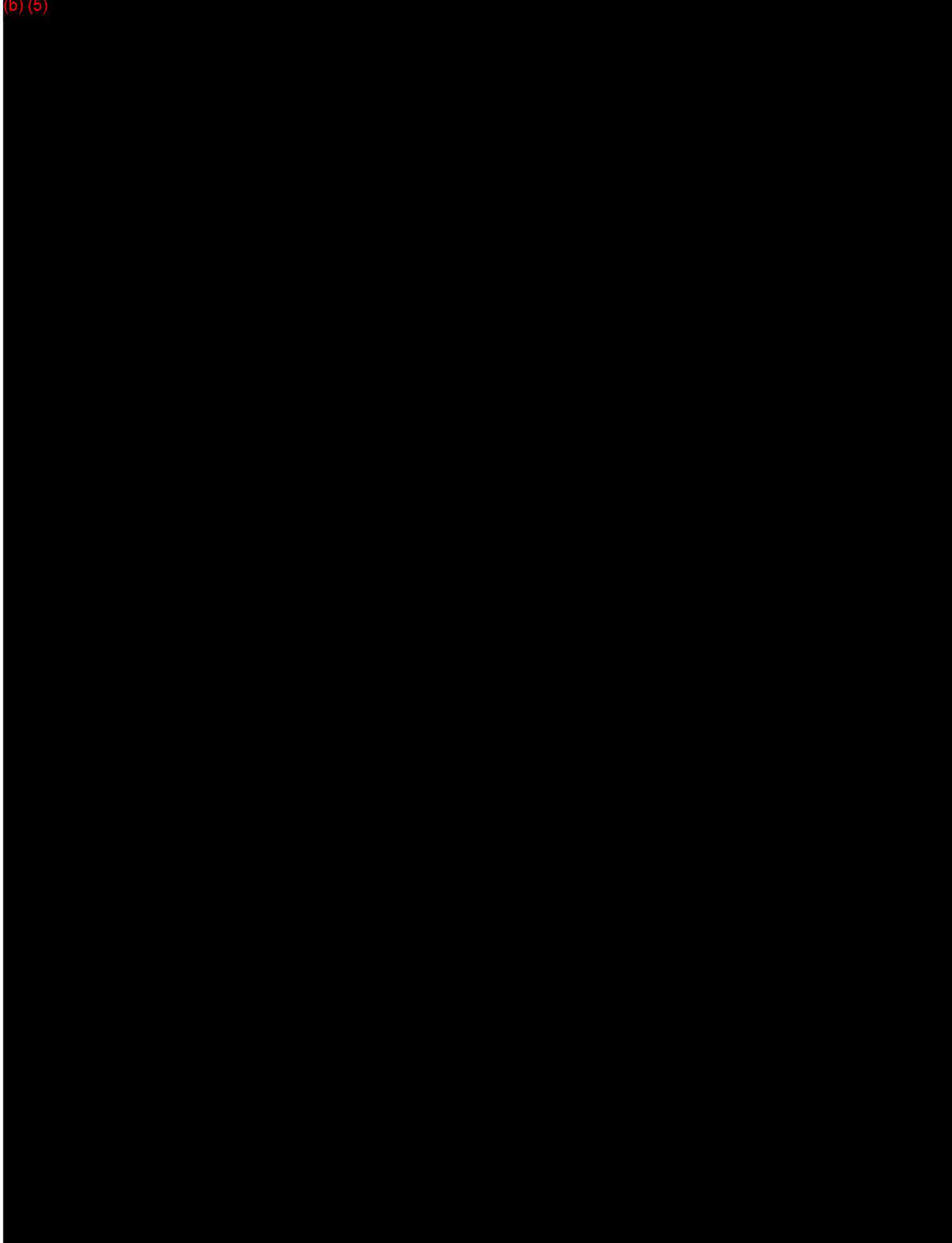


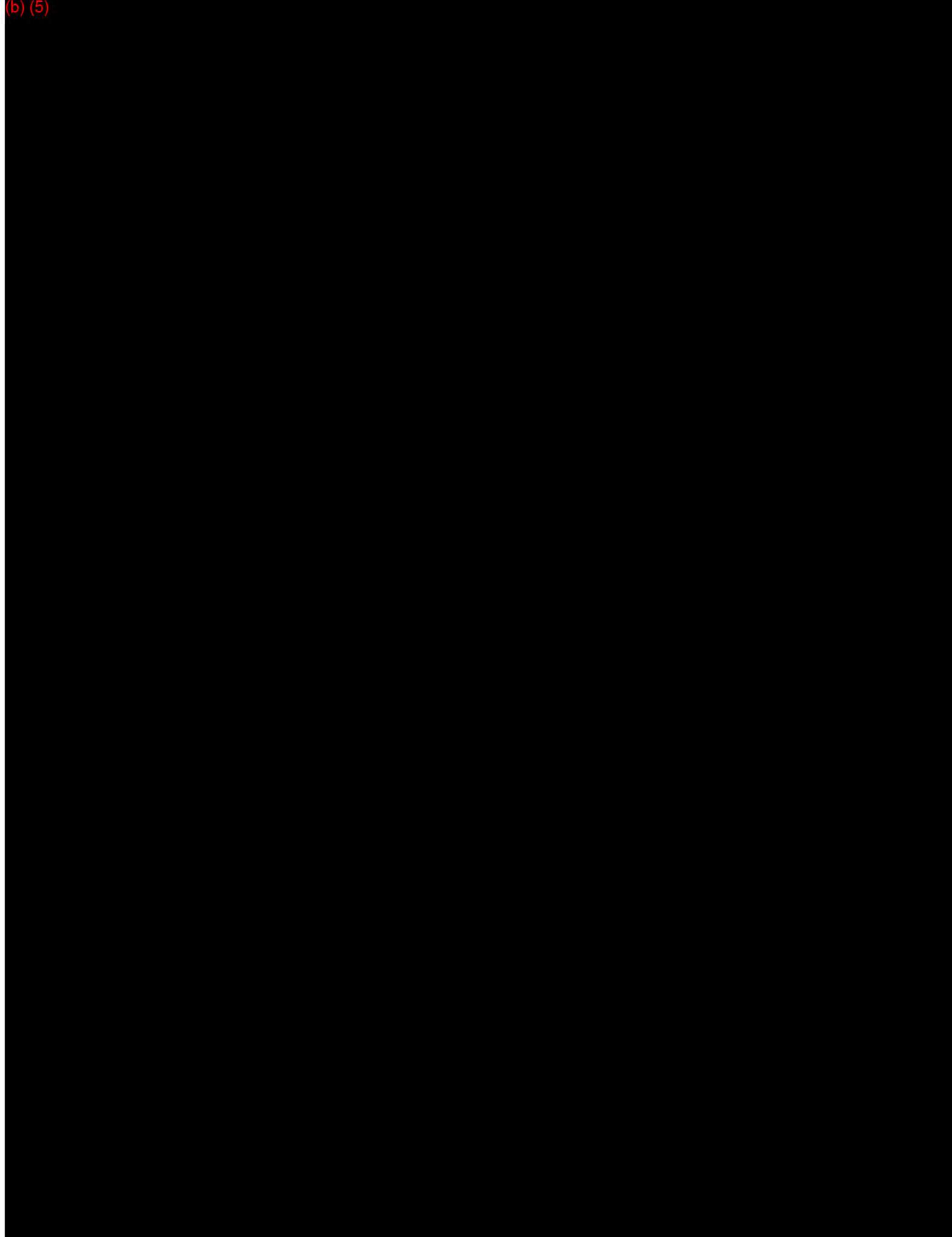




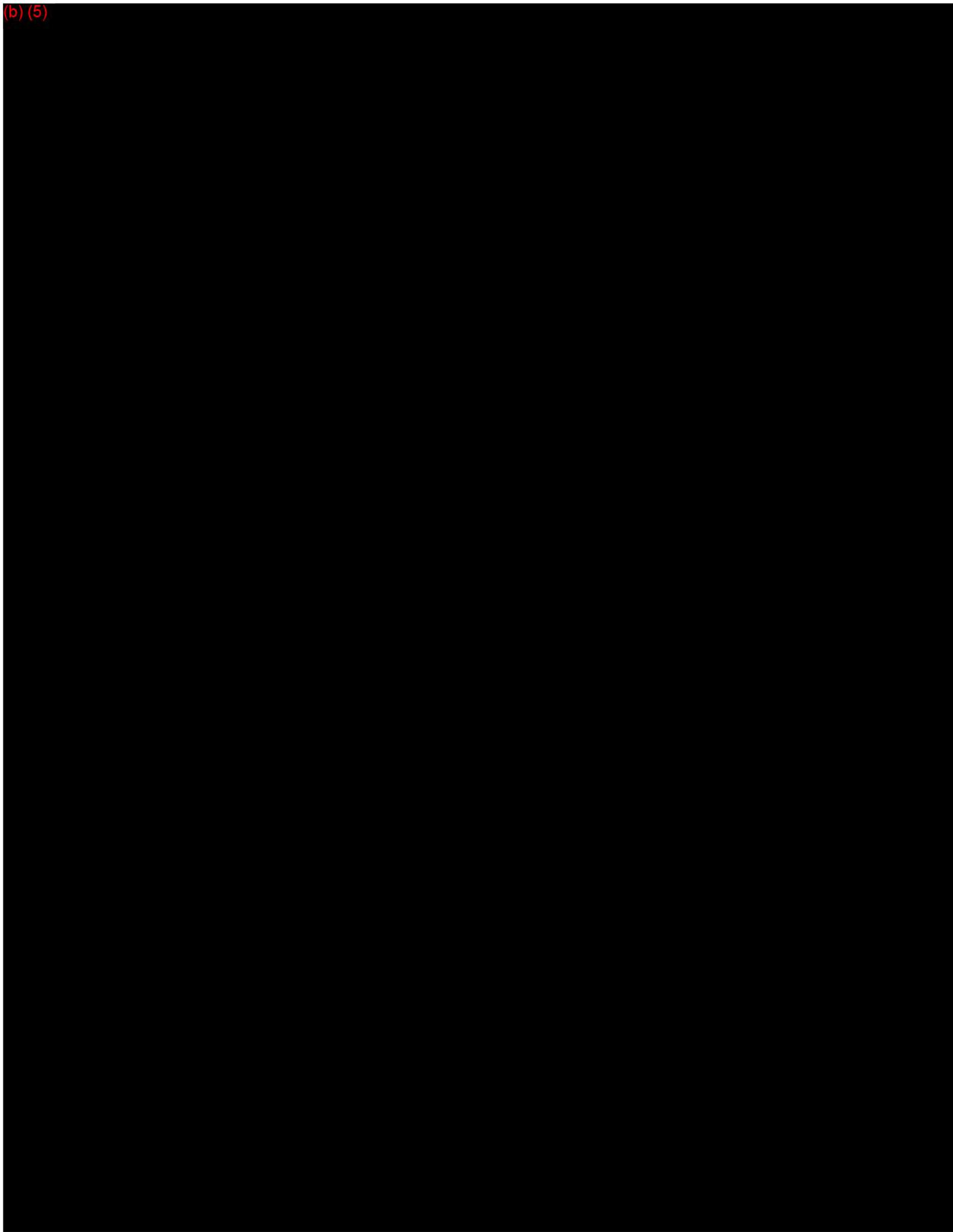


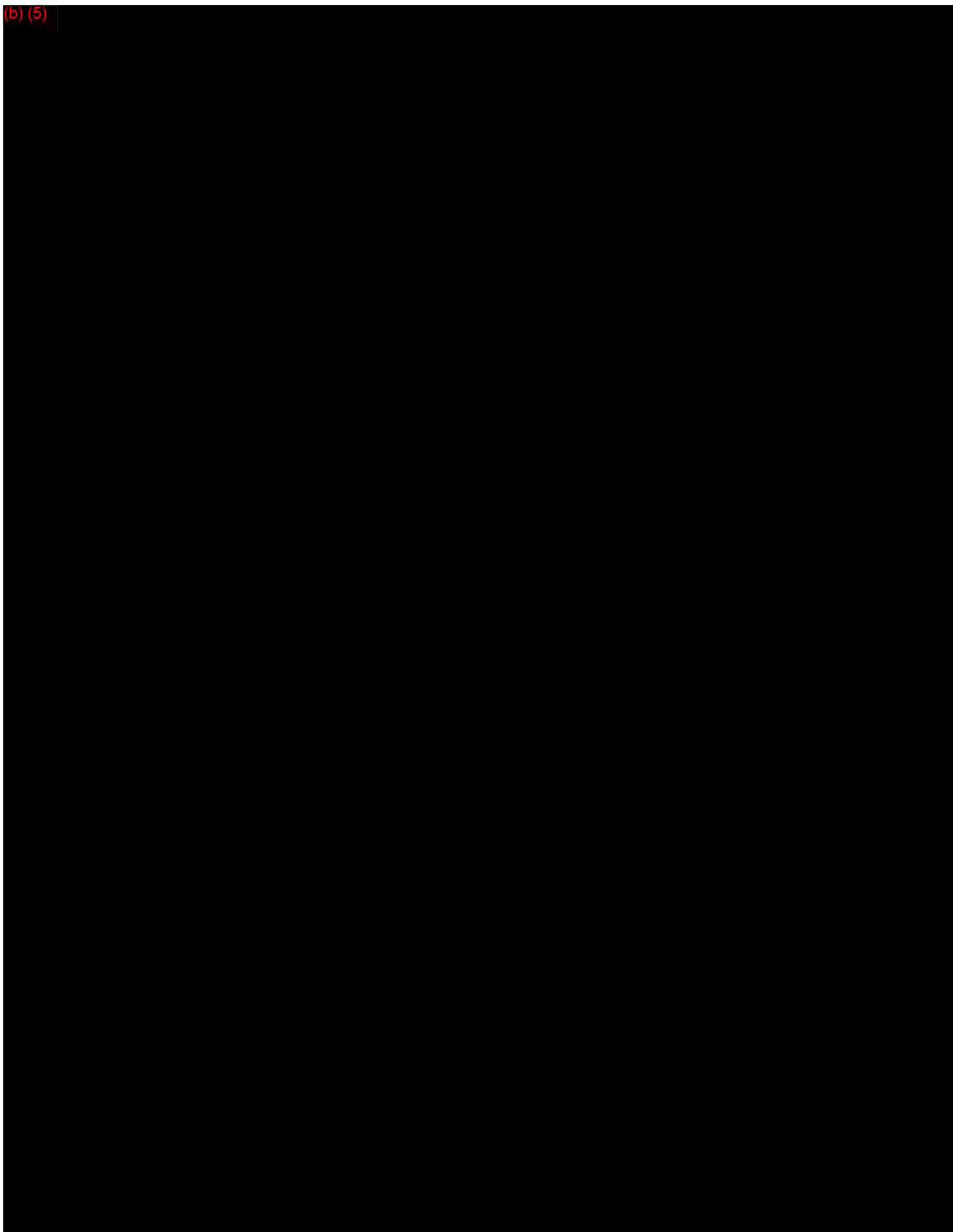


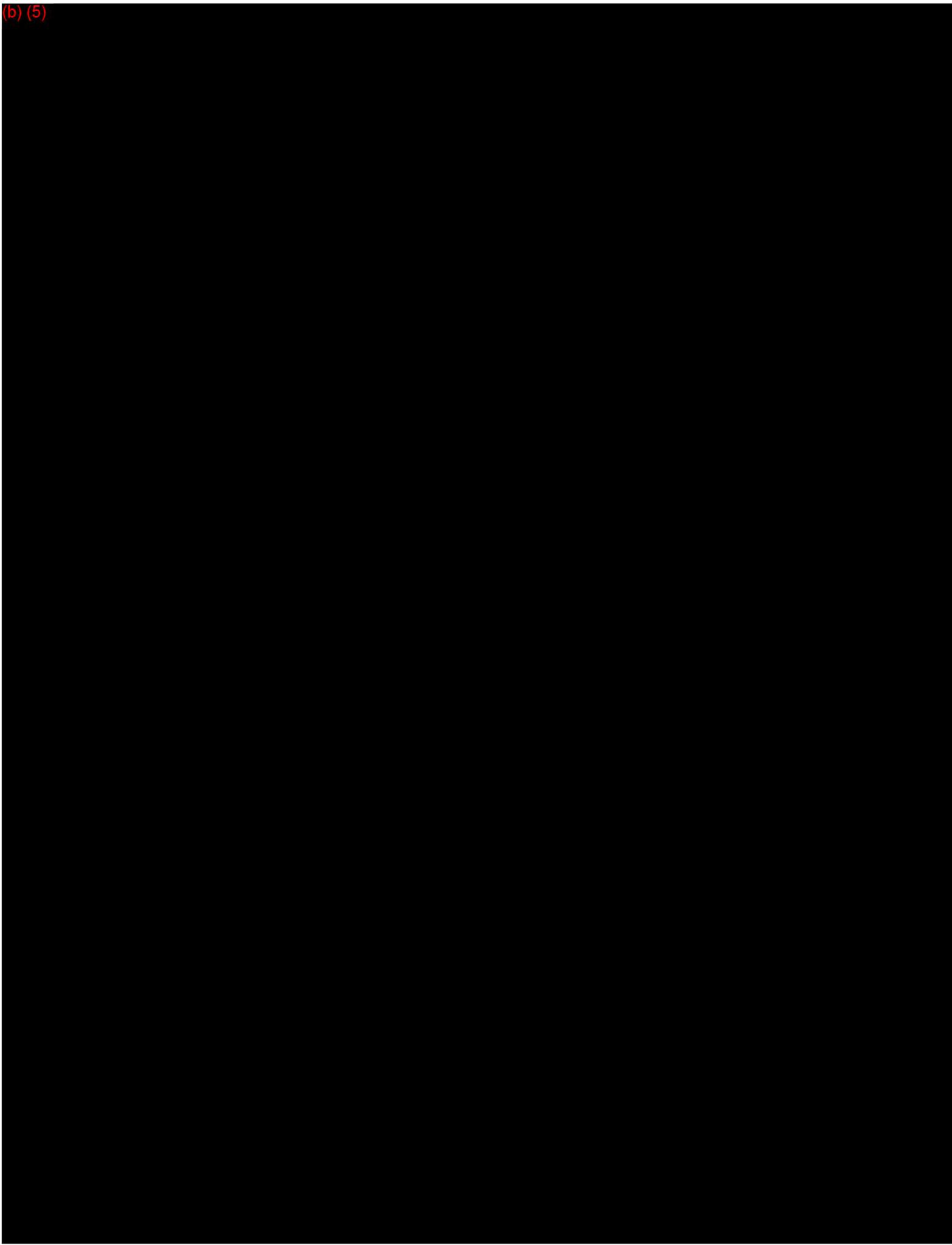


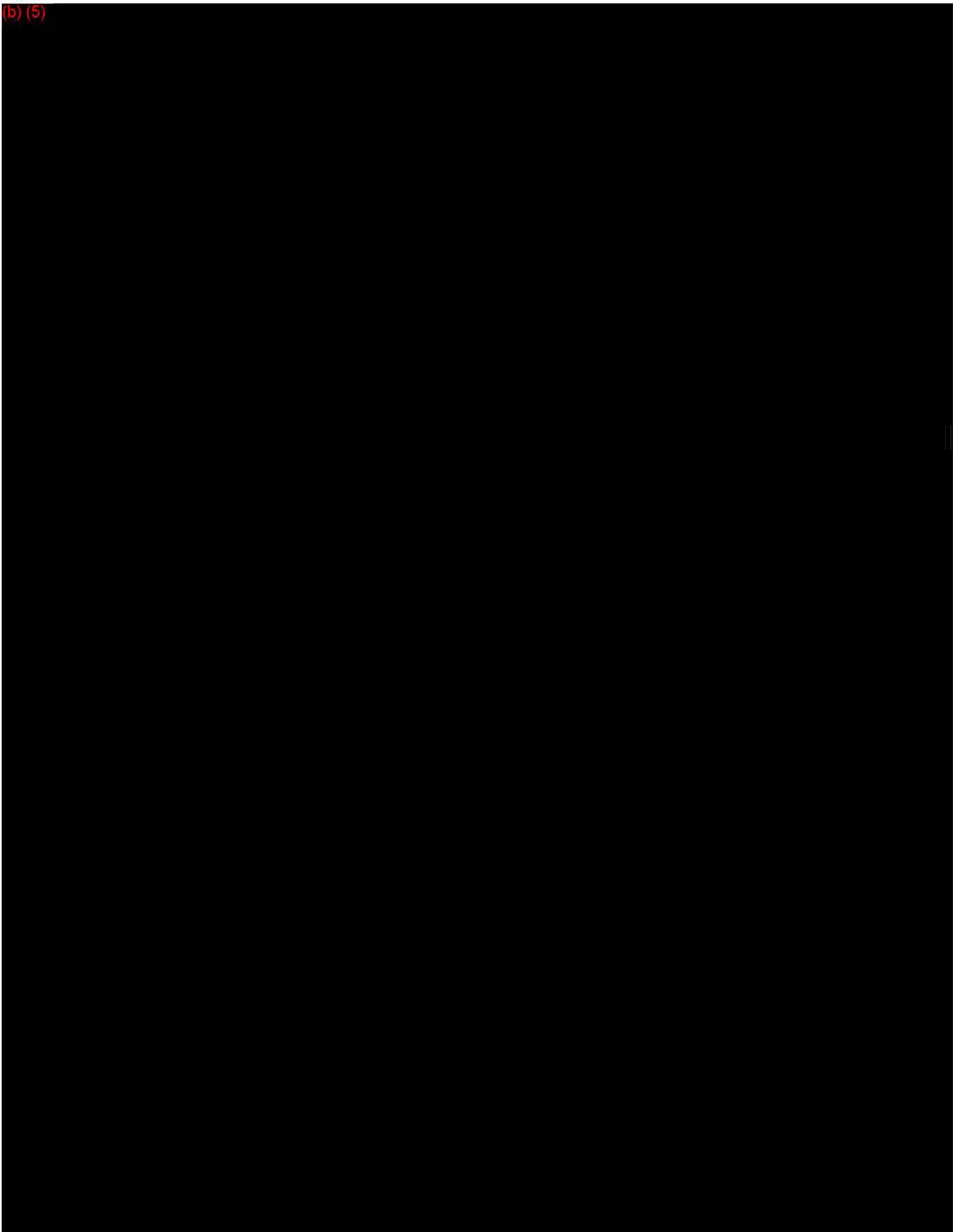


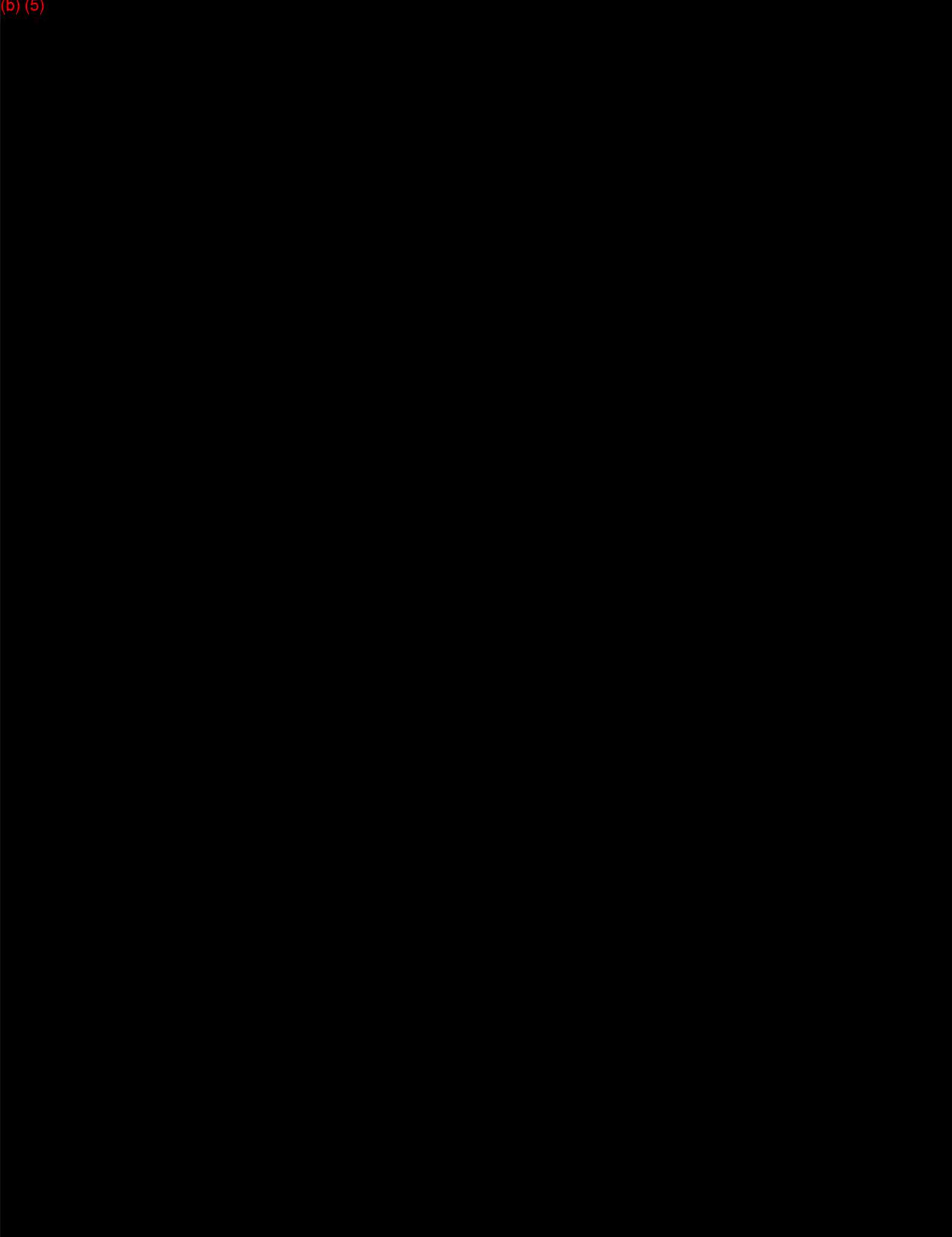




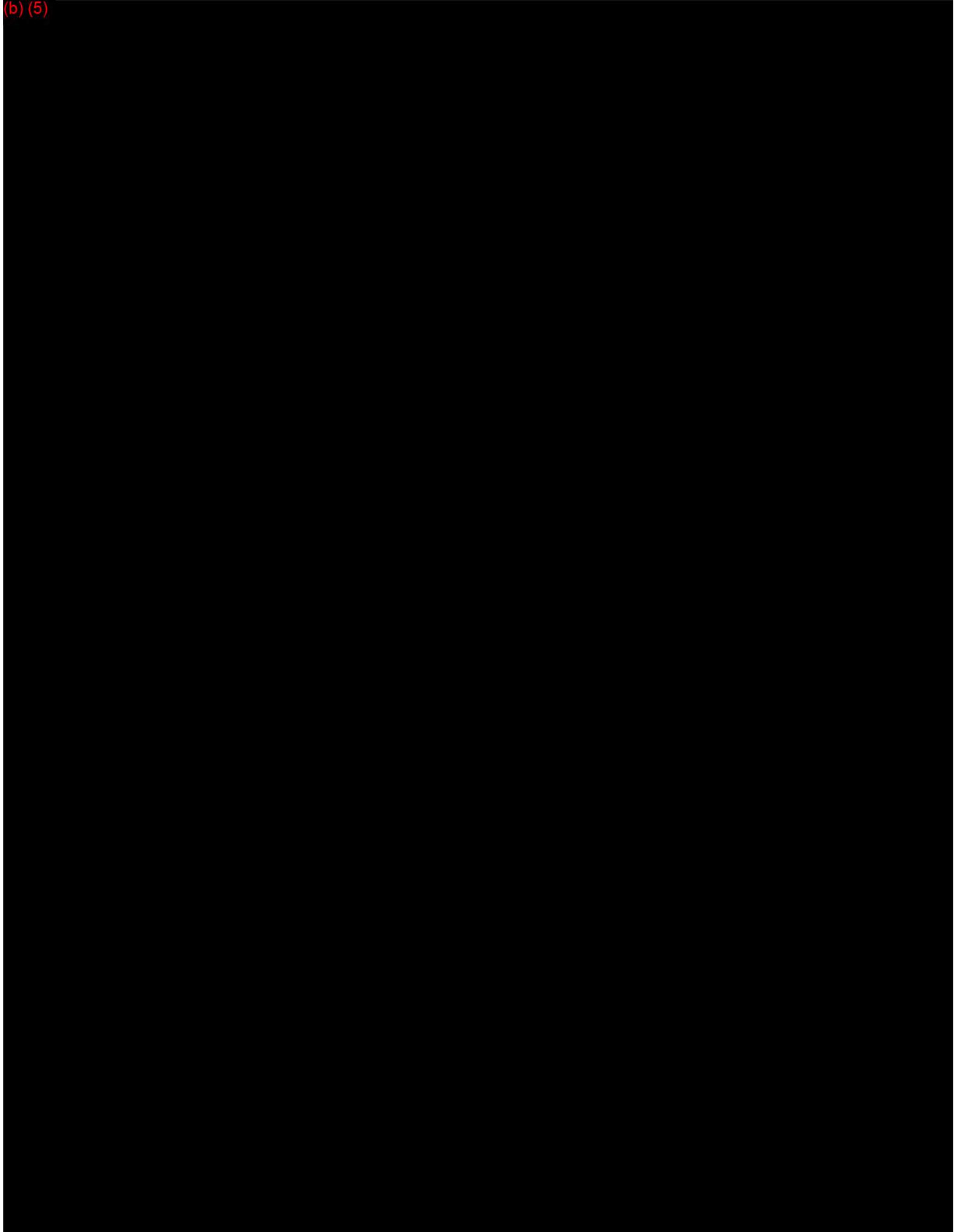


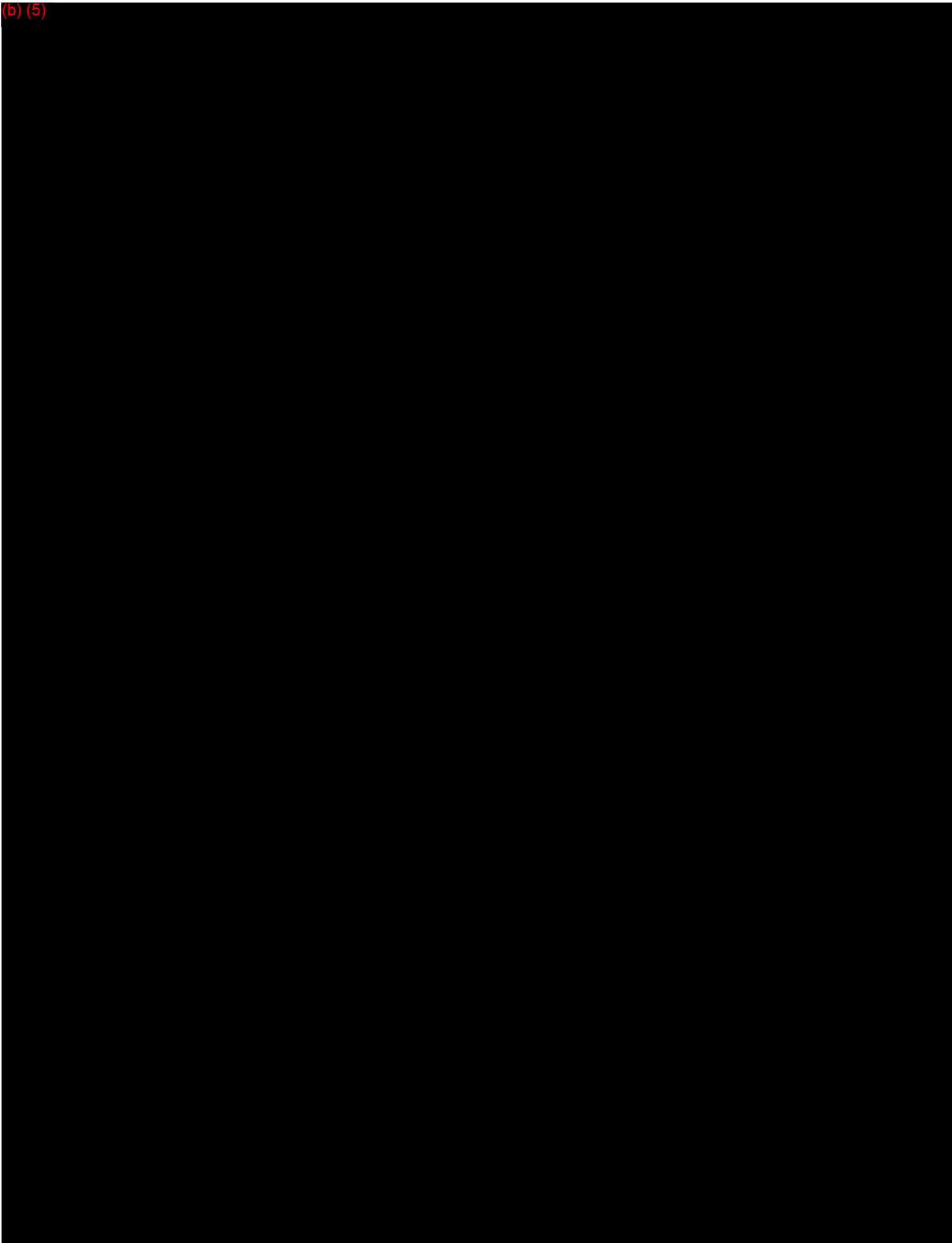


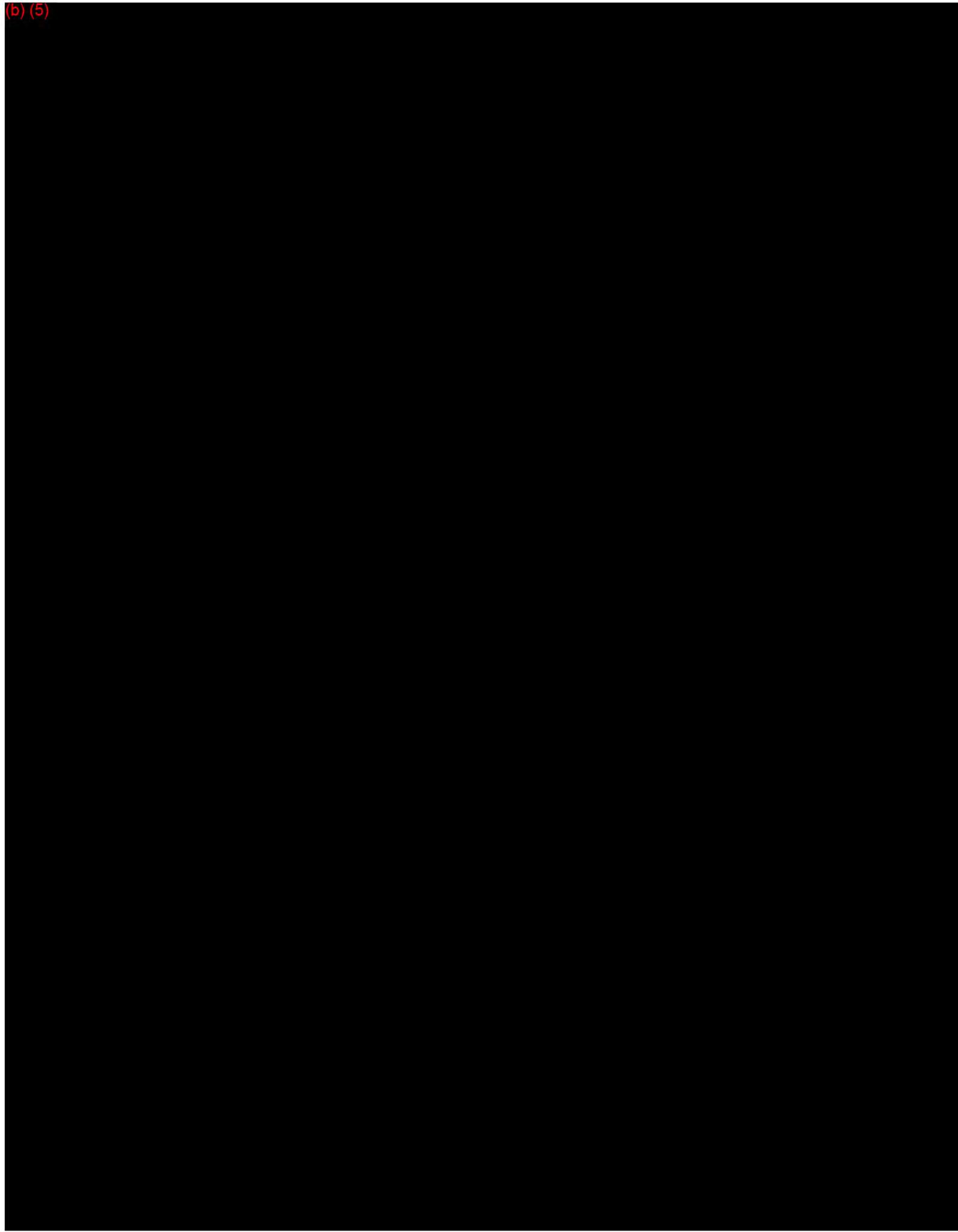


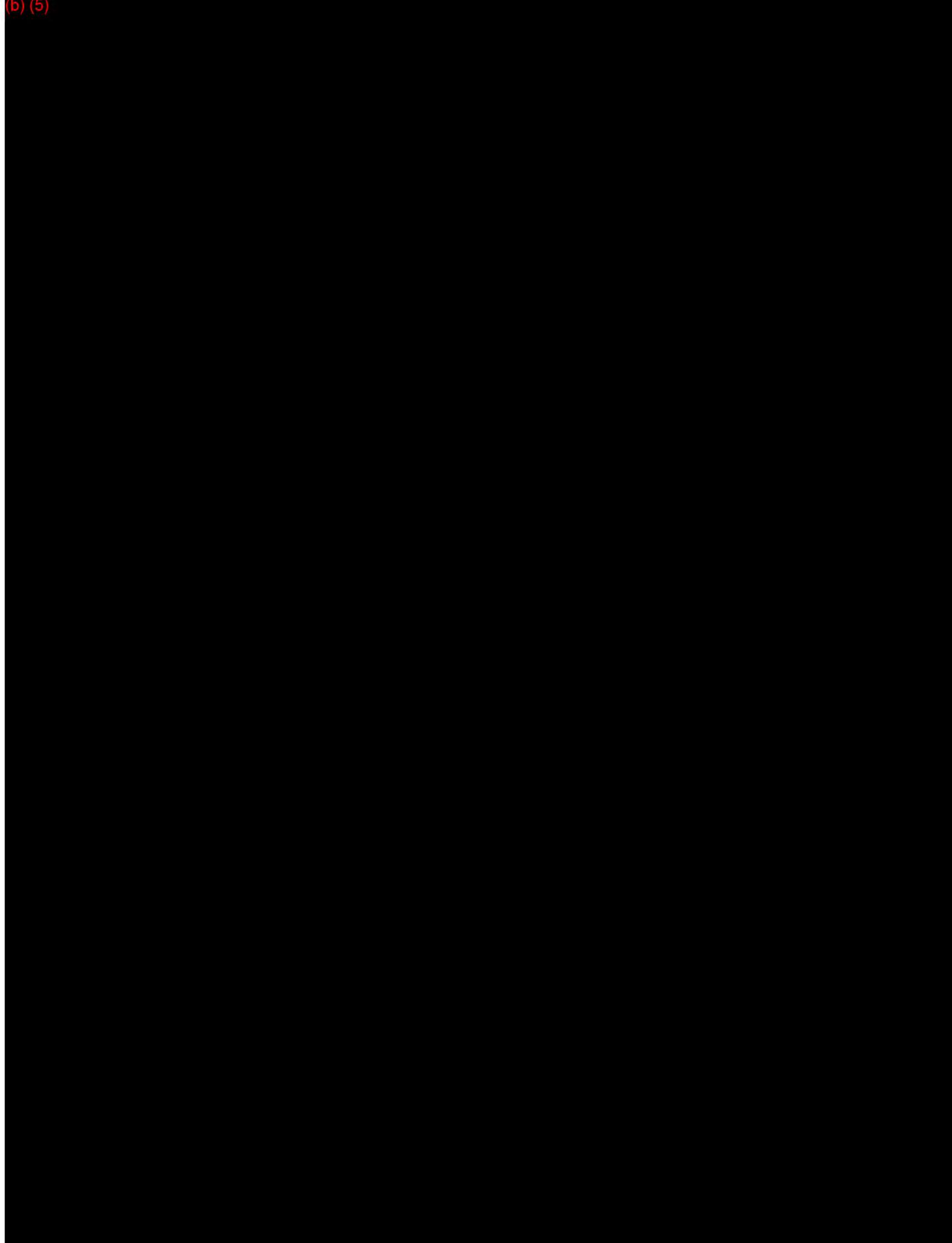


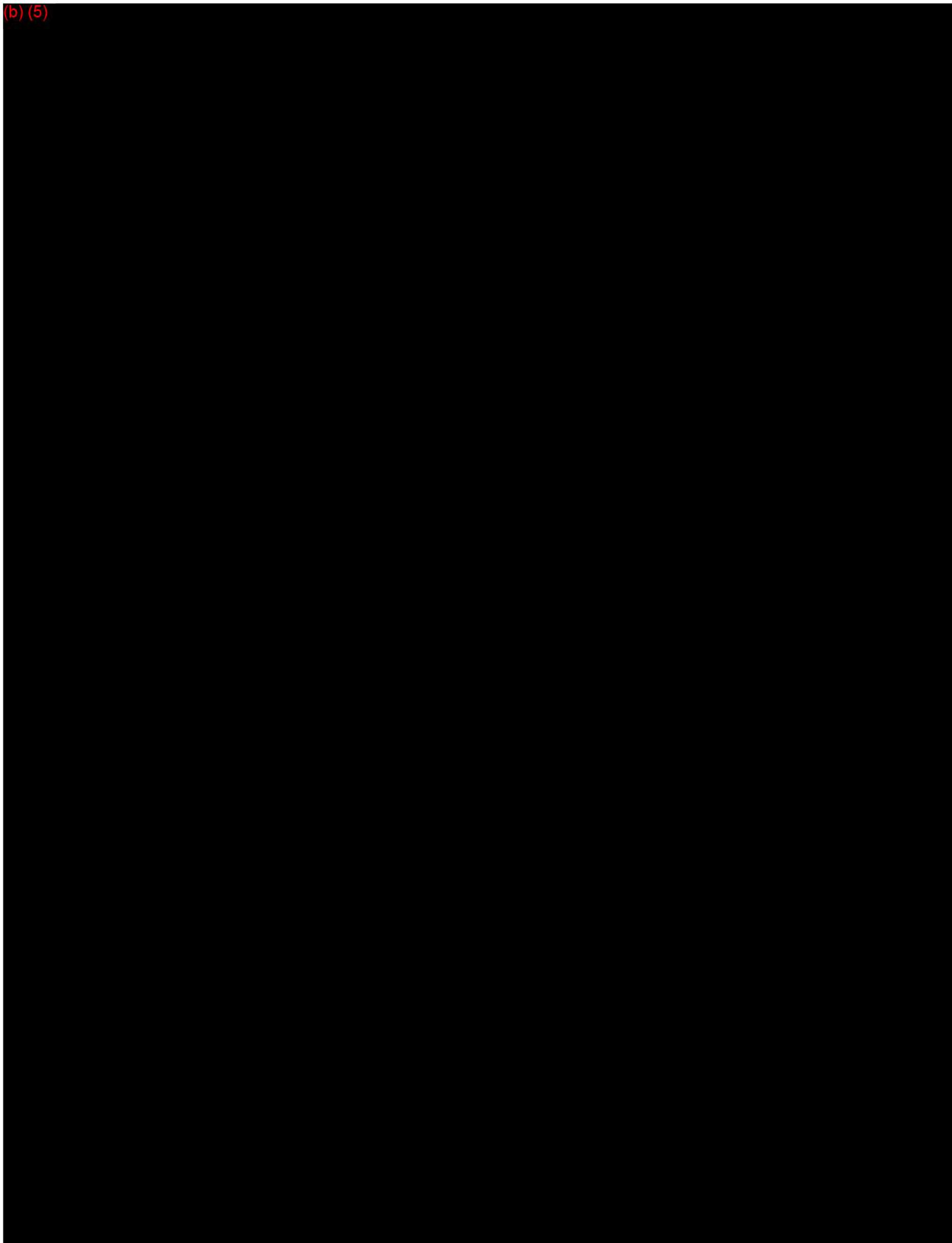


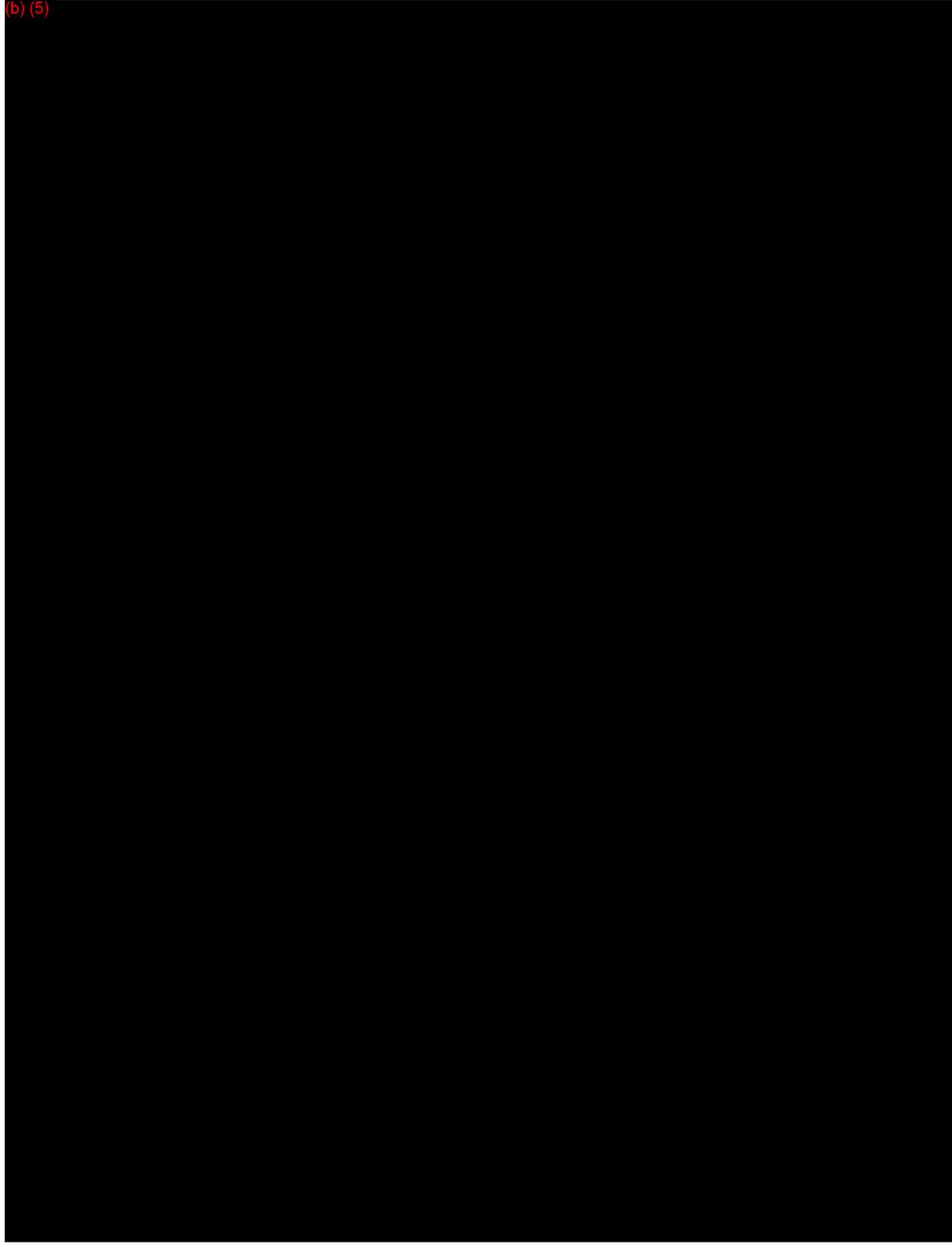












# Federal NEPA Contacts Meeting

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Where: (b) (6) (b) (6) (b) (6)

When: Thu Sep 20 13:00:00 2018 (America/New\_York)

Until: Thu Sep 20 14:30:00 2018 (America/New\_York)

Organiser: "Drummond, Michael R. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=a0bc62c0a5454e6fb7a1be504b7d284a-dr">

Required Attendee: FN-CEQ-NEPA <(b) (6)>

Optional Attendees: "Boling, Ted A. EOP/CEQ" <(b) (6)>  
"Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
"Upchurch, Sara H. EOP/CEQ" <(b) (6)>  
Jaime Loichinger <jloichinger@achp.gov>  
Tom McCulloch <tmcculloch@achp.gov>

---

Apologies for the duplicate email, the previous calendar invitation had the incorrect date.

CEQ will host the Fall Meeting of the Federal NEPA Contacts via webinar on Thursday, September 20 from 1:00pm – 2:30pm EDT.

Conference number and webinar URL are provided below. An agenda will be provided in advance of the meeting along with a PDF of the webinar slides for those unable to join the webinar.

Audio Conference Details:

Conference Number (Toll Free): (b) (6)

Participant Code: (b) (6)

To join the meeting:

(b) (6)

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Get a quick overview: <http://www.adobe.com/products/adobeconnect.html>

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# Federal NEPA Contacts Webinar

Thursday, September 20, 2018

1:00 - 2:30 PM

(b) (6)  
(b) (6)

## AGENDA

- 1:00**      **Welcome**
- 1:05**      **Update on CEQ NEPA Regulations Advance Notice of Proposed Rulemaking**
- Ted Boling, CEQ
- 1:20**      **Categorical Exclusion List**
- Michelle Lennox, NOAA
- 1:30**      **NEPA Timelines and One Federal Decision**
- Michael Drummond, CEQ
- 1:45**      **EPA Update**
- Rob Tomiak or Kelly Knight, EPA
- 2:00**      **13807 Implementation Update**
- CEQ
- 2:10**      **Looking Ahead: NEPA 50<sup>th</sup> Anniversary**
- Ted Boling, CEQ
- 2:20**      **Questions / Discussion**

## [EXTERNAL] Re: Shipley Group - Podcast

---

**From:** Jeffrey Stewart <jeff.stewart@shipleygroup.com>

**To:** "Boling, Ted A. EOP/CEQ" <(b) (6)>

**Date:** Wed, 05 Sep 2018 15:58:45 -0400

Ted,

When you have the chance let me know if you are still interested to participate in our podcast. I know you are busy. It would probably be better to do it around your schedule.

Thanks,

Jeff Stewart

The Shipley Group, Inc.

Phone: 888-270-2157

[jeff.stewart@shipleygroup.com](mailto:jeff.stewart@shipleygroup.com)

Website: >[www.shipleygroup.com](http://www.shipleygroup.com)<

**SHORTEN ENVIRONMENTAL DOCUMENTS**

**COMMUNICATE RELEVANT ENVIRONMENTAL INFORMATION**

**IMPLEMENT YOUR MISSION**

---

**From:** "Boling, Ted A. EOP/CEQ" <(b) (6)>

**Date:** Wednesday, August 8, 2018 at 4:51 PM

**To:** "jeff.stewart@shipleygroup.com" <jeff.stewart@shipleygroup.com>

**Subject:** RE: Shipley Group - Podcast

I can try to fit it in - when were you planning to do it?

**From:** Jeffrey Stewart <jeff.stewart@shipleygroup.com>

**Sent:** Wednesday, August 8, 2018 4:10 PM

**To:** Boling, Ted A. EOP/CEQ <(b) (6)>

**Subject:** [EXTERNAL] Re: Shipley Group - Podcast

Ted,

I wanted to follow-up and see if you were still able to participate in this podcast? If so, let me know if you have any dates that work for you.

Thanks,

Jeff Stewart

The Shipley Group, Inc.

Phone: 888-270-2157

[jeff.stewart@shipleygroup.com](mailto:jeff.stewart@shipleygroup.com)

Website: >>[www.shipleygroup.com](http://www.shipleygroup.com)<<

**SHORTEN ENVIRONMENTAL DOCUMENTS**

**COMMUNICATE RELEVANT ENVIRONMENTAL INFORMATION**

**IMPLEMENT YOUR MISSION**

---

**From:** "Boling, Ted A. EOP/CEQ" <(b) (6)>  
**Date:** Tuesday, July 17, 2018 at 9:13 AM  
**To:** "jeff.stewart@shipleygroup.com" <jeff.stewart@shipleygroup.com>  
**Cc:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**Subject:** RE: Shipley Group - Podcast

Jeff – Thanks for this offer, which came to me while I was away and CEQ was preparing to extend the comment period.

Given the extension, do you have any interest in doing this podcast in August?

Best,  
Ted

Edward A. Boling  
Associate Director for the  
National Environmental Policy Act  
Council on Environmental Quality  
730 Jackson Place  
Washington, DC 20503

**From:** Jeffrey Stewart <jeff.stewart@shipleygroup.com>  
**Sent:** Monday, July 2, 2018 10:51 AM  
**To:** Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** [EXTERNAL] Shipley Group - Podcast

Ted,

The Shipley Group has created a podcast called "The NEPA Project" to educate and assist NEPA Professionals. Our most recent episode was with Joe Carbone and Rhey Solomon discussing President Trump's EO on infrastructure projects. To follow-up on this episode, we are interested in facilitating an episode with you to help CEQ connect with our NEPA learning community on your current efforts to identify potential revisions to update the CEQ regulations to ensure a more efficient, timely, and effective NEPA process that is consistent with NEPA. This would be an opportunity to highlight some of the 20 questions CEQ has posed in the advance notice of proposed rulemaking. With comments due by the 20th of this month, it would be helpful for the NEPA learning community to engage on this topic soon. Hearing from you would likely stimulate comments on the questions CEQ is asking. The podcast

episode would be facilitated by one or two of our instructors as a dialogue with you. Our objective is to assist CEQ and the many NEPA practitioners in providing a productive dialogue on changes needed to make the NEPA process more efficient, timely, and effective.

You would have complete editorial rights prior to releasing the episode.

Let us know if you are interested in participating.

Thanks,

Jeff Stewart

The Shipley Group, Inc.

Phone: 888-270-2157

[jeff.stewart@shipleygroup.com](mailto:jeff.stewart@shipleygroup.com)

Website: >>>[www.shipleygroup.com](http://www.shipleygroup.com)<<<

# Federal NEPA Contacts Meeting

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Where: (b) (6) (b) (6) (b) (6)

When: Thu Sep 27 13:00:00 2018 (America/New\_York)

Until: Thu Sep 27 14:30:00 2018 (America/New\_York)

Organiser: "Drummond, Michael R. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=a0bc62c0a5454e6fb7a1be504b7d284a-dr">

Required Attendee: FN-CEQ-NEPA <(b) (6)>

Optional Attendees:  
: "Boling, Ted A. EOP/CEQ" <(b) (6)>  
"Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
"Drummond, Michael R. EOP/CEQ" <(b) (6)>  
"Upchurch, Sara H. EOP/CEQ" <(b) (6)>

---

CEQ will host the Fall Meeting of the Federal NEPA Contacts via webinar on Thursday, September 20 from 1:00pm – 2:30pm EDT.

Conference number and webinar URL are provided below. An agenda will be provided in advance of the meeting along with a PDF of the webinar slides for those unable to join the webinar.

Audio Conference Details:

Conference Number (Toll Free): (b) (6)

Participant Code: (b) (6)

To join the meeting:

(b) (6)

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Get a quick overview: <http://www.adobe.com/products/adobeconnect.html>

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# Federal NEPA Contacts Webinar

Thursday, September 20, 2018

1:00 - 2:30 PM

(b) (6)  
(b) (6)

## AGENDA

- 1:00      **Welcome**
- 1:05      **Update on CEQ NEPA Regulations Advance Notice of Proposed Rulemaking**
- Ted Boling, CEQ
- 1:20      **Categorical Exclusion List**
- Michelle Lennox, NOAA
- 1:30      **NEPA Timelines and One Federal Decision**
- Michael Drummond, CEQ
- 1:45      **EPA Update**
- Rob Tomiak or Kelly Knight, EPA
- 2:00      **13807 Implementation Update**
- CEQ
- 2:10      **Looking Ahead: NEPA 50<sup>th</sup> Anniversary**
- Ted Boling, CEQ
- 2:20      **Questions / Discussion**

# Federal NEPA Contacts Meeting

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Where: (b) (6) (b) (6) (b) (6)

When: Thu Sep 20 13:00:00 2018 (America/New\_York)

Until: Thu Sep 20 14:30:00 2018 (America/New\_York)

Organiser: "Drummond, Michael R. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdl)/cn=recipients/cn=a0bc62c0a5454e6fb7a1be504b7d284a-dr">

Required Attendees: "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
FN-CEQ-NEPA <(b) (6)>

Optional Attendees: "Boling, Ted A. EOP/CEQ" <(b) (6)>  
"Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
"Upchurch, Sara H. EOP/CEQ" <(b) (6)>

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## Updated Agenda Attached

CEQ will host the Fall Meeting of the Federal NEPA Contacts via webinar on Thursday, September 20 from 1:00pm – 2:30pm EDT.

Conference number and webinar URL are provided below. An agenda will be provided in advance of the meeting along with a PDF of the webinar slides for those unable to join the webinar.

### Audio Conference Details:

Conference Number (Toll Free): (b) (6)

Participant Code: (b) (6)

### To join the meeting:

(b) (6)

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If you have never attended an Adobe Connect meeting before:

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# Federal NEPA Contacts Webinar

Thursday, September 20, 2018

1:00 - 2:30 PM

(b) (6)  
(b) (6)

## AGENDA

- 1:00**      **Welcome**
- 1:05**      **Update on CEQ NEPA Regulations Advance Notice of Proposed Rulemaking**
- Ted Boling, CEQ
- 1:20**      **Categorical Exclusions**
- Ron Lamb, USMC
- 1:30**      **NEPA Timelines and One Federal Decision**
- Michael Drummond, CEQ
- 1:45**      **EPA Update**
- Rob Tomiak or Kelly Knight, EPA
- 2:00**      **13807 Implementation Update**
- CEQ
- 2:10**      **Looking Ahead: NEPA 50<sup>th</sup> Anniversary**
- Ted Boling, CEQ
- 2:20**      **Questions / Discussion**

# Federal NEPA Contacts Meeting

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Where: (b) (6) (b) (6) (b) (6)

When: Thu Sep 20 13:00:00 2018 (America/New\_York)

Until: Thu Sep 20 14:30:00 2018 (America/New\_York)

Organiser: "Drummond, Michael R. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=a0bc62c0a5454e6fb7a1be504b7d284a-dr">

Required Attendees: "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
FN-CEQ-NEPA <(b) (6)>

Optional Attendees: "Boling, Ted A. EOP/CEQ" <(b) (6)>  
"Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
"Upchurch, Sara H. EOP/CEQ" <(b) (6)>  
Jaime Loichinger <jloichinger@achp.gov>  
Tom McCulloch <tmcculloch@achp.gov>

---

Apologies for the duplicate email, the previous calendar invitation had the incorrect date.

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## RE: NEPA Team Meeting

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**From:** "Boling, Ted A. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=eae5b047f871428b9b46baf8afd1176a-bo">

**To:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>

**Date:** Wed, 05 Sep 2018 12:22:23 -0400

Sorry – this has gone long.  
I'm going to step out now

**From:** Drummond, Michael R. EOP/CEQ  
**Sent:** Wednesday, September 5, 2018 12:17 PM  
**To:** Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** Re: NEPA Team Meeting

I assume you'll be calling me when you are free. Just ensuring we aren't both waiting for each other to call.

Michael Drummond  
Deputy Associate Director for NEPA  
Council on Environmental Quality  
(b) (6)

On Sep 5, 2018, at 11:35 AM, Boling, Ted A. EOP/CEQ <(b) (6)> wrote:

(b) (5)  
Thanks for the reminder.

**From:** Drummond, Michael R. EOP/CEQ  
**Sent:** Wednesday, September 5, 2018 11:28 AM  
**To:** Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** RE: NEPA Team Meeting

Yes, I'm free at noon. (b) (5)

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Best,

Michael

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**From:** Boling, Ted A. EOP/CEQ  
**Sent:** Wednesday, September 5, 2018 11:25 AM  
**To:** Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** RE: NEPA Team Meeting

Well done. (b) (5)

Can we talk at noon?

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**From:** Drummond, Michael R. EOP/CEQ  
**Sent:** Wednesday, September 5, 2018 11:21 AM  
**To:** Boling, Ted A. EOP/CEQ <(b) (6)>  
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- 4:20**            **Questions / Discussion**

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**From:** Boling, Ted A. EOP/CEQ  
**Sent:** Wednesday, September 5, 2018 11:06 AM  
**To:** Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** RE: NEPA Team Meeting

(b) (5)

**From:** Drummond, Michael R. EOP/CEQ  
**Sent:** Wednesday, September 5, 2018 10:54 AM  
**To:** Boling, Ted A. EOP/CEQ <(b) (6)>  
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Hello Jessie!

I'm planning to send out the NEPA Contacts Meeting invite. (b) (5)

**From:** Boling, Ted A. EOP/CEQ  
**Sent:** Wednesday, September 5, 2018 10:43 AM  
**To:** Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** RE: NEPA Team Meeting

Jessica McGrath sends her regards

**From:** Drummond, Michael R. EOP/CEQ  
**Sent:** Wednesday, September 5, 2018 10:31 AM  
**To:** Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** NEPA Team Meeting

Concluded in 29 minutes.

Let me know if you have time today to chat.

Best,

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Deputy Associate Director for NEPA  
Council on Environmental Quality

(b) (6)

## Re: NEPA Team Meeting

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## RE: NEPA Team Meeting

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**To:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>

**Date:** Wed, 05 Sep 2018 11:35:19 -0400

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## RE: NEPA Team Meeting

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**From:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>

**To:** "Boling, Ted A. EOP/CEQ" <(b) (6)>

**Date:** Wed, 05 Sep 2018 11:27:52 -0400

Yes, I'm free at noon. (b) (5)  
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**To:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>

**Date:** Wed, 05 Sep 2018 11:05:41 -0400

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: "Upchurch, Sara H. EOP/CEQ" <(b) (6)>

: "Szabo, Aaron L. EOP/CEQ" <(b) (6)>

: "Smith, Katherine R. EOP/CEQ" <(b) (6)>

: "Barnett, Steven W. EOP/CEQ" <(b) (6)>

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## 9/26 Talking Points

---

**From:** "Schneider, Daniel J. EOP/CEQ" <(b) (6)>  
**To:** "Boling, Ted A. EOP/CEQ" <(b) (6)>  
**Cc:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**Date:** Thu, 06 Sep 2018 15:59:48 -0400  
**Attachments:** 20180926 DRAFT Mary DOI NEPA Conference Remarks\_KRS.docx (25.76 kB)

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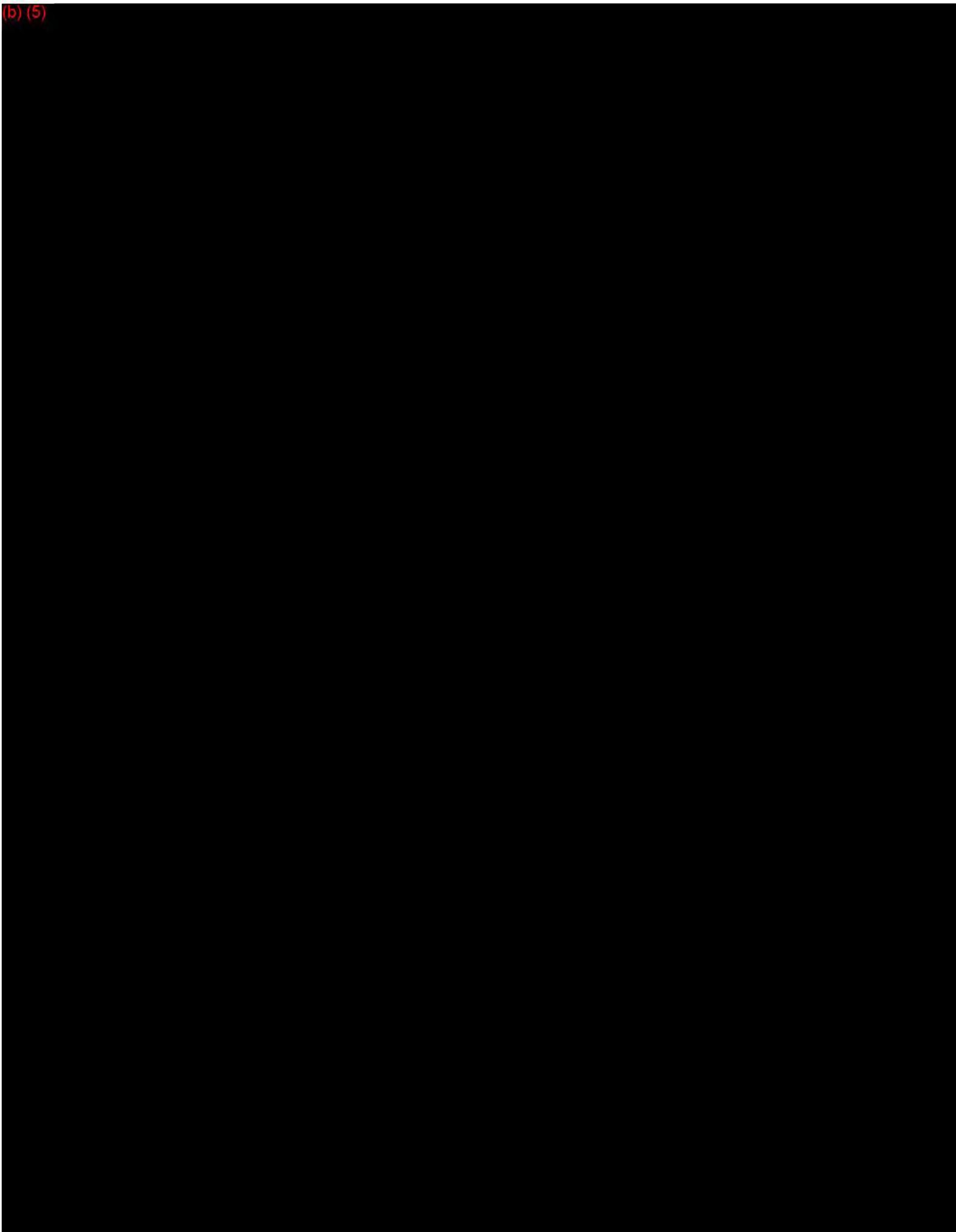
Ted & Michael,

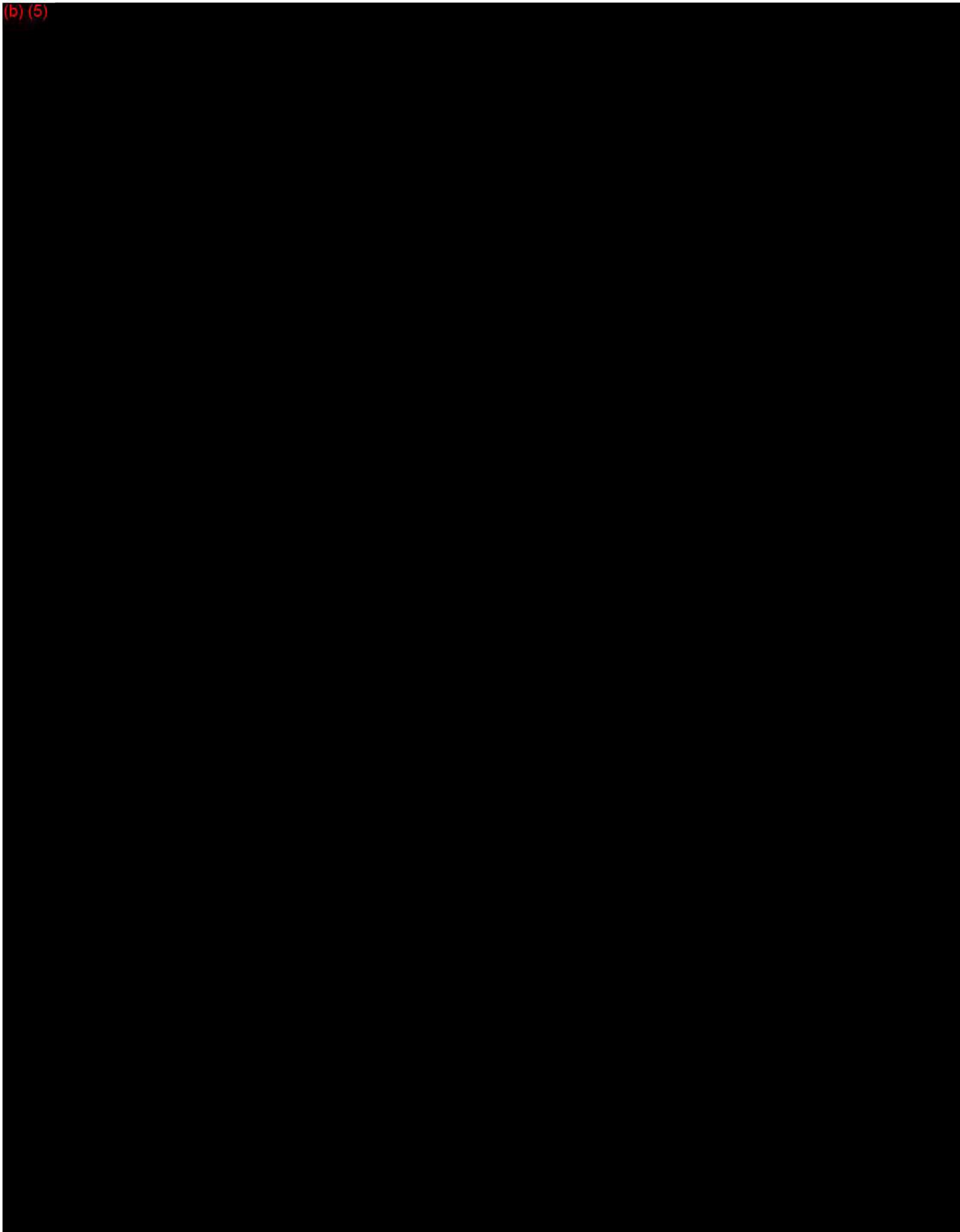
Mary is speaking at the DOI NEPA conference on September 26. She asked me to draft talking points, please see attached for review/edits.

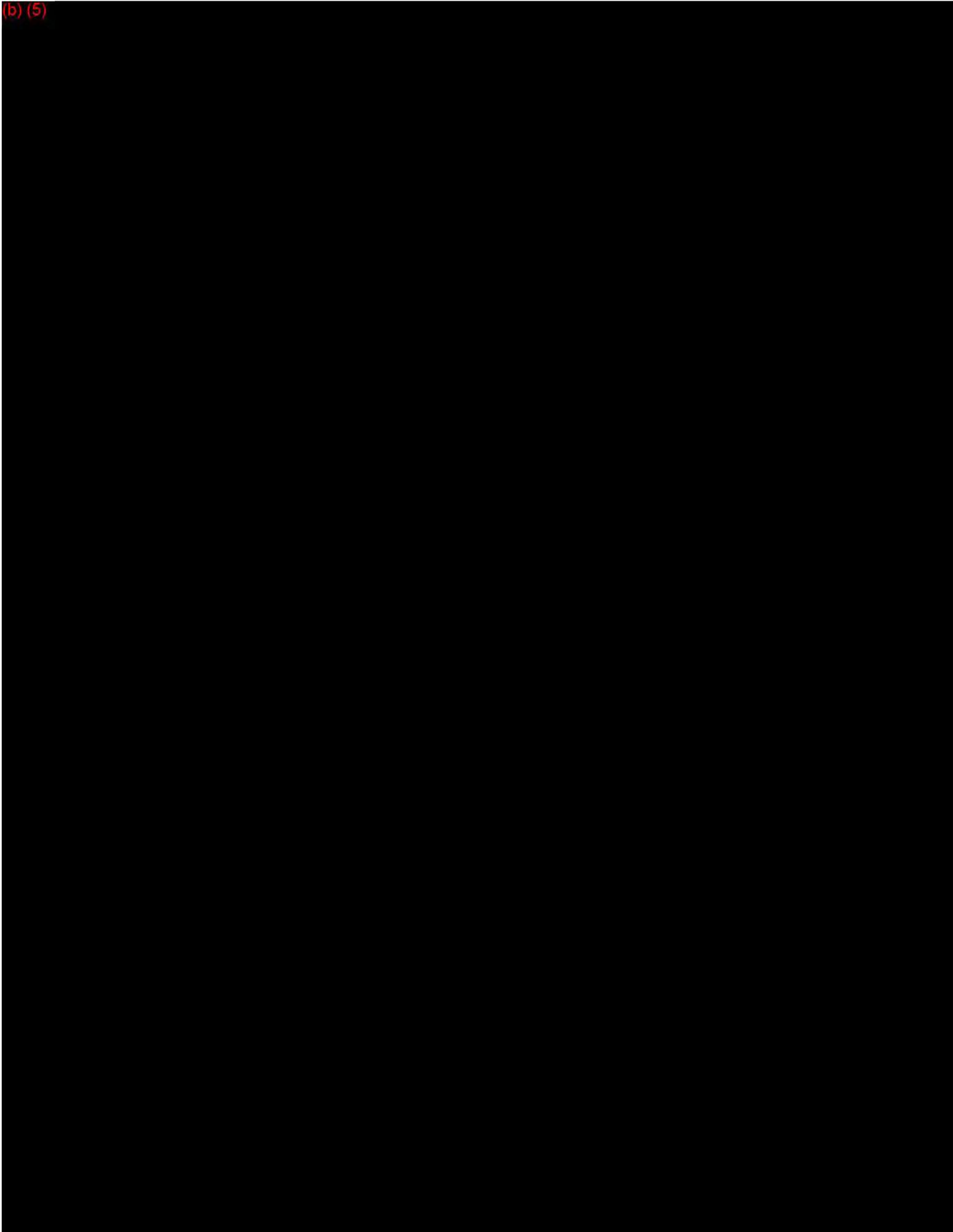
Thanks,

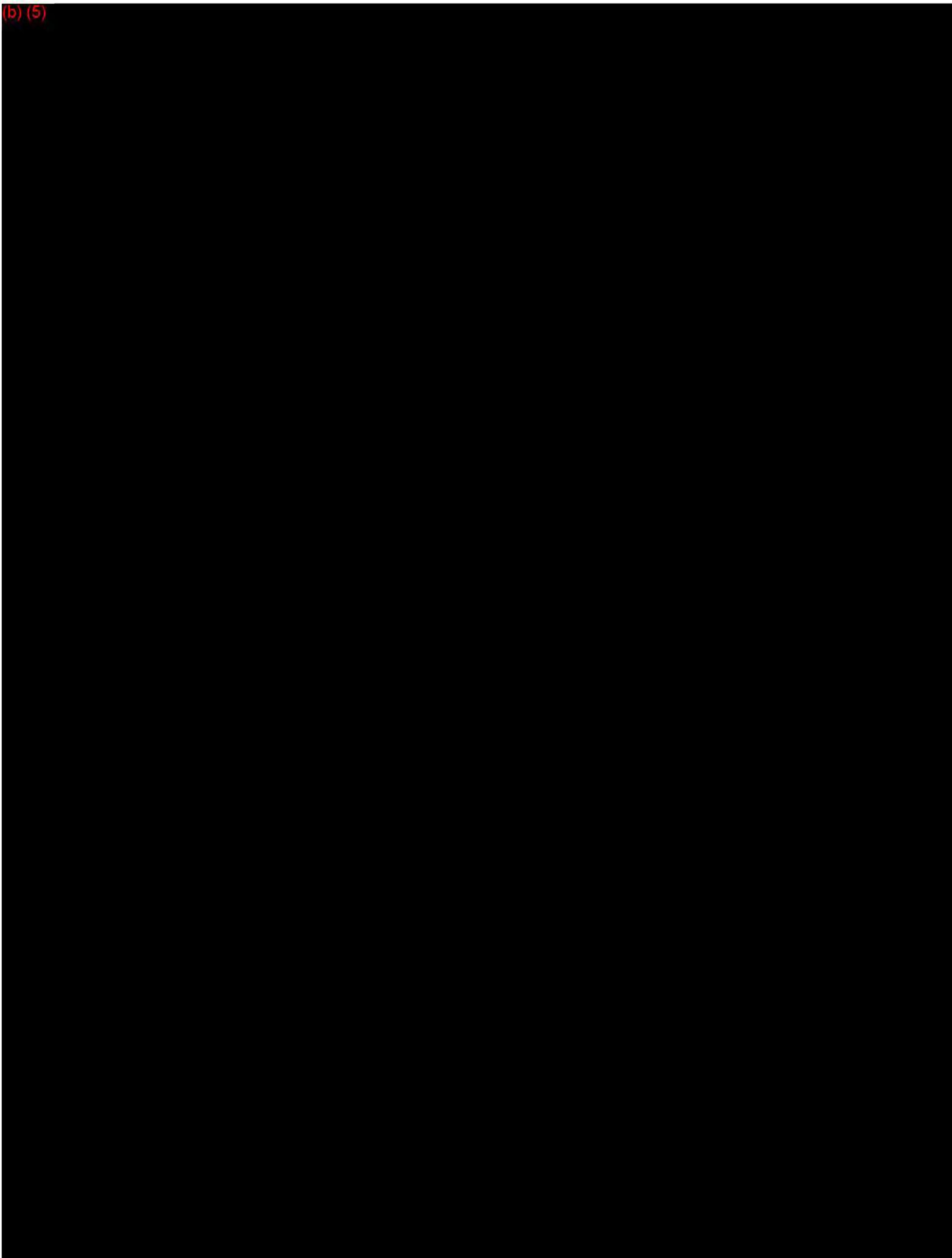
Dan

Dan Schneider  
Associate Director for Communications  
Council on Environmental Quality  
Executive Office of the President  
(b) (6) (desk)  
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## Emailing: All Neumayr QFRs 07.19.2018 Final Responses

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**From:** "Pettigrew, Theresa L. EOP/CEQ" <(b) (6)>  
**To:** "Seale, Viktoria Z. EOP/CEQ" <(b) (6)>  
**Date:** Fri, 07 Sep 2018 14:07:33 -0400  
**Attachments:** All Neumayr QFRs 07.19.2018 Final Responses.pdf (236.57 kB)

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For your records.  
Thanks,  
Theresa

**Senate Committee on Environment and Public Works**  
**Hearing entitled, “Hearing on the Nominations of Mary Bridget Neumayr to be a Member of**  
**the Council on Environmental Quality and John C. Fleming to be Assistant Secretary of**  
**Commerce for Economic Development”**

**July 19, 2018**

**Questions for the Record for Mary Bridget Neumayr**

**Chairman Barrasso:**

1. Red tape and a lack of coordination among federal agencies has significantly delayed infrastructure projects across the country. I am glad to see that the Trump administration has taken meaningful steps to improve the environmental review process and increase coordination among federal agencies. I am especially glad to see that the administration set a two-year goal for completing environmental reviews for these projects. Can you give us a progress report on these efforts? Specifically, are federal agencies on track to meet this two-year goal?

**Executive Order (EO) 13807 of August 15, 2017, titled “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects,” directed Federal agencies to carry out environmental reviews and authorization decisions for major infrastructure projects pursuant to a “One Federal Decision” policy. The EO sets a government-wide goal of reducing the average time for such reviews to two years, measured from the date of publication of a notice of intent (NOI) to prepare an environmental impact statement (EIS) to the date of issuance of a record of decision (ROD).**

**Pursuant to EO 13807, on March 20, 2018, the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ) issued a framework memorandum to assist agencies with implementing the One Federal Decision policy. On April 9, 2018, President Trump announced that 11 Federal agencies and the Federal Permitting Improvement Steering Council (Permitting Council) had executed a Memorandum of Understanding (MOU) committing to work collaboratively to meet the two-year goal for major infrastructure projects. Under the EO, “major infrastructure projects” are projects for which multiple Federal authorizations are required, the lead Federal agency has decided to prepare an EIS, and the project sponsor has identified the reasonable availability of funds.**

**CEQ has convened an interagency working group and is working with Federal agencies to implement the One Federal Decision policy and MOU for major infrastructure projects. Additionally, pursuant to the EO, OMB is currently working to establish an accountability system to track agency performance for processing environmental reviews and meeting the two-year goal.**

2. Earlier this year 11 agencies and the Permitting Council established by the FAST Act signed a Memorandum of Understanding (MOU) outlining the Administration's One Federal Decision policy. This policy establishes a coordinated and timely process for environmental reviews of major infrastructure projects. Under the MOU, the federal agencies agreed to work together to develop a single Permitting Timetable.

- a. Can you explain how this will help achieve a timely, predictable permitting process?

**Under the MOU, the lead Federal agency for a proposed major infrastructure project, in consultation with cooperating agencies, will develop a joint schedule, referred to as a Permitting Timetable, that provides for a two-year timeframe from the date of publication of an NOI to prepare an EIS to the date of issuance of a ROD. Federal agencies will develop a single EIS and single ROD, subject to limited exceptions. They will also coordinate with regard to scoping and concurrence points, and elevate and resolve issues and disputes to avoid unnecessary delays. The MOU is intended to coordinate agencies' processes while preserving each agency's statutory authorities and independence.**

- b. What types of projects do you see as benefitting from the One Federal Decision process with a two-year goal for permitting decisions?

**Projects that may benefit from the One Federal Decision process include a wide range of projects to modernize our nation's infrastructure, including transportation, energy, water, and environmental restoration projects.**

- c. What is the goal of the One Federal Decision process? How does One Federal Decision seek to address delays in the permitting process?

**The goal of the One Federal Decision process is to improve coordination between Federal agencies and provide greater transparency, accountability, and predictability in the Federal environmental review and authorization process for infrastructure projects.**

3. On June 20, 2018, CEQ issued an Advanced Notice of Proposed Rulemaking (ANPR) entitled, "Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act [(NEPA)]." Will you confirm that CEQ, through the ANPR, is considering ways to improve the NEPA process for all applicable federal decision-making, including routine land-management decisions made by the Bureau of Land Management and the U.S. Forest Service?

**Yes, in the Advance Notice of Proposed Rulemaking, CEQ is requesting comment on potential revisions to update and clarify its regulations in order to ensure a more effective, timely, and efficient process for decision-making**

**by all Federal agencies, consistent with the policy stated in Section 101 of the National Environmental Policy Act. This includes land management decisions made by the Bureau of Land Management and the U.S. Forest Service.**

**Ranking Member Carper:**

4. Whistleblower laws protect the right of federal employees to make lawful disclosures to agency management officials, the Inspector General, and the Office of Special Counsel. They also have the right to make disclosures to Congress.

Specifically, 5 U.S.C. § 7211 states that the “right of employees, individually or collectively, to petition Congress or a Member of Congress or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.” Further, 5 U.S.C. § 2302(b)(8), makes it a violation of federal law to retaliate against a whistleblower because of “(A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences- (i) a violation of any law, rule, or regulation, or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences a violation of any law, rule, or regulation...” In addition, pursuant to 18 U.S.C. § 1505, it is against federal law to interfere with a Congressional inquiry.

- a. If you are confirmed, will you commit to protect the rights of all CEQ career employees to make lawful disclosures, including their right to speak with Congress?

**Yes.**

- b. Will you commit to communicate employees’ whistleblower rights via email to all CEQ employees within a week of being sworn in?

**Yes. The Whistleblower Protection Act of 1989, the Whistleblower Protection Enhancement Act of 2012, and related laws provide the right for all covered employees to make whistleblower disclosures and ensure that employees are protected from whistleblower retaliation. In 2017 and 2018, the Council on Environmental Quality (CEQ) took steps to complete the requirements of the Office of Special Counsel (OSC) Certification Program for Federal agencies to meet their statutory obligations under these statutes. In 2018, CEQ was added to the list of agencies that have completed OSC’s Certification Program.**

5. Do you agree to provide complete, accurate and timely responses to requests for information submitted to you by any Member of the Environment and Public Works Committee? If not, why not?

**Yes.**

6. Do you agree with the President's decision in 2017 to withdraw from the Paris Climate Accord? Please explain why or why not.

**The President announced his decision on June 1, 2017. This decision was within his authority, and I support the decision.**

7. As you know, 96 percent of highway projects are categorically excluded from NEPA, meaning they're in a category of actions that don't significantly impact the environment and therefore don't require further analysis. In fact, the vast majority of all Federal actions are categorically excluded from NEPA. When Wyoming DOT Director Bill Panos testified before our committee last year, he indicated that in recent years, all their projects have been Categorical Exclusions from NEPA. Do you agree that for this vast majority of projects, NEPA approvals do not constitute a significant burden? If not, why not?

**Categorical exclusions are a well-established, efficient means of addressing National Environmental Policy Act (NEPA) compliance for actions that are not individually or cumulatively significant.**

8. Several court decisions have held that federal agencies are obligated to analyze the effects of climate change as it is relevant to proposed actions in the course of complying with NEPA. (See for example, *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 508 F.3d 508 (9th Cir. 2008), and *Mid States Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520 (8th Cir. 2003).
  - a. Were those decisions wrongly decided in your view? If so, please explain why.
  - b. Given that President Trump revoked CEQ's guidance to agencies on how to incorporate climate change impacts into federal environmental reviews, how specifically are you now supporting agencies' efforts to consider climate change as part of their NEPA analyses?
  - c. In your view, how should greenhouse gas impacts and sea level rise be considered in the NEPA analysis?

**There have been a number of court decisions relating to NEPA implementation and greenhouse gas or climate change related considerations, and Federal agencies have sought to comply with these court decisions. As a general matter, Federal agencies are required under NEPA to review the potential environmental consequences of proposed major Federal actions that may significantly affect the quality of the environment. In conducting NEPA analyses, Federal agencies have discretion and should use their experience and expertise to decide how and to what degree to analyze particular effects. Pursuant to CEQ's NEPA implementing regulations, agencies should identify methodologies and ensure information is of high quality, consistent with 40 CFR 1500.1(b) and 40 CFR 1502.24.**

9. The CEQ regulations are intended to be flexible so that they may apply broadly to all agency actions. CEQ directs agencies to supplement these regulations as appropriate with agency-specific regulations that encompass the nature of actions taken by that agency and the additional authorities or statutory requirements that agency has. In this way, NEPA may be integrated into an agency's decision-making process in a way that is tailored for that agency. Do you believe that it is appropriate for the CEQ regulations to be flexible in this way to enable NEPA to function as an umbrella to other laws and processes administered by the agency? If not, why not?

**Yes.**

10. The US Government Accountability Office released a report on July 19, 2018, titled "Highway and Transit Projects: Better Data Needed to Assess Changes in the Duration of Environmental Reviews". The report indicated that it is unclear whether recent changes to the environmental review process for highway and transit projects has had an impact on timelines because agencies "lack reliable data and tracking systems." This is a finding that reiterates findings from past GAO reports, such as a report from 2014 that found that government-wide data on the number and type of NEPA analyses are not readily available, and that agencies' data is poor because they do not routinely track the number of EAs and CEs they complete, nor the time required to complete NEPA reviews. This deficit of accurate and reliable data makes it difficult to determine either the success of past streamlining efforts or the potential benefits of additional streamlining or other changes. There is also very little data on the costs and benefits of completing NEPA analyses. CEQ is the agency tasked with NEPA implementation.

- a. Would you agree that it is important to improve the data quality in this field, and that better data is needed for Congress to be able to target procedural improvements that would speed up project delivery without damaging the environment?

**It is important that Congress have access to information that is of high quality, including data relating to environmental reviews, when considering legislative proposals.**

- b. Will you further commit to providing an analysis of how the statutory project delivery changes from the last 10 years have been working out? If so, please provide a timeline and description of all planned efforts, and if not, why not?

**CEQ is currently in the process of compiling data from 2010 through 2017 relating to completed environmental impact statements (EIS) across all Federal agencies, including transportation-related projects. This compilation will include information on the time for completion of the review, measured from the date of publication of a notice of intent (NOI) to prepare an EIS to the date of issuance of a record of decision (ROD).**

11. Over the last several years there have been numerous reports, from non-partisan government entities such as the Government Accountability Office and Congressional Research Service, as well as academia and private studies – all of which indicate that the primary causes of project and permitting delay are not related to the NEPA process. Do you agree with these conclusions? If not, please explain specifically why not, and provide documentation to support your explanation.

**Environmental reviews under NEPA are among the many factors that shape the timeline for project and permitting decisions. Recognizing that there can be many reasons for delays, it is important to consider whether there are commonsense measures to promote improved coordination and planning by Federal agencies in order to ensure that the NEPA process is more efficient, timely, and predictable, without compromising environmental protection.**

12. Would you agree that agencies need the resources, staff, and training necessary to implement NEPA and the many existing flexibilities in the current regulations?
- a. In your view, do agencies have sufficient resources necessary to implement NEPA? Please explain your response.
  - b. In your view, do agencies have sufficient staff necessary to implement NEPA? Please explain your response.
  - c. In your view, do agencies have sufficient training necessary to implement NEPA? Please explain your response.
  - d. In your view does CEQ have sufficient staff capacity to oversee the 70 or more Federal agencies that are subject to NEPA? Please explain your response.
  - e. To the extent that agencies do not have sufficient resources, staff, or training, will you advocate for budget increases that will enable agencies to implement NEPA appropriately?
  - f. Would you commit to working with agencies in conducting a review of agencies' resources and needs with regard to NEPA compliance to inform any kind of regulatory review process?

**I believe Federal agencies have sufficient resources to implement NEPA. CEQ is currently working with agencies to better coordinate their NEPA reviews and more effectively allocate resources, including through the establishment of joint schedules, environmental analyses, and records of decision. CEQ's NEPA implementing regulations set forth in 40 CFR 1507.2 and 1506.5 direct agencies to ensure that they have the capability to implement NEPA.**

**CEQ's staff conduct periodic training for Federal agency NEPA practitioners. In addition, CEQ coordinates NEPA training with non-profit organizations, including the National Association of Environmental Professionals, Rocky Mountain Mineral Law Foundation, American Law Institute, American Bar Association, and the Environmental Law Institute. CEQ also conducts quarterly NEPA Contacts meetings to consult with staff**

**across Federal agencies regarding issues relating to implementation of NEPA.**

**If confirmed, I commit to working to ensure that agencies effectively allocate resources to enable them to implement NEPA appropriately.**

13. A few years ago, CEQ issued a guidance document, clarifying to agencies that there are ample flexibilities within the existing NEPA regulations that are available and either underused, or not used at all, and which would facilitate more efficient timely reviews.
  - a. Shouldn't those authorities be both fully implemented and their impacts understood prior to undertaking a proposal to revise the NEPA regulations themselves?
  - b. What flexibilities within the regulations do you think should be better used by agencies?
  - c. Why don't you think the agencies are using these existing flexibilities?

**On June 20, 2018, CEQ published an Advance Notice of Proposed Rulemaking (ANPRM) to consider potential updates and clarifications to its NEPA implementing regulations. The ANPRM requests comment on a wide range of topics relating to NEPA implementation in order to facilitate more efficient and timely reviews, and comments received will inform any future action. It is important to consider all relevant CEQ guidance as the agency considers whether revisions to update and clarify its regulations may be appropriate.**

14. CEQ is inextricably tied to NEPA, which lays out the nation's environmental policy and enshrines two basic principles, environmental impact review and public input, into federal decisions. The chair of CEQ is meant to implement that policy. Recently, CEQ issued an Advanced Notice of Proposed Rulemaking (ANPRM) announcing an intention to revise the regulations. Have you been involved? If so, how?

**CEQ developed the ANPRM and as a staff member I participated in its development. It was subject to interagency review conducted by the Office of Information and Regulatory Affairs (OIRA) pursuant to Executive Order (EO) 12866.**

15. The NEPA regulations are one of the most broadly applicable in the federal government, and the statute and regulations often provide the only opportunity for the public to weigh in on government decisions and projects impacting their communities. This process has led in many cases to better projects with community buy-in. When CEQ undertook regulatory reviews in 1978, 1981, 1985, and 1997, it held public meetings to solicit additional input of private citizens and stakeholders, whether for the release of studies, guidance, or regulations.

- a. In response to my letter to you on this topic, you stated that, “Robust public engagement is critical to the rulemaking process.” While I agree with you, will you commit to my specific request that CEQ hold public meetings to solicit additional input of private citizens and stakeholders? If so, please provide a timeline that includes the expected number of public meetings and their expected locations. If not, why not?
- b. Can you commit to holding public meetings around the country and have a process that is commensurate with the scope of this undertaking and that complies with the spirit of public input NEPA embodies? If so, please provide a timeline that includes the expected number of public meetings and their expected locations. If not, why not?
- c. What specific types of additional public outreach will CEQ commit to beyond those required by the rulemaking process to ensure the public has a chance to meaningfully respond?
- d. Have you met with any stakeholders and discussed possible revisions? Who did you meet with and when? Please provide copies of all calendar items for CEQ senior staff and yourself for our review.
- e. What steps are you taking to ensure CEQ is both soliciting input from all groups – especially traditionally marginalized groups – and then incorporating that input into your rulemaking?
- f. What additional steps are you planning, in addition to the minimum legal requirements, to make sure the public has a say in how these regulations are rewritten?

**On June 20, 2018, CEQ published an ANPRM to consider potential updates and clarifications to its NEPA implementing regulations. CEQ staff developed the ANPRM and it was subject to interagency review conducted by OIRA pursuant to EO 12866. The ANPRM requests comments on a wide range of topics relating to CEQ’s regulations, and does not include any regulatory proposals. As part of the interagency review process, CEQ staff met with various stakeholders.**

**CEQ supports transparency in the rulemaking process and earlier this year integrated its system with [regulations.gov](https://www.regulations.gov) in order to ensure that all comments submitted would be publically available, and that the public would have access to information relating to prior CEQ actions. In response to requests from the public, CEQ also extended the comment period for the ANPRM from July 20, 2018, to August 20, 2018, and will be accepting comments submitted to [regulations.gov](https://www.regulations.gov) as well as comments by regular mail. CEQ has also posted the ANPRM on its website at <https://ceq.doe.gov/laws-regulations/regulations.html>. As of July 27, 2018, CEQ has received over one thousand comments.**

**CEQ has not made any decision with regard to future actions, and will consider comments received in response to the ANPRM. Should CEQ determine that it would be appropriate to issue a proposed rule setting forth**

**potential revisions to its NEPA regulations, CEQ will consider all options for public engagement, including public meetings. CEQ will also ensure that comments received are posted on [regulations.gov](https://www.regulations.gov) so that stakeholders and the public will have timely access to all comments received.**

16. You previously indicated in 2012 that you were concerned with the speed with which new regulations were being promulgated.<sup>1</sup> You stated, “I think one of the major concerns is the pace at which they’re issuing these regulations. They’re very lengthy, they’re very complex. Each rule may have effects relating to other rules. The pace at which they’re being issued is a genuine concern, because the staff at the Agency is under pressure and the public is under pressure to read all of these rules, to analyze them, and to prepare their comments.” In response to an audience question about what kind of time frame you would desire for the formulation and implementation of environmental regulations, you further stated that to “issue rules before you fully analyzed what the actual impact may be is an approach that raises concern.” Do you still agree with these statements?

**Yes.**

17. NEPA is the primary way in which the federal government implements EO 12898 (“Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”) because NEPA is closely aligned with the principles of environmental justice. NEPA ensures that the environmental, health, and economic impacts of federal projects are disclosed and communities impacted by federal projects are given a meaningful voice.
- a. If confirmed as Chair, what specific actions would you take to increase meaningful public input, transparency, and disclosure of disproportionate impacts?
  - b. It is widely known that the impacts of climate change will disproportionately impact low-income communities and communities of color. If confirmed as chair, will you commit to disclosing the impacts of climate change on such communities in NEPA analyses? If not, why not?

**In 1994, President Clinton issued EO 12898, titled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” which directed Federal agencies to address disproportionately high and adverse human health or environmental effects on minority and low income communities. CEQ issued related guidance in 1997, and CEQ participates in the Federal interagency working group led by the Environmental Protection Agency (EPA) which addresses environmental justice issues. In March 2016, the working group issued a document titled “Promising Practices for EJ Methodologies in NEPA Reviews” which CEQ has posted on its website and is available at <https://ceq.doe.gov/nepa-practice/justice.html>. In addition, on February 23, 2018, EPA issued a**

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<sup>1</sup> 42 ELR 10191 (March 2012), “EPA and the Economy: Seeing Green?” available at: <https://elr.info/news-analysis/42/10191/epa-and-economy-seeing-green>.

**memorandum affirming EPA’s commitment to the implementation of the 1994 EO. If confirmed, I commit that addressing environmental issues for low income and minority communities will be a priority, including actions under NEPA to facilitate the development of new or improved infrastructure in these communities.**

18. Were you involved with developing the Administration’s Infrastructure Plan? If yes, were you involved with the proposal and the permitting provisions? If yes, to what extent?

**The Administration’s “Legislative Outline for Rebuilding Infrastructure in America” (Legislative Principles) released in February 2018 was developed pursuant to a deliberative interagency process that included multiple components within the Executive Office of the President, including CEQ, and also included relevant Federal agencies. The Legislative Principles were intended to inform Congress’ consideration and development of infrastructure-related legislative proposals.**

19. The Administration’s Infrastructure Plan proposed to limit injunctive relief, even though it is already considered an extraordinary remedy. With regard to NEPA, can you identify and list any cases in which a court abused its power to authorize injunctive relief? If not, can you explain what the problem is with allowing impacted communities to obtain injunctive relief against the government?

**Over the past four decades, Federal appellate courts have on a number of occasions reversed NEPA related decisions by lower courts to grant injunctive relief. This has included the U.S. Supreme Court, as well as Federal appellate courts, concluding that injunctive relief was inappropriate.**

20. The Administration’s Infrastructure Plan proposes to eliminate EPA review responsibilities under Section 309 of the Clean Air Act. It is well documented<sup>2</sup> that the 309 process adds value to lead agency analysis and an ultimate decision. Do you agree? If not, why do you believe that EPA shouldn’t have an oversight role? If so, would you urge retention of this provision?

**As stated in the Legislative Principles, separate from its authority under Section 309 of the Clean Air Act, EPA currently has responsibility to review and comment on EISs on matters within its jurisdiction. EPA typically is included as a cooperating agency for areas within its technical expertise, and the review under Section 309 is separate and in addition to this existing responsibility for matters within its jurisdiction. This proposal, as stated in the Legislative Principles, would not eliminate EPA’s regulatory responsibilities to comment during the development of EISs on matters within EPA’s jurisdiction or affect EPA’s responsibilities to collect and publish EISs. As stated in the Legislative**

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<sup>2</sup> <https://www.epa.gov/office-inspector-general/report-epas-comments-improve-environmental-impact-statement-process>

**Principles, it also would not prevent EPA from providing technical assistance to the lead or a cooperating agency upon request.**

21. At the roundtable on the FAST Act on June 27, several members of the Senate and your staff, citing CEQ, said that FAST-41 has saved a billion dollars. I have seen no documentation to substantiate that assertion. Can you present documentation supporting that assertion?

**Facilitating coordinated environmental reviews and authorization decisions can result in cost savings. In her testimony, the Acting Executive Director of the Federal Permitting Improvement Steering Council (Permitting Council) stated that the Permitting Council has “succeeded in saving FAST-41 projects over \$1 billion in costs that would have otherwise resulted from avoidable permitting process delays.” My understanding is that this estimate is based on information provided to the Permitting Council by project sponsors.**

22. Recent guidance issued by the Bureau of Land Management ([BLM Instruction Memorandum 2018-034](#)) has not only removed the requirement for environmental review prior to issuing oil and gas leases but has also removed the requirement to provide an opportunity for public review and comment and shortened the time for filing an administrative protest (now the only way for the public to provide input on millions of acres put up for lease every quarter) to just 10 days.
- How is this consistent with NEPA’s direction to ensure that government decisions are subject to public scrutiny?
  - How would you recommend agencies provide sufficient opportunities for public input prior to making final decisions to turn public lands over to third parties?

**Public participation is very important and Federal agencies can comply through a range of approaches. If confirmed, I will work with agencies to ensure their compliance with applicable law and regulations.**

23. As you may be aware, EO 13792 directed the Department of the Interior to review national monument designations and create a report of recommendations to the President via the Chair of CEQ. During the review, a historic number of comments were received by DOI. Despite this, DOI never publicly acknowledged the total breakdown of comments, although interior DOI documents made available via FOIA show that over 99 percent of all comments opposed changes to national monument designations. Even worse, the documents indicate that DOI staff omitted these figures from their report and recommendations.<sup>3</sup> Instead, the report disparaged the comments by claiming that they “demonstrated a well-orchestrated national campaign organized by multiple organizations.” The President went on to take unprecedented and likely illegal actions to eliminate over two million acres of Bears Ears and Grand Staircase-Escalante National

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<sup>3</sup> Final Report Summarizing Findings of the Review of Designations Under the Antiquities Act, available at: [https://www.doi.gov/sites/doi.gov/files/uploads/revise\\_final\\_report.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/revise_final_report.pdf).

Monuments – the largest rollback of public lands protections in history – based in part on incomplete and misleading information.

- a. In your capacity as Chief of Staff at CEQ, did you see a draft of the DOI report before it was transmitted to the President, and were you aware that the vast majority of comments were in opposition to the recommendations, a fact which was not made evident in the report? If not, when did you become aware of this?
- b. As Chair of CEQ do you think it is appropriate for an agency to obscure the true breakdown of public sentiment from the decision makers and public, and to make recommendations that contradict the vast majority of public comments received?
- c. Do you think it is appropriate that DOI would make recommendations to the President without making him aware that 99% of respondents to the proposal opposed those recommendations?

**The final report issued by the Department of the Interior (DOI) in response to EO 13792, titled “Review of Designations Under the Antiquities Act,” was reviewed pursuant to a deliberative interagency process that included multiple components within the Executive Office of the President, including CEQ. In the final report sent to the President on December 5, 2017, the DOI described the nature and volume of the public comments received. It is important to include stakeholder input in the development of policies and recommendations.**

24. NEPA is a short statute and the NEPA guidance has been key to implementing that law. Major rewrites have been time consuming because of the varied interests and types of projects that are subject to these regulations. Since CEQ’s budget has been significantly reduced over the past years, the agency has had to rely more and more on detailees.
  - a. Will the use of detailees be necessary to redo these regulations?
  - b. If so, would you provide the Committee with a list of the present and future expected detailees, their NEPA experience, the agencies they are from, what their primary role(s) in rewriting the NEPA regulations is/are expected to be, and what is happening to their agency portfolio while at CEQ?

**On June 20, 2018, CEQ published an ANPRM to consider potential updates and clarifications to its NEPA implementing regulations. CEQ will review comments on the ANPRM, and these comments will inform any future action including whether to pursue any proposed revisions to the CEQ regulations. Should CEQ determine that it would be appropriate to issue a proposed rule setting forth potential revisions to its NEPA regulations, CEQ will work with relevant federal agencies to develop the proposal.**

25. As you know, one of CEQ’s statutory responsibilities is to analyze conditions and trends in environmental quality [specifically, “to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining

whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;” 42 U.S.C. § 4344(2)]. Can you describe how CEQ would carry out that responsibility under your leadership?

**As issues arise, I will consult with relevant Federal agencies on environmental matters within their expertise. Additionally, 42 U.S.C. 4345 authorizes CEQ to utilize the services, facilities, and information of public and private agencies and organizations that have developed information on particular environmental issues.**

26. As you may know, American Indians and Alaska Natives share a unique relationship with the federal government. As part of that relationship, the federal government has a duty to perform meaningful consultation with Indian Tribes and Alaska Native villages regarding issues that affect tribal communities and tribal members. Do you commit to engage in essential and honest consultation with tribes and tribal governments?

**Yes.**

27. Please define the Council on Environmental Quality (CEQ)’s mission and the role you believe that sound science plays in fulfilling that mission.

**CEQ’s mission includes overseeing implementation of NEPA by Federal agencies. In addition, CEQ also provides recommendations to the President and coordinates with Federal agencies regarding environmental policy matters. In carrying out its mission, CEQ should be informed by sound science.**

28. Do you think the U.S. National Academy of Sciences is a reliable authority on scientific matters? If not, why not?

**Yes.**

29. If confirmed, how do you plan to maintain a relationship with the White House Office of Science and Technology Policy (OSTP)?

**CEQ works closely with OSTP on a variety of matters including as Co-Chairs of the Ocean Policy Committee, established under EO 13840, titled “Ocean Policy to Advance the Economic, Security, and Environmental Interests of the United States.” If confirmed, I look forward to continuing to work closely with OSTP.**

30. NOAA reported this year that extreme weather events costing \$1 billion or more have doubled on average in frequency over the past decade – costing this country \$425 billion in the last five years. With a little extra planning – combined with prudent, targeted investments – the federal government can help save lives, livelihoods and

taxpayer dollars. On March 28, 2017 through Executive Order 13783, President Trump rescinded Executive Order 13653, *Preparing the United States for the Impacts of Climate Change*, which provided tools for American communities to “strengthen their resilience to extreme weather and prepare for other impacts of climate change.” Included in the revoked Executive Order were provisions that made it easier for communities hit by extreme weather events to rebuild smarter and stronger to withstand future events, including rebuilding roads and infrastructure to be more climate-resilient, and investing in projects that better protect communities from flooding and their drinking water from contamination.

- a. What role, if any, did you or your staff have in contributing to the decision-making process that led to Executive Order 13783, in particular language that rescinded the Executive Order 13653? Please explain in detail.

**EO 13783, titled “Promoting Energy Independence and Economic Growth,” was developed pursuant to a deliberative interagency process that included multiple components within the Executive Office of the President, including CEQ, as well as relevant Federal agencies.**

- b. In light of the extreme weather damages observed since March 28, 2017, would you support the reinstatement of federal guidance and tools for American communities to “strengthen their resilience to extreme weather and prepare for other impacts of climate change?” If not, why not?

**Extreme weather events highlight the importance of modern, resilient infrastructure. I support efforts to pursue technology and innovation, the development of modern, resilient infrastructure, and environmentally beneficial projects, including restoration projects, to address future risks, including climate related risks. I also support efforts to improve weather data, forecasting, modeling and computing in order to prepare for and respond to extreme weather events.**

- c. President Trump also rescinded CEQ’s issued guidance to federal agencies requiring the consideration of greenhouse gasses and climate change effects when evaluating potential impacts of a federal action under NEPA. What role, if any, did you or your staff have in contributing to the drafting of language that rescinded this guidance?

**EO 13783 directed CEQ to rescind this guidance. Pursuant EO 13783, CEQ published a notice of withdrawal of the guidance on April 5, 2017 at 82 FR 16576.**

- d. Should the federal government consider the social costs of carbon in federal actions? If not, why not?

**NEPA and CEQ's NEPA implementing regulations do not require agencies to monetize the costs and benefits of a proposed action. CEQ's regulations at 40 CFR 1502.23 provide that agencies need not weigh the merits and drawbacks of particular alternatives in a monetary cost-benefit analysis, and that such analysis should not be used when there are important qualitative considerations. Social cost of carbon (SCC) estimates were developed for rulemaking purposes to assist agencies in evaluating the costs and benefits of regulatory actions, and were not intended for project level reviews under NEPA.**

**To the extent that SCC estimates are used for rulemaking purposes, EO 13783 directs Federal agencies to be consistent with the guidance contained in the Office of Management and Budget (OMB) Circular A-4 of September 17, 2003. This guidance addresses consideration of domestic versus global impacts as well as appropriate discount rates, and specifically directs agencies to consider the domestic costs and benefits of rulemakings.**

31. Two weeks prior to Hurricane Harvey devastated vast portions of Texas, Executive Order 13807 on "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure" went so far as to repeal the Federal Floodplain Risk Management Standard (FFRMS), which would have held new infrastructure projects to more resilient standards. The FFRMS guidance provided three flexible options for meeting the standard in flood hazard areas: (1) build standard infrastructure, such as federally funded housing and roads, two feet above the 100-year flood standard and elevate critical infrastructure, like hospitals and fire departments, by three feet; (2) elevate infrastructure to the 500 year flood standard; or (3) simply use data and methods informed by the best-available, actionable climate science. In short, the FFRMS was meant to protect taxpayer dollars spent on projects in areas prone to flooding, not to mention the human toll of such events. That is a common-sense approach given that in just the past five years, all 50 states have experienced flood damage.
- a. What role, if any, did you or your staff have in contributing to the decision-making process that led to Executive Order 13807, in particular language that rescinded the FFRMS? Please explain in detail.
  - b. In light of the hurricane-related damage observed last season and the extreme weather events this country has seen this year, would you support the reinstatement of the FFRMS? If not, why not, and how would you suggest resiliency be factored into the infrastructure project design and approval process?
  - c. Do you agree that infrastructure projects that do not account for flooding hazards in the manner(s) prescribed by the FFRMS would be more likely to suffer flood damage over the lifetime of the infrastructure? Would such damage be likely to result in additional costs to repair? If not, why not?
  - d. Do you view the repeal of the FFRMS as a national security threat, given the security threat that rising sea levels could pose to military bases? If not, why not?

**EO 13807, titled “Establishing Discipline and Accountability in Environmental Review and Permitting Process for Infrastructure Projects,” was developed pursuant to a deliberative interagency process that included multiple components within the Executive Office of the President, including CEQ, as well as relevant Federal agencies. Agencies are currently implementing EO 11988, titled “Floodplain Management,” which was published on May 24, 1977, 42 FR 26951. I support efforts to prepare and plan for extreme weather events, including through the development of modern, resilient infrastructure to address such events.**

32. In Executive Order 13834, President Trump also revoked Executive Order 13693, *Planning for Federal Sustainability in the Next Decade*, which stated that “each agency shall prioritize actions that reduce waste, cut costs, enhance the resilience of Federal infrastructure and operations, and enable more effective accomplishments of its mission.” This includes a goal of cutting the federal government’s greenhouse gas emissions by forty percent over ten years.

- a. What role, if any, did you or your staff have in contributing to the decision-making process that led to revoking Executive Order 13693? Please explain in detail.

**EO 13834, titled “Efficient Federal Operations,” was developed pursuant to a deliberative interagency process that included multiple components within the Executive Office of the President, including CEQ, as well as relevant Federal agencies. The EO reflects this Administration’s priorities to protect the environment, promote efficient management, and save taxpayer dollars.**

- b. EO 13693 provided a commitment and plan for Federal agencies to meet certain statutory requirements related to energy and environmental performance of Federal facilities, vehicles, and operations. Are there requirements under Executive Order 13834 that currently are not being met? If so, please list them.

**EO 13834 provides agencies with greater discretion and flexibility to comply with statutory requirements. These statutory requirements are listed on CEQ’s website at [sustainability.gov](https://www.sustainability.gov). CEQ plans to provide consolidated data and information relating to Federal agency performance on this website in the near future.**

- c. Will you commit to ensure each of these statutory requirements are being satisfied?

**I commit to working with Federal agencies to meet their statutory requirements and to continue to make progress going forward. In implementing the EO, CEQ plans to work with OMB to monitor agency implementation and track performance.**

- d. Will you commit to further review of Executive Order 13693 and discussion with my staff to determine if there are specific actions to be reinstated that could reduce waste, cut costs, or enhance the resilience of Federal infrastructure and operations?

**I commit to working with Congress, including your staff, to identify opportunities to further drive and promote efficiency across the Federal government.**

33. Please list all Clean Air Act regulations that were promulgated by the Obama Administration – not a voluntary or grant program – that you support and why?

**I support regulations promulgated under the Clean Air Act that are consistent with the EPA's statutory authorities.**

34. Are there any other EPA regulations – not a voluntary or grant program - that are on the books today that you support? If so, please list them.

**I support EPA regulations that are consistent with the agency's statutory authorities.**

35. Delaware is already seeing the adverse effects of climate change with sea level rise, ocean acidification, and stronger storms. While all states will be harmed by climate change, the adverse effects will vary by state and region. Can you comment on why it is imperative that we have national standards for the reduction in carbon pollution? If you do not believe it is imperative, why not?

**To address climate change related concerns, I believe it is important to pursue technology and innovation to adapt to a changing climate, consistent with Congressional directives. This includes current efforts pursuant to the Weather Research and Forecasting Innovation Act to improve weather data, modeling, computing, forecasting, and warnings. In addition, it is important to pursue continued research to improve our understanding of the climate system. Further, it is important to pursue a strong economy which allows us to develop modern, resilient infrastructure to address future risks, including climate related risks.**

36. In December 2007, President Bush's EPA proposed to declare greenhouse gases as a danger to public welfare through a draft Endangerment Finding, stating, "The Administrator proposes to find that the air pollution of elevated levels of greenhouse gas (GHG) concentrations may reasonably be anticipated to endanger public welfare... Carbon dioxide is the most important GHG (greenhouse gas) directly emitted by human activities, and is the most significant driver of climate change."<sup>4</sup> Do you agree with these statements, if not, why not?

<sup>4</sup>[https://insideclimatenews.org/sites/default/files/2007\\_Draft\\_Proposed\\_Endangerment\\_Finding.pdf](https://insideclimatenews.org/sites/default/files/2007_Draft_Proposed_Endangerment_Finding.pdf)

**I believe that the climate is changing and that human activity has a role.**

37. In a *per curiam* opinion, the U.S. Circuit Court of Appeals for the District of Columbia affirmed the Endangerment Finding and the U.S. Supreme Court declined to issue a writ of certiorari on the D.C. Circuit's decision. The Endangerment Finding set in motion EPA's legal obligations to set greenhouse gas emissions standards for mobile and stationary sources, including those established by the Clean Power Plan in August 2015.<sup>5</sup> Do you agree with the courts that EPA has an obligation to address CO<sub>2</sub>? If not, why not?

**The Endangerment Finding was issued in 2009 and upheld by the D.C. Circuit in 2012. Any reconsideration of the Endangerment Finding by the EPA would be subject to the Administrative Procedure Act.**

38. Do you agree with President Trump's decision to withdraw the United States from the International Paris Climate Accord? If so, please explain.

**The President announced this decision on June 1, 2017. The decision was within his authority and I support the decision.**

39. For the most part, patients and their families only participate in scientific trials and studies once they know their privacy - and any resulting health-related information - will remain confidential and secure. If confirmed, do you commit to respecting confidentiality agreements that exist between researchers and their subjects? Will you protect the health information of the thousands of people that have participated in health studies in the past?

**Yes, it is important to respect confidentiality agreements between researchers and their subjects, and to protect the health information of people who participate in health studies.**

40. On April 17, 2012, Dr. Jerome Paulson, Chair, Council on Environmental Health, American Academy of Pediatrics, testified before the EPW Committee, stating, "Methyl mercury causes localized death of nerve cells and destruction of other cells in the developing brain of an infant or fetus. It interferes with the movement of brain cells and the eventual organization of the brain... The damage it [methylmercury] causes to an individual's health and development is permanent and irreversible. ... There is no evidence demonstrating a "safe" level of mercury exposure, or a blood mercury concentration below which adverse effects on cognition are not seen. Minimizing mercury exposure is essential to optimal child health."<sup>6</sup>

- a. Do you agree with the American Academy of Pediatrics' finding on the

<sup>5</sup> <https://www.epa.gov/climatechange/us-court-appeals-dc-circuit-upholds-epas-action-reduce-greenhouse-gases-under-clean>

<sup>6</sup> <https://www.epw.senate.gov/public/cache/files/4/3/4324fd62-dc89-4820-bd93-ff3714fcb30/01AFD79733D77F24A71FEF9DAFCCB056.41712hearingwitness testimony paulson.pdf>

importance of minimizing mercury exposures for child health? If not, please cite the scientific studies that support your disagreement.

**It is important to minimize the exposure to methylmercury, especially for children, consistent with the laws established by Congress.**

- b. Do you agree the record supports EPA's findings that mercury, non-mercury hazardous air pollutant metals, and acid gas hazardous air pollutants emitted from uncontrolled power plants pose public health hazards? If not, why not?

**EPA published the "National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units," (referred to as the Mercury and Air Toxics Standards (MATS) Rule) on February 16, 2012, based on a record that found mercury, non-mercury hazardous air pollutant metals, and acid gas hazardous air pollutants from uncontrolled power plants pose public health hazards.**

- c. Do you agree it is currently difficult, or impossible, to monetize the reduced risk of human health and ecological benefits from reducing mercury emissions from power plants? If so, please explain. If not, why not?

**EPA monetized the benefits from reductions in mercury exposure in the MATS Rule based on analysis of health effects due to recreational freshwater fish consumption. EPA also identified unquantified impacts for both benefits and costs related to the MATS Rule.**

- d. Do you agree that EPA's recent consideration of the costs of the Mercury and Air Toxics Rule shows that the agency has met the "necessary and appropriate" criteria Congress provided under 112(n) to direct the EPA to regulate power plant mercury (and other air toxic) emissions under Section 112, and more specifically under Section 112(d)? If not, why not?

**On June 29, 2015, the U.S. Supreme Court in *Michigan v. EPA* remanded the MATS Rule based on the agency's failure to consider costs when making its finding that the regulation was appropriate and necessary under Section 112(n) of the Clean Air Act. EPA announced in its Spring 2018 Regulatory Agenda that the agency is planning to propose a rule titled "Mercury and Air Toxics Standards for Power Plants Residual Risk and Technology Review and Cost Review." EPA also stated in the Spring 2018 Regulatory Agenda that, in its April 2017 court filing, the agency requested that oral argument for the MATS litigation be continued to allow the current Administration adequate time to review the Supplemental Cost Finding, and to determine whether it will be**

**reconsidered. That reconsideration is currently under review by EPA.**

41. What, if any, are the casual connections between hydraulic fracturing and environmental problems such as contamination of drinking water and emissions of air pollution and greenhouse gasses?

**With respect to drinking water, EPA published a study in December 2016, titled “Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States.” This study assessed the potential for activities in the hydraulic fracturing water cycle to impact the quality or quantity of drinking water resources and to identify factors that affect the frequency or severity of those impacts. The study found that under some circumstances the hydraulic fracturing water cycle can impact drinking water resources, and that, “impacts can range in frequency and severity, depending on the combination of hydraulic fracturing water cycle activities and local- and regional-scale factors.”**

**With respect to air emissions associated with hydraulic fracturing, EPA has established standards under the Clean Air Act. In particular, on August 16, 2012, EPA published standards for the oil and gas sector that established control measures to limit the emission of volatile organic compounds (VOCs) as well as other air pollutants. For the 2012 rule, EPA estimated that control measures for VOCs would reduce methane emissions annually by 1 million to 1.7 million short tons as a co-benefit.**

**Senator Capito:**

42. Mineral mining is a significant industry with obvious economic and other benefits to West Virginia and the nation. Typical projects employ numerous skilled miners and more in ancillary industries, and require huge investments that would benefit from prompt and firm regulatory decisions. The Federal Permitting Improvement Steering Council (FPISC), established under Title 41 of the FAST Act (FAST-41), is tasked with improving coordination among federal agencies to ensure the timely review and authorization of covered projects. While several areas of activity were identified in FAST-41 as being covered projects, the FPISC has the authority to determine additional eligible activities. Given that the Chairman of the Council on Environmental Quality is a member of the FPISC, what are your thoughts on including mineral mining as a covered project under FAST-41?

**The Council on Environmental Quality (CEQ) is one of 16 agencies that serve as members of Federal Permitting Improvement Steering Council (Permitting Council). On July 28, 2017, the Permitting Council received a request to add mining as an infrastructure sector under the FAST-41 definition of a “covered project,” which may be determined by majority vote of the Permitting Council. The Permitting Council has developed a Standard Operating Procedure (SOP) for Adding a New Sector to consider the potential addition of new sectors of covered projects not expressly enumerated under FAST-41, which includes stakeholder outreach. To date, the Permitting Council has not made any determination to add any new sector of covered projects pursuant to the SOP and FAST-41. In connection with any future action with regard to requests to add a sector, it is important for CEQ to consult with all of the members of the Permitting Council, and to consider the views of stakeholders.**

**Senator Duckworth:**

43. For nearly two decades, Executive Order 12898 has guided Federal efforts to advance environmental justice initiatives. This landmark Executive Order directs that “Each Federal Agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income population.”

If confirmed to lead the Council on Environmental Quality (CEQ), will you commit to upholding and achieving the goals contained in this critical environmental justice Executive Order 12898?

**Yes. In 1994, President Clinton issued EO 12898, titled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” which directed Federal agencies to address disproportionately high and adverse human health or environmental effects on minority and low income communities. CEQ issued related guidance in 1997, and CEQ participates in the Federal interagency working group led by Environmental Protection Agency (EPA) which addresses environmental justice issues. In March 2016, the working group issued a document titled “Promising Practices for EJ Methodologies in NEPA Reviews” which CEQ has posted on its website and is available at <https://ceq.doe.gov/nepa-practice/justice.html>. In addition, on February 23, 2018, EPA issued a memorandum affirming EPA’s commitment to the implementation of the 1994 EO. If confirmed, I commit that addressing environmental issues for low income and minority communities will be a priority, including actions under NEPA to facilitate the development of new or improved infrastructure in these communities.**

44. The Centers for Disease Control and Prevention has made clear that there is no safe level of lead in a person’s bloodstream, particularly a child. However, our Nation’s laws and regulations fail to eliminate the presence of lead in drinking water and claim success for merely lowering the amount of lead present in water supplies. There is no public health justification for being satisfied with only a small amount of lead in our drinking water and I simply refuse to accept excuses or explanations from cynics who claim that the United States is incapable of solving this problem.

If confirmed to lead CEQ, will you commit to taking concrete and meaningful action to make sure the Trump Administration prioritizes modernizing and strengthening the Lead and Copper Rule by no later than early 2019?

**If confirmed, I will work with the EPA to prioritize development of this rule.**

45. Illinois is home to an innovative Archer Daniels Midland project that is leading the way in helping to reduce emissions by capturing and storing carbon. This Carbon Capture, Utilization and Storage (CCUS) system is capable of storing more than 1 million tons of

carbon emissions, and it represents the type of CCUS technology that will prove vital in empowering our Nation and countries around the world to reduce emissions and protect our planet.

If confirmed to lead CEQ, will you commit to working with the U.S. Department of Energy and other agencies to support project developers and operators of Carbon Capture, Utilization and Storage facilities?

**Yes. If confirmed, I will work with the Department of Energy and other relevant agencies on this issue.**

**Senator Markey:**

46. On June 19, 2018 Trump rescinded the National Ocean Plan and replaced it with the Ocean Policy Committee co-chaired by the Council on Environmental Quality (CEQ) and the Office of Science and Technology Policy. The Northeast Ocean Plan, established in 2012, created the very successful Northeast Ocean Data Portal. The Portal helps ocean stakeholders plan activities such as fishing, marine traffic routes, and energy development by combining and layering data in regards to different ocean uses onto one map.
- a. As the head of CEQ and co-chair of the new Ocean Policy Committee, will you work to ensure federal agencies continue to engage with states and regions on regional ocean plans? Will you work to ensure federal agencies continue to engage with diverse stakeholders including fishermen, the tourism industry, the recreational industry, port operators, local communities, offshore wind development, the science community, and conservation groups?
  - b. Will you ensure that the Northeast Ocean Plan and other regional ocean plans continue to receive updated data and support so that local stakeholders, governments, states, federal agencies, industry, tribes, and the science community can make more informed management decisions?
  - c. Can you guarantee that federal support for data collection and management, including for publicly available data, will continue?

**Executive Order (EO) 13840, titled “Ocean Policy to Advance the Economic, Security, and Environmental Interests of the United States,” specifically directs the Ocean Policy Committee (OPC) established under the EO to engage with stakeholders, including Regional Ocean Partnerships (ROPs), “to address ocean-related matters that may require interagency or intergovernmental solutions.” The EO also directs the OPC to coordinate the release of unclassified data and other ocean-related information through “common information management systems, such as the Marine Cadastre, that organize and disseminate this information.” The Marine Cadastre is a primary source of Federal coastal and ocean spatial data for ROPs. The Council on Environmental Quality (CEQ) and the Office of Science and Technology Policy (OSTP) have issued guidance to agencies relating to implementation of EO 13840 which is available at <https://www.whitehouse.gov/wp-content/uploads/2017/11/20180628EO13840OceanPolicyGuidance.pdf>.**

47. The National Environmental Policy Act (NEPA) is often blamed for delays in infrastructure projects, but analyses done by federal agencies and reports by the Congressional Research Service have repeatedly pointed to issues like a lack of funding as the main cause of delays. Additional changes to the NEPA process required by recent legislation have also resulted in conflicting, duplicative, and confusing directions to staff responsible for conducting NEPA reviews.

- a. Before or as part of the broader NEPA rulemaking, would you commit to conducting a review of the resources that agencies have and are missing that are necessary to perform environmental impact statements and environmental assessments?

**I believe Federal agencies have sufficient resources to implement NEPA. CEQ is currently working with agencies to better coordinate their NEPA reviews and to more effectively allocate resources, including the establishment of joint schedules, environmental analyses, and records of decision. CEQ's NEPA implementing regulations set forth in 40 CFR 1507.2 and 1506.5 direct agencies to ensure that they have the capability to implement NEPA. If confirmed, I commit to working to ensure that agencies effectively allocate resources to enable them to implement NEPA appropriately.**

48. President Trump signed an executive order directing agencies to use a "One Federal Decision" mechanism, which designates a lead agency to shepherd a single NEPA review to completion.

- a. What role do you think CEQ plays in the "One Federal Decision" approach?

**Pursuant to EO 13807, CEQ and the Office of Management and Budget (OMB) were directed to develop a framework for implementation of the One Federal Decision policy. On March 20, 2018, CEQ and OMB issued a memorandum to Federal agencies providing a framework for implementation of the policy. On April 9, 2018, President Trump announced that 11 Federal agencies and the Federal Permitting Improvement Steering Council (Permitting Council) executed a Memorandum of Understanding committing to work collaboratively to implement the policy and to meet the two-year goal for major infrastructure projects. Pursuant to EO 13807, CEQ will continue to work with the agencies to implement the One Federal Decision policy, including through the interagency working group convened by CEQ in fall 2017 to implement the EO.**

**Senator Merkley:**

49. We have seen storm surges, floods, droughts, increased frequency and severity of natural disasters, ocean acidification, and general environmental distress across the country a trend that will only continue with the climate chaos we are currently facing. In your testimony, you said that you believed humans are impacting the world's climate. If confirmed as the head of CEQ, what steps will you take to proactively combat the environmental concerns listed above?

**To address climate change related concerns, I believe it is important to pursue technology and innovation to adapt to a changing climate, consistent with Congressional directives. This includes current efforts pursuant to the Weather Research and Forecasting Innovation Act to improve weather data, modeling, computing, forecasting, and warnings. I also believe it is important to pursue continued research in order to improve our understanding of the climate system.**

50. We are reaching a breaking point in terms of climate change impacts, and it is clear that this country need leaders who are willing to take action now to prevent us from rapidly reaching a point of no return in terms of climate change impacts. This cannot happen if science and the impacts of climate disruption are ignored. In your leadership role with the CEQ, what steps will you take to arrest and reverse climate change?

**I believe it is important to pursue a strong economy which allows us to have the resources to advance technology and innovation and to develop resilient infrastructure to address future risks, including climate related risks. In addition, it is important to advance projects to achieve environmental protection, including environmental restoration projects. To facilitate the development of such projects in a timely manner, the Council on Environmental Quality (CEQ) has been working with Federal agencies to streamline environmental reviews that are conducted pursuant to the National Environmental Policy Act (NEPA) and related statutes.**

51. CEQ's primary role is leading coordination between environmental agencies. In an ANPRM (Advanced Notice of Proposed Rule Making) published last month, it seems clear the administration is looking to revamp the NEPA review process, which could allow for industry to bypass environmental regulations. As head of CEQ, can you please describe how you will ensure that this NEPA overhaul will not cut environmental review requirements?

**On June 20, 2018, CEQ published an ANPRM to consider potential updates and clarifications to its NEPA implementing regulations. As stated in the ANPRM, "CEQ solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective process consistent with the national environmental policy stated in NEPA." CEQ will review comments on the ANPRM, and these comments will inform any**

**future action including whether to pursue any proposed revisions to the CEQ regulations.**

52. On June 19th, President Donald Trump issued an Executive Order replacing the existing U.S. Ocean Policy with one that follows a shift away from environment to economy, changing U.S. ocean policy from one that was focused on stewardship of our valuable and vulnerable ocean life to resource use and extraction. If confirmed as the head of CEQ, how will you work to prioritize ocean conservation and coastal protection? How will you ensure the ecological health of our oceans and coastlines?

**Congress has issued many statutes to address the management of our ocean resources and environmental protection of our oceans, Great Lakes, and coastal waters. Executive Order (EO) 13840, titled “Ocean Policy to Advance the Economic, Security, and Environmental Interests of the United States,” supports ocean stewardship by directing Federal agencies to work to ensure economic, security, and environmental benefits for present and future generations by coordinating ocean policy. The EO establishes an Ocean Policy Committee (OPC) and subcommittees to address science and technology and ocean resource management issues. Matters relating to ocean conservation and coastal protection may be addressed by the OPC and its subcommittees. If confirmed, as Co-Chair of the OPC, I commit to working with Federal agencies to continue to make data and information that supports conservation and coastal protection publicly available.**

53. It seems as though the prioritization of economic development, and the president’s vow to expand fossil fuel extraction from our oceans, run directly counter to the CEQ’s goal of environmental protection and a productive harmony between humans and their environment? Please explain how the Trump Executive Order encourages healthy ocean ecosystems. If confirmed as the head of the CEQ, will you support these policies that will undoubtedly harm the long-term health and sustainability of our oceans?

**EO 13840 specifically directs the OPC to engage and collaborate with stakeholders, including Regional Ocean Partnerships (ROPs), address regional coastal and ocean matters potentially requiring interagency or intergovernmental solutions, expand public access to Federal ocean-related data and information, and identify priority ocean research and technology needs to facilitate the use of science in establishing policy. The EO also facilitates the collection, development, dissemination, and exchange of information among agencies. If confirmed, as Co-Chair of the OPC, I commit to working with Federal agencies to implement the EO in a manner that advances environmental protection.**

**Senator Whitehouse:**

54. Last month, President Trump issued an Executive Order repealing President Obama's National Ocean Policy Executive Order and implementing his own ocean priorities. The EO focused on extracting as much as possible from the oceans with little regard for conservation. It also omitted any mention of climate change and its effects on oceans and coasts.
- a. Do you agree that the primary focus of the United States' policy on oceans management should be on the exploitation of our oceans for short-term economic gain at the expense of long-term conservation and sustainable use?
  - b. Explain your understanding of the consequences of climate change and carbon pollution on our oceans and coasts, including warming, deoxygenation, sea level rise, and ocean acidification?
  - c. What role did you play in the development and drafting of President Trump's Executive Order?
    - i. Did you recommend or support the emphasis on extraction of resources in the EO?
    - ii. Did you recommend or support the exclusion of any mention of climate change or ocean acidification from the EO?

**Executive Order (EO) 13840, titled "Ocean Policy to Advance the Economic, Security, and Environmental Interests of the United States," is an order that addresses interagency processes and coordination with regard to ocean-related research and resource management. This EO was developed pursuant to a deliberative interagency process that included multiple components within the Executive Office of the President, including the Council on Environmental Quality (CEQ), and also included relevant Federal agencies.**

**The EO establishes an Ocean Policy Committee (OPC) and establishes two subcommittees, including a subcommittee on science and technology, and a subcommittee on resource management. I anticipate that matters relating to climate change and ocean acidification may be addressed by one or both subcommittees.**

55. The EO establishes an interagency Ocean Policy Committee which is co-chaired by the Council on Environmental Quality and Director of the Office of Science and Technology Policy. The Co-chairs are directed, in coordination with the Assistants to the President for National Security Affairs, Homeland Security and Counterterrorism, Domestic Policy, and Economic Policy, to "regularly convene and preside at meetings of the Committee, determine its agenda, and direct its work, and shall establish and direct subcommittees of the Committee as appropriate."
- a. Given your current status as the highest ranking official at CEQ, what steps have you taken to establish the Committee, and set its agenda and meeting schedule?

- b. When do you plan to hold the first Committee meeting?
- c. What subcommittees and specific tasks for these subcommittees do you anticipate forming?

**To implement EO 13840, on June 20, 2018, CEQ and the Office of Science and Technology Policy (OSTP) which co-chairs the OPC, held a call with state representatives from regions across the country, including the Northeast region, to discuss the new EO. On June 28, 2018, CEQ and OSTP also issued guidance to Federal agencies relating to implementation of the EO, which is available at <https://www.whitehouse.gov/wp-content/uploads/2017/11/20180628EO13840OceanPolicyGuidance.pdf>.**

**CEQ and OSTP have scheduled the first OPC Meeting for August 1, 2018. At the meeting Federal agencies will discuss implementation of EO 13840, including: i) the function and structure of the OPC and establishment of the subcommittees; ii) the timely release of Federal ocean-related data and information; iii) priority ocean research and technology needs; iv) Federal participation in ocean research projects, including through the National Oceanographic Partnership Program; and v) interagency coordination.**

56. The EO also “recognizes and supports Federal participation in regional ocean partnerships.” These partnerships manage ocean planning and data collection for the purposes of sustainable ocean management.
- a. If confirmed, how will you advise federal agencies to support and participate in these regional ocean partnerships?
  - b. How should federal agencies consider the data and recommendations from the regional ocean partnerships in their own work and decision-making?

**As stated above, on June 28, 2018, CEQ and OSTP issued guidance to Federal agencies relating to implementation of the EO, including continued support for Regional Ocean Partnerships (ROPs) or their functional equivalents.**

**EO 13840 directs the OPC to identify priority ocean research and technology needs to facilitate the use of science in establishing policy, and the collection, development, dissemination, and exchanges of information among agencies. It also directs that the OPC address coordination and Federal participation in projects conducted under the National Oceanographic Partnership Program. Data and recommendations from the ROPs should inform these activities.**

57. The EO emphasizes the importance of ocean data and monitoring, a priority for the Senate Oceans Caucus. As we develop legislation to support enhanced ocean data and

monitoring technologies and methods, will you work with us to improve and implement the legislation, if passed?

**Yes.**

58. The growing threat of plastic pollution and other marine debris are endangering our coastal economies and wildlife. The bipartisan Save Our Seas Act, which aims to increase federal involvement in both domestic and international efforts to combat marine debris, passed the Senate by unanimous consent last August. The House of Representatives is expected to pass their bipartisan companion bill shortly. The issue of marine debris has captured the attention of the nation and concerned citizens of all political leanings.

- a. What role can CEQ play in coordinating federal efforts to research, monitor, and reduce marine plastic pollution?
- b. If confirmed, do you commit to working with the bipartisan Senate Oceans Caucus to build on the Save Our Seas Act and build on U.S. investments in marine debris research, prevention, and innovation?

**Addressing marine debris is an important issue. If confirmed, as Co-Chair of the OPC, I commit to working with you and your colleagues on this issue going forward.**

59. At your confirmation hearing, you told Senator Van Hollen that you “agree that the climate is changing and that human activity has a role.” My question to you is do you believe that human activity, namely the burning of fossil fuels, is the primary driver of climate change? If not, what is?

**I agree that the climate is changing and human activity has a role. The climate system is driven by complex interactions, and examination of the climate involves complex models and assumptions, as well as projections which may extend far into the future. To improve our understanding of the climate system, it is important to continue climate related research.**

60. In your time as chief of staff at CEQ, you have already withdrawn guidance issued under the Obama administration that directed relevant agencies to consider the carbon emissions and associated climate change effects in NEPA reviews. Given that Freddie Mac, the insurance industry trade publication Risk & Insurance, and the Union of Concerned Scientists all warn that sea level rise caused by climate change will have a severe impact on coastal real estate values, and the Bank of England and numerous researchers, economists, and other academics warn of the risks of a “carbon bubble,” please explain why you think that it is good policy to not require that the climate effects of projects be considered in NEPA reviews?

**As a general matter, Federal agencies are required under NEPA to review the potential environmental consequences of proposed major Federal actions that may significantly affect the quality of the environment.**

61. How should greenhouse gas impacts and sea level rise be considered in NEPA project reviews?

**In conducting NEPA analyses, Federal agencies have discretion and should use their experience and expertise to decide how and to what degree to analyze particular effects. Pursuant to CEQ's NEPA implementing regulations, agencies should identify methodologies and ensure information is of high quality, consistent with 40 CFR 1500.1(b) and 40 CFR 1502.24.**

62. The Obama administration had estimated the social cost of carbon to be around \$45 per ton of emissions in 2020. Former EPA Administrator Scott Pruitt reduced this number to between \$1 and \$6 per ton, notably by excluding the costs of climate change that are borne outside our borders.
- a. Do you agree that the social cost of carbon is a valuable tool for policy makers that should be used to help them assess the true costs of projects and true benefits of regulations limiting carbon emissions?
  - b. Do you agree with Pruitt's decision to reduce the value of the social cost of carbon by excluding costs that are borne outside our borders?

**NEPA and CEQ's regulations do not require agencies to monetize the costs and benefits of a proposed action. CEQ's regulations at 40 CFR 1502.23 provide that agencies need not weigh the merits and drawbacks of particular alternatives in a monetary cost-benefit analysis, and that such analysis should not be used when there are important qualitative considerations. Social cost of carbon (SCC) estimates were developed for rulemaking purposes to assist agencies in evaluating the costs and benefits of regulatory actions, and were not intended for project level reviews under NEPA.**

**To the extent that SCC estimates are used for rulemaking purposes, EO 13783 directs Federal agencies to be consistent with the guidance contained in the Office of Management and Budget (OMB) Circular A-4 of September 17, 2003. This guidance addresses consideration of domestic versus global impacts as well as appropriate discount rates, and specifically directs agencies to consider the domestic costs and benefits of rulemakings.**

63. Former EPA Administrator Scott Pruitt issued a proposed rule that would prohibit EPA from considering in its rulemaking process studies whose underlying data is not public. This proposed rule would exclude many public health studies that rely upon confidential patient data. Do you support Pruitt's approach of excluding peer-reviewed public health

studies simply because many of the people whose health data is used in them have not consented to making their data public?

**Transparency and reproducibility of findings are essential for scientific research. It is important to respect confidentiality agreements between researchers and their subjects, and to protect the health information of people who participate in health studies. The proposed rule has been issued for public comment and comments submitted will inform any future action.**

## FW: FR 2018-13246\_1644312 (2).docx

---

**From:** "Sun, Howard C. EOP/CEQ" <(b) (6)>  
**To:** "Seale, Viktoria Z. EOP/CEQ" <(b) (6)>  
**Cc:** "Szabo, Aaron L. EOP/CEQ" <(b) (6)>  
**Date:** Fri, 15 Jun 2018 15:40:10 -0400  
**Attachments:** FR 2018-13246\_1644312 (2).docx (47.96 kB)

Viktoria,

Can you confirm?

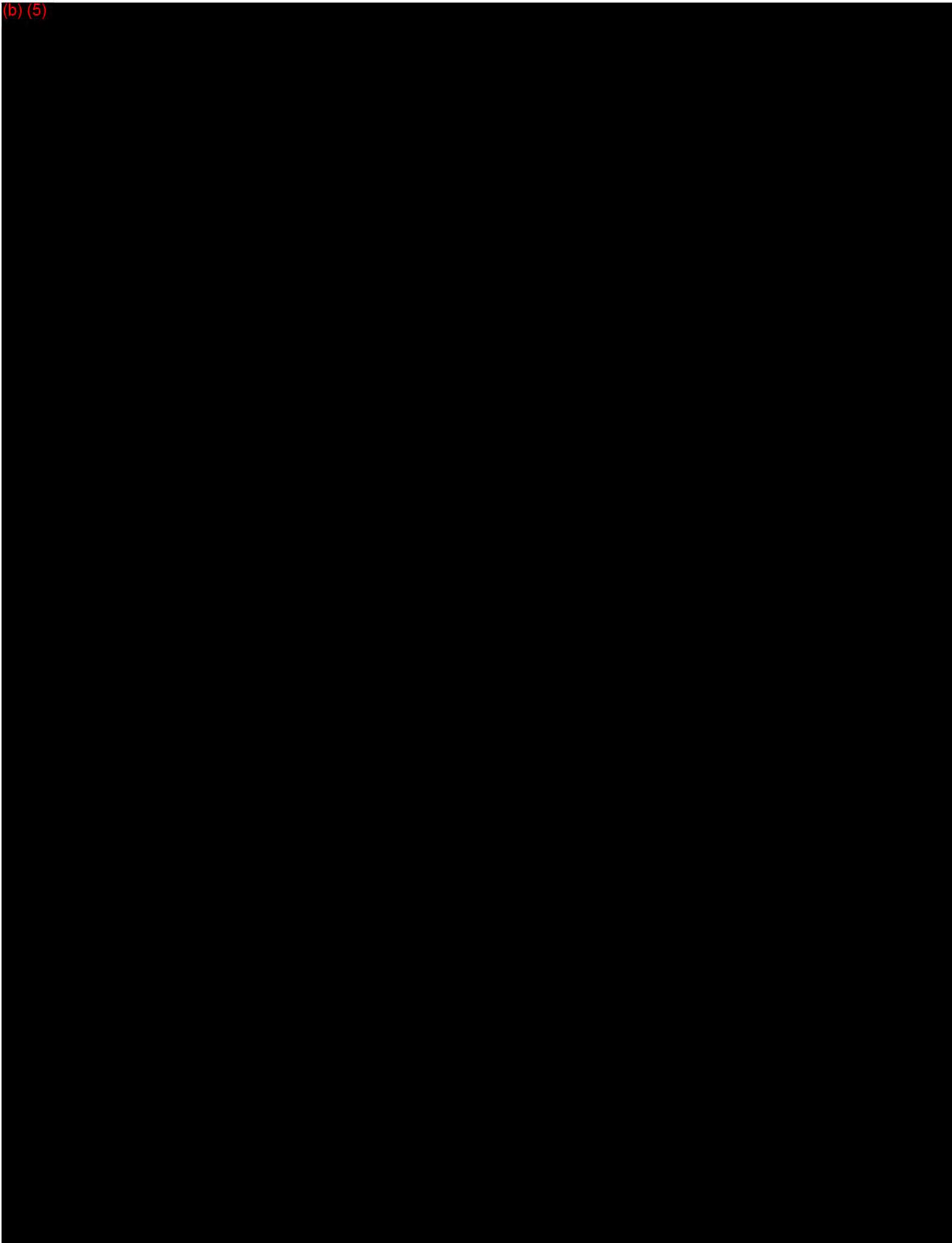
Very Respectfully,  
Howard Sun  
Attorney Advisor  
Council on Environmental Quality  
Executive Office of the President  
Office: (b) (6)

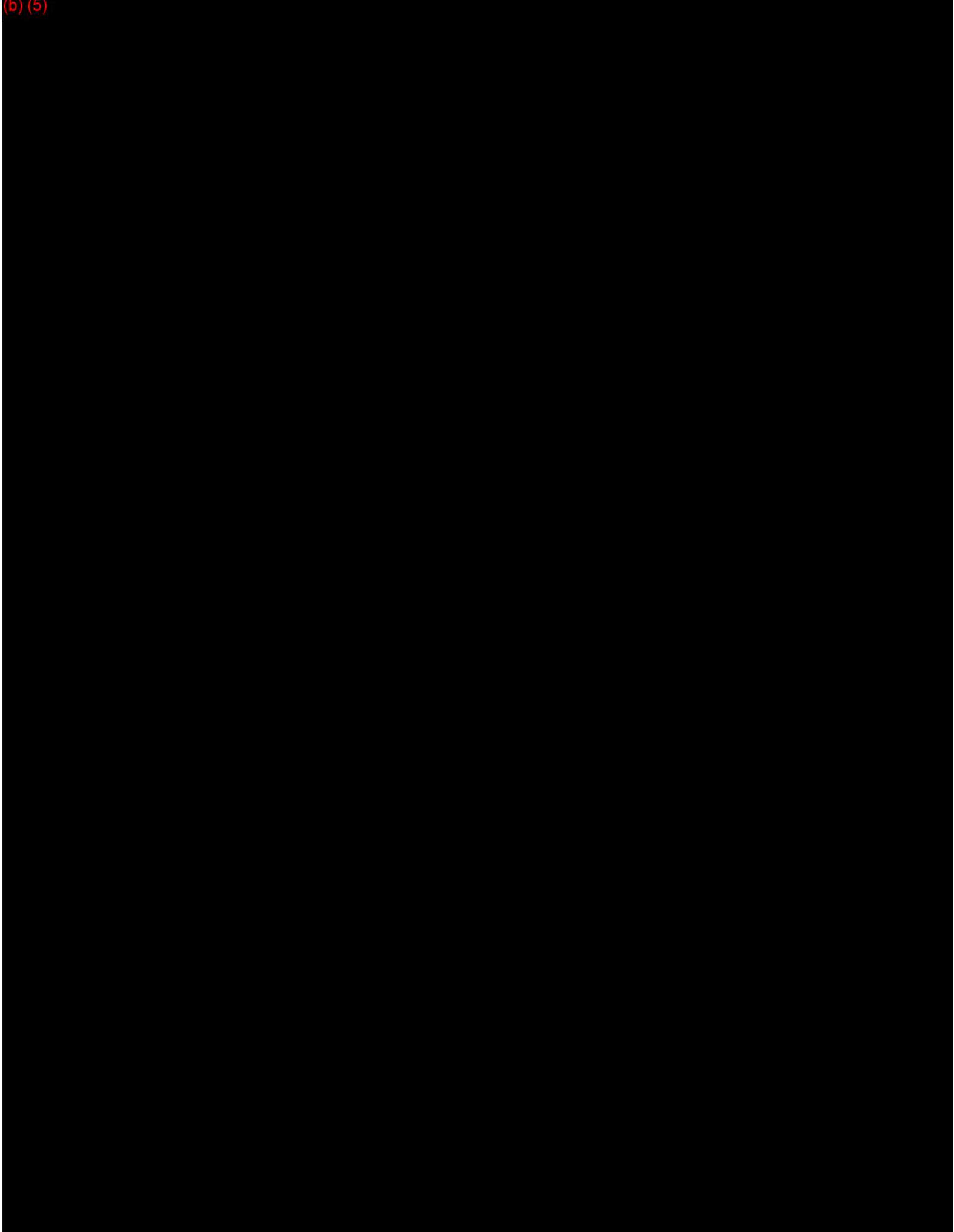
**From:** Reid, Chipp (OFR) <creid@gpo.gov>  
**Sent:** Friday, June 15, 2018 3:39 PM  
**To:** Sun, Howard C. EOP/CEQ <(b) (6)>  
**Subject:** FR 2018-13246\_1644312 (2).docx

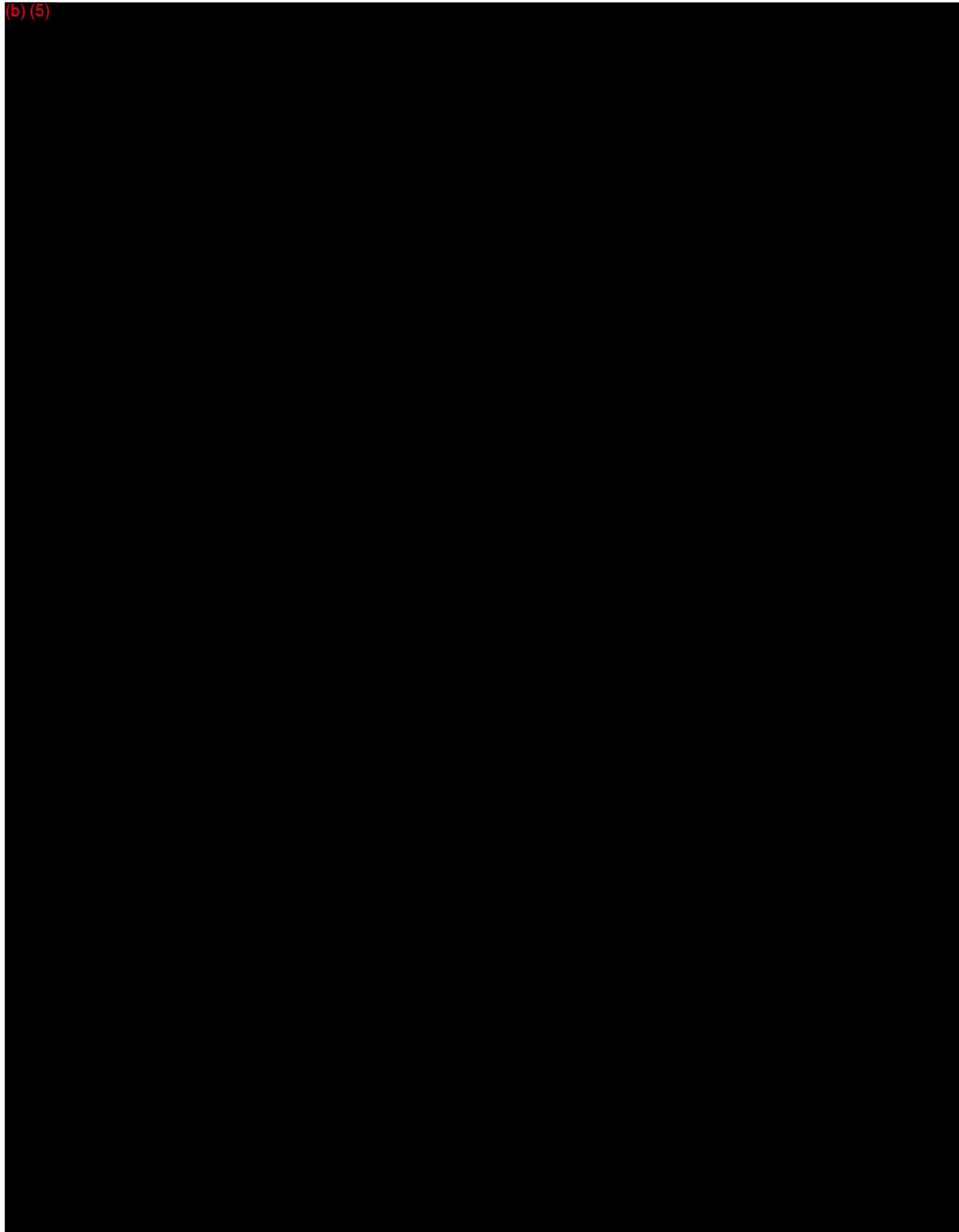
Howard

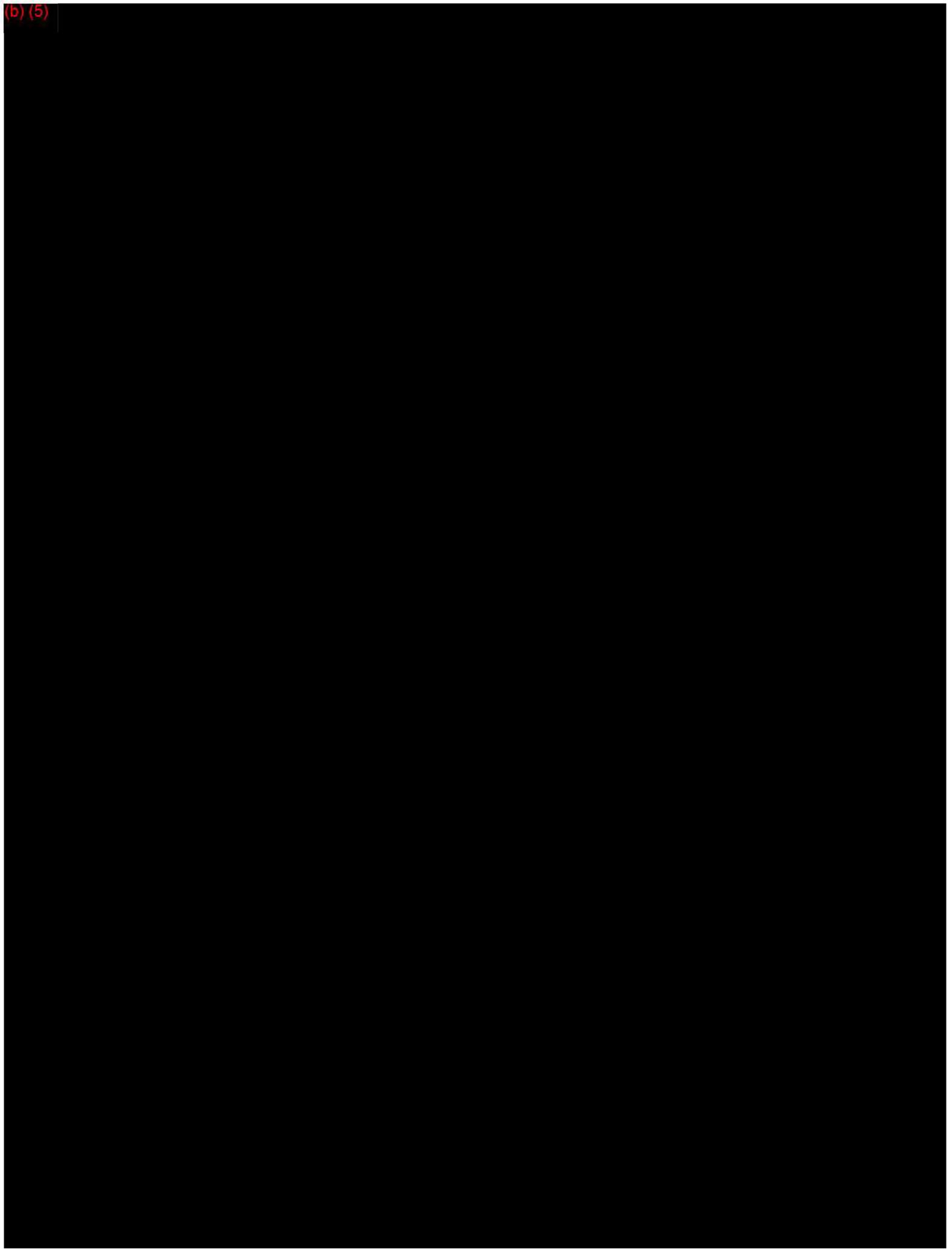
Attached is the new markup. If all looks good, please shoot me an email to that effect and I will schedule.

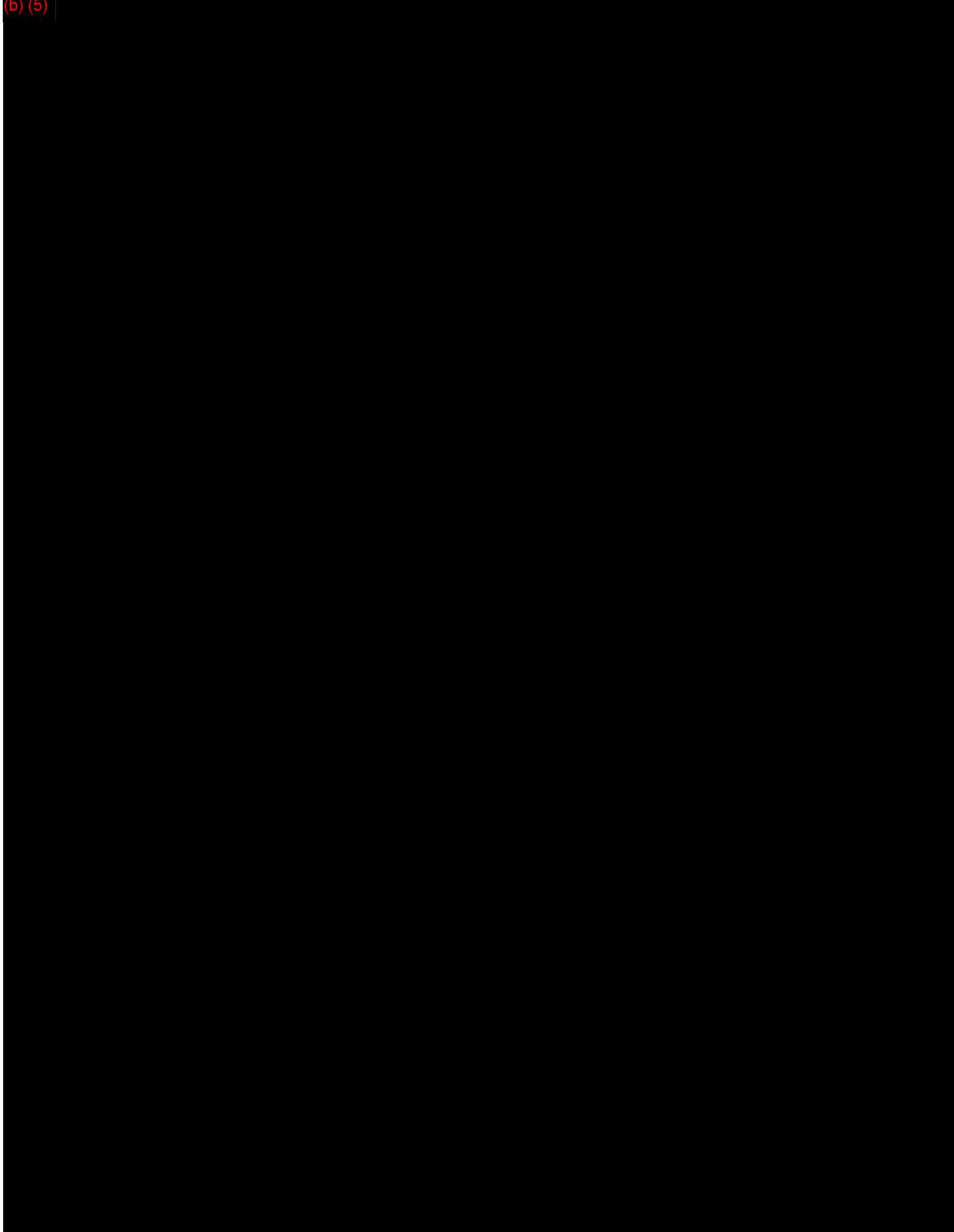
Chipp Reid  
Writer/Editor  
Office of the Federal Register  
[creid@gpo.gov](mailto:creid@gpo.gov)  
[chipp.reid@nara.gov](mailto:chipp.reid@nara.gov)  
202-741-6007

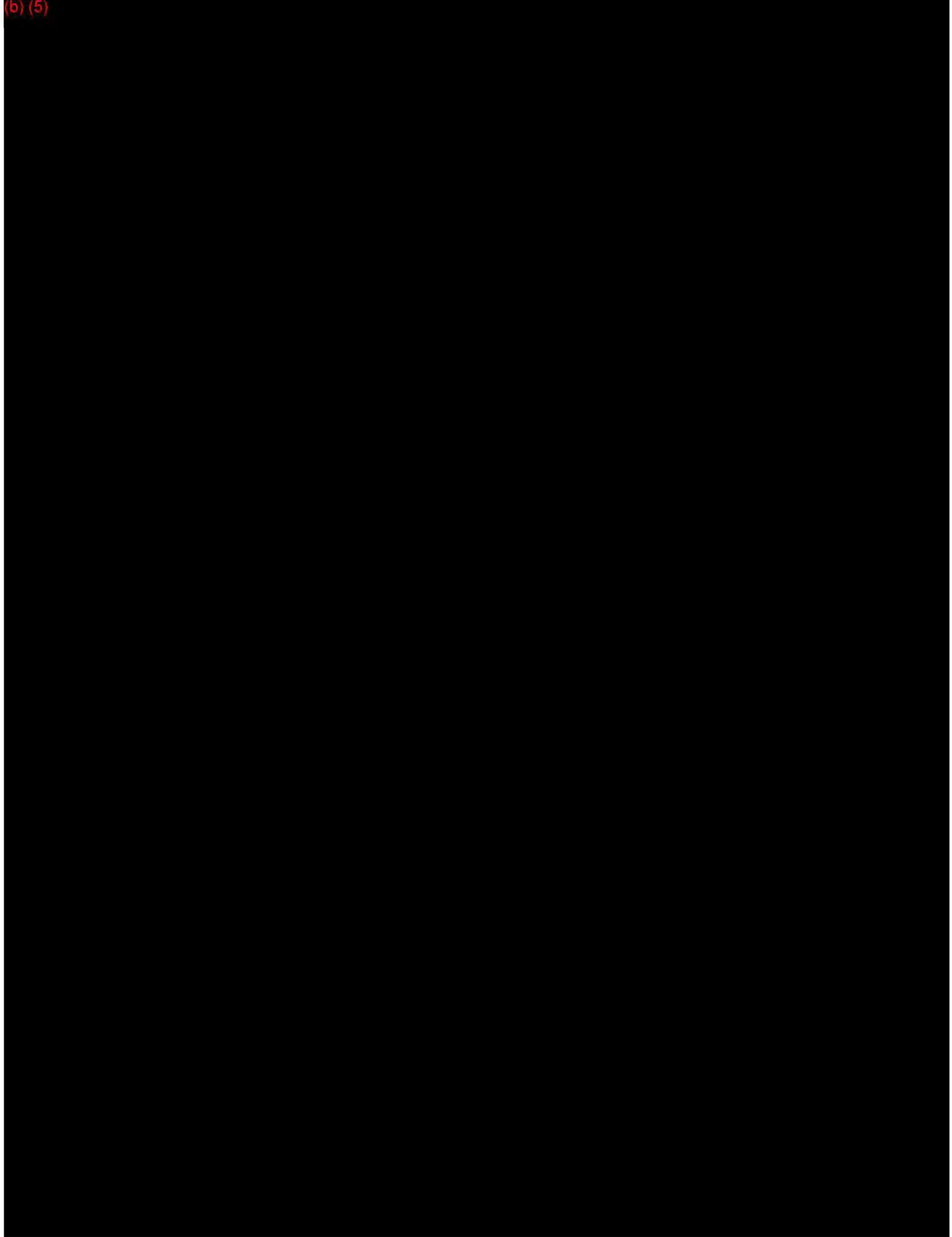


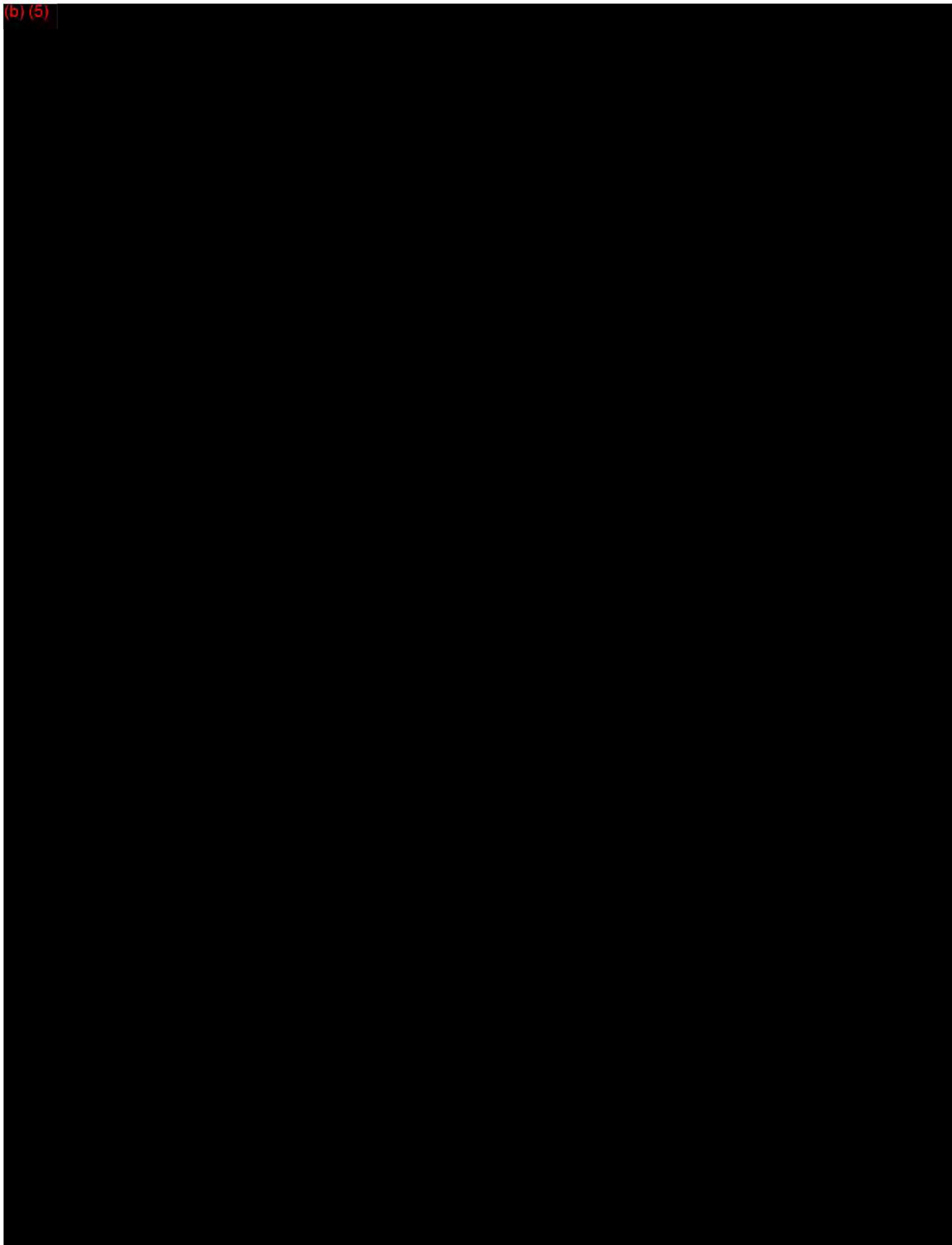












## Edits to proposed rule on NEPA review

---

**From:** "Reid, Chipp (OFR)" <creid@gpo.gov>

**To:** "Sun, Howard C. EOP/CEQ" <(b) (6)>

**Date:** Fri, 15 Jun 2018 12:22:47 -0400

**Attachments:** FR 2018-13246\_1644312.docx (49.86 kB)

---

(b) (5)

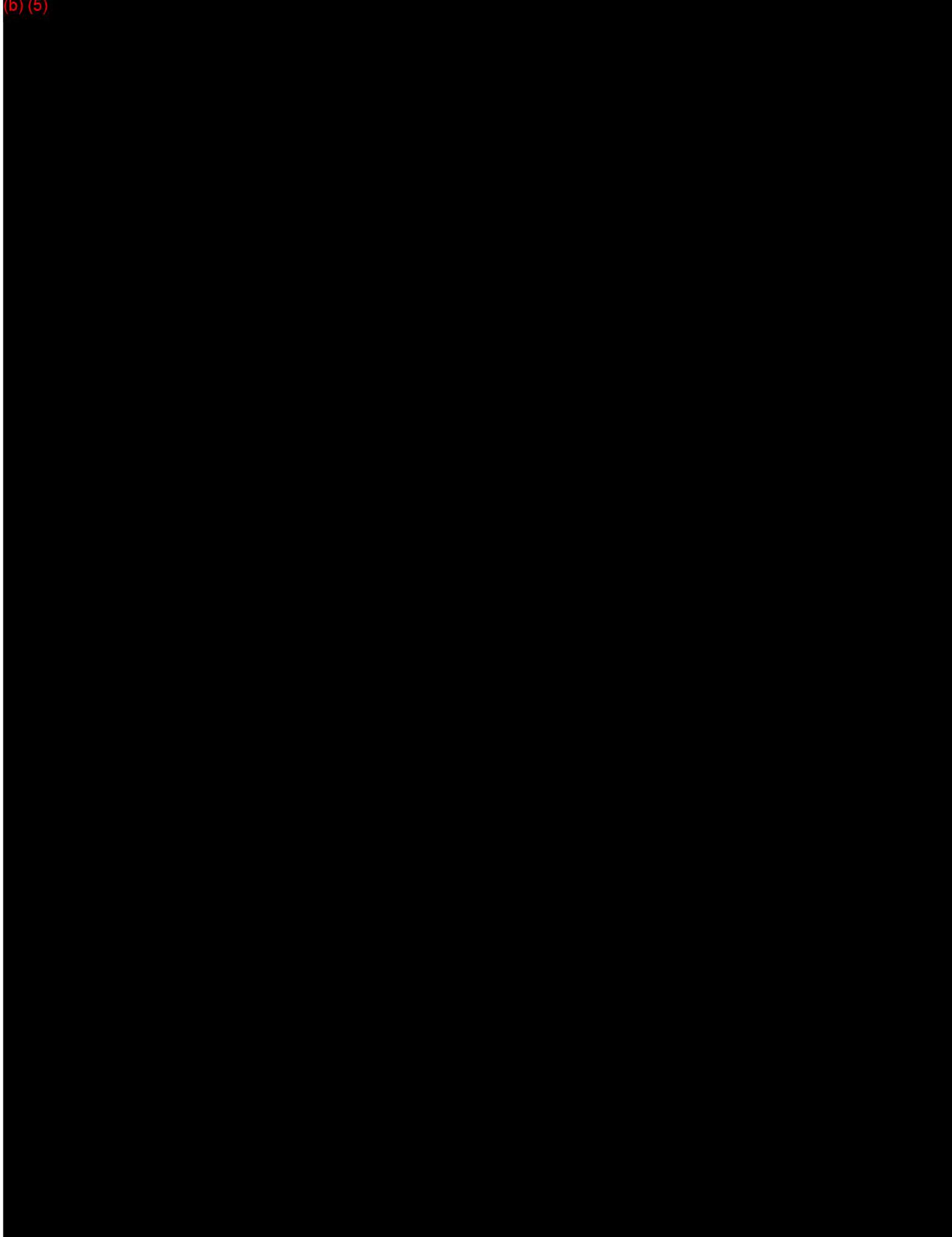
Please see the Document Drafting Handbook, page 2-15, which states:

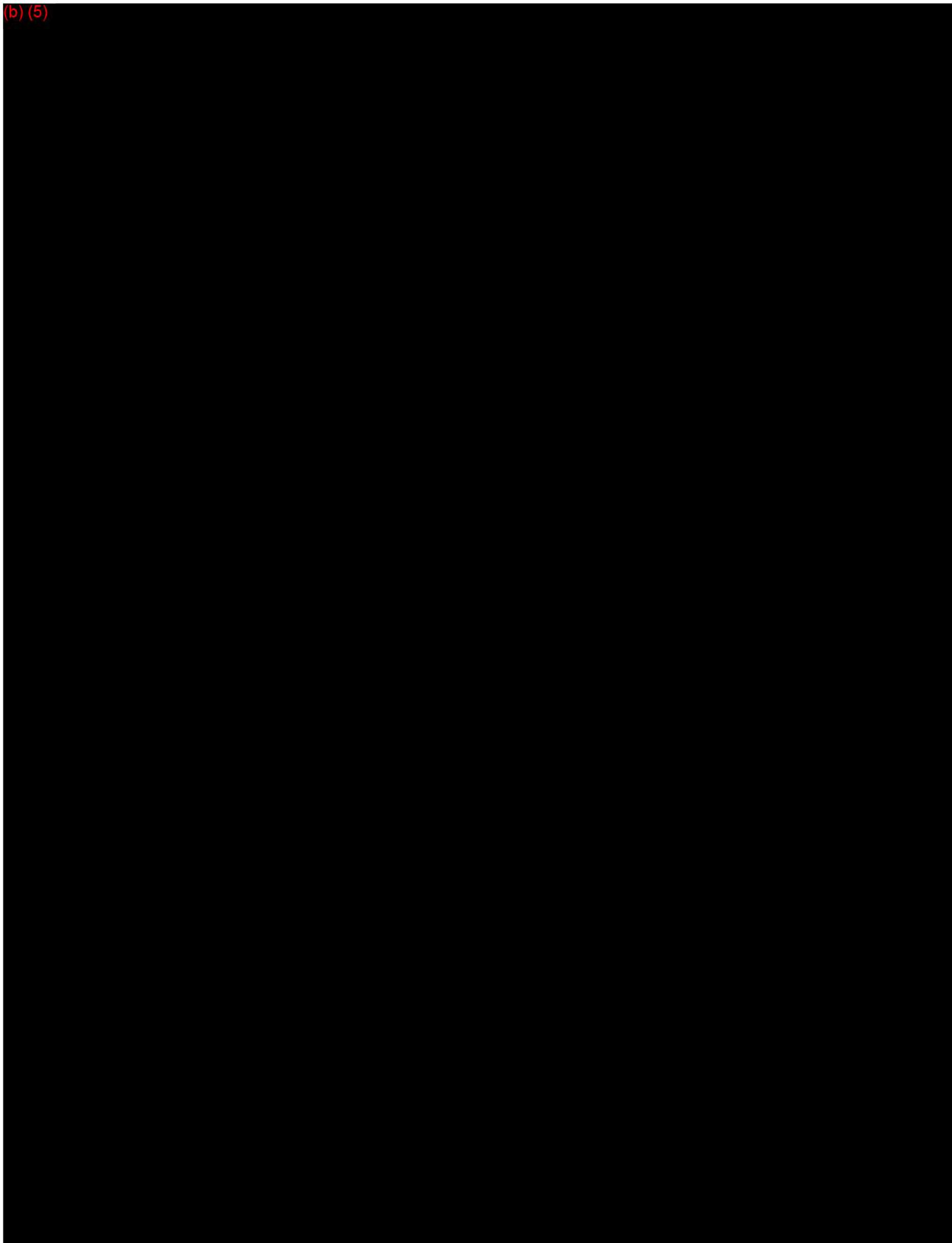
2.6 When can I use direct quotes? The OFR does not allow lengthy or excessive quotation from Federal regulations or Federal law. This includes text from regulatory documents published in the Federal Register. However, if your agency has a compelling legal reason to extensively quote this type of material, contact OFR's Legal Affairs and Policy Division (fedreg.legal@nara.gov) before you submit your document for publication.

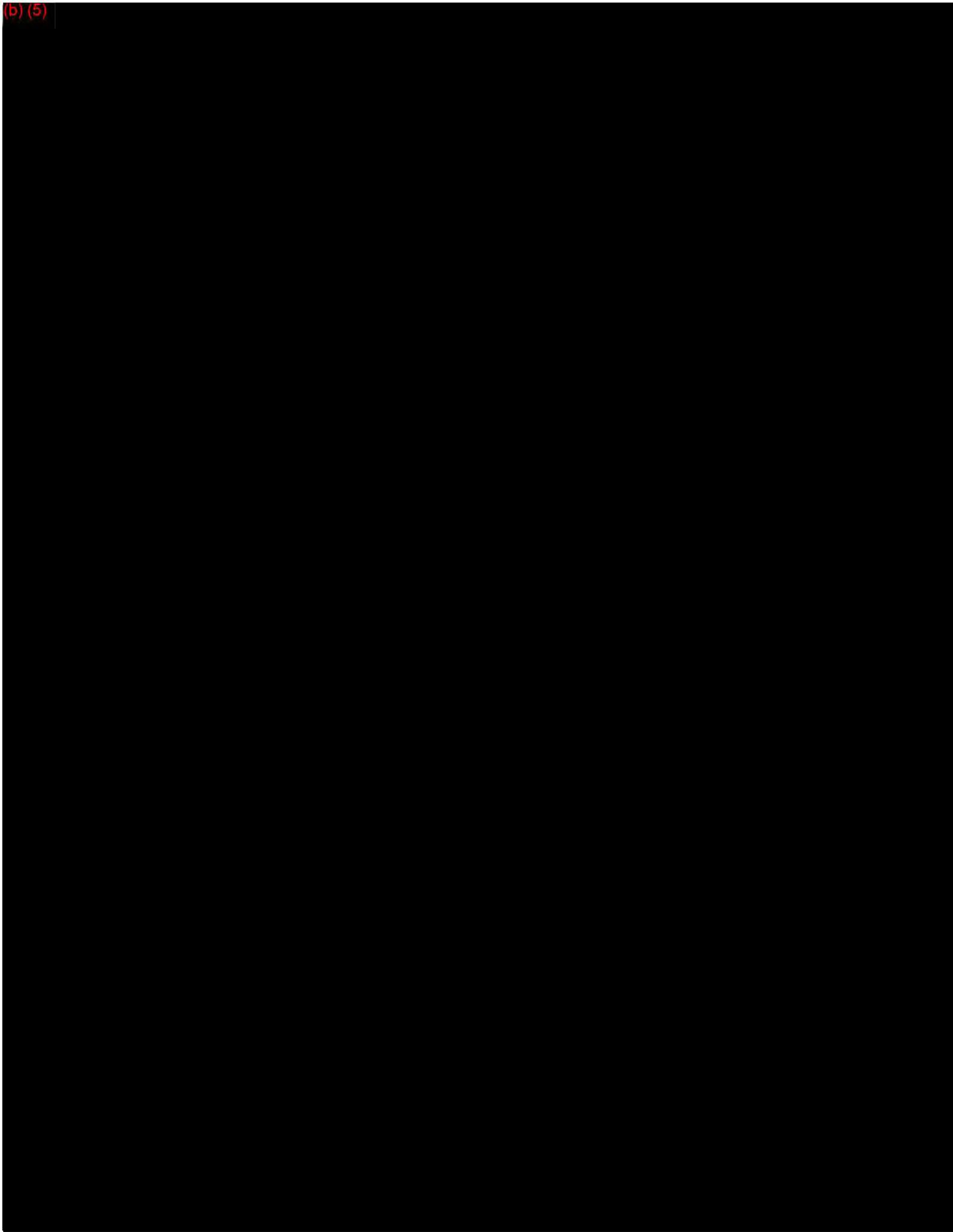
(b) (5)

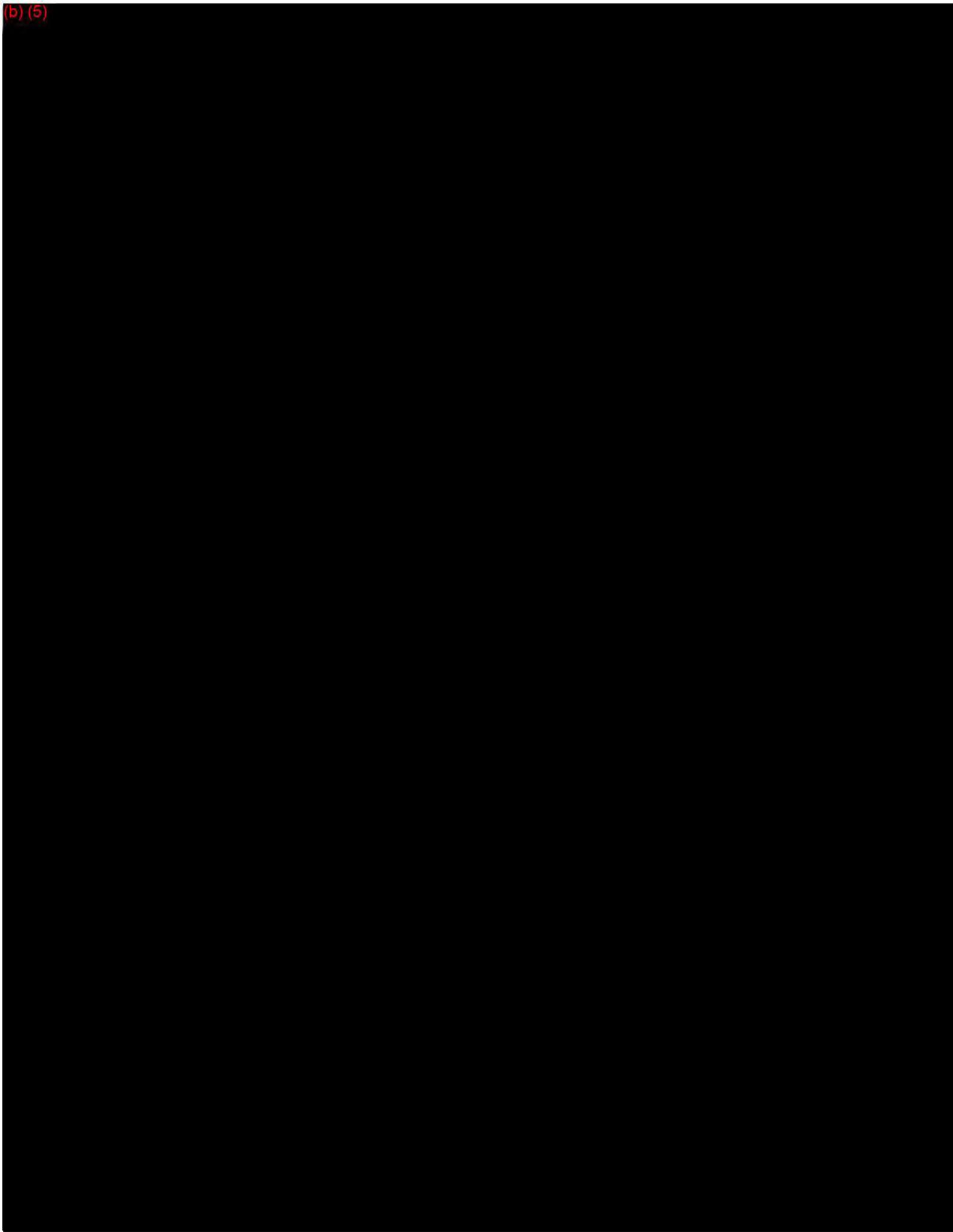
Please let me know if you have any questions.

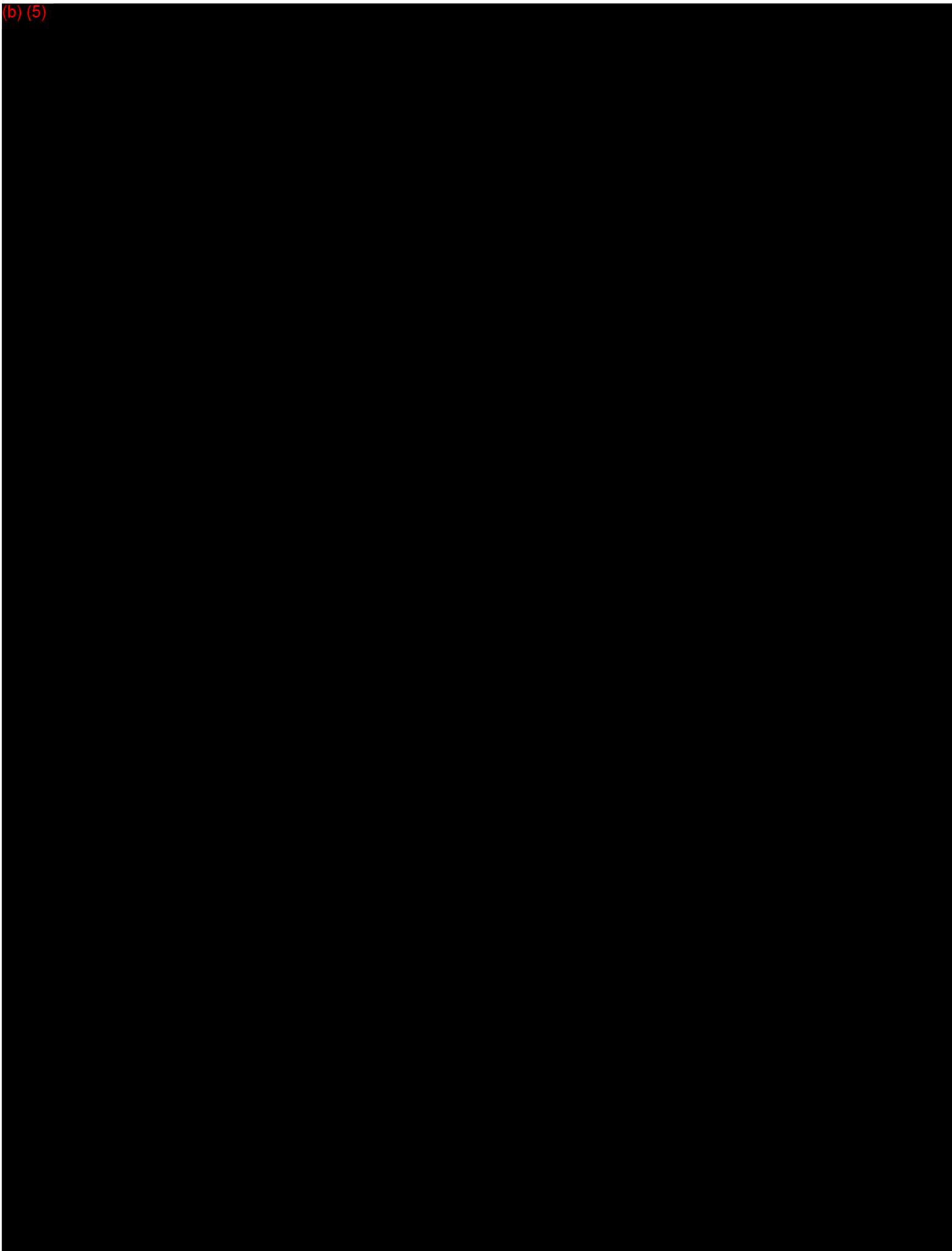
Chipp Reid  
Writer/Editor  
Office of the Federal Register  
[creid@gpo.gov](mailto:creid@gpo.gov)  
[chipp.reid@nara.gov](mailto:chipp.reid@nara.gov)  
202-741-6007

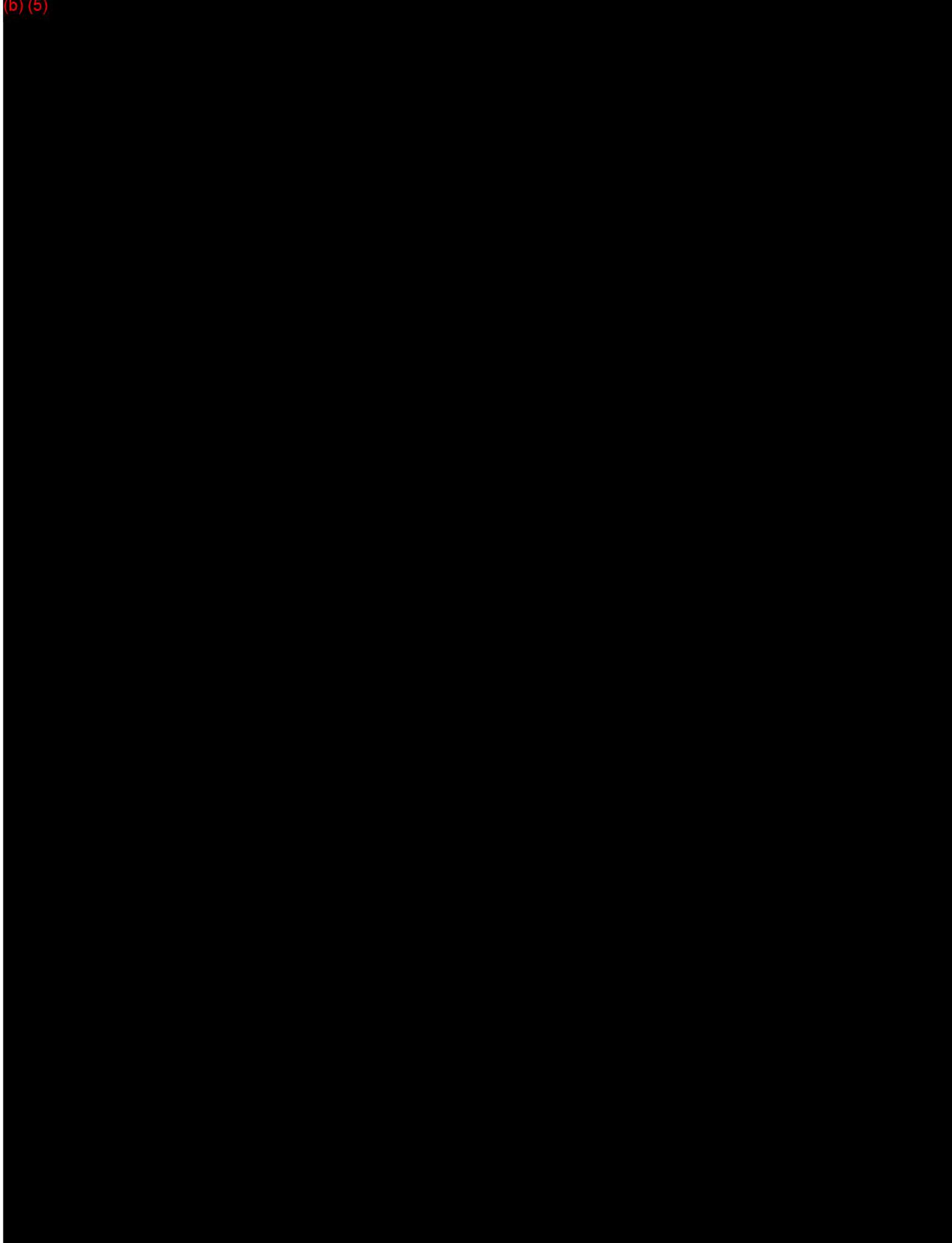


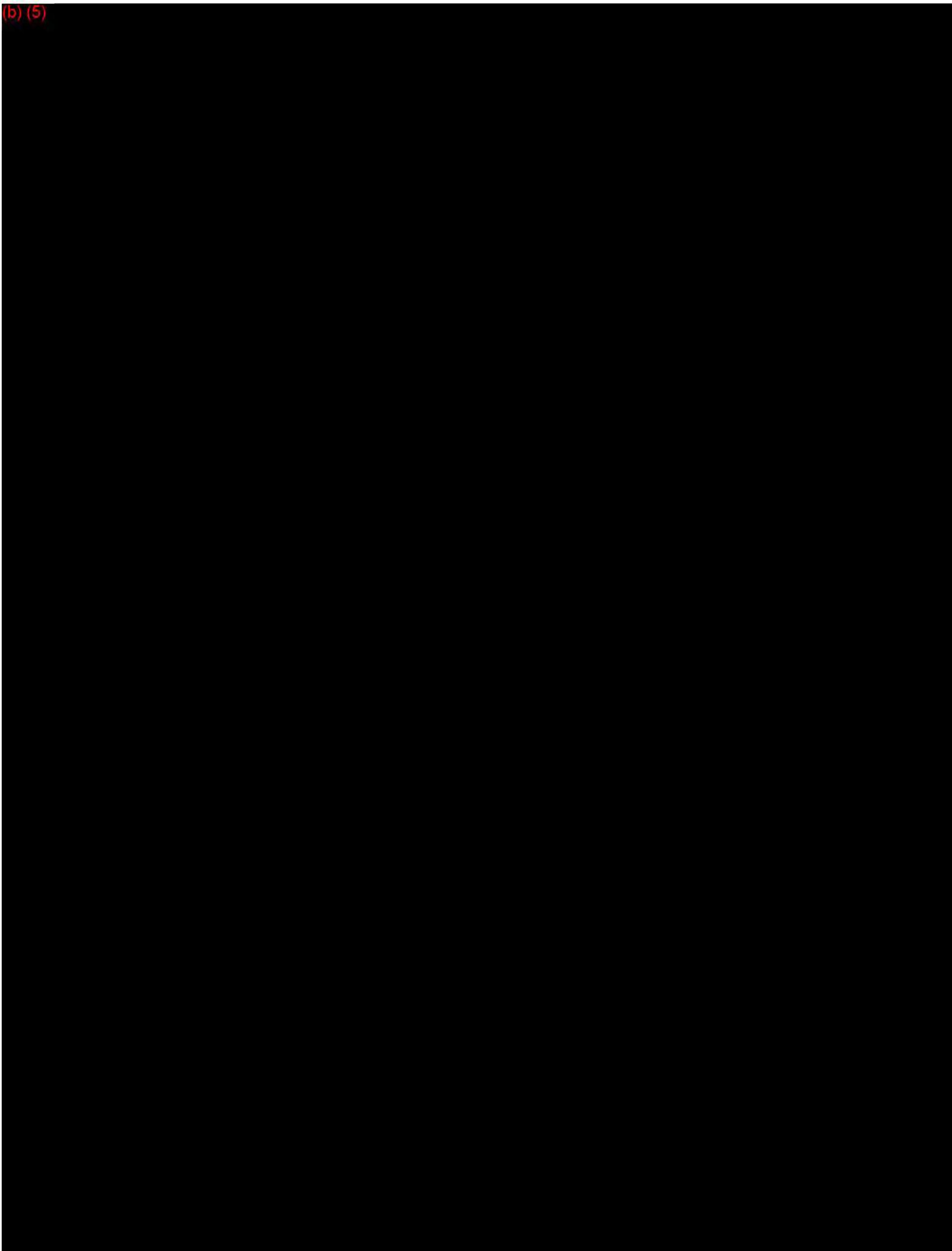


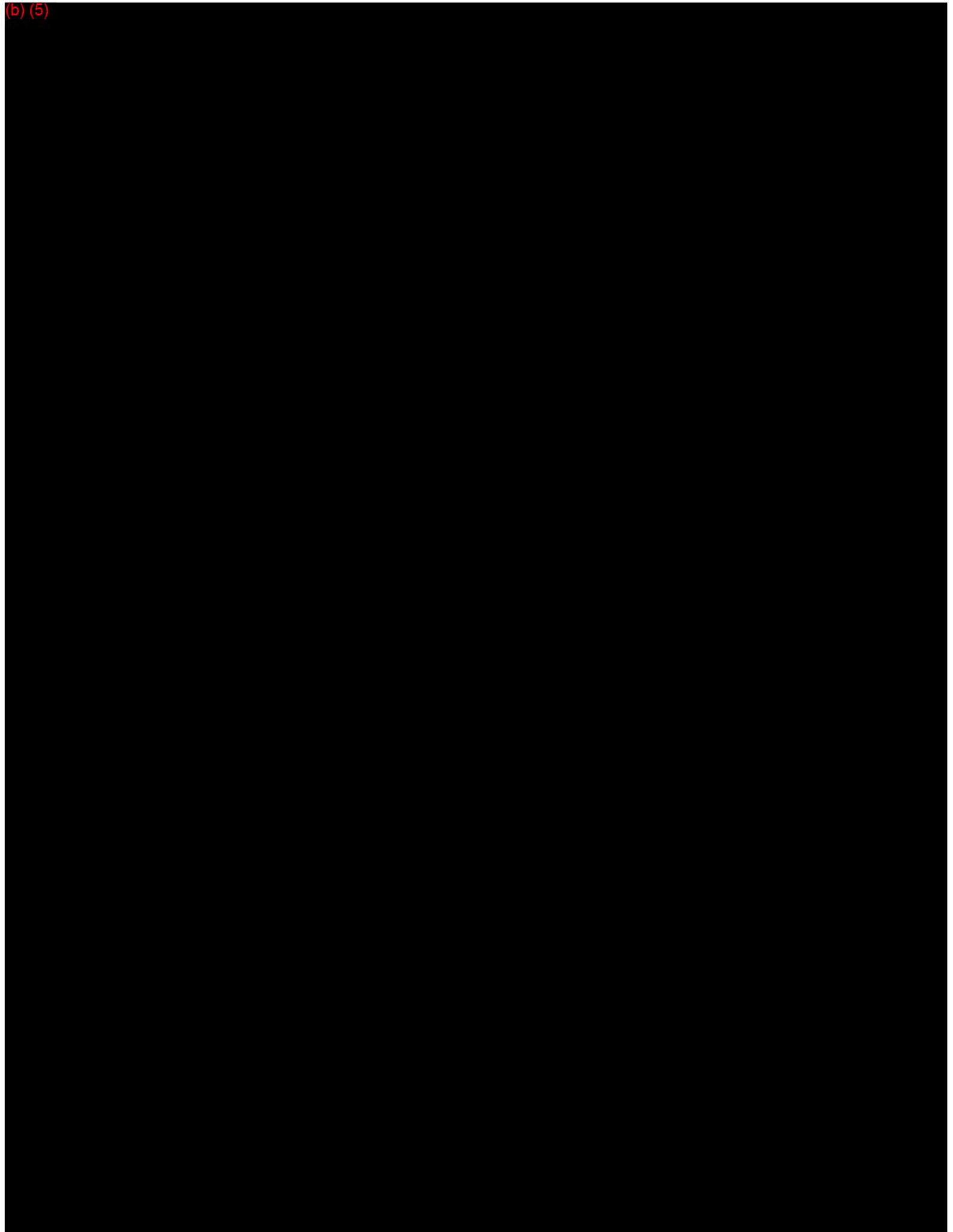












## Re: FW: Edits to proposed rule on NEPA review

---

**From:** Miriam Vincent <miriam.vincent@nara.gov>

**To:** "Seale, Viktoria Z. EOP/CEQ" <(b) (6)>

**Cc:** fedreg.legal@nara.gov

**Date:** Mon, 18 Jun 2018 07:51:13 -0400

Viktoria,

At the moment, I don't have a lot of meeting scheduled for the next 2 weeks. I can't do this Thursday, next Monday, or next Friday, but I still have time this morning between 9:30 and noon. Or, I'm available to set something up during one the following times:

6/19 09:30-12:00  
6/20 09:30-12:00  
6/22 09:30-15:00  
6/26 09:30-15:00  
6/27 09:30-15:00  
6/28 09:30-15:00

Let me know what works best for you.

**Miriam**

**Miriam Vincent**  
Staff Attorney, Legal Affairs and Policy Division  
Office of the Federal Register  
National Archives and Records Administration  
(o)202.741.6024 (c) (b) (6)

On Fri, Jun 15, 2018 at 3:22 PM, Seale, Viktoria Z. EOP/CEQ <(b) (6)> wrote:

Miriam,

Per my email to Chipp, we did decide to remove the quotes entirely.

I would like to take you up on your offer to talk generally.

Please let me know if you are available for a call in the next two weeks.

Thank you,

Viktoria

**From:** Miriam Vincent <[miriam.vincent@nara.gov](mailto:miriam.vincent@nara.gov)>

**Sent:** Friday, June 15, 2018 2:42 PM

**To:** Seale, Viktoria Z. EOP/CEQ <(b) (6)>

**Cc:** [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov)

**Subject:** Re: FW: Edits to proposed rule on NEPA review

Viktoria,

Yes, eliminating the quotations is certainly one of your options. If you want to do that, you can have Howard send the edited document back to Chipp and we don't need to do anything else. If you want to remove the quotations and then discuss options for future documents, we're happy to set up a call and talk generally, even if you don't have a specific document drafted. Just let us know what will work best for you.

Miriam

Miriam Vincent

Staff Attorney, Legal Affairs and Policy Division

Office of the Federal Register

National Archives and Records Administration

(o)202.741.6024 (b) (6)

On Fri, Jun 15, 2018 at 2:38 PM, Seale, Viktoria Z. EOP/CEQ <(b) (6)> wrote:

Miriam,

We are now considering eliminating the quotes entirely. Will that address your concerns?

Viktoria

Viktorija Z. Seale

General Counsel

Executive Office of the President

Council on Environmental Quality

(b) (6) (direct)

(b) (6) (cell)

**From:** Miriam Vincent <[miriam.vincent@nara.gov](mailto:miriam.vincent@nara.gov)>

**Sent:** Friday, June 15, 2018 2:29 PM

**To:** Seale, Viktorija Z. EOP/CEQ <(b) (6)>

**Cc:** [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov); [ofr-legal@gpo.gov](mailto:ofr-legal@gpo.gov)

**Subject:** Re: FW: Edits to proposed rule on NEPA review

Viktorija,

While we understand that this document (like many documents we receive) has gone through the OIRA inter-agency review process, that process does not into account *Federal Register* publication requirements.

Since the EOs inform your rulemaking process, we agree that they should be acknowledged as part of your authority, but you haven't shown, in either the document or your email, why you need the full text, verbatim, from the EOs instead of the citation.

We allow quotations where the agency has added value to the quotation - addressing the specific language used, contrasting with other relevant language, showing how the specific language directed or led to specific agency action.

I've added comments with our concerns and questions. We can talk about those issues and discuss ways that you can modify the document and how to request a formal deviation if you feel you can't modify the document.

I have a flexible schedule on Monday, so can be available (with a little notice) anytime between 9:30 and 3:30. I'm finishing up for the day shortly, but I'll be starting early enough on Monday that I can be ready for a 9:30 meeting if you send a meeting request after I log off this afternoon.

Miriam

Miriam Vincent

Staff Attorney, Legal Affairs and Policy Division

Office of the Federal Register

National Archives and Records Administration

(o)202.741.6024 (b) (6)

On Fri, Jun 15, 2018 at 1:16 PM, Seale, Viktoria Z. EOP/CEQ <(b) (6)> wrote:

Dear Sir or Madam,

I am writing with regards to an Advance Notice of Proposed Rulemaking that the Council on Environmental Quality (CEQ) has submitted to the Federal Register for publication. We have been notified by OFR that we cannot use certain quotes in the preamble to the rule. See email exchange below and attached document.

However, CEQ believes it is necessary to include the quotes from the two Executive Orders as they provide the direction to CEQ to promulgate regulations implementing the National Environmental Policy Act. In addition, this notice has gone through OIRA's interagency review process which included multiple agencies and has been agreed to.

I am available to discuss this matter at your earliest convenience and can be reached at (b) (6) (direct) or (b) (6) (cell).

Sincerely,

Viktoria

**Viktoria Z. Seale**

**General Counsel**

**Executive Office of the President**

**Council on Environmental Quality**

(b) (6) (direct)

(b) (6) (cell)

---

**From:** Sun, Howard C. EOP/CEQ  
**Sent:** Friday, June 15, 2018 12:24 PM  
**To:** Schneider, Daniel J. EOP/CEQ <(b) (6)> Neumayr, Mary B. EOP/CEQ  
<(b) (6)> Szabo, Aaron L. EOP/CEQ <(b) (6)> Scale,  
Viktoria Z. EOP/CEQ <(b) (6)>  
**Subject:** FW: Edits to proposed rule on NEPA review

---

**From:** Reid, Chipp (OFR) <[creid@gpo.gov](mailto:creid@gpo.gov)>  
**Sent:** Friday, June 15, 2018 12:23 PM  
**To:** Sun, Howard C. EOP/CEQ <(b) (6)>  
**Subject:** Edits to proposed rule on NEPA review

Attached are edits to your proposed rule on the NEPA review. You cannot use the lengthy direct quotes from EOs you have in the Preamble. Please see the Document Drafting Handbook, page 2-15, which states:

2.6 When can I use direct quotes? The OFR does not allow lengthy or excessive quotation from Federal regulations or Federal law. This includes text from regulatory documents published in the Federal Register. However, if your agency has a compelling legal reason to extensively quote this type of material, contact OFR's Legal Affairs and Policy Division ([fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov)) before you submit your document for publication.

You will need to re-write the sections I highlighted and paraphrase ALL of the legal text – change or insert a couple of words, etc., and change the formatting so it does NOT mimic a legal document.

Please let me know if you have any questions.

Chipp Reid  
Writer/Editor  
Office of the Federal Register  
[creid@gpo.gov](mailto:creid@gpo.gov)  
[chipp.reid@nara.gov](mailto:chipp.reid@nara.gov)  
202-741-6007

--

Legal Affairs and Policy Staff  
Office of the Federal Register  
National Archives and Records Administration

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--

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Office of the Federal Register  
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For more options, visit <https://groups.google.com/a/nara.gov/d/optout>.

## Advance Notice of Proposed Rulemaking

---

**From** "Seale, Viktoria Z. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=af5f6888d706481b94d18088a30821c9-se">

"Neumayr, Mary B. EOP/CEQ" <(b) (6)> "Szabo, Aaron L. EOP/CEQ" <(b) (6)> "Boling, Ted A. EOP/CEQ" <(b) (6)> "Drummond, Michael R. EOP/CEQ" <(b) (6)> "Smith, Katherine R. EOP/CEQ" <(b) (6)> "Pettigrew, Theresa L. EOP/CEQ" <(b) (6)> "Schneider, Daniel J. EOP/CEQ" <(b) (6)>

**Cc:** "Sun, Howard C. EOP/CEQ" <(b) (6)>

**Date:** Tue, 19 Jun 2018 09:10:30 -0400

---

The Advance Notice of Proposed Rulemaking is available on the public inspection desk at <https://www.federalregister.gov/documents/2018/06/20/2018-13246/implementation-of-the-procedural-provisions-of-the-national-environmental-policy-act>. It will be published in tomorrow's Federal Register, June 20.

**Viktoria Z. Seale**  
**General Counsel**  
**Executive Office of the President**  
**Council on Environmental Quality**

(b) (6) (direct)

(b) (6) (cell)

## Re: Federal NEPA Contacts Webinar

---

**From:** Victor Bullen <vbullen@usaid.gov>

**To:** FN-CEQ-NEPA <(b) (6)>

**Date:** Wed, 20 Jun 2018 15:40:35 -0400

---

One federal decision? what does this mean?  
CE Catalog  
Appendix 2 of NEPA process  
List of training providers, searchable  
NEPA.gov website updates  
Federal NEPA Contacts website, keeping it current  
Michael Drummand/Cat Ex guidance

Victor Bullen  
Agency Environmental Coordinator & Multilateral Development Bank (MDB) Team Lead  
Bureau for Economic Growth, Education and Environment (E3)  
Ronald Reagan Building, Washington, D.C.  
Room 3.08-088 [vbullen@usaid.gov](mailto:vbullen@usaid.gov) | [1.202.712.4634](tel:12027124634)

General inquiries: [E3MDBTeam@usaid.gov](mailto:E3MDBTeam@usaid.gov)  
Legal mandates [Title XIII](#) and [Public Law 113-235](#)  
Project reviews and reports to Congress: [Public repository](#)



On Wed, Jun 20, 2018 at 12:55 PM, FN-CEQ-NEPA <(b) (6)> wrote:

---

Federal NEPA Contacts,

Apologies for an additional email, but there were some indications that yesterday's calendar invite update was not received by all, so its contents are being resent in this email. See you all online at 3:00pm (EDT).

In advance of today's webinar, we have updated the tele-conference participant code (correct code is (b) (6)). Pleased find attached 1) a meeting agenda for tomorrow's webinar, 2) a slide deck for those unable to join the webinar, 3) instructions for joining the webinar, 4) the pre-publication version of the Advance Notice of Proposed Rulemaking for the CEQ NEPA Regulations, and 5) a Report from the Federal Forum on Environmental Collaboration and Conflict Resolution.

---

Lastly, please take a moment to review your agency's NEPA Contact listed here:  
<https://ceq.doe.gov/docs/nepa-practice/2018-Federal-NEPA-contacts-and-websites-2018-06-15.pdf>  
and provide any necessary updates via email to (b) (6)

Sincerely,

The CEQ NEPA Team

\*\*\*\*\*

CEQ will host the Summer Meeting of the Federal NEPA Contacts via webinar on Wednesday, June 20 from 3:00pm – 4:30pm EDT.

Conference number and webinar URL are provided below. An agenda will be provided in advance of the meeting along with a PDF of the webinar slides for those unable to join the webinar.

Audio Conference Details:

Conference Number (Toll Free): (b) (6)

Participant Code: (b) (6)

To join the meeting:

(b) (6)

-----

If you have never attended an Adobe Connect meeting before:

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Get a quick overview: <http://www.adobe.com/products/adobeconnect.html>

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## Re: Federal NEPA Contacts Webinar

---

**From:** "Drummond, Michael R. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlf)/cn=recipients/cn=a0bc62c0a5454e6fb7a1be504b7d284a-dr">  
**To:** "Upchurch, Sara" <sara.upchurch@fema.dhs.gov>  
**Date:** Thu, 21 Jun 2018 17:23:22 -0400

---

It's in the other slide deck

Michael Drummond  
Deputy Associate Director for NEPA  
Council on Environmental Quality  
(b) (6)

On Jun 21, 2018, at 5:20 PM, Upchurch, Sara <[sara.upchurch@fema.dhs.gov](mailto:sara.upchurch@fema.dhs.gov)> wrote:

---

Hi - Did we get the EJ slide deck?

Sara Upchurch, AICP  
Office of Environmental Planning and Historic Preservation (OEHP)  
Unified Federal Review (UFR)  
Liaison to Council on Environmental Quality (CEQ)  
FIMA/FEMA/DHS  
400 C Street SW  
Washington, DC 20472-3020  
202-709-1092 (c)  
[sara.upchurch@fema.dhs.gov](mailto:sara.upchurch@fema.dhs.gov)

---

**From:** "FN-CEQ-NEPA" <(b) (6)>  
**Date:** Wednesday, June 20, 2018 at 12:57:00 PM  
**To:** "FN-CEQ-NEPA" <(b) (6)>  
**Cc:** "Boling, Ted A. EOP/CEQ" <(b) (6)> "Drummond, Michael R. EOP/CEQ" <(b) (6)> "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
**Subject:** Federal NEPA Contacts Webinar

Federal NEPA Contacts,

Apologies for an additional email, but there were some indications that yesterday's calendar invite update was not received by all, so its contents are being resent in this email. See you all online at 3:00pm (EDT).

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version of the Advance Notice of Proposed Rulemaking for the CEQ NEPA Regulations, and 5) a Report from the Federal Forum on Environmental Collaboration and Conflict Resolution.

Lastly, please take a moment to review your agency's NEPA Contact listed here: <https://ceq.doe.gov/docs/nepa-practice/2018-Federal-NEPA-contacts-and-websites-2018-06-15.pdf> and provide any necessary updates via email to (b) (6)

Sincerely,

The CEQ NEPA Team

\*\*\*\*\*

CEQ will host the Summer Meeting of the Federal NEPA Contacts via webinar on Wednesday, June 20 from 3:00pm – 4:30pm EDT.

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Audio Conference Details:

Conference Number (Toll Free): (b) (6)

Participant Code: (b) (6)

To join the meeting:

(b) (6)

-----  
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Get a quick overview: <http://www.adobe.com/products/adobeconnect.html>

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## RE: 6/27 meeting request - CEO of EDF Renewables

---

**From:** "Drummond, Michael R. EOP/CEQ" </o=exchange organization/ou=exchange administrative group : (fydibohf23spdlt)/cn=recipients/cn=a0bc62c0a5454e6fb7a1be504b7d284a-dr">  
**To:** elizabeth.moeller@pillsburylaw.com  
**Date:** Mon, 25 Jun 2018 18:14:33 -0400

Elizabeth,

Your meeting request was forwarded to me by Mary Green. I'd be happy to meet with you and Tristan on Wednesday at 11:30am. I'll be joined by my colleague Aaron Szabo, our Senior Counsel. Aaron and I are interested to hear EDF Renewables' experience with the NEPA process. I'll send a calendar invite momentarily.

I will put this meeting on our Chief of Staff Mary Neumayr's calendar as well, though she has a very busy day on Wednesday.

I look forward to meeting you in person on Wednesday.

Best,

Michael Drummond  
Deputy Associate Director for NEPA

(b) (6)

**From:** Moeller, Elizabeth V. <elizabeth.moeller@pillsburylaw.com>  
**Sent:** Thursday, June 21, 2018 4:33 PM  
**To:** Green, Mary A. EOP/CEQ <(b) (6)>  
**Subject:** [EXTERNAL] 6/27 meeting request - CEO of EDF Renewables

Dear Ms. Green,

Thank you for your time yesterday – just before we saw the release of the Advance Notice of Proposed Rulemaking on NEPA!

I am following up on behalf of EDF Renewables which is a market leading independent power producer and service provider in the U.S. with projects throughout the United States and headquarters in San Diego.

EDF Renewables' President and CEO, [Tristan Grimbert](#), will be in DC on Wednesday, June 26<sup>th</sup> and is hoping that leaders at CEQ will have time for a short visit to discuss NEPA and national energy and environmental policy.

Would a short visit on Wednesday, June 27<sup>th</sup> at, perhaps at 11:30 be convenient for schedules?

EDF Renewables delivers grid-scale power: wind (onshore and offshore), solar photovoltaic, and storage projects; distributed solutions: solar, solar+storage, EV charging and energy management; and asset optimization: technical,

operational, and commercial skills to maximize performance of generating projects. EDF Renewables' North American portfolio consists of 10 GW of developed projects and 10 GW under service contracts.

Please let me know if you need any additional information. Many thanks in advance.

Kind regards,  
Elizabeth

**Elizabeth Vella Moeller** | Partner | Public Policy Group Leader  
Pillsbury Winthrop Shaw Pittman LLP  
1200 Seventeenth Street NW | Washington, DC 20036-3006  
t 202.663.9159 | f 202.663.8007 | m (b) (6)  
[elizabeth.moeller@pillsburylaw.com](mailto:elizabeth.moeller@pillsburylaw.com) | [website bio](#)

ABU DHABI AUSTIN BEIJING DUBAI HONG KONG HOUSTON LONDON  
LOS ANGELES MIAMI NASHVILLE NEW YORK NORTHERN VIRGINIA  
PALM BEACH SACRAMENTO SAN DIEGO SAN DIEGO NORTH COUNTY  
SAN FRANCISCO SHANGHAI SILICON VALLEY TOKYO WASHINGTON, DC



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## FW: 6/27 meeting request - CEO of EDF Renewables

---

**From:** "Drummond, Michael R. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlit)/cn=recipients/cn=a0bc62c0a5454e6fb7a1be504b7d284a-dr">  
**To:** "Szabo, Aaron L. EOP/CEQ" <(b) (6)>  
**Date:** Mon, 25 Jun 2018 18:07:12 -0400  
**Attachments**  
: Palen Profile 11-2017 v5.pdf (356.04 kB); 10102017\_Final Report.pdf (137.58 kB)

Aaron,

Want to take this meeting with me, 11:30am on Wednesday? I spoke with Mary about it and that was her suggestion. She may attend too if she's available.

Thanks,

Michael

**From:** Moeller, Elizabeth V. <elizabeth.moeller@pillsburylaw.com>  
**Sent:** Thursday, June 21, 2018 4:33 PM  
**To:** Green, Mary A. EOP/CEQ <(b) (6)>  
**Subject:** [EXTERNAL] 6/27 meeting request - CEO of EDF Renewables

Dear Ms. Green,

Thank you for your time yesterday – just before we saw the release of the Advance Notice of Proposed Rulemaking on NEPA!

I am following up on behalf of EDF Renewables which is a market leading independent power producer and service provider in the U.S. with projects throughout the United States and headquarters in San Diego.

EDF Renewables' President and CEO, [Tristan Grimbert](#), will be in DC on Wednesday, June 26<sup>th</sup> and is hoping that leaders at CEQ will have time for a short visit to discuss NEPA and national energy and environmental policy. Would a short visit on Wednesday, June 27<sup>th</sup> at, perhaps at 11:30 be convenient for schedules?

EDF Renewables delivers grid-scale power: wind (onshore and offshore), solar photovoltaic, and storage projects; distributed solutions: solar, solar+storage, EV charging and energy management; and asset optimization: technical, operational, and commercial skills to maximize performance of generating projects. EDF Renewables' North American portfolio consists of 10 GW of developed projects and 10 GW under service contracts.

Please let me know if you need any additional information. Many thanks in advance.

Kind regards,  
Elizabeth

**Elizabeth Vella Moeller** | Partner | Public Policy Group Leader  
Pillsbury Winthrop Shaw Pittman LLP  
1200 Seventeenth Street NW | Washington, DC 20036-3006  
t 202.663.9159 | f 202.663.8007 | m (b) (6)  
[elizabeth.moeller@pillsburylaw.com](mailto:elizabeth.moeller@pillsburylaw.com) | [website bio](#)

ABU DHABI AUSTIN BEIJING DUBAI HONG KONG HOUSTON LONDON  
LOS ANGELES MIAMI NASHVILLE NEW YORK NORTHERN VIRGINIA  
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# CEQ Remarks for Portman/McCaskill Roundtable on Federal Permitting Process for Major Infrastructure Projects (June 27, 2018)

---

**From:** "Pettigrew, Theresa L. EOP/CEQ" <(b) (6)>  
**To:** "Drummond, Michael R. EOP/CEQ" (b) (6);  
"Schneider, Daniel J. EOP/CEQ" <(b) (6)>  
**Date:** Mon, 25 Jun 2018 12:36:45 -0400  
**Attachments** 2018-06-27 Portman and McCaskill Roundtable Invitation to Herrgott.pdf (1.75 MB);  
: Herrgott Statement 6.27 Roundtable Senate FINAL\_CLEAN.DOCX (27.19 kB)

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Hi, would y'all please read through the testimony again for any errors. I will too! Also, Michael, the details time/location on the invitation. I think there should be a lot of us going.

I need to get this to the Committee by 2:30 today.

Thanks!  
Theresa

**STATEMENT OF**  
**ALEXANDER HERRGOTT**  
**ASSOCIATE DIRECTOR FOR INFRASTRUCTURE**  
**COUNCIL ON ENVIRONMENTAL QUALITY**  
**BEFORE THE**  
**COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS**  
**UNITED STATES SENATE**

**June 27, 2018**

Senator Portman, Ranking Member McCaskill, and Members of the Committee, thank you for the invitation to this roundtable discussion on the federal permitting process for major infrastructure projects. We appreciate this Committee's willingness to have a meaningful dialogue on this topic as we work toward a shared goal of reducing permitting delays and providing the American people the modernized infrastructure they undoubtedly need.

As many of you know, a major cause of delay has been too many decision makers without effective cross agency communication and coordination. Multiple federal agencies oversee potentially dozens of federal statutes that project sponsors must navigate before beginning construction on a major infrastructure project. Over time, this has created a redundant and often inconsistent federal permitting process. Too often, these processes do not share a single framework or time frame. For example, a highway project could have as many as 10 different federal agencies involved in 16 different permitting decisions, in addition to the state, local, and tribal agencies with separate permitting and approval processes.

The result is a federal permitting process that often takes too long, increases costs, and creates uncertainty. We are actively working to address these challenges while ensuring environmental protection. With process enhancements and a common-sense, harmonized approach among federal agencies, infrastructure projects will move through the environmental review permitting process more efficiently. Federal agency coordination is imperative to long-term process reforms throughout these agencies.

**Executive Order 13807**

On August 15, 2017, President Trump signed Executive Order 13807 implementing a policy of "One Federal Decision." Under One Federal Decision, federal agencies will administer the National Environmental Policy Act (NEPA) so that a single Environmental Impact Statement (EIS) and a single Record of Decision (ROD) are prepared for all reviewing agencies, and all applicable permitting decision processes will be conducted concurrently with the NEPA process to ensure that the necessary permitting decisions can be made within 90 days of the ROD. One Federal Decision also provides that federal agencies will seek to complete the environmental

[APG]

review process within an average of 2 years of the publication of a Notice of Intent to prepare an EIS. As a result of One Federal Decision, the federal environmental review and permitting process will be streamlined, more transparent, and predictable.

One Federal Decision builds on the statutory authorities provided in the Fixing America's Surface Transportation Act (FAST Act) to streamline permitting and provides a framework to further improve efficient coordination between federal agencies. The FAST-41 process, established in Title 41 of the FAST Act, provides a range of tools for large and complex infrastructure projects to navigate the federal environmental review and authorization process. In brief, FAST-41 established project-specific procedures that may be applicable or available to agencies and project sponsors in meeting permitting and review obligations. One Federal Decision broadly impacts how agencies conduct and coordinate environmental reviews while preserving each agency's statutory authority, independence, and ability to comply with NEPA and related statutes, like FAST-41.

### **Memorandum of Understanding**

On April 9, 2018, President Trump announced that the following 12 federal agencies signed a One Federal Decision Memorandum of Understanding (MOU): Department of the Interior (Interior), Department of Agriculture (USDA), Department of Housing and Urban Development, Department of Commerce, Department of Transportation, Department of Energy (DOE), United States Army Corps of Engineers, Department of Homeland Security, Environmental Protection Agency (EPA), Federal Energy Regulatory Commission (FERC), Advisory Council on Historic Preservation, and the Federal Permitting Improvement Steering Council (FPISC). Under the MOU, these agencies committed to following the President's One Federal Decision framework. In doing so, the agencies agreed to implement an unprecedented level of coordination and collaboration in conducting their environmental reviews of major infrastructure projects.

The Council on Environmental Quality (CEQ), in coordination with other components of the White House, has convened a federal interagency working group to develop the framework under which agencies will implement One Federal Decision. This framework establishes the standard operating procedures for how agencies process environmental reviews from beginning to end. The agencies will work together to identify the appropriate level of analysis needed to conduct the necessary environmental reviews, synchronize the public engagement, and complete other procedural steps to ensure that all necessary decisions can be made within the timelines established by Executive Order 13807.

### **Agency Action**

To date, agencies have been taking steps to advance One Federal Decision principles, starting first with normalizing regular interagency working group meetings and collaboration between agencies and CEQ to improve interagency coordination and the quality of environmental analysis. Since the agencies signed the MOU, CEQ and agency leadership have engaged in numerous meetings on agency streamlining efforts to identify and implement policy, process, and regulatory changes that include:

[APG]

- The Federal Highway Administration signed an agreement with the United States Fish and Wildlife Service, the Army Corps of Engineers, EPA, United States Coast Guard, and National Oceanic and Atmospheric Administration (NOAA), committing to working together to achieve the goals of Executive Order 13807. These agencies collaboratively developed a chart coordinating each agency's processes;
- Interior issued Secretarial Order 3355 and additional guidance that advance the department's NEPA-streamlining efforts within Executive Order 13807;
- The Army Corps of Engineers issued Section 408 policy changes adopting other agencies' NEPA documents and issued a policy memorandum operationalizing "risk-informed decision making" to improve coordination and risk management across disciplines;
- USDA, FERC, DOE, and EPA are improving internal clearance processes along with increasing agency capacity for projects with dedicated staff assignments;
- USDA, the Army Corps of Engineers, NOAA Fisheries and the United States Fish and Wildlife Service are expanding the use of time-saving programmatic consultation processes; and
- Agencies will be issuing directives and conducting training at all levels of their organizations, from headquarters to field offices, on timetables and plans to implement the One Federal Decision policy nationwide.

### **Agency Accountability**

The Office of Management and Budget is developing a performance accountability system and appropriate performance metrics to ensure that agencies are implementing One Federal Decision, including the adherence to lead federal agency permitting timetables. The Administration plans to consider agency performance during budget formulation, and agency delays from the permitting timetable may be quantified. Key agency personnel also will have accountability and performance criteria added to their performance plans to measure their effectiveness in processing project permits.

### **Regulatory Reforms**

Following the direction laid out in Executive Order 13807, CEQ published an initial list of actions in the *Federal Register* on September 14, 2017, outlining its plans to enhance and modernize the federal environmental review and authorization process. Last fall, CEQ announced its intent to review its 1978 regulations implementing the procedural requirements of NEPA to identify potential updates and clarifications to those regulations. Just last week, CEQ published in the *Federal Register* for public comment an Advance Notice of Proposed Rulemaking titled, "Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act."

\*\*\*\*

Through improved agency coordination, increased transparency and accountability and timely decision making, we can improve our infrastructure permitting process and get projects completed and to the market faster for the benefit of the American people.

[APG]

While CEQ is focused on the development of a better process for all infrastructure project permitting, the Federal Permitting Improvement Steering Council is focused on overcoming obstacles on a project-by-project basis. My colleague, Angela Colamaria, the acting Executive Director of the Permitting Council, will expand further on the implementation of FAST-41 and FPISC's role in streamlining the federal permitting process.

Thank you again for the opportunity to participate in today's discussion.

[APG]

## [EXTERNAL] RE: 6/27 meeting request - CEO of EDF Renewables

---

**From:** "Moeller, Elizabeth V." <elizabeth.moeller@pillsburylaw.com>

**To:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>

**Date:** Tue, 26 Jun 2018 11:20:27 -0400

Dear Michael,

Wonderful! We look forward to our visit with you and Aaron tomorrow at 11:30.

If it works for your team, Tristan and I will be joined by Virinder Singh, EDF Renewables Director of Regulatory and Legislative Affairs who will be in DC from Portland.

Many thanks. We look forward to our visit tomorrow!

Best,

Elizabeth

**From:** Drummond, Michael R. EOP/CEQ <(b) (6)>

**Sent:** Monday, June 25, 2018 6:15 PM

**To:** Moeller, Elizabeth V. <elizabeth.moeller@pillsburylaw.com>

**Subject:** RE: 6/27 meeting request - CEO of EDF Renewables

Elizabeth,

Your meeting request was forwarded to me by Mary Green. I'd be happy to meet with you and Tristan on Wednesday at 11:30am. I'll be joined by my colleague Aaron Szabo, our Senior Counsel. Aaron and I are interested to hear EDF Renewables' experience with the NEPA process. I'll send a calendar invite momentarily.

I will put this meeting on our Chief of Staff Mary Neumayr's calendar as well, though she has a very busy day on Wednesday.

I look forward to meeting you in person on Wednesday.

Best,

Michael Drummond

Deputy Associate Director for NEPA

(b) (6)

**From:** Moeller, Elizabeth V. <elizabeth.moeller@pillsburylaw.com>

**Sent:** Thursday, June 21, 2018 4:33 PM

**To:** Green, Mary A. EOP/CEQ <(b) (6)>

**Subject:** [EXTERNAL] 6/27 meeting request - CEO of EDF Renewables

Dear Ms. Green,

Thank you for your time yesterday – just before we saw the release of the Advance Notice of Proposed Rulemaking on NEPA!

I am following up on behalf of EDF Renewables which is a market leading independent power producer and service provider in the U.S. with projects throughout the United States and headquarters in San Diego.

EDF Renewables' President and CEO, Tristan Grimbert, will be in DC on Wednesday, June 26<sup>th</sup> and is hoping that leaders at CEQ will have time for a short visit to discuss NEPA and national energy and environmental policy.

Would a short visit on Wednesday, June 27<sup>th</sup> at, perhaps at 11:30 be convenient for schedules?

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Please let me know if you need any additional information. Many thanks in advance.

Kind regards,  
Elizabeth

**Elizabeth Vella Moeller** | Partner | Public Policy Group Leader

Pillsbury Winthrop Shaw Pittman LLP

1200 Seventeenth Street NW | Washington, DC 20036-3006

t 202.663.9159 | f 202.663.8007 | m (b) (6)

[elizabeth.moeller@pillsburylaw.com](mailto:elizabeth.moeller@pillsburylaw.com) | [website bio](#)

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LOS ANGELES MIAMI NASHVILLE NEW YORK NORTHERN VIRGINIA  
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## RE: Comment - CEQ-2018-001

---

**From:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>

**To:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>

**Date:** Tue, 03 Jul 2018 15:17:53 -0400

I added it to the log. It was also submitted today on regulations.gov.

**From:** Drummond, Michael R. EOP/CEQ

**Sent:** Tuesday, July 3, 2018 3:11 PM

**To:** Szabo, Aaron L. EOP/CEQ <(b) (6)> Seale, Viktoria Z. EOP/CEQ

<(b) (6)> Neumayr, Mary B. EOP/CEQ <(b) (6)>

**Cc:** Mansoor, Yardena M. EOP/CEQ <(b) (6)> Smith, Katherine R. EOP/CEQ

<(b) (6)>

**Subject:** FW: Comment - CEQ-2018-001

FYI -- We received the attached this afternoon from the AGs offices of WA, MD, MA, NJ, NY, and OR requesting a 60-day extension of the comment period.

**From:** Kealy, Tricia (ATG) <TriciaK@ATG.WA.GOV>

**Sent:** Tuesday, July 3, 2018 2:44 PM

**To:** FN-CEQ-NEPA <(b) (6)> ksmith@ceq.eop.gov

**Cc:** Janke, Aurora (ATG) <AuroraJ@ATG.WA.GOV>

**Subject:** Comment - CEQ-2018-001

Greetings,

Attached please find a letter Re: Advance Notice of Proposed Rulemaking – Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 83 Fed. Reg. 28591 (June 20, 2018) Docket ID No. CEQ-2018-001 from Attorneys General of Washington, Maryland, Massachusetts, New Jersey, New York, and Oregon. This was submitted today on regulations.gov.

Thank you,

**Tricia Kealy**

Legal Assistant 3/Lead

Counsel for Environmental Protection

Office of the Attorney General

800 5th Ave, Suite 2000

Seattle, WA 98104

Phone 206-326-5494

TriciaK@atg.wa.gov



## RE: Comment - CEQ-2018-001

---

**From:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>

**To:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>

**Date:** Tue, 03 Jul 2018 15:11:27 -0400

Thanks

**From:** Drummond, Michael R. EOP/CEQ

**Sent:** Tuesday, July 3, 2018 3:11 PM

**To:** Szabo, Aaron L. EOP/CEQ <(b) (6)> Seale, Viktoria Z. EOP/CEQ

<(b) (6)> Neumayr, Mary B. EOP/CEQ <(b) (6)>

**Cc:** Mansoor, Yardena M. EOP/CEQ <(b) (6)> Smith, Katherine R. EOP/CEQ

<(b) (6)>

**Subject:** FW: Comment - CEQ-2018-001

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Thank you,

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Legal Assistant 3/Lead

Counsel for Environmental Protection

Office of the Attorney General

800 5th Ave, Suite 2000

Seattle, WA 98104

Phone 206-326-5494

TriciaK@atg.wa.gov



## Website update expected on Monday, July 9

---

**From** : "Mansoor, Yarden M. EOP/CEQ" <(b) (6)>  
**To**: "Adams, John (AU) (CONTR)" <john.adams@hq.doe.gov>, "Carter, Marian (CONTR)" <marian.carter@hq.doe.gov>, "Alexander, Lillian" <lillian.alexander@hq.doe.gov>  
**Cc**: "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**Date**: Tue, 03 Jul 2018 12:20:21 -0400

---

On Monday morning, July 9, I'll confirm these instructions, provide the Federal Register file to post, and give the OK for the update go live. Michael Drummond or I will let you know if anything changes before then.

At <https://ceq.doe.gov/laws-regulations/regulations.html>:

---

### Proposed Rulemaking:

CEQ is considering updating its NEPA implementing regulations and solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process. Submit comments, identified by docket ID number CEQ-2018-0001, through the Federal eRulemaking portal, <https://www.regulations.gov>. Comments should be submitted on or before **July August** 20, 2018.

[June 20, 2018: Advance Notice of Proposed Rulemaking](#)

**July 9, 2018: Extension of Comment Period**

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Thanks, as always, for your help.

Yarden Mansoor  
Deputy Associate Director for NEPA  
Council on Environmental Quality  
(b) (6) / (b) (6)

## Comment - CEQ-2018-001

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**From:** "Kealy, Tricia (ATG)" <triciak@atg.wa.gov>  
**To:** FN-CEQ-NEPA <(b) (6)> ksmith@ceq.eop.gov  
**Cc:** "Janke, Aurora (ATG)" <auroraj@atg.wa.gov>  
**Date:** Tue, 03 Jul 2018 14:43:40 -0400  
**Attachments** Final State AG Letter Requesting Extension of Time to Comment on Advance...pdf  
: (1.24 MB)

---

Greetings,

Attached please find a letter Re: Advance Notice of Proposed Rulemaking – Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 83 Fed. Reg. 28591 (June 20, 2018) Docket ID No. CEQ-2018-001 from Attorneys General of Washington, Maryland, Massachusetts, New Jersey, New York, and Oregon. This was submitted today on regulations.gov.

Thank you,  
**Tricia Kealy**  
Legal Assistant 3/Lead  
Counsel for Environmental Protection  
Office of the Attorney General  
800 5th Ave, Suite 2000  
Seattle, WA 98104  
Phone 206-326-5494  
TriciaK@atg.wa.gov

**ATTORNEYS GENERAL OF WASHINGTON, MARYLAND, MASSACHUSETTS,  
NEW JERSEY, NEW YORK, AND OREGON**

July 3, 2018

BY EMAIL AND REGULATIONS.GOV

Mary B. Neumayr, Chief of Staff  
Council on Environmental Quality  
730 Jackson Place NW  
Washington, DC 20503  
NEPA@ceq.eop.gov  
ksmith@ceq.eop.gov

Re: Advance Notice of Proposed Rulemaking – Update to the Regulations for  
Implementing the Procedural Provisions of the National Environmental Policy  
Act, 83 Fed. Reg. 28591 (June 20, 2018)  
Docket ID No. CEQ-2018-0001

Dear Chief of Staff Neumayr:

The undersigned State Attorneys General write to express our concern about the Council on Environmental Quality's (CEQ) advance notice of proposed rulemaking regarding updates to the regulations implementing the National Environmental Policy Act (NEPA). For the following reasons, we ask that you extend the public comment period from 30 days to 90 days to provide a sufficient opportunity for states, the public, and other stakeholders to comment on this significant proposal to revise regulations that have long served to protect the environment and public health.

NEPA is one of our nation's bedrock environmental laws. The CEQ's implementing regulations provide the guiding principles for administering NEPA across the entire federal government. Nearly every major federal action from the approval of significant energy and infrastructure projects to key decisions concerning the administration of federal public lands requires compliance with the NEPA process. We are concerned that amendments to CEQ's regulations may result in profound changes on the depth and quality of federal agencies' consideration of the environmental and public health impacts of major federal actions—many of which are of significant interest to our states' residents and have lasting impacts on our states' natural resources and economies. In addition, many states, including Maryland, Massachusetts, New York, and Washington, have adopted their own environmental review laws that often must be administered in conjunction with the NEPA process. Our states thus have a strong interest in ensuring that any revisions to CEQ's NEPA regulations continue to require, consistent with NEPA, that federal agencies always take a "hard look" at the environmental and public health consequences of major federal actions.

As stated in the advance notice, CEQ's NEPA regulations have been revised extremely infrequently, and therefore a compressed timeline for consideration of such revisions is unwarranted and unwise. CEQ's NEPA regulations are fundamental to the daily functioning of numerous agencies and any revisions to these regulations must be carefully and deliberately calibrated. A wealth of scholarship and practical experience can be brought to bear on the need for and prudence of any revisions, and we believe that only a truly deliberative and public process will produce revised regulations that are consistent with NEPA's structure and purpose.

Given the significant impacts that revisions to CEQ's NEPA regulations could have on states and the public, the broad scope of the advance notice, and the long history of the federal government's use of the regulations under review, we ask that you extend the comment period by 60 days to provide a meaningful amount of time for states, the public, and other stakeholders to adequately respond to the advance notice. The current 30-day comment period does not provide the affected public adequate opportunity to participate in the rulemaking and comment on the proposal as required by the Administrative Procedure Act, 5 U.S.C. § 553(c). Under section 2(b) of Executive Order 13,563, a standard comment period should be at least 60 days, but the significance of this proposal to change longstanding and far-reaching NEPA regulations demands additional time to ensure an opportunity for meaningful public involvement in the review process.

We therefore request that CEQ extend the comment period by 60 days, to September 18, 2018. We also request that CEQ hold several public hearings on the proposal in different regions of the country during the comment period.

We appreciate your consideration of this important matter.

Respectfully submitted,

FOR THE STATE OF WASHINGTON

ROBERT W. FERGUSON  
Attorney General

By:



WILLIAM R. SHERMAN  
Assistant Attorney General  
AURORA R. JANKE  
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FOR THE STATE OF MARYLAND

BRIAN E. FROSH  
Attorney General

By:



LEAH J. TULIN  
Assistant Attorney General  
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ltulin@oag.state.md.us

FOR THE COMMONWEALTH OF  
MASSACHUSETTS

MAURA HEALEY  
Attorney General of Massachusetts

By:

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Assistant Attorney General and Chief  
Environmental Protection Division  
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christophe.courchesne@state.ma.us

FOR THE STATE OF NEW JERSEY

GURBIR S. GREWAL  
Attorney General

By:

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Assistant Attorney General  
KRISTINA MILES  
Deputy Attorney General  
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(609) 376-2804  
david.apy@law.njoag.gov  
kristina.miles@law.njoag.gov

FOR THE STATE OF NEW YORK

BARBARA D. UNDERWOOD  
Attorney General

By:

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Senior Counsel  
CLAIBORNE E. WALTHALL  
Assistant Attorney General  
Environmental Protection Bureau  
New York State Attorney General  
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Claiborne.Walthall@ag.ny.gov

FOR THE STATE OF MARYLAND

BRIAN E. FROSH  
Attorney General

By:

\_\_\_\_\_  
LEAH J. TULIN  
Assistant Attorney General  
200 Saint Paul Place  
Baltimore, MD 21202  
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ltulin@oag.state.md.us

FOR THE COMMONWEALTH OF  
MASSACHUSETTS

MAURA HEALEY  
Attorney General of Massachusetts

By:

  
\_\_\_\_\_  
CHRISTOPHE COURCHESNE  
Assistant Attorney General and Chief  
Environmental Protection Division  
Office of the Attorney General  
One Ashburton Place, 18th Floor  
Boston, Massachusetts 02108  
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FOR THE STATE OF NEW JERSEY

GURBIR S. GREWAL  
Attorney General

By:

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Assistant Attorney General  
KRISTINA MILES  
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kristina.miles@law.njoag.gov

FOR THE STATE OF NEW YORK

BARBARA D. UNDERWOOD  
Attorney General

By:

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CLAIBORNE E. WALTHALL  
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FOR THE STATE OF MARYLAND

BRIAN E. FROSH  
Attorney General

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FOR THE COMMONWEALTH OF  
MASSACHUSETTS

MAURA HEALEY  
Attorney General of Massachusetts

By:

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CHRISTOPHE COURCHESNE  
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Environmental Protection Division  
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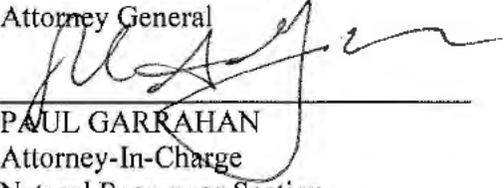
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FOR THE STATE OF OREGON

ELLEN F. ROSENBLUM  
Attorney General

By:



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PAUL GARRAHAN  
Attorney-In-Charge  
Natural Resources Section  
STEVE NOVICK  
Special Assistant Attorney General  
1162 Court St. NE  
Salem, OR 97301-4096  
(503) 947-4520  
paul.garrahan@doj.state.or.us  
steve.novick@doj.state.or.us

## FW: Comment - CEQ-2018-001

---

**From:** "Neumayr, Mary B. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=4e618ec0a8d749c29c9f64889897f4bb-ne">  
**To:** "Schneider, Daniel J. EOP/CEQ (b) (6)" <(b) (6)> "Pettigrew, Theresa L. EOP/CEQ (b) (6)" <(b) (6)>  
**Date:** Tue, 03 Jul 2018 18:16:24 -0400  
**Attachments:** Final State AG Letter Requesting Extension of Time to Comment on Advance...pdf (1.24 MB)

Fyi

**From:** Drummond, Michael R. EOP/CEQ  
**Sent:** Tuesday, July 3, 2018 3:11 PM  
**To:** Szabo, Aaron L. EOP/CEQ <(b) (6)> Seale, Viktoria Z. EOP/CEQ <(b) (6)> Neumayr, Mary B. EOP/CEQ <(b) (6)>  
**Cc:** Mansoor, Yardena M. EOP/CEQ <(b) (6)> Smith, Katherine R. EOP/CEQ <(b) (6)>  
**Subject:** FW: Comment - CEQ-2018-001

FYI -- We received the attached this afternoon from the AGs offices of WA, MD, MA, NJ, NY, and OR requesting a 60-day extension of the comment period.

**From:** Kealy, Tricia (ATG) <TriciaK@ATG.WA.GOV>  
**Sent:** Tuesday, July 3, 2018 2:44 PM  
**To:** FN-CEQ-NEPA <(b) (6)> ksmith@ceq.eop.gov  
**Cc:** Janke, Aurora (ATG) <AuroraJ@ATG.WA.GOV>  
**Subject:** Comment - CEQ-2018-001

Greetings,

Attached please find a letter Re: Advance Notice of Proposed Rulemaking – Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 83 Fed. Reg. 28591 (June 20, 2018) Docket ID No. CEQ-2018-001 from Attorneys General of Washington, Maryland, Massachusetts, New Jersey, New York, and Oregon. This was submitted today on regulations.gov.

Thank you,  
**Tricia Kealy**

Legal Assistant 3/Lead  
Counsel for Environmental Protection  
Office of the Attorney General  
800 5th Ave, Suite 2000  
Seattle, WA 98104  
Phone 206-326-5494  
TriciaK@atg.wa.gov

**ATTORNEYS GENERAL OF WASHINGTON, MARYLAND, MASSACHUSETTS,  
NEW JERSEY, NEW YORK, AND OREGON**

July 3, 2018

BY EMAIL AND REGULATIONS.GOV

Mary B. Neumayr, Chief of Staff  
Council on Environmental Quality  
730 Jackson Place NW  
Washington, DC 20503  
NEPA@ceq.eop.gov  
ksmith@ceq.eop.gov

Re: Advance Notice of Proposed Rulemaking – Update to the Regulations for  
Implementing the Procedural Provisions of the National Environmental Policy  
Act, 83 Fed. Reg. 28591 (June 20, 2018)  
Docket ID No. CEQ-2018-0001

Dear Chief of Staff Neumayr:

The undersigned State Attorneys General write to express our concern about the Council on Environmental Quality's (CEQ) advance notice of proposed rulemaking regarding updates to the regulations implementing the National Environmental Policy Act (NEPA). For the following reasons, we ask that you extend the public comment period from 30 days to 90 days to provide a sufficient opportunity for states, the public, and other stakeholders to comment on this significant proposal to revise regulations that have long served to protect the environment and public health.

NEPA is one of our nation's bedrock environmental laws. The CEQ's implementing regulations provide the guiding principles for administering NEPA across the entire federal government. Nearly every major federal action from the approval of significant energy and infrastructure projects to key decisions concerning the administration of federal public lands requires compliance with the NEPA process. We are concerned that amendments to CEQ's regulations may result in profound changes on the depth and quality of federal agencies' consideration of the environmental and public health impacts of major federal actions—many of which are of significant interest to our states' residents and have lasting impacts on our states' natural resources and economies. In addition, many states, including Maryland, Massachusetts, New York, and Washington, have adopted their own environmental review laws that often must be administered in conjunction with the NEPA process. Our states thus have a strong interest in ensuring that any revisions to CEQ's NEPA regulations continue to require, consistent with NEPA, that federal agencies always take a "hard look" at the environmental and public health consequences of major federal actions.

As stated in the advance notice, CEQ's NEPA regulations have been revised extremely infrequently, and therefore a compressed timeline for consideration of such revisions is unwarranted and unwise. CEQ's NEPA regulations are fundamental to the daily functioning of numerous agencies and any revisions to these regulations must be carefully and deliberately calibrated. A wealth of scholarship and practical experience can be brought to bear on the need for and prudence of any revisions, and we believe that only a truly deliberative and public process will produce revised regulations that are consistent with NEPA's structure and purpose.

Given the significant impacts that revisions to CEQ's NEPA regulations could have on states and the public, the broad scope of the advance notice, and the long history of the federal government's use of the regulations under review, we ask that you extend the comment period by 60 days to provide a meaningful amount of time for states, the public, and other stakeholders to adequately respond to the advance notice. The current 30-day comment period does not provide the affected public adequate opportunity to participate in the rulemaking and comment on the proposal as required by the Administrative Procedure Act, 5 U.S.C. § 553(c). Under section 2(b) of Executive Order 13,563, a standard comment period should be at least 60 days, but the significance of this proposal to change longstanding and far-reaching NEPA regulations demands additional time to ensure an opportunity for meaningful public involvement in the review process.

We therefore request that CEQ extend the comment period by 60 days, to September 18, 2018. We also request that CEQ hold several public hearings on the proposal in different regions of the country during the comment period.

We appreciate your consideration of this important matter.

Respectfully submitted,

FOR THE STATE OF WASHINGTON

ROBERT W. FERGUSON  
Attorney General

By:



WILLIAM R. SHERMAN  
Assistant Attorney General  
AURORA R. JANKE  
Special Assistant Attorney General  
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auroraj@atg.wa.gov

FOR THE STATE OF MARYLAND

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Attorney General

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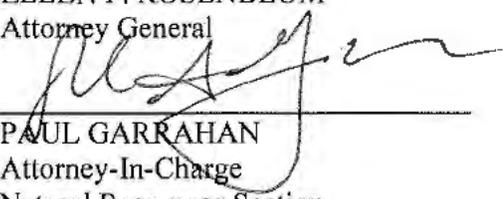
By:

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FOR THE STATE OF OREGON

ELLEN F. ROSENBLUM  
Attorney General

By:



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(503) 947-4520  
paul.garrahan@doj.state.or.us  
steve.novick@doj.state.or.us

## RE: Comment - CEQ-2018-001

---

**From:** "Janke, Aurora (ATG)" <auroraj@atg.wa.gov>

**To:** "Green, Mary A. EOP/CEQ" <(b) (6)>

**Cc:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>

**Date:** Thu, 05 Jul 2018 11:16:05 -0400

Thank you very much for your help.

Best regards,

Aurora Janke

**From:** Green, Mary A. EOP/CEQ <(b) (6)>  
**Sent:** Thursday, July 5, 2018 6:53 AM  
**To:** Janke, Aurora (ATG) <AuroraJ@ATG.WA.GOV>  
**Cc:** Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** RE: Comment - CEQ-2018-001

Got it! Will route it out to COS Neumayr and Associate Director, Ted Boling.  
Ms. Green

**From:** Janke, Aurora (ATG) <AuroraJ@ATG.WA.GOV>  
**Sent:** Tuesday, July 3, 2018 3:38 PM  
**To:** Green, Mary A. EOP/CEQ <(b) (6)>  
**Subject:** FW: Comment - CEQ-2018-001

Ms. Green,

I just spoke with you on the phone concerning filing a request for an extension of time to comment on CEQ's Advance Notice of Proposed Rulemaking – Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act.

We would like to ensure that Chief of Staff Neumayr receives the attached letter from several State Attorneys General requesting an extension of time to comment on the Advance Notice. However, the email to [ksmith@ceq.eop.gov](mailto:ksmith@ceq.eop.gov), whom I understand to be Chief of Staff Neumayr's special assistant, bounced back. Could you please ensure that Chief of Staff Neumayr receives the attached letter?

Thank you for your assistance.

Best regards,

**Aurora R. Janke**

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Counsel for Environmental Protection  
Washington State Attorney General's Office  
800 5<sup>th</sup> Ave Suite 2000, TB-14  
Seattle, WA 98104-3188  
Office: (206) 233-3391  
Email: [auroraj@atg.wa.gov](mailto:auroraj@atg.wa.gov)

---

**From:** Kealy, Tricia (ATG)  
**Sent:** Tuesday, July 3, 2018 11:44 AM  
**To:** (b) (6) [ksmith@ceq.eop.gov](mailto:ksmith@ceq.eop.gov)  
**Cc:** Janke, Aurora (ATG) <[AuroraJ@ATG.WA.GOV](mailto:AuroraJ@ATG.WA.GOV)>  
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Thank you,

**Tricia Kealy**

Legal Assistant 3/Lead  
Counsel for Environmental Protection  
Office of the Attorney General  
800 5th Ave, Suite 2000  
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Phone 206-326-5494  
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## RE: Comment - CEQ-2018-001

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**From:** "Green, Mary A. EOP/CEQ" <(b) (6)>  
**To:** "Janke, Aurora (ATG)" <auroraj@atg.wa.gov>  
**Cc:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**Date:** Thu, 05 Jul 2018 09:53:13 -0400

Got It! Will route it out to COS Neumayr and Associate Director, Ted Boling.  
Ms. Green

**From:** Janke, Aurora (ATG) <AuroraJ@ATG.WA.GOV>  
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**To:** "Green, Mary A. EOP/CEQ" <(b) (6)>

**Date:** Thu, 05 Jul 2018 09:44:58 -0400

Thanks Mary, this email was also received in the (b) (6) account and I forwarded it along to Mary and others on Tuesday.

If you are responding to Aurora, would you please cc me on that reply.

Thank you,

Michael

**From:** Green, Mary A. EOP/CEQ  
**Sent:** Thursday, July 5, 2018 9:42 AM  
**To:** Neumayr, Mary B. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)>  
**Cc:** Drummond, Michael R. EOP/CEQ <(b) (6)> Mansoor, Yardena M. EOP/CEQ <(b) (6)>  
**Subject:** FW: Comment - CEQ-2018-001

**From:** Janke, Aurora (ATG) <AuroraJ@ATG.WA.GOV>  
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**To:** "Janke, Aurora (ATG)" <auroraj@atg.wa.gov>

**Date:** Thu, 05 Jul 2018 09:46:24 -0400

Got it! Will route it out to COS Neumayr and Associate Director of NEPA, Ted Boling.  
Ms. Green

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**Sent:** Tuesday, July 3, 2018 3:38 PM

**To:** Green, Mary A. EOP/CEQ <(b) (6)>

**Subject:** FW: Comment - CEQ-2018-001

Ms. Green,

I just spoke with you on the phone concerning filing a request for an extension of time to comment on CEQ's Advance Notice of Proposed Rulemaking – Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act.

We would like to ensure that Chief of Staff Neumayr receives the attached letter from several State Attorneys General requesting an extension of time to comment on the Advance Notice. However, the email to [ksmith@ceq.eop.gov](mailto:ksmith@ceq.eop.gov), whom I understand to be Chief of Staff Neumayr's special assistant, bounced back. Could you please ensure that Chief of Staff Neumayr receives the attached letter?

Thank you for your assistance.

Best regards,

**Aurora R. Janke**

Special Assistant Attorney General

Counsel for Environmental Protection

Washington State Attorney General's Office

800 5<sup>th</sup> Ave Suite 2000, TB-14

Seattle, WA 98104-3188

Office: (206) 233-3391

Email: [auroraj@atg.wa.gov](mailto:auroraj@atg.wa.gov)

---

**From:** Kealy, Tricia (ATG)

**Sent:** Tuesday, July 3, 2018 11:44 AM

**To:** (b) (6) <ksmith@ceq.eop.gov>

**Cc:** Janke, Aurora (ATG) <AuroraJ@ATG.WA.GOV>

**Subject:** Comment - CEQ-2018-001

Greetings,

Attached please find a letter Re: Advance Notice of Proposed Rulemaking – Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 83 Fed. Reg. 28591 (June 20, 2018) Docket ID No. CEQ-2018-001 from Attorneys General of Washington, Maryland, Massachusetts, New Jersey, New York, and Oregon. This was submitted today on regulations.gov.

Thank you,

**Tricia Kealy**

Legal Assistant 3/Lead

Counsel for Environmental Protection

Office of the Attorney General

800 5th Ave, Suite 2000

Seattle, WA 98104

Phone 206-326-5494

[TriciaK@atg.wa.gov](mailto:TriciaK@atg.wa.gov)

## [EXTERNAL] SCHEDULED: Document Number - 2018-14821

---

**From:** noreply@fedreg.gov  
**To:** FN-Chair <(b) (6)>  
**Date:** Fri, 06 Jul 2018 12:10:46 -0400

---

Please do not reply directly to this e-mail. If you have any questions or comments regarding this email, please contact [Dominique Nathan](#).

Attention : Howard Sun, (CEQ) Council on Environmental Quality

Document 2018-14821, Category PROPOSED RULES has been scheduled to publish on 07-11-2018.  
This document will be placed on public inspection on 07-10-2018 08:45:00.

The subject of this document is Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act.

The submitting Agency is (CEQ) Council on Environmental Quality.

The Docket Id is Docket No. CEQ-2018-0001.

The RIN is 0331-AA03.

This document has an effective date of NA.

The comments due date is 08-20-2018.

The separate part # for this document is NA.

Agency/CFR Title/CFR Part:

(CEQ) Council on Environmental Quality, CFR Title is 40, CFR Part is 1500,1501,1502,1503,1504,1505,1506,1507,1508

[3225-F8-P]

COUNCIL ON ENVIRONMENTAL QUALITY

40 CFR Parts 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, and 1508

[Docket No. CEQ-2018-0001]

RIN: 0331-AA03

Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

AGENCY: Council on Environmental Quality (CEQ).

ACTION: Advance Notice of Proposed Rulemaking; extension of comment period

## Agenda Review Reports for CEQ-0331

---

**From:** Elizabeth Harris-Marshall - M1V1E <liz.harris-marshall@gsa.gov>  
**To:** "Szabo, Aaron L. EOP/CEQ" <(b) (6)>  
**Date:** Wed, 01 Aug 2018 09:33:22 -0400  
**Attachments:** 0331-CEQ Spring 2018 Preamble.docx (14.94 kB); ARR CEQ-0331 as of  
: 08012018.pdf (72.69 kB)

Good morning:

Attached are the agenda review reports for your agency in need of your attention. These RINs are currently in a "No Stage" of rulemaking which indicates that the timetable needs to be updated. You will need to supply a projected next action of 10/00/2018 or greater. Please take a moment and provide the projected next action and any other changes required. Also attached is the spring 2018 preamble that may need your attention. I will need this information emailed to me ***NLT Friday, August 3, 2018 or sooner.***

If you have questions or need additional information, please call me.



---

### U.S. General Services Administration

Liz Harris-Marshall  
Program Analyst  
Regulatory Information Service Center  
Office of Government-wide Policy  
Office [202-482-7340](tel:202-482-7340) | Direct [202-501-8971](tel:202-501-8971)

[1800 F Street, NW](https://www.gsa.gov)  
[Washington, DC 20405](https://www.gsa.gov)  
>[www.gsa.gov](https://www.gsa.gov)<

**TITLE:**

Freedom of Information Act (FOIA) and Privacy Act Regulations Update

**RIN:** 0331-AA02 (No Stage)

**# Paper Print:** No

**# REGULATORY PLAN:** No

**PRIORITY:** Substantive, Nonsignificant  
Major status under 5 USC 801 is undetermined

**# UNFUNDED MANDATES:** No

**EO 13771 Designation :** Not subject to, not significant

**LEGAL AUTHORITY:**

5 U.S.C. 552 et seq.

**CFR CITATION:**

40 CFR 1515; 40 CFR 1516

**LEGAL DEADLINE:**

None

None

**OVERALL DESCRIPTION OF DEADLINE:**

**ABSTRACT:**

The Council on Environmental Quality (CEQ) is developing a proposal to revise its Freedom of Information Act (FOIA) regulations, in order to comply with the FOIA Improvement Act of 2016; to reflect CEQ's business process; and to correct or remove obsolete information. CEQ is also revising its Privacy Act implementation regulations due to changes of address and other administrative issues.

**STATEMENT OF NEED:**

**SUMMARY OF LEGAL BASIS:**

**ALTERNATIVES:**

**ANTICIPATED COSTS AND BENEFITS:**

**RISKS:**

**TIMETABLE:**

ACTION	DATE	FR CITE
NPRM	07/00/2018	

**REGULATORY FLEXIBILITY ANALYSIS REQUIRED:** No

**# SMALL ENTITIES AFFECTED:**

**GOVERNMENT LEVELS AFFECTED:** None

**# FEDERALISM AFFECTED:** No

**ENERGY AFFECTED:**

**INTERNATIONAL IMPACTS:** No

**USER SORT CODES:**

\* - Missing data

# - Will not print in agenda

**ADDITIONAL INFORMATION:**

**URL FOR MORE INFORMATION:**

**URL FOR PUBLIC COMMENTS:**

**RELATED RIN:**

**RELATED AGENCY:**

**AGENCY CONTACT:**

Viktoria Z. Seale,  
Council on Environmental Quality,  
730 Jackson Place NW,  
Washington, DC 20506  
PHONE: 202 395-5750

\* - Missing data

# - Will not print in agenda

**TITLE:**

Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

**RIN:** 0331-AA03 (No Stage)

**# Paper Print:** No

**# REGULATORY PLAN:** No

**PRIORITY:** Other Significant

**# UNFUNDED MANDATES:** No

**# MAJOR:** No **EO 13771 Designation :** Other

**LEGAL AUTHORITY:**

42 U.S.C. 4371 et seq.

**CFR CITATION:**

40 CFR 1500 to 1508

**LEGAL DEADLINE:**

None

None

**OVERALL DESCRIPTION OF DEADLINE:**

**ABSTRACT:**

On August 15, 2017, President Trump issued Executive Order 13807, titled "Establishing Discipline and Accountability in the Environment Review and Permitting Process for Infrastructure." Section 5(e) of Executive Order 13807 directed the Council on Environmental Quality (CEQ) to develop an initial list of actions it will take to enhance and modernize the Federal environmental review and authorization process. CEQ published its initial list of actions in the Federal Register on September 14, 2017, (82 FR 43226) and stated that CEQ intends to review existing CEQ regulations implementing the procedural requirements of the National Environmental Policy Act in order to identify changes needed to update and clarify those regulations. The regulations were issued in 1978, were amended in 1986, and have never been comprehensively revised. While CEQ has issued memoranda and guidance documents over the years, CEQ believes it is appropriate at this time to consider updating the implementing regulations.

**STATEMENT OF NEED:**

**SUMMARY OF LEGAL BASIS:**

**ALTERNATIVES:**

**ANTICIPATED COSTS AND BENEFITS:**

**RISKS:**

**TIMETABLE:**

ACTION	DATE	FR CITE
ANPRM	05/00/2018	

**REGULATORY FLEXIBILITY ANALYSIS REQUIRED:**

Undetermined

**# SMALL ENTITIES AFFECTED:**

**GOVERNMENT LEVELS AFFECTED:**

Undetermined

**# FEDERALISM AFFECTED:**

No

**ENERGY AFFECTED:**

\* - Missing data

# - Will not print in agenda

**INTERNATIONAL IMPACTS:**

No

**USER SORT CODES:**

**ADDITIONAL INFORMATION:**

**URL FOR MORE INFORMATION:**

**URL FOR PUBLIC COMMENTS:**

**RELATED RIN:**

**RELATED AGENCY:**

**AGENCY CONTACT:**

Ted Boling,  
Council on Environmental Quality,  
730 Jackson Place NW,  
Washington, DC 20506  
PHONE: 202 395-5750

\* - Missing data

# - Will not print in agenda

## RE: EO 12866 comments to docket?

---

**From:** "Whiteman, Chad S. EOP/OMB" <(b) (6)>

**To:** "Szabo, Aaron L. EOP/CEQ" <(b) (6)>

**Date:** Mon, 06 Aug 2018 10:45:15 -0400

Okay, thanks

**From:** Szabo, Aaron L. EOP/CEQ

**Sent:** Monday, August 6, 2018 10:43 AM

**To:** Whiteman, Chad S. EOP/OMB <(b) (6)>

**Subject:** Re: EO 12866 comments to docket?

No.

Sent from my iPhone

On Aug 6, 2018, at 10:40 AM, Whiteman, Chad S. EOP/OMB <(b) (6)> wrote:

Aaron,

Is CEQ required to post the EO 12866 comments on the NEPA ANPRM to the public docket? I'm only aware of the CAA 307(d) docketing requirements. Are there equivalent docketing requirements for NEPA? Got a question from one of the agencies.

Chad

## Re: EO 12866 comments to docket?

---

**From:** "Szabo, Aaron L. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=f93a8d1dd2b4420ca81e53ff8199b780-sz">

**To:** "Whiteman, Chad S. EOP/OMB" <(b) (6)>

**Date:** Mon, 06 Aug 2018 10:43:03 -0400

---

No.

Sent from my iPhone

On Aug 6, 2018, at 10:40 AM, Whiteman, Chad S. EOP/OMB <(b) (6)> wrote:

---

Aaron,

Is CEQ required to post the EO 12866 comments on the NEPA ANPRM to the public docket? I'm only aware of the CAA 307(d) docketing requirements. Are there equivalent docketing requirements for NEPA? Got a question from one of the agencies.

Chad

## EO 12866 comments to docket?

---

**From:** "Whiteman, Chad S. EOP/OMB" <(b) (6)>

**To:** "Szabo, Aaron L. EOP/CEQ" <(b) (6)>

**Date:** Mon, 06 Aug 2018 10:40:24 -0400

---

Aaron,

Is CEQ required to post the EO 12866 comments on the NEPA ANPRM to the public docket? I'm only aware of the CAA 307(d) docketing requirements. Are there equivalent docketing requirements for NEPA? Got a question from one of the agencies.

Chad

## RE: Agenda Review Reports for CEQ-0331

---

**From:** "Szabo, Aaron L. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=f93a8d1dd2b4420ca81e53ff8199b780-sz">  
**To:** Elizabeth Harris-Marshall - M1V1E <liz.harris-marshall@gsa.gov>  
**Date:** Tue, 07 Aug 2018 09:16:43 -0400  
**Attachments**  
: DRAFT - Council on Environmental Quality Agenda Entries\_Fall 2018.docx (20.5 kB)

Please find CEQ's draft agenda attached.

**From:** Elizabeth Harris-Marshall - M1V1E <liz.harris-marshall@gsa.gov>  
**Sent:** Monday, August 6, 2018 11:11 PM  
**To:** Szabo, Aaron L. EOP/CEQ <(b) (6)>  
**Subject:** Re: Agenda Review Reports for CEQ-0331

Aaron,

Since you have not taken ROCIS agenda training, you will have to send the updates to me for inputting into ROCIS. Thank you for replying.



---

### U.S. General Services Administration

Liz Harris-Marshall

Program Analyst

Regulatory Information Service Center

Office of Government-wide Policy

Office [202-482-7340](tel:202-482-7340) | Direct [202-501-8971](tel:202-501-8971)

[1800 F Street, NW](#)

[Washington, DC 20405](#)

>>[www.gsa.gov](http://www.gsa.gov)<<

On Mon, Aug 6, 2018 at 5:46 PM, Szabo, Aaron L. EOP/CEQ <(b) (6)> wrote:

Hi Liz,

Where do I provide the information for the revised regulatory agenda? Is there a website that I need to do or do can I send it to you?

Thanks.

**From:** Elizabeth Harris-Marshall - M1V1E <[liz.harris-marshall@gsa.gov](mailto:liz.harris-marshall@gsa.gov)>  
**Sent:** Wednesday, August 1, 2018 9:44 AM  
**To:** Szabo, Aaron L. EOP/CEQ <(b) (6)>  
**Subject:** Re: Agenda Review Reports for CEQ-0331

Aaron:

You will have to update these RINs within the base date of 10/00/2018-09/00/2018 in order to place them in an active stage of rulemaking. No a season is not allowed as an update.

---

**U.S. General Services Administration**

Liz Harris-Marshall

Program Analyst

Regulatory Information Service Center

Office of Government-wide Policy

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[Washington, DC 20405](#)

>>>[www.gsa.gov](http://www.gsa.gov)<<<

On Wed, Aug 1, 2018 at 9:38 AM, Szabo, Aaron L. EOP/CEQ <(b) (6)> wrote:

Hi Liz, to what extent do we need to provide a date for an action we may be taking within the next year? Can we put a season in or just have the year?

We did not receive the data call until very late, so we are running behind on getting this done.

Sent from my iPhone

On Aug 1, 2018, at 9:34 AM, Elizabeth Harris-Marshall - MIVIE <[liz.harris-marshall@gsa.gov](mailto:liz.harris-marshall@gsa.gov)> wrote:

Good morning:

Attached are the agenda review reports for your agency in need of your attention. These RINs are currently in a "No Stage" of rulemaking which indicates that the timetable needs to be updated. You will need to supply a projected next action of 10/00/2018 or greater. Please take a moment and provide the projected next action and any other changes required. Also attached is the spring 2018 preamble that may need your attention. I will need this information emailed to me ***NLT Friday, August 3, 2018 or sooner.***

If you have questions or need additional information, please call me.

---

**U.S. General Services Administration**

Liz Harris-Marshall

Program Analyst

Regulatory Information Service Center

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[1800 F Street, NW](#)

[Washington, DC 20405](#)

[>>>www.gsa.gov<<<<](http://www.gsa.gov)

<0331-CEQ Spring 2018 Preamble.docx>

<ARR CEQ-0331 as of 08012018.pdf>

**COUNCIL ON ENVIRONMENTAL QUALITY**

**40 CFR 1500**

**Semiannual Regulatory Agenda**

**AGENCY:** Council on Environmental Quality.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** This notice provides the semiannual agenda of the Council on Environmental Quality (CEQ) rules scheduled for review or development between fall 2018 and fall 2019. The Regulatory Flexibility Act and Executive Order 12866 require publication of the agenda.

**ADDRESSES:** All agency contacts are located at the Council on Environmental Quality, 730 Jackson Place Northwest, Washington, D.C. 20503.

**FOR FURTHER INFORMATION CONTACT:** Please direct all comments and inquiries about these rules to the appropriate agency contact. Please direct general comments relating to the agenda to Aaron L. Szabo, at the address above or at (202) 395-5750.

**SUPPLEMENTARY INFORMATION:** With this publication, CEQ meets the requirement of Executive Order 12866 that CEQ publish an agenda of rules that CEQ has issued or expects to issue and of currently effective rules that CEQ has scheduled for review. Additionally, CEQ meets the requirement of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) to publish an agenda in April and October of each year, as necessary, identifying rules that may have significant economic effects on a substantial number of small entities. The complete Unified Agenda will be published at [www.reginfo.gov](http://www.reginfo.gov), in a format that offers users enhanced ability to obtain information from the Agenda database. Agenda information is also available at [www.regulations.gov](http://www.regulations.gov), the government-wide website for submission of comments on proposed regulations.

[APG]

**NAME** Mary Neumayr,

*Chief of Staff,*

*Council on Environmental Quality.*

**Council on Environmental Quality—Prerule Stage**

Sequence Number	Title	Regulation Identifier Number
1	Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act	0331-AA03

**Council on Environmental Quality—Proposed Rule Stage**

Sequence Number	Title	Regulation Identifier Number
2	Freedom of Information Act (FOIA) and Privacy Act Regulations Update	0331-AA02

<b>Council on Environmental Quality (CEQ)</b>	<b>Prerule Stage</b>

[APG]

**1. • UPDATE TO THE REGULATIONS FOR IMPLEMENTING THE PROCEDURAL PROVISIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT**

**Priority:** Other Significant. Major status under 5 USC 801 is undetermined.

**Unfunded Mandates:** Undetermined

**EO 13771 Designation:** Other

**Legal Authority:** 42 U.S.C. 4371 et seq.

**CFR Citation:** 40 CFR Parts 1500 to 1508

**Legal Deadline:** None

**Abstract:** On August 15, 2017, President Trump issued Executive Order 13807, titled Establishing Discipline and Accountability in the Environment Review and Permitting Process for Infrastructure.” Section 5(e) of Executive Order 13807 directed the Council on Environmental Quality (CEQ) to develop an initial list of actions it will take to enhance and modernize the Federal environmental review and authorization process. CEQ published its initial list of actions in the Federal Register on September 14, 2017 (82 FR 43226) and stated that CEQ intends to review existing CEQ regulations implementing the procedural requirements of the National Environmental Policy Act (NEPA) in order to identify changes needed to update and clarify those regulations. The regulations were issued in 1978, were amended in 1986, and have never been comprehensively revised. While CEQ has issued memoranda and guidance documents over the years, CEQ believes it is appropriate at this time to consider updating the implementing regulations. On June 20, 2018, CEQ published an advance notice of proposed rulemaking (ANPRM) requesting public comments on questions related to CEQ’s regulations implementing the procedural requirements of NEPA. On July, 22, 2018, CEQ extended the ANPRM comment period until August 20, 2018. CEQ will review the comments provided in response to the ANPRM as CEQ considers development of a proposed rule.

**Timetable:**

[APG]

Action	Date	FR Cite
ANPRM	06/20/18	83 FR 28591
Comment Extension	7/11/2018	83 FR 32071
NPRM	02/00/2019	

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** Undetermined

**Agency Contact:** Ted Boling, Council on Environmental Quality, 730 Jackson Place NW, Washington, DC 20506

Phone: 202 395-5750

**RIN:** 0331-AA03

Council on Environmental Quality (CEQ)	Proposed Rule Stage

**2. • FREEDOM OF INFORMATION ACT (FOIA) AND PRIVACY ACT REGULATIONS UPDATE**

**Priority:** Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

**EO 13771 Designation:** Not subject to, not significant

**Legal Authority:** 5 U.S.C. 552 et seq.

**CFR Citation:** 40 CFR 1515; 40 CFR 1516

**Legal Deadline:** None

[APG]

**Abstract:** The Council on Environmental Quality (CEQ) is developing a proposal to revise its Freedom of Information Act (FOIA) regulations, in order to comply with the FOIA Improvement Act of 2016; to reflect CEQ's business process; and to correct or remove obsolete information. CEQ is also revising its Privacy Act implementation regulations due to changes of address and other administrative issues.

**Timetable:**

Action	Date	FR Cite
NPRM	01/00/19	

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** None

**Agency Contact:** Viktoria Z. Seale, Council on Environmental Quality, 730 Jackson Place NW,  
Washington, DC 20506

Phone: 202 395-5750

**RIN:** 0331-AA02

[FR Doc. Filed 01-01-01; 0:00 AM]

[APG]

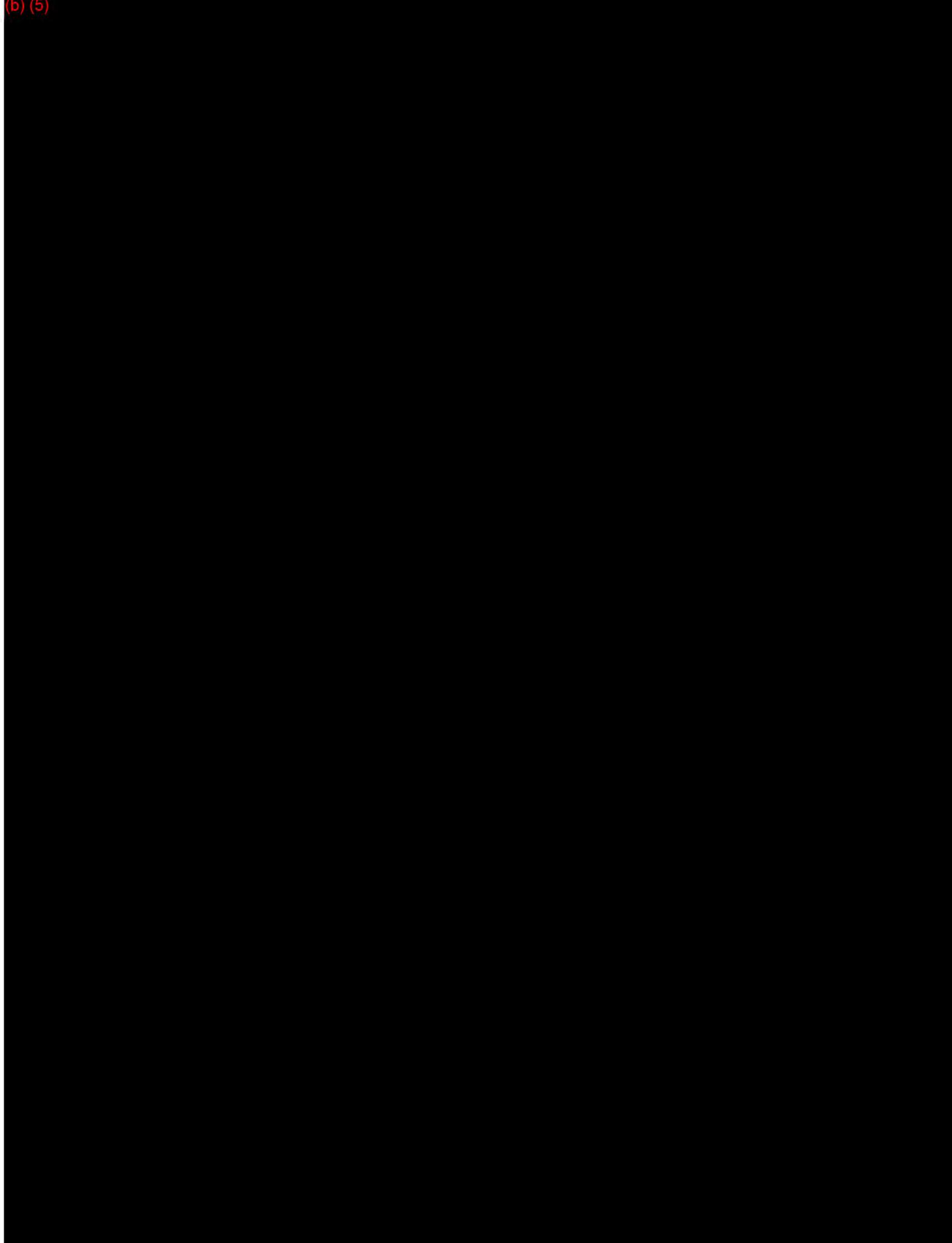
## FW: Draft

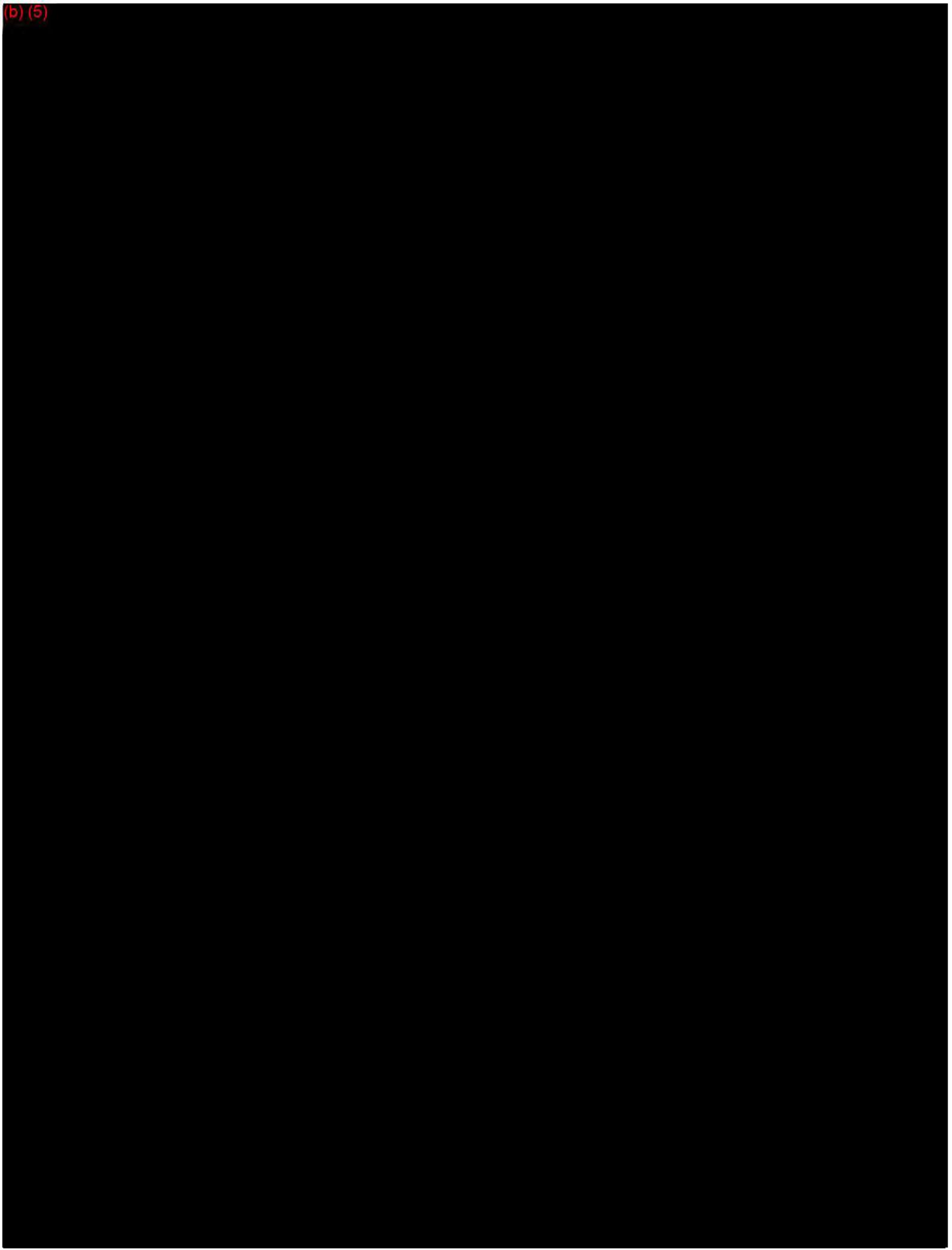
---

**From:** "Pettigrew, Theresa L. EOP/CEO" <(b) (6)>  
**To:** "Neumayr, Mary B. EOP/CEQ" <(b) (6)>  
**Date:** Wed, 08 Aug 2018 15:14:31 -0400  
**Attachments** DRAFT Response to Senator Carper 8-8-18.docx (15.02 kB); DRAFT Response to  
: Senator Carper letter Appendix 8 8 18.docx (61.1 kB)

**From:** Smith, Katherine R. EOP/CEQ  
**Sent:** Wednesday, August 8, 2018 2:45 PM  
**To:** Pettigrew, Theresa L. EOP/CEQ <(b) (6)>  
**Subject:** Draft

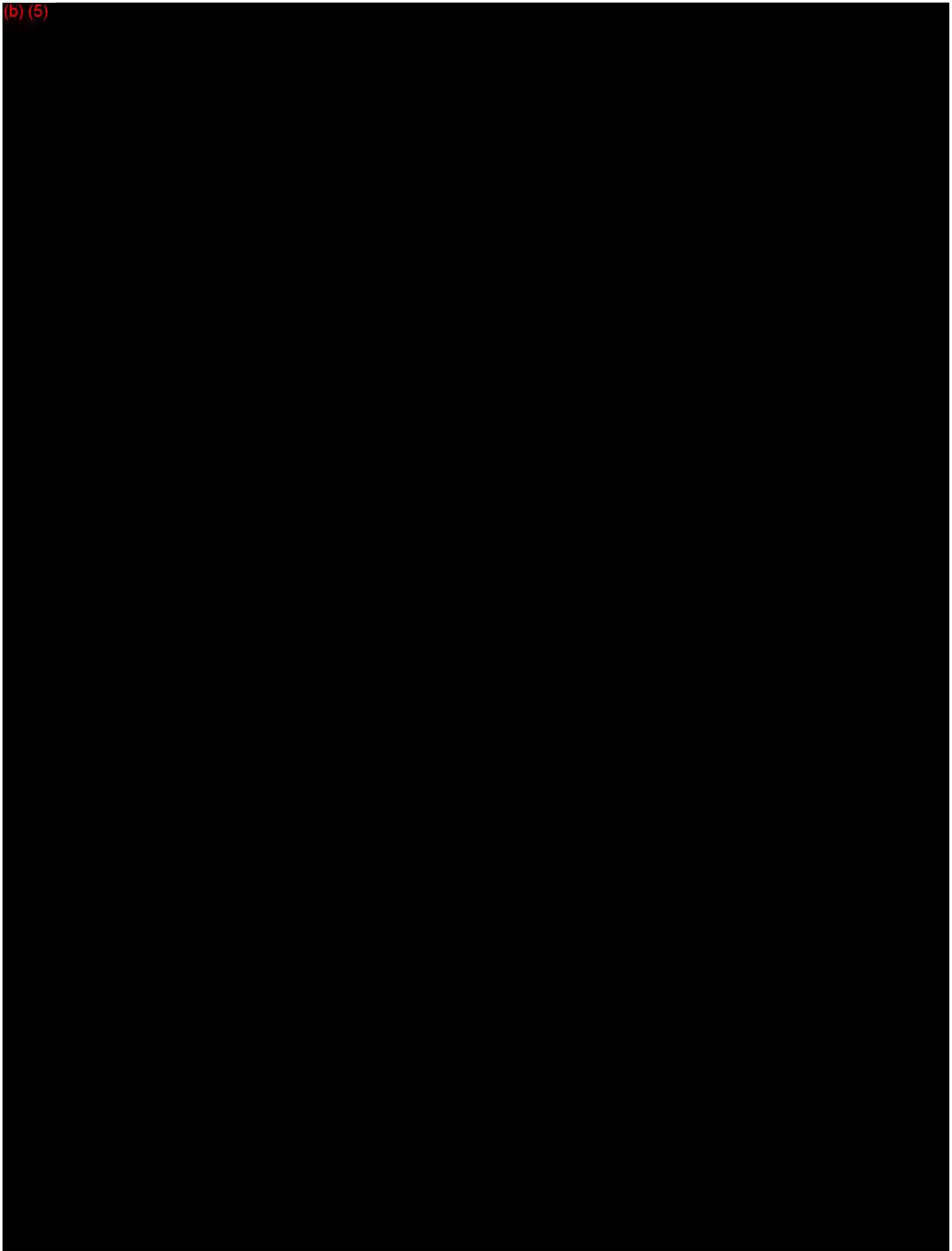
Katherine Smith  
Special Assistant  
Council on Environmental Quality  
(b) (6)

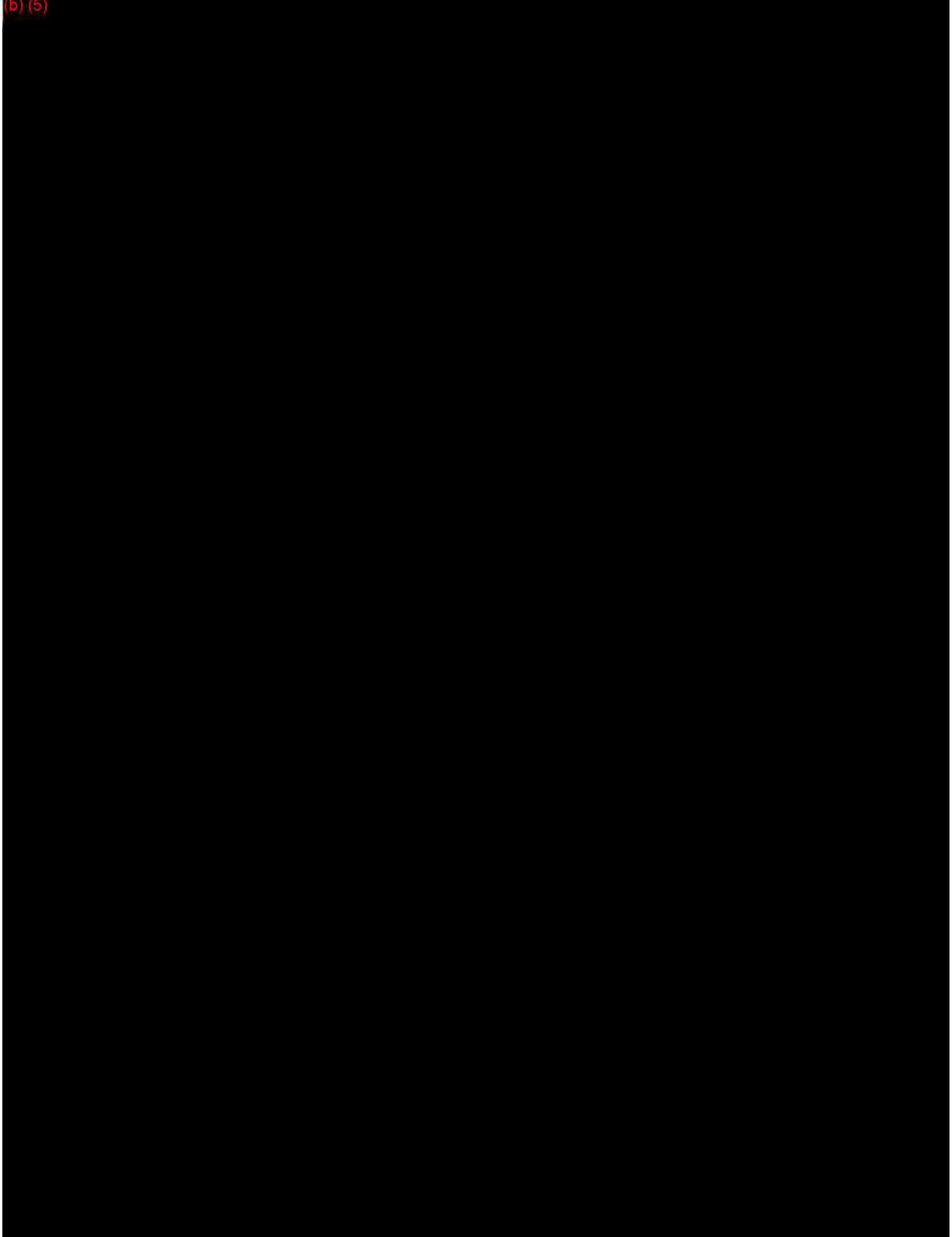


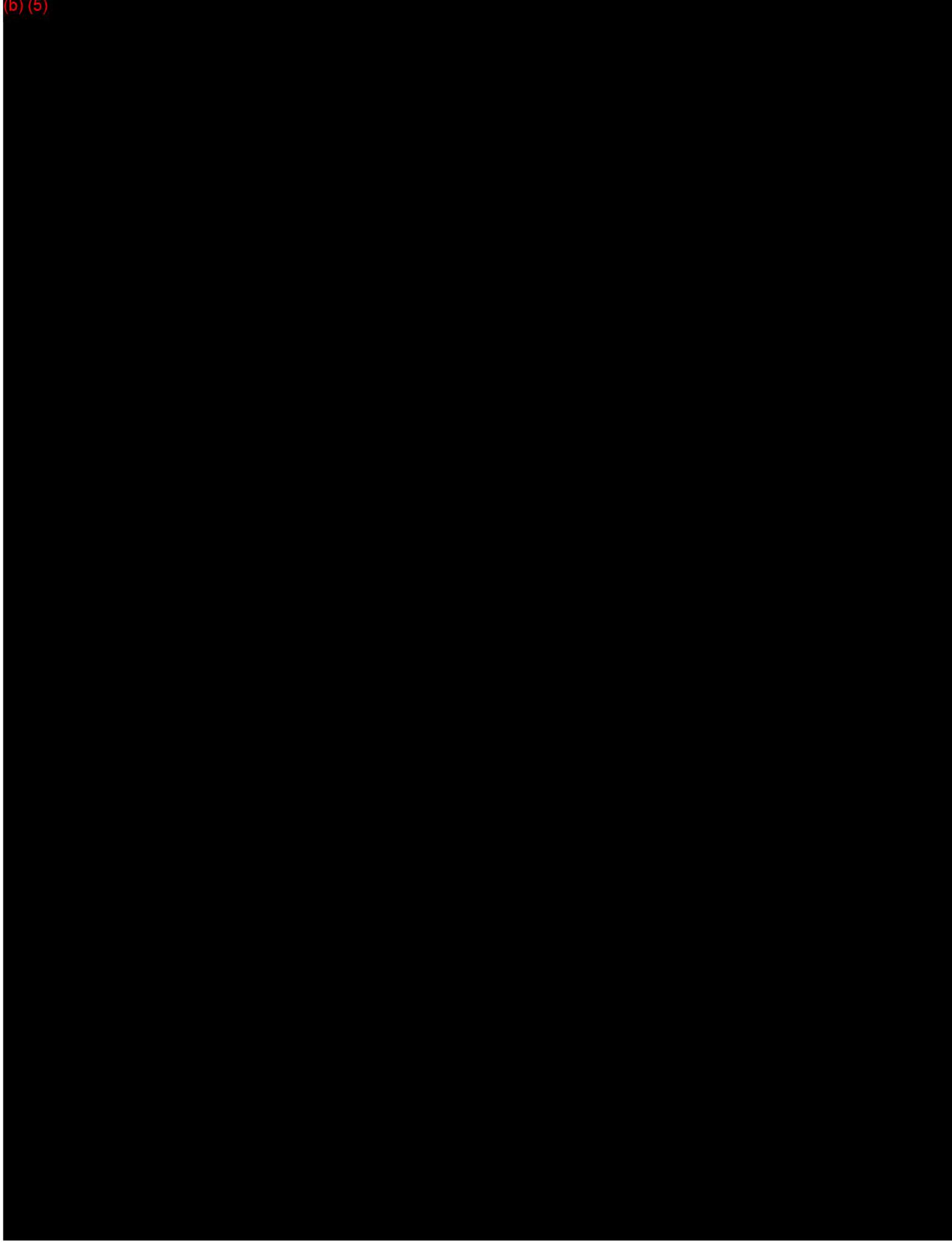


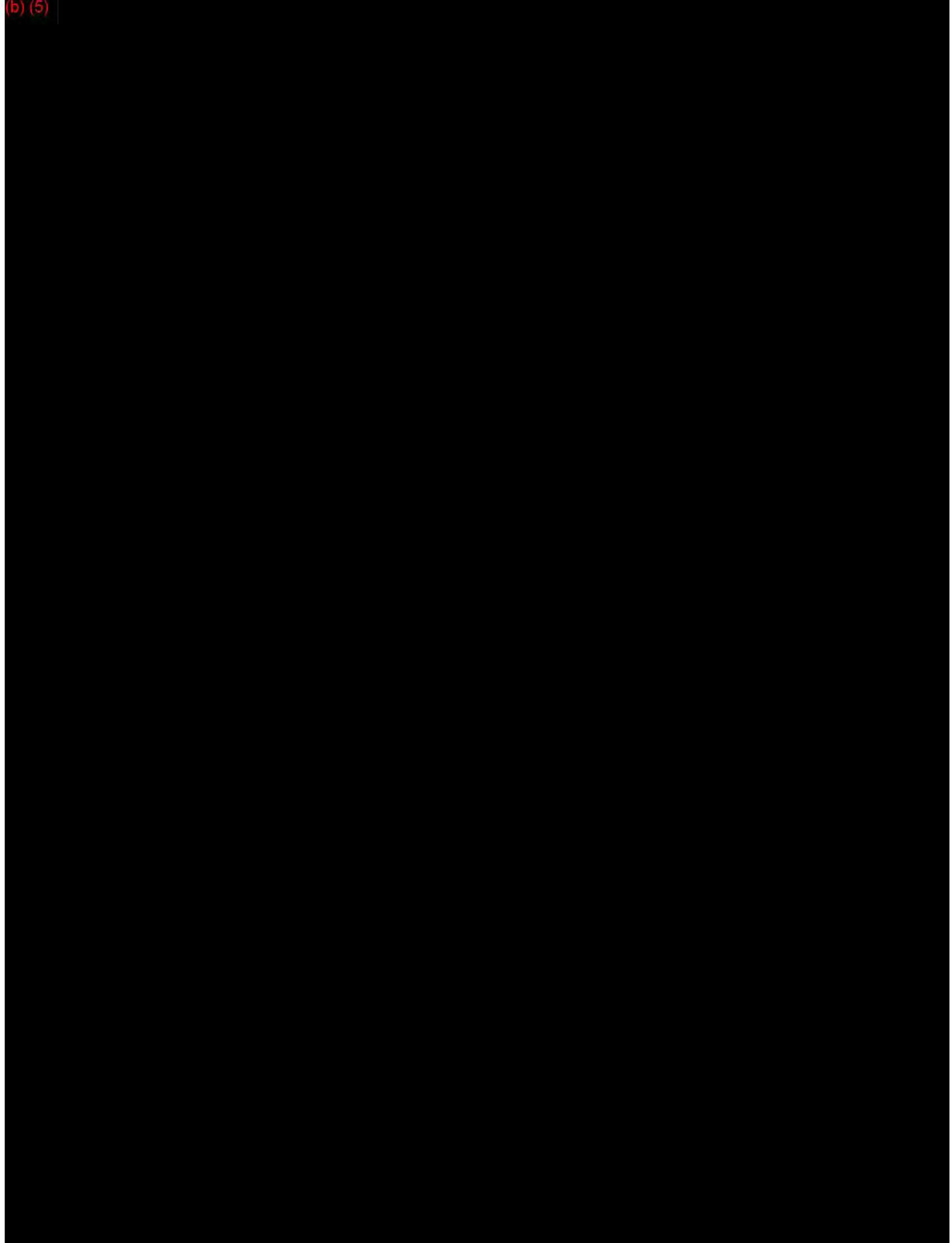


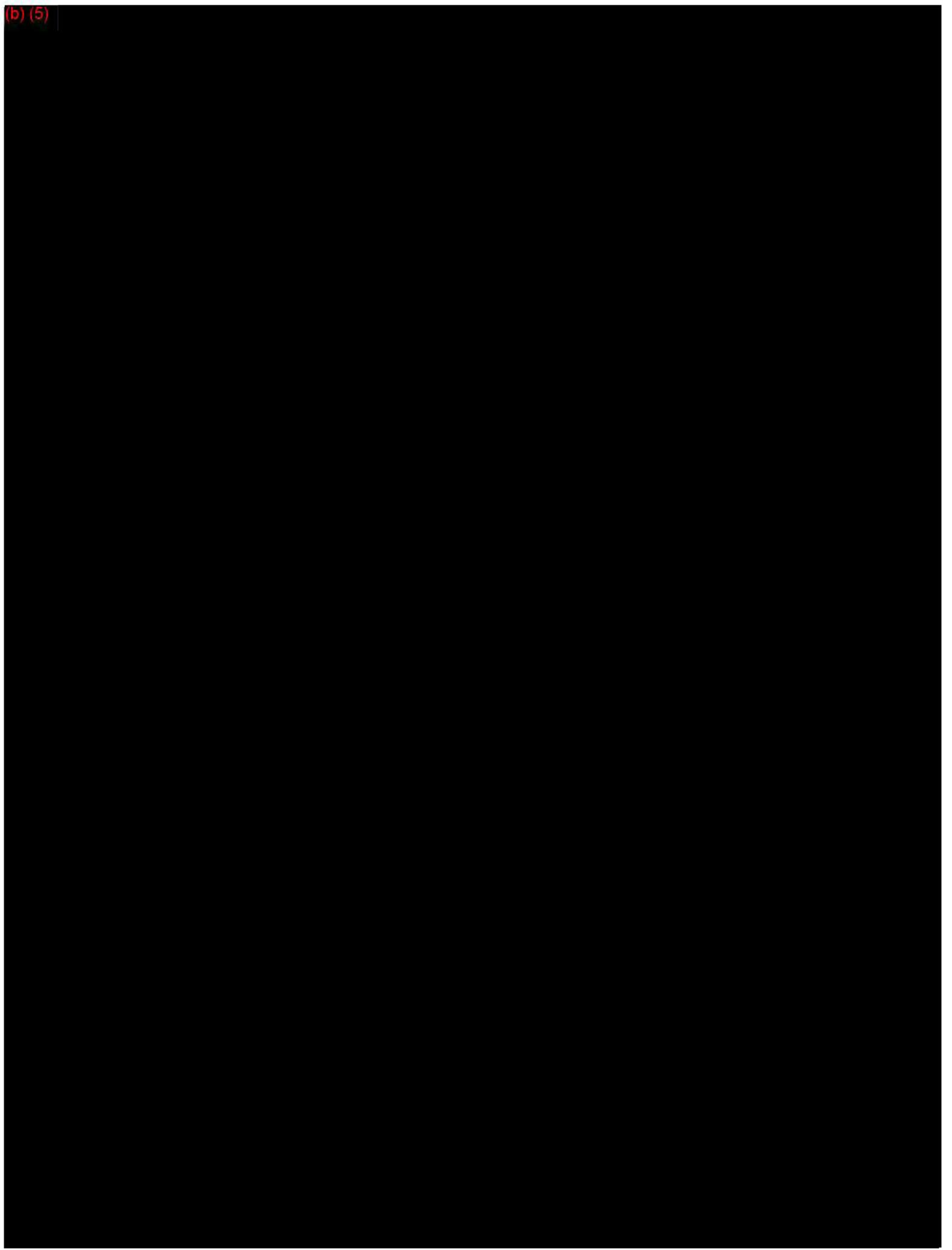


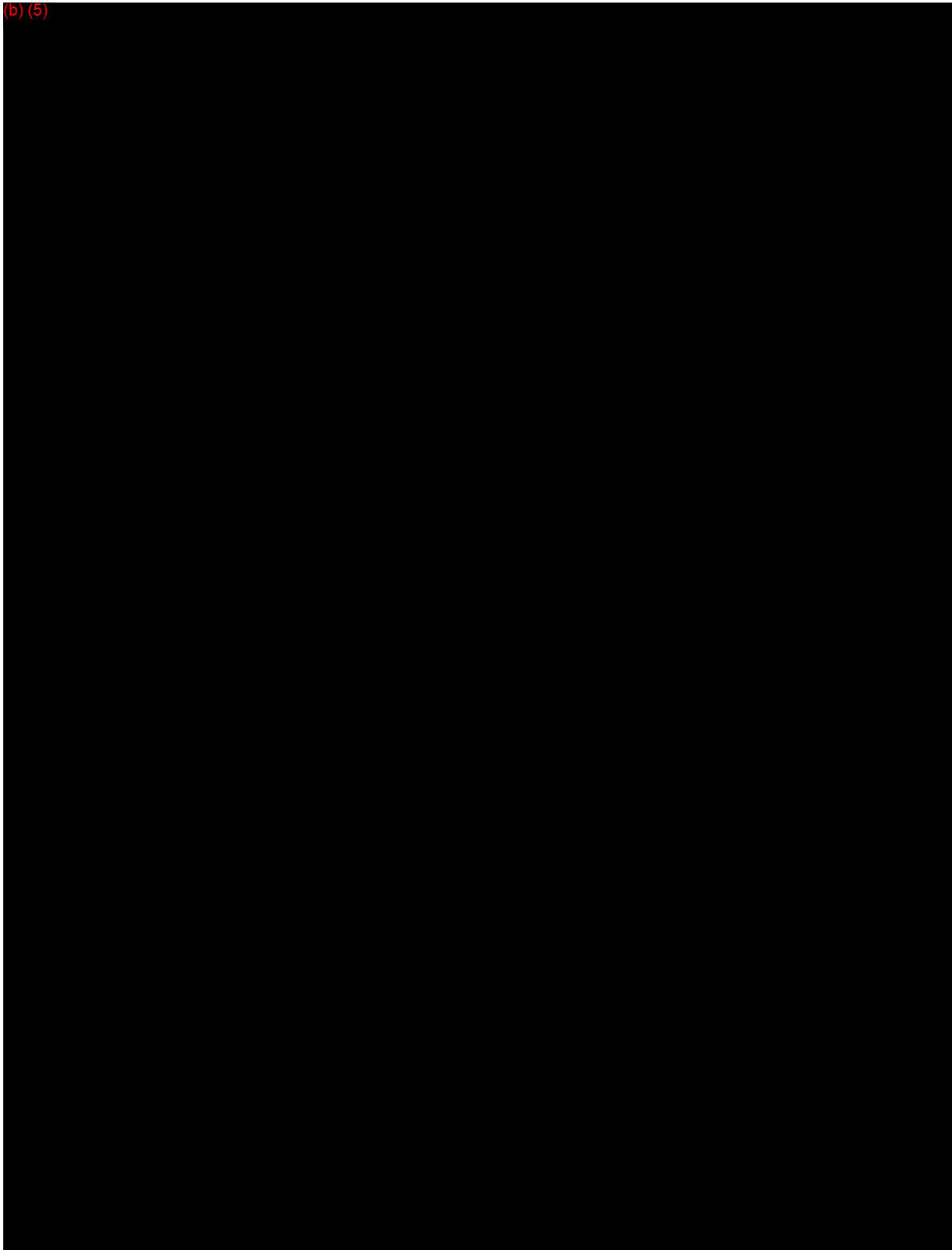


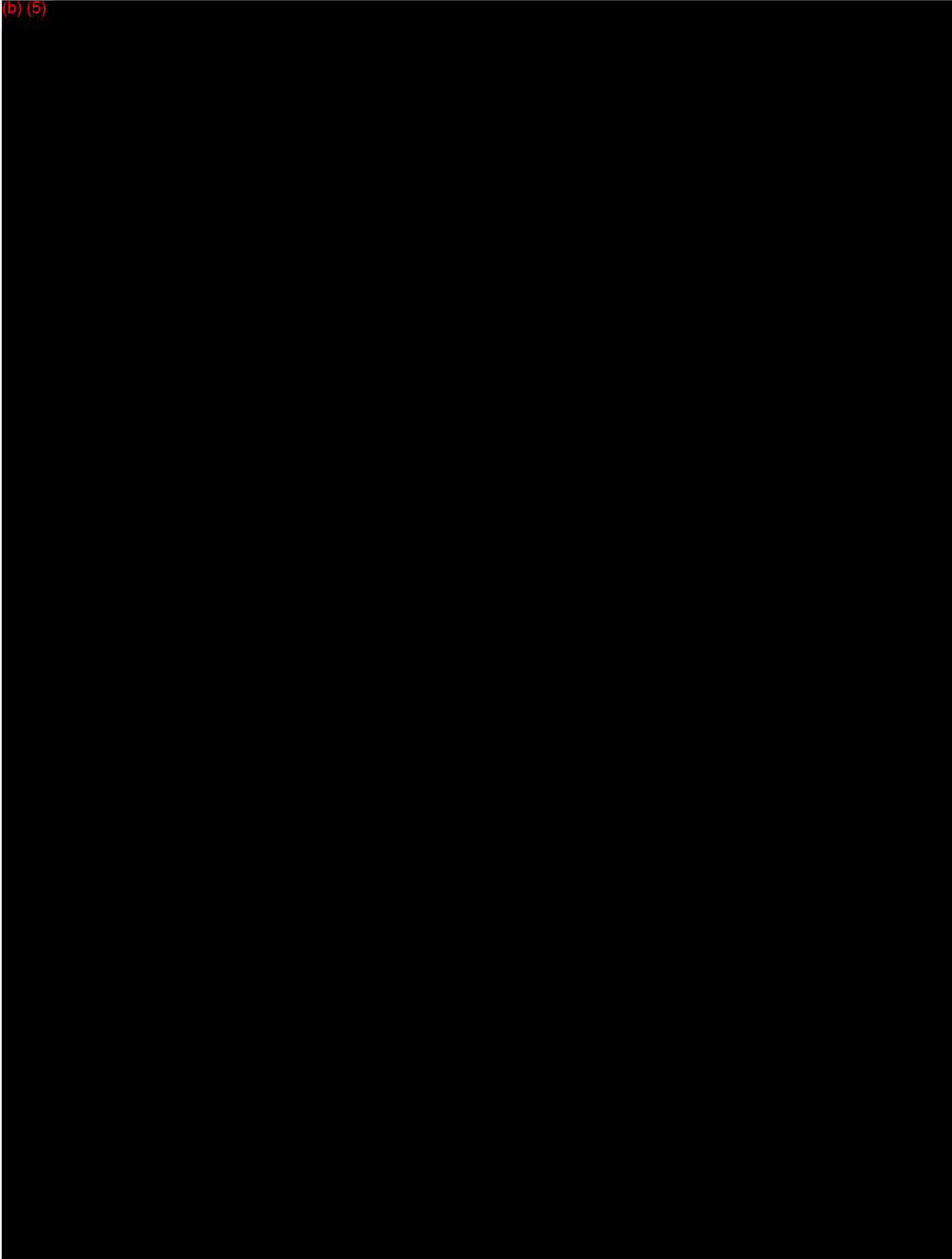




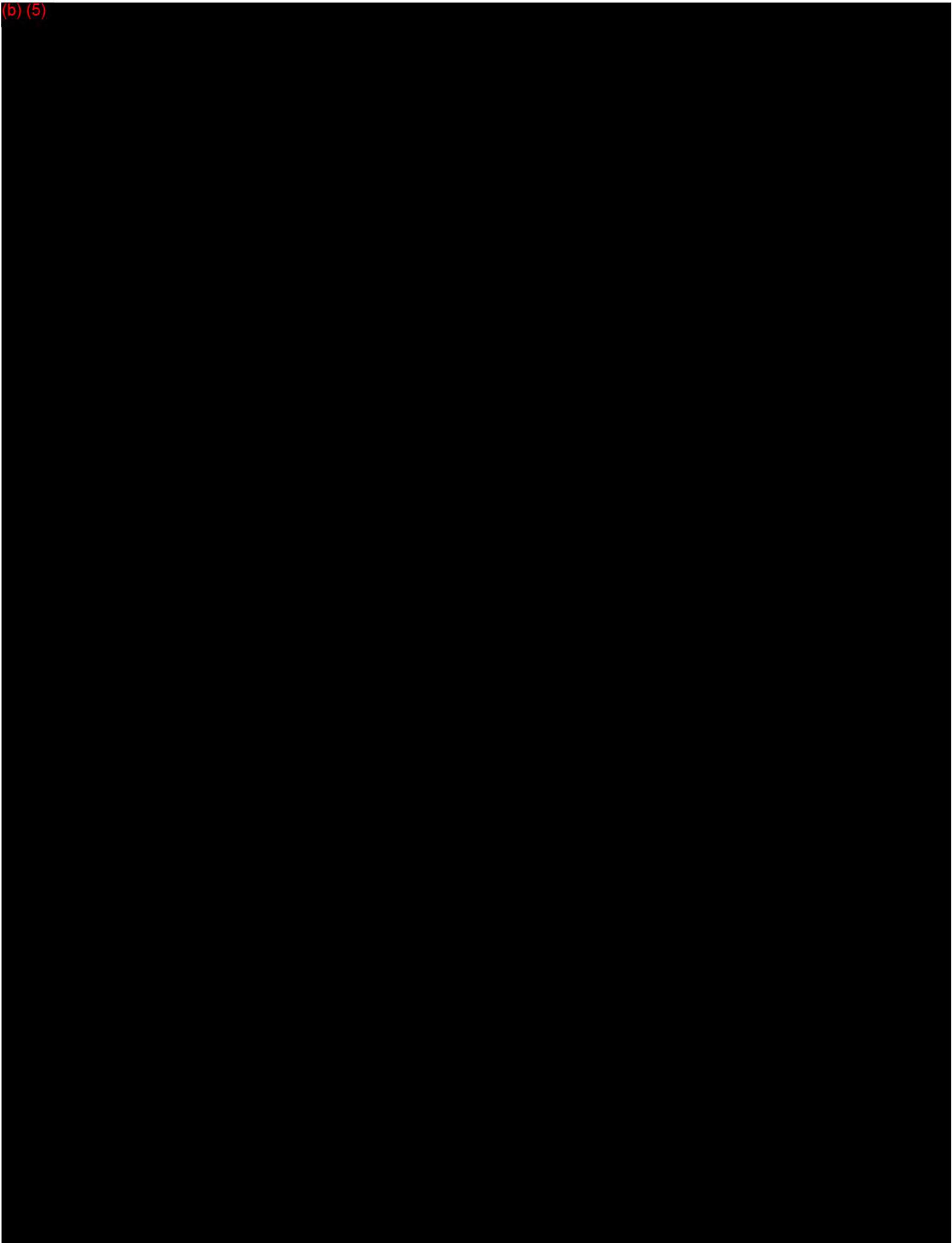


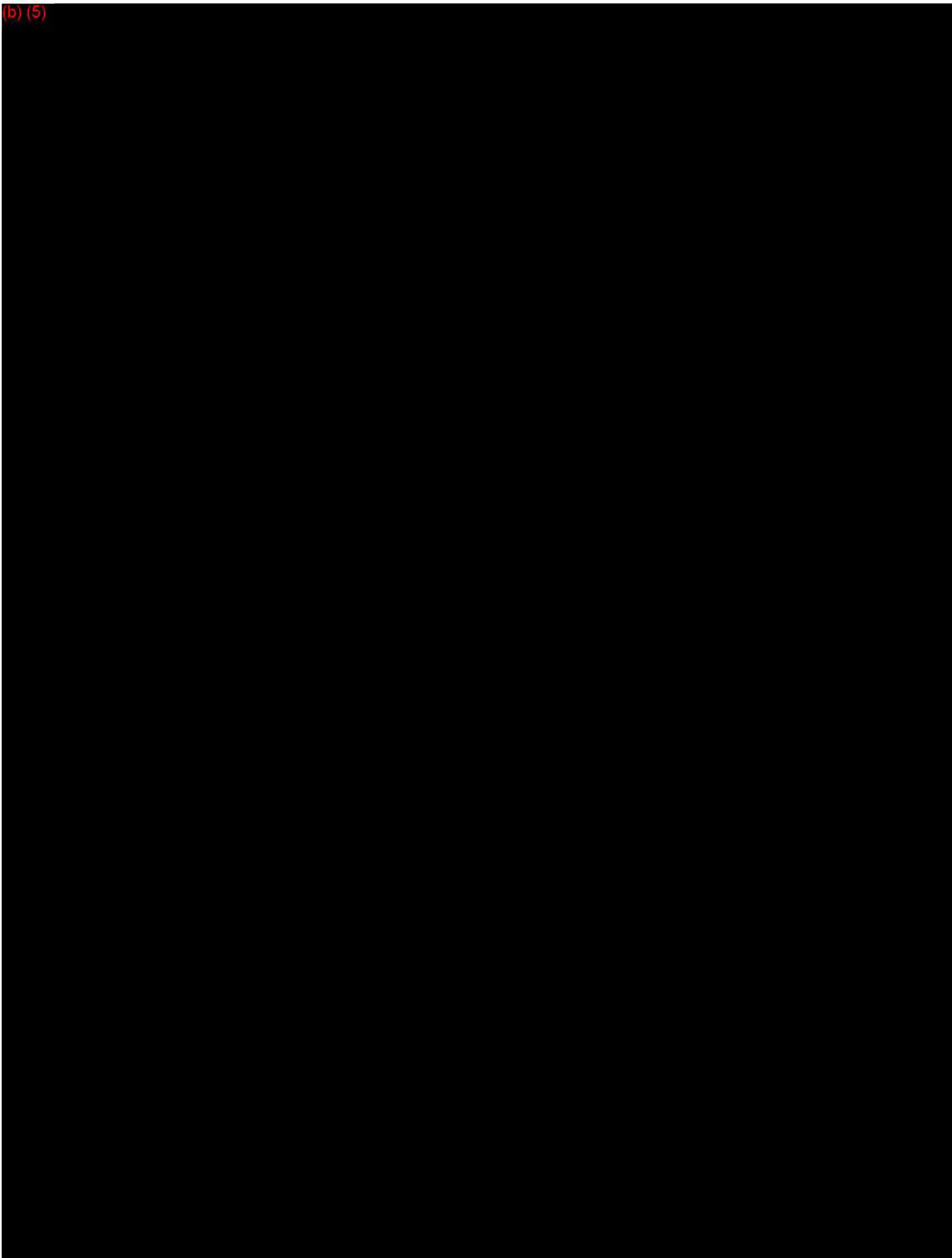


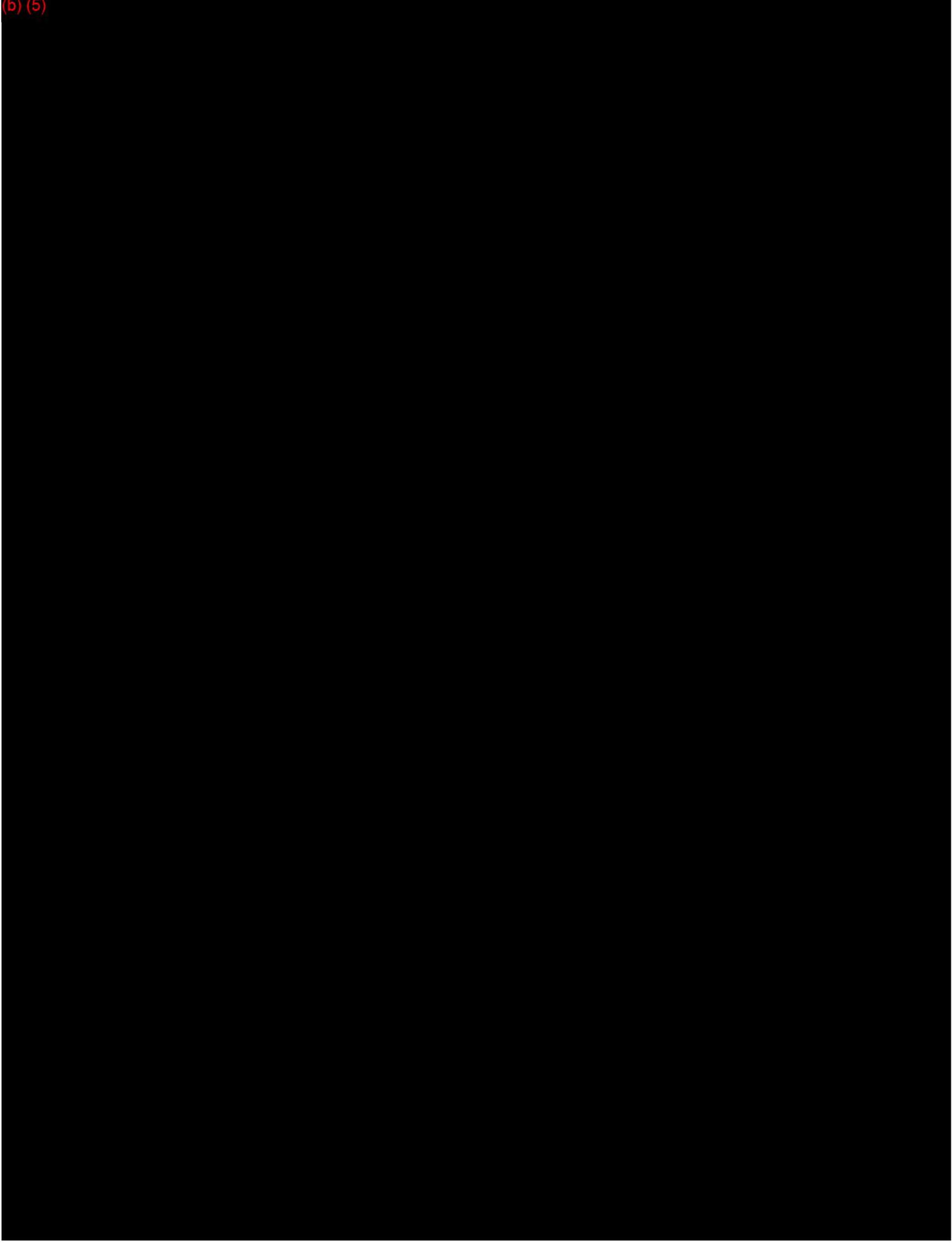


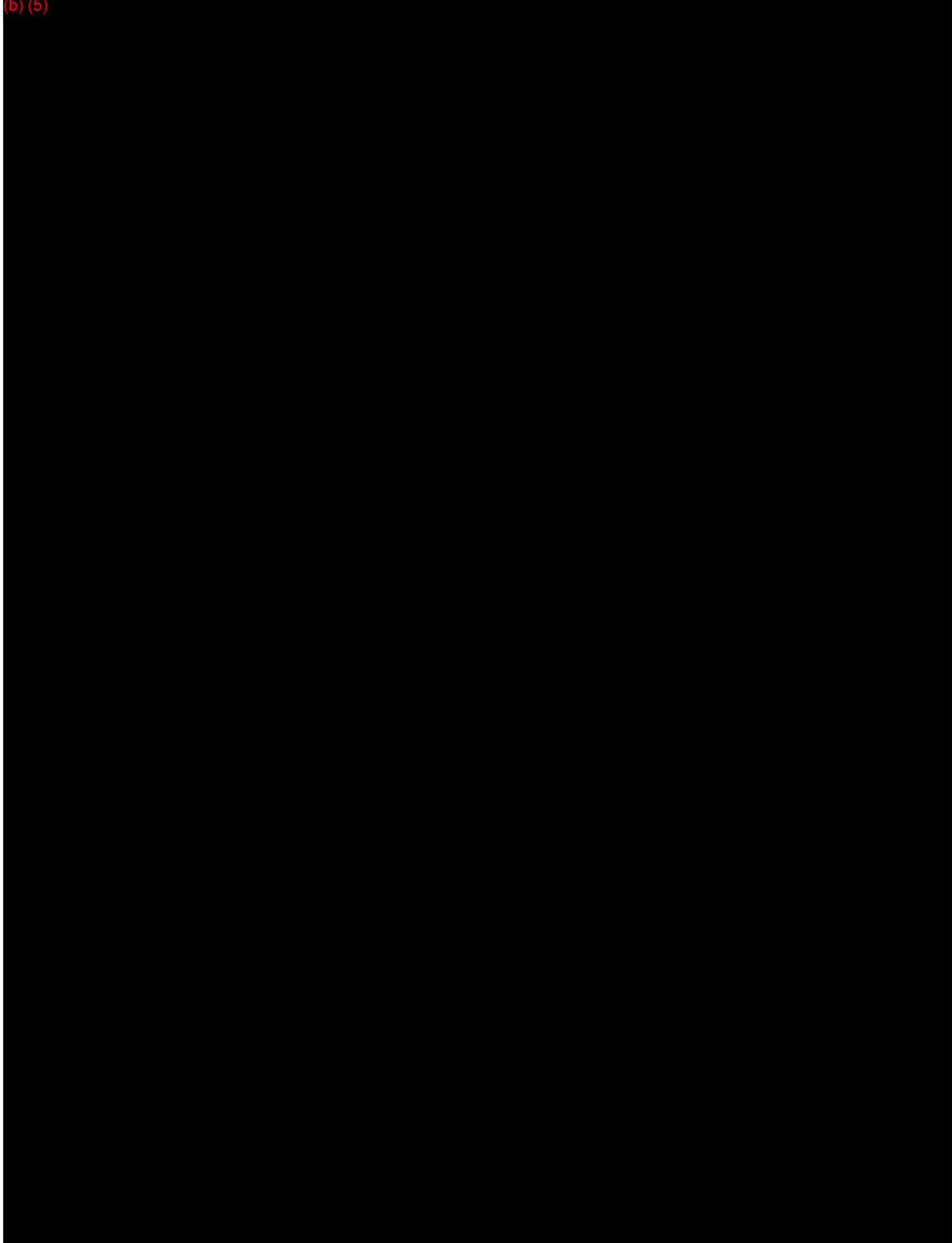


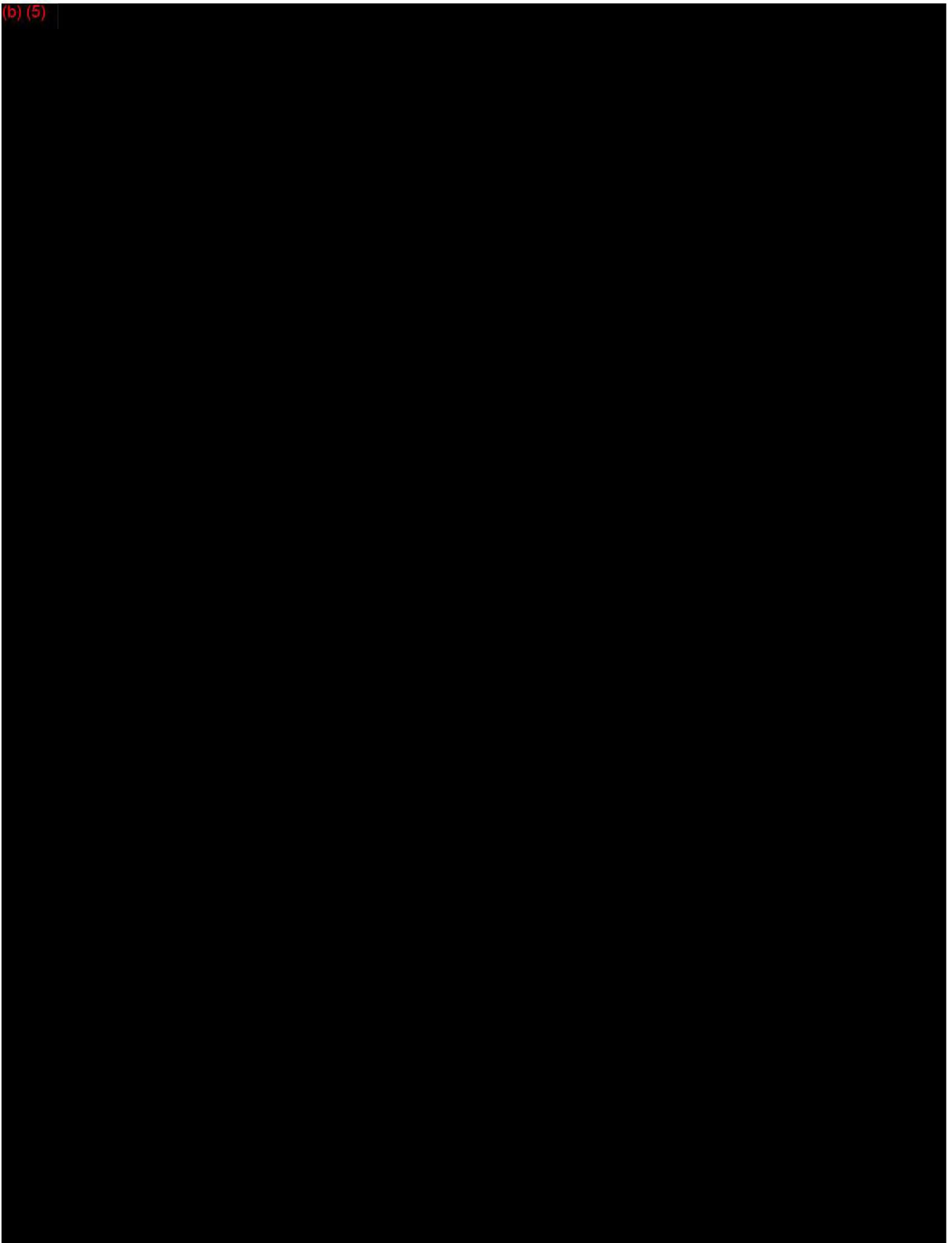


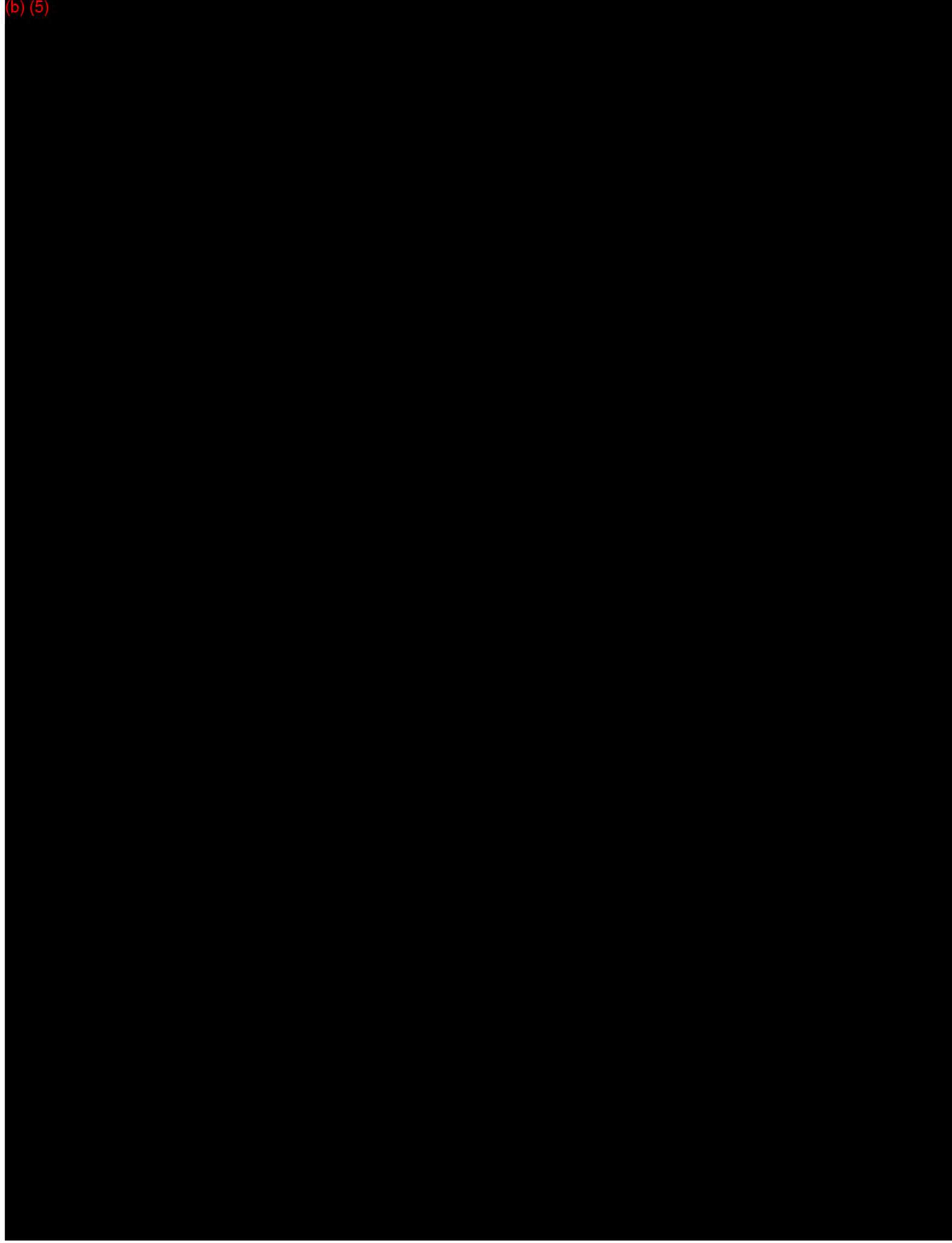


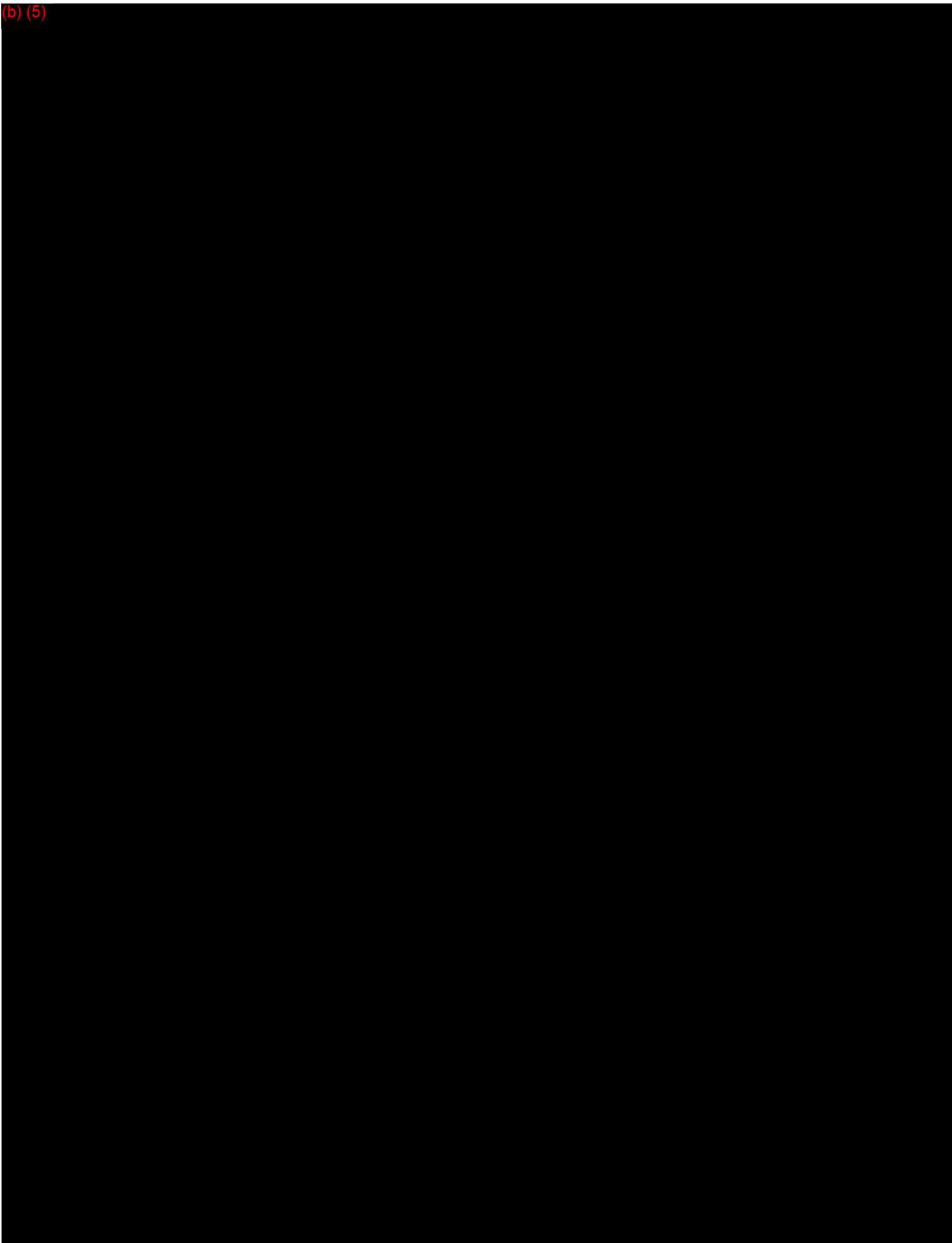












## FW: Quick question re EO 12866

---

**From:** "Smith, Katherine R. EOP/CEQ" <(b) (6)>

**To:** "Szabo, Aaron L. EOP/CEQ" <(b) (6)>

**Date:** Thu, 09 Aug 2018 15:12:23 -0400

---

-----Original Message-----

**From:** Boling, Ted A. EOP/CEQ

**Sent:** Thursday, August 9, 2018 3:05 PM

**To:** Smith, Katherine R. EOP/CEQ <(b) (6)> Neumayr, Mary B. EOP/CEQ

<(b) (6)>

**Subject:** FW: Quick question re EO 12866

OIRA is updating the record of meetings on the ANPRM. RegInfo.gov currently shows only:

06/13/2018 11:30 AM 0331-AA03 0331-CEQ Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act Prerule Stage Completed

06/12/2018 03:00 PM 0331-AA03 0331-CEQ Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act Prerule Stage Completed

06/07/2018 04:00 PM 0331-AA03 0331-CEQ Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act Prerule Stage Completed

-----Original Message-----

**From:** Whiteman, Chad S. EOP/OMB

**Sent:** Thursday, August 9, 2018 2:43 PM

**To:** Boling, Ted A. EOP/CEQ <(b) (6)>

**Subject:** RE: Quick question re EO 12866

Ted,

We're just now getting the EO meetings posted on reginfo.gov. Three of the meeting records have been posted so far. The remainder should be up soon. Mabel talked to me today about how to spell Chris P.'s name so she is actively uploading some of them today. Here is the link: <https://www.reginfo.gov/public/do/eom12866Search>

Let me know if you have any questions.

Chad

-----Original Message-----

**From:** Boling, Ted A. EOP/CEQ

**Sent:** Thursday, August 9, 2018 2:39 PM

**To:** Whiteman, Chad S. EOP/OMB <(b) (6)>

**Subject:** Quick question re EO 12866

Chad - could you point me to where you post information about our meetings on the ANPRM? Or call me on (b) (6)

Sent from my iPhone

## RE: Minutes

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**From:** "Szabo, Aaron L. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=f93a8d1dd2b4420ca81e53ff8199b780-sz">  
**To:** "Barnett, Steven W. EOP/CEQ" <(b) (6)>  
**Date:** Fri, 10 Aug 2018 12:31:28 -0400  
**Attachments**  
: CEQ NEPA Implementing Regulation Working Group 8.7.2018\_als.docx (31.4 kB)

Looks good. My suggestions in RLSO. Let me know if you would like to chat about it.

**From:** Barnett, Steven W. EOP/CEQ  
**Sent:** Friday, August 10, 2018 10:38 AM  
**To:** Szabo, Aaron L. EOP/CEQ <(b) (6)>  
**Subject:** Minutes

Sorry about the delay on these—in the future, I'll shoot for EOB Wednesday.

(b) (5)

After your review, let me know if there's changes you'd like me to make to format or content going forward. Thanks.

Steven

**CEQ NEPA Implementing Regulation Working Group**

**Meeting Minutes**

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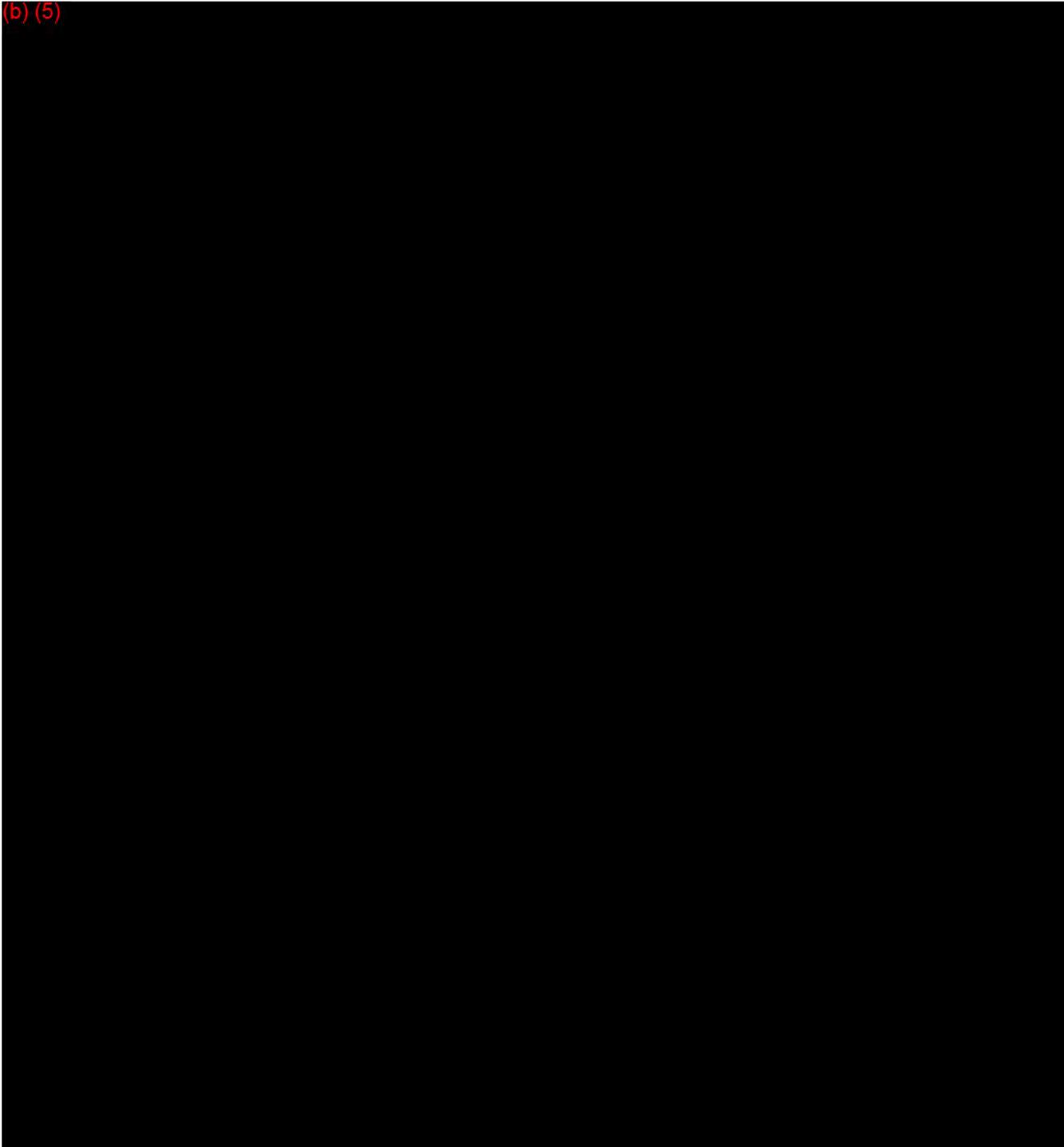
**Date:** August 7, 2018

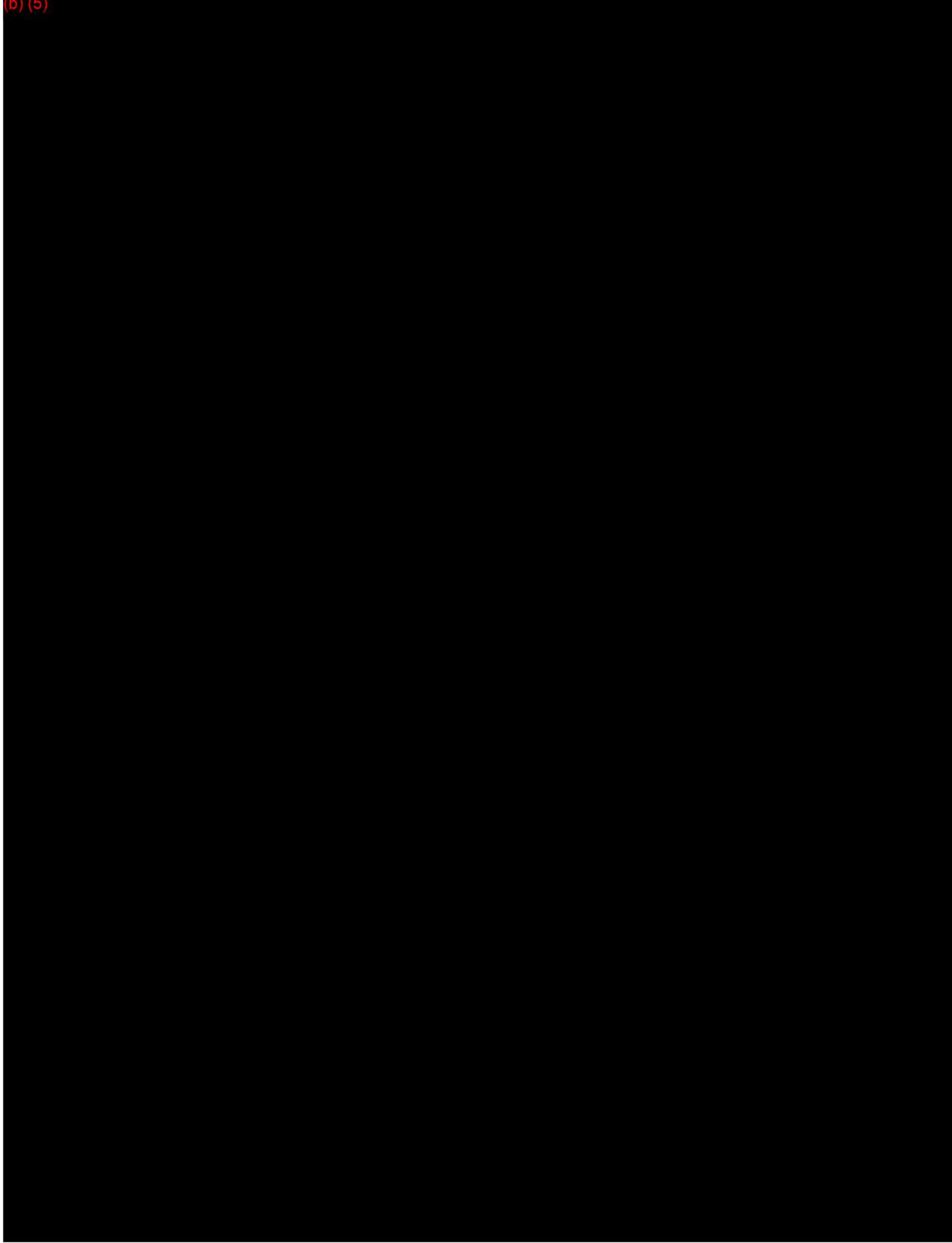
**Time:** 4:00 PM

**Present:** Aaron Szabo, Ted Boling, Viktoria Seale, Dan Schneider, Mario Loyola, Michael Drummond, Katherine Smith, Yardena Mansoor, Steven Barnett, Tom Sharp

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(b) (5)





## Minutes

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**From:** "Barnett, Steven W. EOP/CEQ" <(b) (6)>  
**To:** "Szabo, Aaron L. EOP/CEQ" <(b) (6)>  
**Date:** Fri, 10 Aug 2018 10:38:09 -0400  
**Attachments:** CEQ NEPA Implementing Regulation Working Group 8.7.2018.docx (19.61 KB)

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Sorry about the delay on these—in the future, I'll shoot for EOB Wednesday.

(b) (5)

After your review, let me know if there's changes you'd like me to make to format or content going forward. Thanks.

Steven

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**CEQ NEPA Implementing Regulation Working Group**  
**Meeting Minutes**

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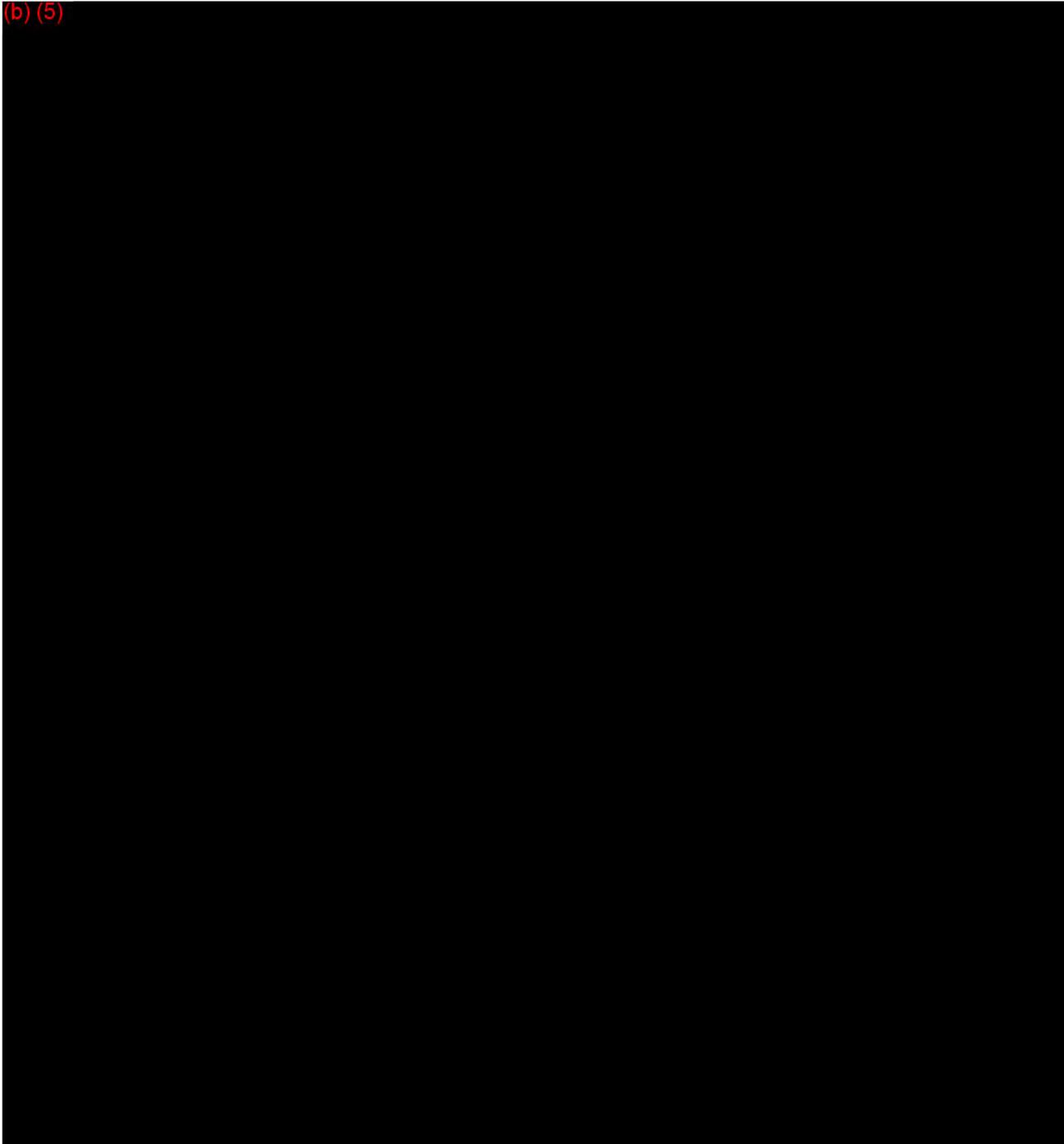
**Date:** August 7, 2018

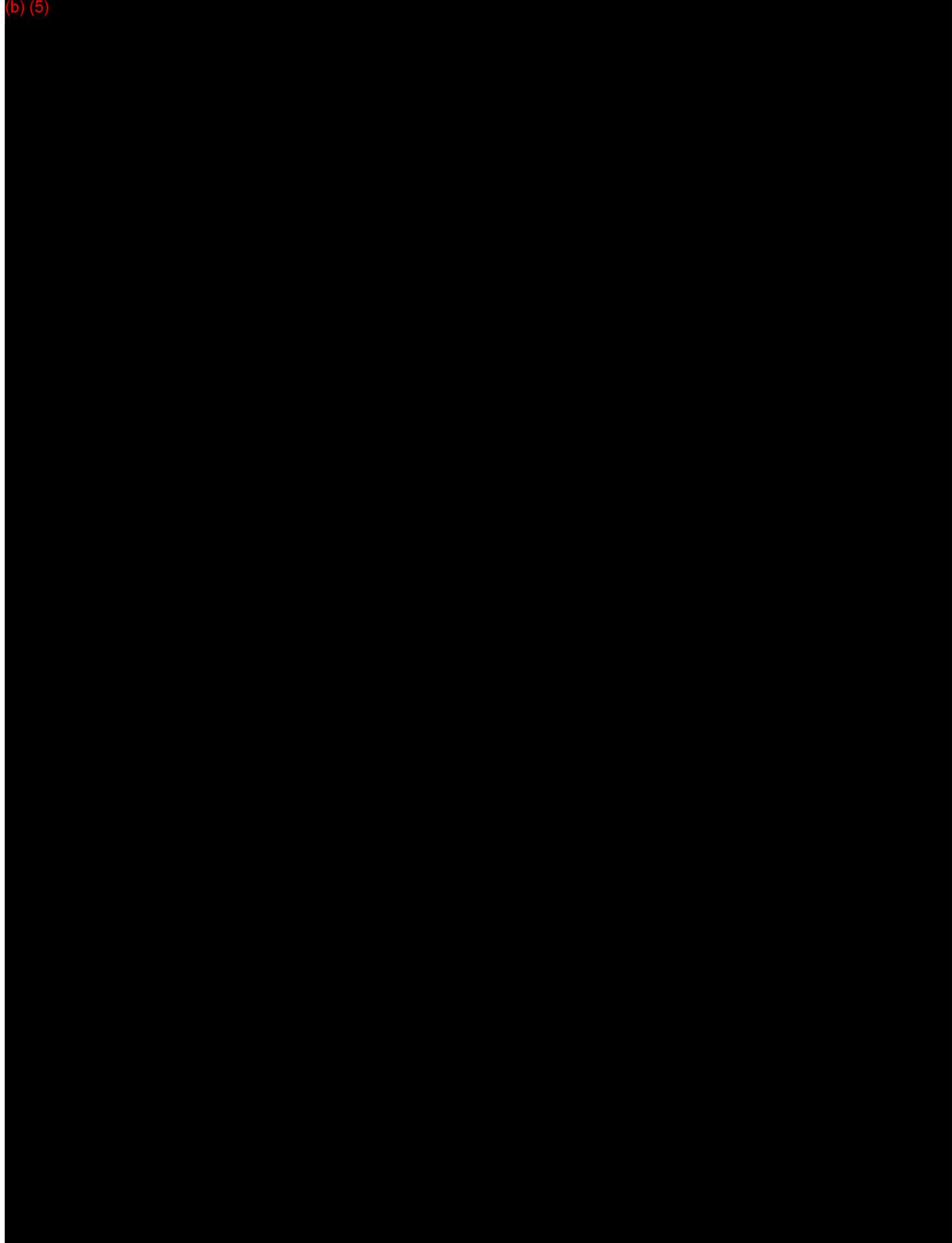
**Time:** 4:00 PM

**Present:** Aaron Szabo, Ted Boling, Viktoria Seale, Dan Schneider, Mario Loyola, Michael Drummond, Katherine Smith, Yardena Mansoor, Steven Barnett, Tom Sharp

---

(b) (5)





## Comment previously unavailable due to "Internal Server Error" is now available

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**From:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
**To:** "Loyola, Mario A. EOP/CEQ" (b) (6) "Drummond, Michael R. EOP/CEQ" (b) (6)  
**Date:** Mon, 20 Aug 2018 12:36:03 -0400  
**Attachments**  
: 0534 John Young.pdf (108.25 kB)

Comment 0534, attached, from John Young is now available.

Regulations.gov is very quick to respond to requests for assistance.

**From:** Mansoor, Yardena M. EOP/CEQ  
**Sent:** Monday, August 20, 2018 12:23 PM  
**To:** 'regulations@erulemakinghelpdesk.com' <regulations@erulemakinghelpdesk.com>  
**Subject:** Requesting assistance re "Internal Server Error"

The attachment to the comments of John Young, at <https://www.regulations.gov/document?D=CEQ-2018-0001-0534>, is unavailable. When I select the pdf icon, the complete text of the resulting page is:

### Internal Server Error

The server encountered an internal error or misconfiguration and was unable to complete your request.

Please contact the server administrator at [regulations@erulemakinghelpdesk.com](mailto:regulations@erulemakinghelpdesk.com) to inform them of the time this error occurred, and the actions you performed just before this error.

More information about this error may be available in the server error log.

I would appreciate your assistance in retrieving this attachment. (On 8/13, you quickly solved my similar request regarding a different submittal by replacing an illegal character in the attachment name.)

Thanks,

Yardena Mansoor  
Deputy Associate Director for NEPA  
Council on Environmental Quality  
(b) (6) / (b) (6)

Regarding CEQ-2018-0001

Just stumbled on this 07-19-2018 while researching Federal Energy Regulatory Commission challenges in the permitting of proposed LNG projects in which reference was made to FAST-41 which, in turn led me to the Council on Environmental Quality's interest in overhauling the National Environmental Policy Act.

I believe that our nation desperately needs a thorough NEPA reworking – but not until after the 2020 presidential election and not along the lines proposed by the Advance Notice of Proposed Rulemaking accompanying the request for comments on CEQ-2018-0001.

Politics should not be the major factor here, but planet-wide catastrophic climate change/chaos has become an existential political issue. Delaying immediate and substantial reductions in our Greenhouse Gas emissions places our lands and people at perilous and unacceptable risk -- both here and to all the corners of our globe [pun intended, even though the peril could not be greater].

Nothing wrong with streamlining – as long as you carefully avoid and protect against streamlining death sentences and mass executions of populations (including animal and plant populations essential to our food security). Nothing wrong with transparency – as long as it doesn't make such populations invisible etc.

Full disclosure: My wife and I have been members of SAVE RGV from LNG since it was formed in May 2014 to fight the threat of proposed LNG export operations at our local Port of Brownsville, next door to South Padre Island, TX. Check out the groups Facebook page at <https://www.facebook.com/saveRGVfromLNG/>. I am also registered as a FERC Intervenor in regards to NextDecade's proposed Rio Grande LNG and Rio Bravo Pipeline projects, the proposed Annova LNG and Texas LNG projects, and Enbridge's Valley Crossing Pipeline Border Crossing Project. All of these projects continue to face strong local opposition and all except the Valley Crossing Pipeline remain heavily contested (Valley Crossing having prevailed in obtaining FERC approval). More personally, I am a 76 year old Texas native who, before I retired this year, was a mental health professional (holding masters degrees in psychology and social work and state licensed as a Professional Counselor, Marriage and Family Therapist, and Clinical Social Worker).

#### THE CENTRAL CHALLENGES TO NEPA REVISION:

##### Challenge Number 1: Adequately Defining and Protecting Our “Public Interest”

Overall, I favor efficiency, responsible budgeting, and responsible and timely action.

**HOWEVER**, I cannot agree to arbitrary time limits for the completion of evaluations and issuing of permits for proposed projects that pose significant dangers to our health and to our natural environment on which our niceties for life depend (including clean air with sufficient oxygen levels; adequate supplies of clean water; biologically manageable temperature rages; and manageable body burdens of harmful chemicals and organisms).

Those seeking permission to build such projects quite reasonably want to transfer all the risks and costs involved from a) themselves to b) taxpayers to the general population as a whole. The primary purpose of our National Environmental Protection Act is to protect our Public Interest by preventing them from doing this to their advantage against our reasonable and desirable best interests.

There are situations in which the Public Interest can include dangerous projects that result in fatalities, illness, disabilities, pain, suffering, and loss. The greatest challenge to reworking NEPA is the difficulty of achieving a consensus definition of the term "Public Interest" and consensus process for determining when, where, under what conditions, and for how long particular projects are to be permitted consistent with this definition.

Consider, for example, how the inadequacy (lack?) of Public Interest definition within NEPA has allowed Natural Gas Act language that privileges the exporting of natural gas to other countries. Exporting natural gas to other countries is to be considered to be in our Public Interest unless it can be shown to be "inconsistent with the public interest." Our US Department of Energy (DOE) has stated that the presumption that natural gas exports is "rebuttable" on a number of grounds including but not limited to "economic impacts, international impacts, security of natural gas supply, and environmental impacts" (<https://s3.amazonaws.com/public-inspection.federalregister.gov/2018-13427.pdf>). However, the possibility of showing such proposed projects are contrary to our Public Interest has remained theoretical. To date, DOE has never found the arguments against such exports sufficient. Especially our environmental arguments against such exports are dismissed as "hypothetical," "speculative," "unforeseeable," and/or "unknowable" by DOE, by our Federal Energy Regulatory Commission, and by our federal courts.

#### Challenge Number 2: Achieving A Balance Between Conflicting Public Interests

NEPA is suppose to protect our Environmental Public Interests (including the protection of our health as a people and the preservation and conservation of our public lands). But other interests such as national defense and economic stability are also Public Interest concerns.

Claiming to protect our economic, national security, and other interests, those pushing forward enterprises that negatively impact our environment are increasingly demanding that they be freed from "burdensome" regulations that threaten the building, expansion, continuation, and profitability of their commercial operations. They are insisting on tight time limits and a relaxation of regulatory constraints to get everything streamlined, expedited, fast tracked, and green lighted to release their potential to create jobs, expand our economy, and maintain our ability to meet all our domestic energy needs 7/24/365 – etc.

They insist that their Economic Impact Studies and Economic Case Studies solid, realistic, and reliable while independent climate science and medical science studies that contradict their claims are unreliable. Their industry-standard bought and paid for cradle to grave EISs are based on proprietary computer programs that lack adequate empirical validation, are not amenable to peer review, and claim upstream, midstream, and downstream direct, indirect, and induced impacts that are augmented by multiplier, ripple, and synergistic effects that are remarkably and consistently all positive. Meanwhile they claim for example, that ground level, ambient ozone emission limits of 70 parts per billion are unneeded, unnecessary, and economically burdensome even though the American Academy of Pediatrics, American College of Preventative Medicine, American Heart Association, American Lung Association, American Medical Association, American Public Health Association, American Thoracic Society, Asthma and Allergy Foundation of America, Children's Environmental Health Network, National Association of County and City Health Officials, National Association for Medical Direction of Respiratory Care, Health Care Without Harm, and Trust for America's Health agree that the research indicates that no more than 60 ppm should be allowed to "best protect public health."

Meanwhile, those pushing forward operations that threaten our health and our environment have infiltrated our regulatory agencies, have waged heavily funded public opinion campaigns (reminiscent of psychological warfare, in my professional opinion), and have heavily funded political campaigns and lobbying operations to achieve their objectives. For example, the Railroad Commission of Texas (which regulates pipelines, not railroads) and the Texas Commission for Environmental Quality issued expedited permits "by rule" for the Valley Crossing Pipeline without any prior Public Notices or Public Meetings. For example, TCEQ was all set to issue the air quality permits requested by Rio Grande LNG March 2018 before local communities (Port Isabel and Laguna Vista, TX) and groups (Vecinos Para el Bienestar de la Comunidad Costera, Shrimpers and Fishermen of the RGV, and Save RGV from LNG) filed requests for Contested Hearings on the requested permits.

All while our many of our Superfund Sites remain continuing threats (as evidenced by the leakage of such sites in Houston, TX, last year due to Hurricane Harvey), many abandoned oil and gas wells remain unaccounted for and uncapped, Puerto Rico remains a disaster area, forest fires rage ever hotter and destructive, our arctic ice cap melts away (destabilizing our northern jet air streams), and our gulf currents become sluggish – etc.

Accommodate the needs of companies and industry, yes. But not in ways that shift onerous economic burdens to the public in terms of wrecked health and a world wrecked beyond repair. Set time limit goals, yes – but not time limits that automatically result in the permitting of proposed projects no matter what their impacts on our health and environment. When the time limits are reached, those seeking permits should no longer be able to pursue them if they have not yet found a credible way to meet the regulatory requirements protecting our immediate and long-term health and environmental Public Interests.

### Challenge Number 3: Including The Public In Determining Public Interest Issues

This is a magnificent challenge – possibly greater than that of reaching any consensus on defining of the term "Public Interest" in any meaningful, actionable sense.

The present system of obtaining adequate public input on such matters is outdated and inadequate. Those pushing these projects forward often want to limit and/or manipulate public input. Regular folks who want to know what's headed their way and want to stop it or want to make sure its done the right way are at a disadvantage in numerous respects.

For example, LNG started heading our way in the Port of Brownsville area in June 2012 via the Panama Canal Stakeholders Working Group out of the Texas Department of Transportation. Our county judge was the vice chair of the group and was one of more than twenty of our locally elected representatives and self-appointed business leaders who sent Letters of Recommendation to DOE on behalf of the now defunct Gulf Coast LNG project in September 2012. We didn't know until May 2014 that we were to be the beneficiaries of jobs and economic growth due to LNG export operations at our local Port. We didn't find out that we could submit comments to DOE opposing the projects until after the comment deadline had passed.

For example, I happened upon a report that Mexico had put out a Request for Proposals for a Nueces-Brownsville pipeline to take natural gas from the Nueces County area (near Corpus Christi, TX) down to our border city of Brownsville, TX, where it was to connect with a Sur de Texas-Tuxpan Pipeline to take the gas as far south as Veracruz, Mexico. But we couldn't find any information about it enabling us to effectively stop it or influence its pathway. We had no clue that its name was changed to Valley Crossing Pipeline. As related above, construction was started without any prior Public Notice or Public Meeting by the Railroad Commission of

Texas and TCEQ.

For example, I just happened upon this opportunity to comment on the reworking of the National Environmental Protection Act yesterday, the deadline for comments is today, and I'm out of time and having problems with my computer – even though I have much more to say doubly especially about the need for improved public input into the determination and implementation of Public Interest issues and the permitting of NEPA related projects. I'll just add that pushing these projects forward minus adequate public input ferments civil unrest, especially when local and state law enforcement is used to force eminent domain pipeline construction etc. And give overly brief responses to the first three questions listed. I haven't even had time to open the document folder to look at the information and comments it contains.

Q1. Should CEQ's NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?

A: Sure, as long as time limits automatically permitting proposed projects are not part of the process.

Q2. Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions, and if so, how?

A: No. At least not in ways that prioritize efficiency over well grounded decisions or that serve to perpetuate compromised prior findings made on the basis of insufficient or outdated information etc. Precedent is important but being up-to-date and correcting past mistakes and/or injustices are also important. One of the several ways the Texas Commission for Environmental Quality's air permit regulations have been severely compromised is the consideration of emission levels already permitted for similar projects by TCEQ or by the Environmental Protection Agency.

Q3. Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?

Q4. Should the provisions in CEQ's NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?

Q5. Should CEQ's NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decisionmakers and the public, and if so, how?

Q6. Should the provisions in CEQ's NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?

John Young, MA, MSW  
San Benito, TX  
ForJohnAndBarbara@gmail.com

# [EXTERNAL] U.S. Chamber of Commerce Comments - CEQ NEPA NOPR

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**From:** "Tyner, Jake" <jtyner@uschamber.com>  
**To:** "Tyner, Jake" <jtyner@uschamber.com>  
**Cc:** "Mortimer, Edward" <emortimer@uschamber.com>  
**Date:** Mon, 20 Aug 2018 17:03:20 -0400  
**Attachments:** 082018-U.S. Chamber of Commerce-NEPA NOPR.pdf (205.22 kB)

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All,

I have attached a copy of the U.S. Chamber of Commerce's comments regarding CEQ's NEPA NOPR.

Please let us know if you have any questions.

Best,

**Jake Tyner**  
Manager & Associate Policy Counsel  
U.S. Chamber of Commerce  
W: 202-463-5344 | (b) (6)  
JTyner@USChamber.com

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

NEIL L. BRADLEY  
EXECUTIVE VICE PRESIDENT &  
CHIEF POLICY OFFICER

1615 H STREET, NW  
WASHINGTON, DC 20062  
(202) 463-5310

August 20, 2018

**VIA ELECTRONIC FILING**

Mr. Edward Boling  
Council on Environmental Quality  
730 Jackson Place, N.W.  
Washington, D.C. 20503

**RE: Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 83 Fed. Reg. 32,071 (July 11, 2018); Docket No. CEQ-2018-0001**

Dear Mr. Boling,

The U.S. Chamber of Commerce (“the Chamber”) appreciates the opportunity to comment on the Council of Environmental Quality’s (“CEQ”) advance notice of proposed rulemaking (“ANPR”)<sup>1</sup> as CEQ considers revising its regulations concerning the National Environmental Policy Act (“NEPA”).

The Chamber supports CEQ’s interest in revising the NEPA regulations to ensure a more efficient, timely, and effective process consistent with NEPA’s important purpose and mission. In the 40 years since CEQ promulgated its NEPA regulations,<sup>2</sup> there has been a tremendous transformation in how agencies review projects and how information is developed, shared, and analyzed in support of agency NEPA decisions. The Chamber’s comments focus on revising the regulations to bolster the efficiency and efficacy of NEPA reviews.

Environmental reviews and authorizations – including NEPA reviews – often become untethered to the scope and requirements for review and instead serve as unnecessary barriers to important projects. Environmental review statements can run several thousand pages,<sup>3</sup> take over a

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<sup>1</sup> Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 83 Fed. Reg. 28,591 (June 20, 2018) (“ANPR”).

<sup>2</sup> Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 43 Fed. Reg. 55,978 (Nov. 29, 1978).

<sup>3</sup> The Bayonne Bridge elevation project – an infrastructure improvement project that was considered to have minimal impacts as compared to the alternative of building a new bridge – resulted in 20,000 pages of analysis and exhibits and at a cost of millions of dollars. Sam Roberts, High Above the Water, but Awash in Red Tape: Long Review of Bayonne

decade to complete,<sup>4</sup> prevent the rebuilding and expanding of infrastructure, and are an unnecessary drain on the economy.<sup>5</sup> The Chamber encourages improvements to the federal permitting process to improve transparency and predictability, and encourages coordination among federal agencies.

**I. CEQ’s Revisions Should Reflect Core Principles That Re-Focus Agency Analysis on Information That Is Meaningful and Significant**

In revisiting its NEPA regulations, CEQ should advance revisions that re-focus agency analysis on information that is significant and meaningful. Such direction will help realign NEPA reviews with the purpose of the statute to provide meaningful insight to agencies and the public while reducing unnecessary information gathering and analysis.

**A. NEPA Review Should Focus on Information that is Meaningful to the Agency<sup>6</sup>**

CEQ should pursue revisions that direct agencies in gathering and analyzing information that is meaningful to carrying out their decisions.

NEPA’s purpose is to impose a framework by which federal agencies can understand the environmental impacts of their decisions, allowing them to consider actions that might mitigate such impacts.<sup>7</sup> Agencies can only achieve this purpose if the information considered meaningfully informs the agency’s action. An analysis is only meaningful if the information is relevant to the agency’s decision-making discretion within the bounds of the action statute. The action statute authorizes the major federal action that triggers the NEPA review.

The action statute prescribes the parameters for agency decision-making and thus limits the agency’s discretion to act. NEPA “imposes only procedural requirements” to ensure that agencies are well informed under the action statute.<sup>8</sup> NEPA does not expand the parameters of the agency’s decision-making beyond consideration of information the agency has the discretion to act on. CEQ’s regulations should reflect this limitation.

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Bridge Project Is Assailed, *The New York Times*, Jan. 2, 2014, <https://www.nytimes.com/2014/01/03/nyregion/long-review-of-bayonne-bridge-project-is-assailed.html>.

<sup>4</sup> The environmental review for the Port of Savannah took 14 years. Philip K. Howard, *Common Good, Two Years Not Ten Years, Redesigning Infrastructure Approvals*, September 2015, [https://commongood.3cdn.net/c613b4cfd258a5fcb\\_e8m6b5t3x.pdf](https://commongood.3cdn.net/c613b4cfd258a5fcb_e8m6b5t3x.pdf).

<sup>5</sup> *See, id.*

<sup>6</sup> ANPR at 28591 (Question 5)

<sup>7</sup> *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 756 (2004) (citing 42 U.S.C. § 4321) (NEPA “was intended to reduce or eliminate environmental damage and to promote ‘the understanding of the ecological systems and natural resources important to’ the United States.”).

<sup>8</sup> *Id.* at 756.

## **B. NEPA Review Should Focus on Significant Environmental Impacts<sup>9</sup>**

NEPA recognizes the value in focusing agency resources and requires agencies to consider “detailed information concerning significant environmental impacts.”<sup>10</sup> However, agencies and the public have increasingly come to expect project applicants to provide comprehensive and detailed analyses of all issues, without regard to significance. NEPA inappropriately becomes a statute that generates insignificant or irrelevant information, rather than aids agency decision making. CEQ should advance revisions that bring the agencies back to assessments of significance.

Not all environmental impacts are significant. The comprehensiveness of the NEPA analysis should depend on the significance of the potential impact.<sup>11</sup> However, agencies feel constant pressure to provide comprehensive analysis of all impacts, regardless of significance or relevance.<sup>12</sup> Refocusing agencies towards significant environmental impacts will narrow information requests and streamline the NEPA process.

To achieve this focus, the revisions to the regulations should promote flexible information collection methods. Agencies should rely on available information that is sufficient to be informative of significance, rather than require new project-specific information in all instances. For example, agencies can leverage information generated from prior surveys in similar circumstances as the proposed project to inform the extent of the agency’s information gathering. CEQ’s regulations should encourage or mandate reuse of relevant analysis and data.

In addition, the regulations should accommodate the use of advanced technologies such as remote sensing to replace more costly and labor-intensive work. For example, data analytics and aerial review efficiently and effectively provide information to agencies of potential impacts.

## **II. CEQ’s Revisions Should Focus On Issues That Are Frequently Litigated to Improve Predictability and Efficiency in NEPA Reviews**

NEPA’s central role in agency decision-making has made it a preferred vehicle for challenging those decisions. Courts adjudicating these challenges seldom provide broadly applicable legal standards, often applying Supreme Court precedent on key issues in ways that invite further legal challenges. The constant threat of litigation encourages agencies to increase the amount of information considered, as a defensive measure.

The Chamber encourages CEQ to focus on revisions to the regulations that address frequently litigated issues and make regulatory improvements consistent with the key principles identified above.

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<sup>9</sup> ANPR at 28591 (Questions 2, 5, and 15)

<sup>10</sup> *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

<sup>11</sup> 40 C.F.R. § 1502.2(b).

<sup>12</sup> See e.g., *Protect Our Communities Foundation v. Jewell*, 825 F.3d 571, 583 (9th Cir. 2016) (rejecting argument that the Bureau of Land Management was required to comprehensively review the effects of noise on birds at all stages of life).

### A. Adherence to Interagency Coordination<sup>13</sup>

The existing NEPA regulations encourage interagency coordination early in the process. However, without accountability or metrics for measuring coordination, breakdowns are common and can significantly delay reviews.

The Administration has recognized that interagency coordination is a critical component in ensuring transparent and efficient review of infrastructure projects. Executive Order 13807 requires that federal agencies implement a unified environmental review and authorization process for major infrastructure projects.<sup>14</sup> Referred to as “One Federal Decision,” a single lead agency directs this unified process to navigate the project through all federal authorizations.

In support of the One Federal Decision concept, the Administration recently released a Memorandum of Understanding (“MOU”) providing guidance to agencies on carrying out their One Federal Decision responsibilities.<sup>15</sup> The MOU clarifies agency roles and procedures with the goal of timely NEPA process coordination and implementation. To promote the coordination of agencies, CEQ should consider incorporating the following elements into its revisions:

- **Lead and Cooperating Agencies:** The MOU provides expanded guidance on the roles and responsibilities of lead and cooperating agencies to ensure efficient coordination among parties.<sup>16</sup>
- **Project Timeline:** Preparing a multi-agency project timeline improves the likelihood of a more timely process.<sup>17</sup>
- **Scoping and Concurrence Points:** The requirements that agencies sign off on scoping and concurrence points ensures early and continued coordination at key points.<sup>18</sup>

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<sup>13</sup> ANPR at 28591-92 (Questions 1, 3, and 16).

<sup>14</sup> *Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting*

*Process for Infrastructure Projects* (signed Aug. 15, 2017), 82 Fed. Reg. 40463 (Aug. 24, 2017).

<sup>15</sup> Memorandum for Heads of Federal Departments and Agencies from Mick Mulvaney, Director, Office of Management and Budget and Mary Neumayr, Chief of Staff, Council on Environmental Quality, March 20, 2018 at Attachment A (“MOU”).

<sup>16</sup> *Id.* at A-6 – A-8.

<sup>17</sup> *Id.* at A-5-A-6.

<sup>18</sup> *Id.* at A-9 – A-11

- **Delays and Dispute Resolution:** Providing a mechanism for resolving inter-agency disagreements encourages resolution of disputes in a timely and consistent manner.<sup>19</sup>

#### **B. Tailor the Purpose and Need Statement to the Decision Before the Agency**

The framework that NEPA provides to federal agencies to understand the environmental outcomes of their decisions imposes requirements on agencies, but it does not define the analytical parameters. The substantive criteria of the agency's analysis must reflect the purpose and need of the decision for the analysis to effectively inform the agency.

Broadly defining “purpose and need” under NEPA is a frequent challenge in NEPA implementation. This often transforms NEPA from a decision-making tool into an obstacle that delays those decisions. CEQ should consider revisions to the regulations that require agencies to tailor the purpose and need to the decision the agency is considering.<sup>20</sup>

#### **C. Consideration of Environmental Impacts Must be Within NEPA's Boundaries of Foreseeability and Causation**

Agencies must consider the direct, indirect, and cumulative effects of a proposed action.<sup>21</sup> The scope of review is limited to “reasonably foreseeable” effects of a proposed action.<sup>22</sup> NEPA further requires a “reasonably close causal relationship” between the proposed action and the indirect and cumulative effects to warrant the agency's consideration.<sup>23</sup> The connection between the federal action and the impact should be proximate.<sup>24</sup> This framework must limit consideration of broad environmental impacts – including greenhouse gas emissions and climate change.

As CEQ considers revisions to its regulations, it should retain NEPA's flexible analytical framework centered on foreseeability, causation, and the availability of probative information.

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<sup>19</sup> *Id.* at A-11 – A 12

<sup>20</sup> In the case where multiple federal agencies have authorization authority over a project under different statutes, CEQ should again look to the MOU, which requires that the lead federal agency develop the purpose and need to support a single, coordinated NEPA review among agencies. *See* MOU at A-7.

<sup>21</sup> 40 C.F.R. §§ 1508.7-1508.8.

<sup>22</sup> *Id.* § 1508.8

<sup>23</sup> *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 754 (2004) (quoting *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)).

<sup>24</sup> *Id.*

**D. Connect the Alternatives Analysis to the Purpose and Need<sup>25</sup>**

The breadth and depth of alternatives analyses that agencies routinely consider demonstrates that the analysis has become untethered from the purpose of NEPA. Agencies must tailor alternative analysis to the purpose of the proposal; otherwise, it leads to excessive analysis of irrelevant or infeasible projects that the agency is not reviewing.

NEPA does not require agencies to consider an endless number of alternatives. Instead, the statute limits such analysis to a reasonable number of alternatives that meet the purpose and need of the agency's decision.<sup>26</sup> When this is tailored to the agency's decision, agencies ensure that the analysis generates information that is meaningful. The breadth of the analyses has increased to analyze an unreasonable number of unnecessarily detailed alternatives. Clear standards that reasonably limit the scope of the alternative analyses would benefit agencies.

**E. Limit Cumulative Impacts Analysis to Those Impacts That Are Reasonably Foreseeable and Provide Meaningful Insight<sup>27</sup>**

The cumulative impact analysis seeks to ensure that an agency considers how the effects of its own actions interact with other impacts. Existing regulations and guidance instruct agencies on the appropriate bounds of the cumulative impacts analysis.<sup>28</sup> Despite existing regulations and guidance, the cumulative impact analysis has become a target for those seeking to expand the scope of NEPA. Clear and practical limits on the scope of the cumulative impacts analysis in the regulations would help head off some of this litigation and advocacy:

- First, the agency identifies the resources, geographic area, and the timeframe over which a decision is likely to create effects.<sup>29</sup>
- Next, the agency identifies other expected actions affecting the resources within the identified geographic area and timeframe. What the agency knows and can reasonably foresee as well as what is significant to the environment limits this second step.<sup>30</sup>

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<sup>25</sup> ANPR at 28,592 (Question 13).

<sup>26</sup> *City of Alexandria, Va. v. Slater*, 198 F.3d 862, 869 (D.C. Cir. 1999) (stating that “a reasonable alternative is defined by reference to a project’s objectives.”) (citation omitted).

<sup>27</sup> ANPR at 28,592 (Question 17).

<sup>28</sup> 40 C.F.R. § 1508.7; Council on Environmental Quality, *Considering Cumulative Effects Under the National Environmental Policy Act* (Jan. 1997) (“CEQ Guidance”), available at [https://ceq.doe.gov/publications/cumulative\\_effects.html](https://ceq.doe.gov/publications/cumulative_effects.html).

<sup>29</sup> CEQ Guidance at 15.

<sup>30</sup> 40 C.F.R. § 1508.7.

Employing this analytical framework focuses the agency's cumulative impacts analysis on information meaningful to its decision. Incorporating this framework into the regulations can provide agencies with clear and practical analytical limits.

#### F. Set Clear Timing and Page Length Expectations<sup>31</sup>

The preparation time and length of documents for Environmental Assessments and Environmental Impact Statements has grown longer. In 2016, the average length of time to prepare a Final EIS across all federal agencies was 5.1 years – the highest since 1997.<sup>32</sup> The Department of Energy took over 4 years for an average NEPA review.<sup>33</sup> NEPA documents routinely exceed the regulatory expectations on page limits<sup>34</sup> – EISs should normally be less than 150 pages, up to 300 pages for proposals of unusual scope or complexity.<sup>35</sup> Even when agencies find no significant impact, those documents can be over a thousand pages.<sup>36</sup> Although the vast majority of projects do not require such lengthy and prolonged analysis,<sup>37</sup> large-scale infrastructure (such as energy projects) are subject to review by multiple agencies are often disproportionately long.<sup>38</sup>

If CEQ adheres to the principles above and focuses on critical issues that are significant and likely to provide meaningful input to the agency, they can achieve brevity and focus in the review

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<sup>31</sup> ANPR at 28591 (Questions 4 and 10).

<sup>32</sup> National Association of Environmental Professionals, Annual NEPA Report 2016 at 12.

<sup>33</sup> United States Department of Energy, Lessons Learned Quarterly Report, Mar. 2016, <http://energy.gov/nepa/downloads/lessonslearned-quarterly-report-march-2016>.

<sup>34</sup> As of August 14, 2018, the last eight Final EIS documents contained in the U.S. Environmental Protection Agency's EIS database averaged 560 pages. Although these pages numbers reflect the Final EIS documents in their entirety (excluding appendices), it appears that only one comes close to complying with the 300 page limit for the text of EIS documents. See EPA EIS Database, July 20, 2018-August 3, 2018, <https://cdxnodengn.epa.gov/cdx-enepa-II/public/action/eis/search/search?searchCriteria.endCommentLetterDate=&d-446779-p=1&searchCriteria.title=&searchRecords=Search&searchCriteria.primaryStates=&searchCriteria.endFRDate=08%2F14%2F2018&searchCriteria.startCommentLetterDate=&searchCriteria.startFRDate=07%2F20%2F2018#results>.

<sup>35</sup> 40 C.F.R. § 1502.7.

<sup>36</sup> See James W. Coleman, Fixing the National Environmental Policy Act, U.S. House of Representatives, House Committee on Natural Resources, at 3 April 28, 2018 (identifying the "Finding of No Significant Impact" for the Dakota Access Pipeline as over one thousand pages), [https://naturalresources.house.gov/uploadedfiles/testimony\\_coleman.pdf](https://naturalresources.house.gov/uploadedfiles/testimony_coleman.pdf).

<sup>37</sup> In the past, CEQ has estimated that about 95 percent of NEPA analyses are categorical exclusions, less than 5 percent are Environmental Assessments, and less than 1 percent are EISs. U.S. Government Accountability Office, National Environmental Policy Act, Little Information Exists on NEPA Analyses, at 1 April 2014, <https://www.gao.gov/assets/670/662543.pdf>.

<sup>38</sup> Across agencies, the average length of time from notice to final EIS is 1,864 days, whereas the average length of time for projects at the U.S. Department of Energy and the Department of Transportation and the Federal Highway Administration are 2,709 days and 3,586 respectively. National Association of Environmental Professionals, Annual NEPA Report 2016 at 13.

process. CEQ should also consider revisions that achieve the Administration's expectations for short, effective NEPA reviews.

The regulations should incorporate the recent government wide goal of an average of two years for environmental reviews and authorization decisions.<sup>39/40</sup> CEQ can accomplish this by identifying the factors that agencies should consider in developing expected decision timelines, and by encouraging default timelines for typical decisions.

The current regulations do not set universal time limits for the entire NEPA process, and instead encourage federal agencies to set limits on an individual basis.<sup>41</sup> Without a requirement to set a project specific timetable or a mechanism to encourage compliance, NEPA reviews often languish – especially when multiple agencies are involved – leading to an unnecessarily lengthy and unpredictable process. CEQ should consider revisions requiring the development of project-specific timelines and provide mechanisms for compliance. CEQ could accomplish this by codifying concepts from the MOU on the development of permitting timetables, scoping and concurrence points, and elevation of delays and dispute resolution.<sup>42</sup>

CEQ should revise the regulations that help agencies achieve the expected page lengths. CEQ should consider identifying the factors that agencies should consider in setting appropriate benchmark lengths for typical decisions.

#### **G. More Clearly Define Regulatory Terms<sup>43</sup>**

The existing definitions fail to provide the clarity critical for an effective regulatory program. Definitions omit key terms such as “alternatives,” “purpose and need,” and “reasonably foreseeable.” Definitions for defined terms often create more confusion than clarity.<sup>44</sup> In the absence of clarity, courts have attempted to provide their own interpretations, but often in conflicting or confusing ways that invite further legal challenges. A clear, simple, comprehensive set of regulatory definitions can improve NEPA implementation. CEQ should review the existing definitions and identify revisions and additions that provide this clarity.

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<sup>39</sup> An average time period of two years for the review of infrastructure projects is aligned with other industrialized countries, and even longer than some. For example, under a proposed expansion, Canada's reviews would be completed in 300 days. *Id.* at 2.

<sup>40</sup> Memorandum for Heads of Federal Departments and Agencies from Mick Mulvaney, Director, Office of Management and Budget and Mary Neunayr, Chief of Staff, Council on Environmental Quality, March 20, 2018 at 1.

<sup>41</sup> 40 C.F.R. § 1501.8.

<sup>42</sup> OFD MOU at A-4 – A-5.

<sup>43</sup> ANPR at 28,591-92 (Questions 7 and 8).

<sup>44</sup> For example, the definition of “Major Federal action” is lengthy, conflates Federal actions with Major Federal actions, and is circular with the meaning of “significant.” 40 C.F.R. § 1508.18.

### III. Conclusion

The Chamber appreciates the opportunity to comment on the ANPR. If you have any questions or need more information please do not hesitate to contact me at (202) 463-5310 or at [nbradley@uschamber.com](mailto:nbradley@uschamber.com).

Sincerely,

A handwritten signature in blue ink, appearing to read "Neil I. Bradley". The signature is fluid and cursive, with a large initial "N" and "B".

Neil I. Bradley

## [EXTERNAL] Comment submission

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**From:** Marina Micic <marina@cg-la.com>  
**To:** "McLaurin, Juschelle D. EOP/CEQ" <(b) (6)>  
**Date:** Mon, 20 Aug 2018 16:53:33 -0400  
**Attachments:** Proposed NEPA Changes 8-20-18 for filing (2).pdf (1.41 MB)

Hello,

We tried to submit our comment by mailing it to the address noted on the filing instructions, but the delivery was not possible. Could you please help us deliver the attached document to the right person/department?

Thank you so much for your assistance!

Marina

The CEQ is extending the comment period on the ANPRM, which was scheduled to close on July 20, 2018, for 31 days until August 20, 2018. The CEQ is making this change in response to public requests for an extension of the comment period.

**DATES:** Comments should be submitted on or before August 20, 2018. **ADDRESSES:** Submit your comments, identified by docket identification number CEQ-2018-0001 through the Federal eRulemaking portal at [https:// >www.regulations.gov<](https://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [https:// >www.regulations.gov<](https://www.regulations.gov). CEQ may publish

any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (e.g., audio, video) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make.

Comments may also be submitted by mail. Send your comments to: Council on Environmental Quality, 730 Jackson Place NW, Washington, DC 20503, Attn: Docket No. CEQ-2018-0001.

**FOR FURTHER INFORMATION CONTACT:**

Edward A. Boling, Associate Director for the National Environmental Policy Act, Council on Environmental Quality, 730 Jackson Place NW, Washington, DC 20503. Telephone: (202) 395-5750.

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[3225-F8]

August 20, 2018

Comments of Blueprint 2025

Re: Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

AGENCY: Council on Environmental Quality (CEQ).

ACTION: Advance Notice of Proposed Rulemaking.

Docket No. CEQ-2018-0001 - RIN: 0331-AA03

The Blueprint 2025 (“BP2025”) initiative is collaboration among infrastructure professionals, leading infrastructure development companies and public sector project managers, which advances and supports plans and policies to restore the U.S. position as the country with the world’s best, most efficient and most productive infrastructure. A central tenet of BP 2025’s policy is the recognition that reform of the permitting process for major infrastructure projects is absolutely essential if the U.S. is to modernize its infrastructure in time to allow development of the new technologies which will enable us to keep pace with the modernization programs of our major global competitors. As outlined in our recently updated position paper on modernization of the NEPA process (Annex A attached), the current process is cumbersome, inefficient and antiquated, it needs to be modernized and brought into the 21st century through better use of available technology.

A major reason for the failure, up to this point, to optimize the NEPA process lies in the facts, outlined in Annex A, that no one knows what NEPA review costs the government and the private sector and there are no performance metrics to evaluate the government’s performance. In this context, there has been no incentive to make the process more efficient or to reduce its cost. These deficiencies should be addressed as priority subjects pursuant to this ANPR as it is clear that the NEPA process imposes very direct and substantial costs on both government and the private sector. Perhaps more important, costs arising from NEPA delays may increase project costs by 50% or more and, for cutting edge projects, may substantially reduce the useful life between startup and technical obsolescence.

Against that background, we have the following comments in response to the specific questions presented in the advance notice:

1. Should CEQ’s NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?

*Both the FAST 41 efforts and those pursuant to the President’s “One Federal Action” order have operated on the basis of consensus among agencies and, as a result, have yielded complex and convoluted compromise procedures. An appropriate environmental*

*review procedure would adopt the “one window” approach mandated by laws such as the Deepwater Port Act and the Deep Seabed Hard Mineral Resources Act in which the lead agency is, in fact, the lead agency, with final decision making authority. Other affected agencies should be required to participate and exercise only the authorities granted by the laws which they are responsible for implementing. Experience shows that, by this approach, complex and controversial environmental reviews can be completed in less than a year.*

*As noted above, the time delay associated with the current NEPA review process not only imposes substantial costs on both government and the private sector, it impedes the development of the technology of the future and handicaps our Country's efforts to maintain its global leadership position.<sup>1</sup>*

2. Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions , and if so, how?

*Yes. As noted in the attached Update, the use of modern technologies can facilitate the development and maintenance of a National Environmental Database which can be drawn upon as necessary and relevant. Modern Data analytics can speed and regularize the environmental review process, minimize opportunities for agency bias and make judicial review more expeditious and predictable.*

3. Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?

*Yes. See response to Question 1 above.*

#### **Scope of NEPA Review:**

4. Should the provisions in CEQ's NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?

*The current suggested page limits seem appropriate, but should be enforced through appropriate entry software. To the extent necessary, supporting data can be included in*

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<sup>1</sup> As we have noted on a number of occasions, the Congress used to identify and “put its shoulder behind” projects which it believed to be of national importance and the agencies were by and large responsive to directives under laws such as the Trans Alaska Pipeline System Act, the Deepwater Port Act, the Deep Seabed Hard Mineral Resources Act and the Alaska Natural Gas Transportation System Act. In recent years, there has been more reluctance to address specific projects and projects which have been high on BP 2025's top fifty list, such as the Cadiz Water Project in California, the Clean Line Transmission Project, the Texas Central Rail Project the SeaOne Energy Transportation Project have languished and a few have been stalled by opposition from a very small number of members. President Trump's Executive Order 13766, directing priority processing of critical infrastructure projects has largely been ignored. If we are to keep pace with “Made in China” this situation must be remedied.

*searchable and linked data attachments. A digitized process would allow more expeditious review and enforcement of hard time limits.*

5. Should CEQ's NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decision makers and the public, and if so, how?

*In accordance with the existing statutes and regulations, NEPA analysis should address only the direct and indirect effects which are subject to regulation by the lead or participating agencies, NEPA documents should not address federal actions which are non-discretionary or impacts which are not subject to federal regulation. Agencies should participate in the lead agency process throughout the life of the project and their input should be limited to matters within their jurisdiction.<sup>2</sup>*

6. Should the provisions in CEQ's NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?

*Public involvement regulations should be predicated on an assumed basic level of computer literacy, should be developed with a view towards maintenance of efficient digital processes and should have timing requirements consistent with the capabilities of digital processes. Software protocols should seek to enforce basic requirements regarding relevance and supporting references.*

7. Should definitions of any key NEPA terms in CEQ's NEPA regulations, such as those listed below, be revised, and if so, how?

a. Major Federal Action;

*The existing formulation a federal action which will have a direct or indirect effect which is within federal jurisdiction and which has the potential for significant environmental impacts is appropriate but often not followed. The "within federal jurisdiction" element is too often ignored. Agencies often interpret the "no action" alternative to mean "no project" and thus allow them to expand their jurisdiction to cover the entire project rather than only the aspect, such as an air or water discharge, over which they exercise jurisdiction. It needs to be made clear that NEPA does not expand agency jurisdiction but only permits agencies to consider effects within their jurisdiction. It should also be made clear that "categorical exclusion" is not the first step in the environmental review process. The CATEX*

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<sup>2</sup> The Deepwater Port Act provides for a perpetual license which functions to provide all authorizations required for the construction and operation of the Ports and put in place a continuous environmental review process to assure that the Ports continue to utilize best available technology to minimize impacts on the marine environment. EPA participates in the licensing process and issues Clean Water Act Permits for the very minor domestic and cooling water discharges associated with Port Operations. Some EPA officials have taken the position that since the Ports are originally "new sources" and since water permits expire every five years, new and separate environmental reviews addressing the Ports' operations are required at five year intervals PS.

*review should only take place after the decision maker has concluded that a federal action has the potential to significantly affect the environment.*

**b. Effects;**

*Again, the effect must be within federal jurisdiction. NEPA does not expand federal jurisdiction and an interpretation which would, for example, allow consideration of the construction of a facility which is beyond the agency's jurisdiction would be contrary to the clear intention that agencies' jurisdiction should not be affected. A proper interpretation of this requirement would be consistent with NEPA's original intent and would greatly simplify its application.*

**c. Cumulative Impact;**

*Effects to be considered in cumulative impact analysis must be subject to federal regulatory authority. For example, if the federal government is prohibited from restricting the export of crude oil, crude oil exports should not be the subject of cumulative impact analysis. Cumulative effects, like other effects, must be within in an agency's jurisdiction in order to merit consideration in the environmental review process.*

**d. Significantly;**

*Under the Act, the decision maker must exercise discretion, subject to judicial review, to decide whether the a proposed federal action may have an effect, within her or his agency's jurisdiction, which has the potential to be "significant" As noted above, limitation of this requirement through improper application of the "categorical exclusion" is inappropriate and counterproductive. The "significantly" definition might be amended to make clear that the decision maker retains this authority.*

**e. Scope;**

*Environmental reviews must focus precisely on the foreseeable direct and indirect effects subject to federal regulation of the proposed federal action or reasonable alternatives to the federal action. Alternatives which are not within federal jurisdiction need not be assessed. The No Federal Action alternative need not be addressed unless the agency has discretion to take no action.*

8. Should any new definitions of key NEPA terms, such as those noted below, be added, and if so, which terms?

- a. Alternatives;
- b. Purpose and Need;
- c. Reasonably Foreseeable;
- d. Trivial Violation; and

f. Other NEPA terms.

9. Should the provisions in CEQ's NEPA regulations relating to any of the types of documents listed below be revised, and if so, how?

a. Notice of Intent;

b. Categorical Exclusions Documentation;

*As noted above, the "categorical exclusion" methodology is being misapplied in many agencies to impose additional limits on decision makers' discretion rather than to provide a "safe harbor" to be relied upon by decision makers facing decisions on close questions. It needs to be made clear that categorical exclusions do not preclude the exercise of agency discretion regarding the question of whether a "major federal action" is proposed and that extensive documentation and public comment is not required. Otherwise the CATEX functions essentially as a redundant environmental assessment. The millions and perhaps billions that have been spent by agencies in adopting CATEX regulations will have been wasted. Finally the exception in many agencies' CATEX regulations for matters involving substantial public interest or opposition essentially defeats the purpose of CATEXs. Those exceptions should be eliminated.*

c. Environmental Assessments;

*We need to know what Environmental Assessments cost, in both federal and private sector dollars and in project delay costs. Since nearly all EAs result in FONSI the cost benefit ratio of this process may be subject to question. Fortunately, the EA process should be amenable to radical attenuation through the application of modern technology. That potential should be explored intensively.*

d. Findings of No Significant Impact;

c. Environmental Impact Statements;

e. Records of Decision;

*As noted in the attached report, all of these elements of the NEPA review process have become unnecessarily complex and stylized. Digitization of the review process will provide an opportunity to enhance clarity and predictability. CEQ must take full advantage of that opportunity; and*

f. Supplements;

*The role of supplements should be clarified. There is no need for supplementation where there is no continuing federal oversight or periodic permitting. Where there is continued oversight or regulatory engagement, periodic updating should be a matter of course. Scoping and public participation requirements for supplements are likely very different from those for original EISs and should be tailored accordingly.*

10. Should the provisions in CEQ's NEPA regulations relating to the timing of agency action be revised, and if so, how?

*Addressing at the earliest practicable date is important and should be rigorously enforced. Particularly in adjudicatory proceedings, environmental documentation should be available prior to finding and application to be complete, certainly prior to commencement of the proceeding. Any necessary environmental review should be integrated into the proceeding and certainly should not be a basis for reopening a proceeding after the record is closed. There is no need for FEIS or ROD when a judicial decision is issued after a trial type proceeding. Time limits for final approval should be provided.*

11. Should the provisions in CEQ's NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised, and if so, how?

*Existing procedures for third party preparation of environmental review documents are cumbersome, create perverse incentives and should be eliminated. Reasoned review of applicant prepared documents should be a fully accepted protocol.*

12. Should the provisions in CEQ's NEPA regulations relating to programmatic NEPA documents and tiering be revised, and if so, how?

*Programmatic documentation is extremely useful and should be more effectively utilized. It should be made clear, however, that there is not a moratorium on permit issuance during the pendency of programmatic review and reviews should be completed within a reasonable time period. Digitization and data analytics will allow continuous input to programmatic review processes and would greatly improve the usefulness of this tool.*

13. Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised, and if so, how?

*Alternatives which are not within the regulatory purview of the reviewing agencies should be eliminated. Where an agency lacks authority to withhold action based on public interest considerations, the "no action" alternative is not available. Agency regulations restricting consideration of "mitigation" in choosing among alternatives or requiring selection of the "least impact" alternative should be examined to determine their statutory basis.*

**General:**

1. Are any provisions of the CEQ's NEPA regulations currently obsolete? If so, please provide specific recommendations on whether they should be modified, rescinded, or replaced.

*As noted above, the NEPA regulations require a comprehensive overhaul to enable full utilization of modern technology.*

2. Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient?

*As noted, we believe a comprehensive review of the entire process is required.*

3. Are there additional ways CEQ's NEPA regulations should be revised to promote coordination of environmental review and authorization decisions, such as combining NEPA analysis and other decision documents, and if so, how?

*Reliance on relevant State Environmental Review Documents should be mandatory.*

4. Are there additional ways CEQ's NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA, and if so, how?

*The Regulations should include a specific expedited review procedure with time limits for priority projects identified pursuant to E.O. 13766.*

5. Are there ways in which the role of tribal governments in the NEPA process should be clarified in CEQ's NEPA regulations, and if so, how?

6. Are there additional ways CEQ's NEPA regulations should be revised to ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible, and if so, how?

*Although it is clear that delays in permit issuance can have environmental consequences as adverse and severe as those of imprudent permit issuance, there are few consequences or disincentives for unnecessary or unreasonable delays in permit issuance. CEQ should work to provide appropriate performance metrics, cost monitoring and related mechanisms for providing a more appropriate balance.*

7. Are there additional ways CEQ's NEPA regulations related to mitigation should be revised, and if so, how?

*While the basic concept of mitigation may be relatively well understood, the details are not. Is it appropriate to require mitigation when the statute does not allow for a broad "public interest" determination? (We think the answer should be "No"). Should mitigation be taken into account in determining the "best" environmental alternative?<sup>3</sup> (We think the answer must be "Yes".) There are a number of these kinds of questions which must be answered in order to achieve fair and predictable results in this context.*

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<sup>3</sup> In circumstances where environmental review is linked with a substantive finding such as the Corps of Engineers LEDPA determination on water projects the question of how mitigation should be taken into account is critical. The provision in the Corps' guidance to the effect that mitigation cannot be taken into account in LEDPA determinations is unauthorized by law and counterproductive. In general, the basis for agency authority to require mitigation need to be clarified.

Blueprint 2025 greatly appreciates the opportunity to submit these comments and is, of course, available to clarify or expand upon them at your convenience.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'Norman Anderson', with a long horizontal stroke extending to the right.

Norman Anderson  
President

## **Blueprint 2025 Position Paper Modernizing the NEPA Environmental Review Process**

Over the last fifty or so years (since enactment of the National Environmental Policy Act “NEPA”) serious deficiencies have developed in the way the U.S. Government goes about the planning and authorization of infrastructure projects. This unnecessarily burdensome administrative process delays decisions on critical infrastructure projects, severely restricting our country’s ability to modernize infrastructure to enable the technologies of the future or even to maintain the infrastructure which is now in place.

China and our other competitors have in place not only programs to plan and prioritize the infrastructure to be built, but highly efficient computer aided approaches for individual projects beginning with the early planning stages and continuing throughout their development. Though the governance systems of these major competitors might be more conducive to efficient management of the development process than is our “rule of law” system, it should be possible to at least narrow the gap by simplifying and improving the U.S. system as it has evolved (or devolved) over the last 50 years and enabling the use of modern technology to make the authorization process work more efficiently. This note outlines possible steps toward that end.

### ***The Process for Achieving NEPA’s Goals is Outmoded and Inefficient***

Despite the well-intentioned goals of NEPA to help public officials make decisions based on an informed understanding of environmental consequences, there is a large and growing number of actors in both the public and private sectors that feel the Act has evolved into an unintended project-stalling process of administrative hurdles. What was originally designed to encourage simple informed decision making has become a burdensome and expensive process resulting in undue delays, loss of investment and, perhaps, even environmental harm.<sup>1</sup>

According to this view:

- Environmental analyses are routinely conducted for actions that reasoned judgment would conclude are not major and should not be subject to such onerous agency oversight.
- Though the act was intended to facilitate public input and participation, the environmental review process as it currently exists is esoteric and inaccessible to the average citizen who might like to weigh in. Data on the average length of an EIS is lacking, but it is not uncommon for these reports to span in excess of 1,000, 2,000, and

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<sup>1</sup> See *Modernizing NEPA for the 21<sup>st</sup> Century: Oversight Hearing Before the H. Comm. on Natural Resources*, 115<sup>th</sup> Cong. (2017) (statement of Philip Howard, Chairman Common Good).

even 3,000 pages, though CEQ regulations state that the text of final EIS reports should “normally be less than 150 pages and for proposals of unusual scope or complexity ... be less than 300 pages.”<sup>2</sup> This added complexity often means that participation only comes from well-funded organizations or experts in a particular field. While expert comments are appreciated, and encouraged, the process was meant to invite participation on a much broader scale.

- While agencies do not routinely track data on the cost of completing NEPA analyses, it is clear that the cost of an environmental review process for a single project can run into the millions of dollars. For instance, the Department of Energy (DOE) tracks limited cost data associated with NEPA analyses, specifically, funds the agency pays to contractors to prepare NEPA analyses. According to DOE data, the average payment to a contractor to prepare an EIS from calendar year 2003 through calendar year 2012 was \$6.6 million, with the range being a low of \$60,000 and a high of \$85 million.<sup>3</sup> DOE’s median EIS contractor cost was \$1.4 million over that time period.<sup>4</sup>

Though the extent and impact of these problems may be subject to debate, it seems clear that there is a great deal of room for improvement in order to mitigate what many interpret to be excessive delay, cost, and complexity.

As a recent House Natural Resources Committee hearing on the need to modernize NEPA highlighted, there remains broad support for the act’s basic objective of informing agency decision makers.<sup>5</sup> However, there seems to be a consensus that the process is plagued by the kinds of problems outlined here and that as a result, NEPA has failed to fulfill the basic purpose for which it was enacted, resulting in unintended adverse impacts on the U.S. economy, the quality of our infrastructure, and in fact, on the environment itself. Solutions like those suggested at the hearing, by former CEQ General Counsel, Dinah Bear, that more and better-trained federal employees are needed—are both unrealistic and rooted in the past.<sup>6</sup> NEPA, like other elements of our infrastructure, needs to be updated and brought into the 21<sup>st</sup> century. New tools including data analysis, artificial intelligence, and even virtual reality modeling can and should be effectively utilized to expedite and simplify the NEPA process, making it more accessible to ordinary citizens and yielding superior analytical results.

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<sup>2</sup> 40 C.F.R. § 1502.7.

<sup>3</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-14-370, NATIONAL ENVIRONMENTAL POLICY ACT: LITTLE INFORMATION EXISTS ON NEPA ANALYSES 13 (2014) (According to DOE, the cost for the \$85 million Hanford Tank Closure and Waste Management EIS includes the costs for three major EISs—waste management, high-level waste tank closure, and disposition of a nuclear reactor—that were started separately and ultimately integrated into one document spanning 3,600+ pages including agency responses to public comments).

<sup>4</sup> *Id.*

<sup>5</sup> See 42 U.S.C. § 4321 (NEPA’s congressional declaration of purpose states that the purposes of the act are “to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.”).

<sup>6</sup> See *Modernizing NEPA for the 21<sup>st</sup> Century: Oversight Hearing Before the H. Comm. on Natural Resources*, 115<sup>th</sup> Cong. (2017) (statement of Dinah Bear, Former General Counsel, Council on Environmental Quality).

## *Current Process Dynamics*

NEPA requires federal agencies to analyze both the nature and the extent of a project's potential environmental effects and, in many cases, document these analyses.<sup>7</sup> While much has been said about the merits of this process in furthering a public dialogue and improving the quality of decision making at the federal level, CEQ regulations make explicit the need for a level of analysis that is timely, efficient, and genuinely useful. For instance, under the CEQ's own articulation of NEPA's purpose, "NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail."<sup>8</sup> "NEPA's purpose is *not* to generate paperwork—even excellent paperwork—but to foster excellent action."<sup>9</sup> "Ultimately, it is not better documents but better decisions that count."<sup>10</sup> The regulations go on to include specific instructions targeted at two additional goals: (i) to reduce paperwork and (ii) reduce delay.<sup>11</sup> These instructions highlight the needs for agencies to reduce the length of environmental impact statements (EIS); emphasize the portions of the EIS that are useful to decision makers and the public; integrate NEPA requirements with other environmental review and consultation requirements; require comments to be as specific as possible; eliminate duplication with state and local procedures by providing for joint preparation; emphasize interagency cooperation before the EIS is prepared; establish appropriate time limits for the EIS process; and use accelerated procedures for proposals for legislation.<sup>12</sup>

Title 41 of the "Fixing America's Surface Transportation" Act ("FAST Act") --- establishes a new interagency committee (the Federal Permitting Improvement Steering Council "FPISC"), which is directed to ensure use of most efficient and timely processes for environmental review, and establishment of performance schedules for the completion of the environmental reviews. Title 41 thus both confirms the basic principles outlined above and augments them by a requirement that the Council established by the Act must ensure that "best technology" will be fully utilized in the environmental review process. The Title 41 mandate requires timely action to integrate modern technology into the NEPA process. An approach to such an effort is roughly outlined below.

### **The Process Now in Place**

NEPA is primarily a procedural statute. It does not require an agency to pursue the least environmentally harmful alternative, only that the agency give adequate consideration to the potential benefits and harms of the proposed action in order to demonstrate informed decision making.<sup>13</sup>

Over the last 50 years, NEPA practitioners and the courts have developed a well choreographed set of procedures designed to fulfill these procedural requirements.<sup>14</sup>

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<sup>7</sup> Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (CEQ regulations), 40 C.F.R. Parts 1500-1508, set out the level of analysis and documentation for complying with NEPA. The scope and form of these analyses can take the form of a Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS).

<sup>8</sup> 40 C.F.R. § 1500.1(b).

<sup>9</sup> *Id.* at § 1500.1(c) (emphasis added).

<sup>10</sup> *Id.*

<sup>11</sup> See 40 C.F.R. §§ 1500.4-1500.5.

<sup>12</sup> *Id.*

<sup>13</sup> See *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989); *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978).

- Identify the need for action in connection with a proposal.
- Determine whether the action is a federal action subject to NEPA review.
- Determine whether the proposed action is a “major federal action” i.e. could it have direct or indirect effects which have the *potential* to significantly affect the quality of the human environment.<sup>15</sup>
  - If “yes,” determine whether the project qualifies for a categorical exclusion (CE).
  - If significant environmental effects are uncertain and the action fails to qualify for a CE, then agencies must move forward with an environmental assessment (EA) providing for public involvement to the extent practicable.<sup>16</sup>
- Determine whether the EA reveals a potential for significant environmental effects.
  - If “no,” then agencies must issue a Finding of No Significant Impact explaining the reasoning for their decision.
  - If, however, in the process of completing the EA, it is determined that significant environmental effects *are* likely to result, a notice must be published in the federal register of intent to prepare an Environmental Impact Statement (EIS).
- A public process to determine the “scope” of the EIS must be conducted.
- A draft EIS will be prepared and published, with a minimum 90-day period for public review and further comment.
- After addressing public input, a final EIS is published (no time limit).
- Finally, a Record of Decision is issued by the lead agency detailing its decision to move forward with the proposal or not.

### NEPA for the 21<sup>st</sup> Century

Clearly there is ample room for this process to benefit from the economies and efficiencies associated with the digitization, data analytics and networking available to us in 2018, but, unfortunately, much of the analysis and “streamlining” attempted to date, whether pursuant to the FAST Act or the several Trump Administration executive orders in furtherance of those objectives,

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<sup>14</sup> See COUNCIL ON ENVIRONMENTAL QUALITY, A CITIZEN’S GUIDE TO THE NEPA: HAVING YOUR VOICE HEARD 8 (2007).

<sup>15</sup> See 40 C.F.R. § 1508.27.

<sup>16</sup> There is no statutory basis for the position taken by some agencies that there must be environmental review unless there is an applicable categorical exclusion. The mandatory C.E exercise is unduly cumbersome and unduly restricts the exercise of reasoned judgment by the agency head in determining whether an action is “major” An intelligent computer aided approach to this analysis could provide the equivalent of reasoned judgment based on the thousands of relevant factors which might affect a reasoned human decision.

has been developed by consensus among multiple agencies and predicated on traditional “paper trail” oriented administrative processes. It has failed to take into account the advances achievable through use of modern technology.

As a result, the environmental review process has yet to embrace the efficiencies associated with software development and technological integration. While people who wish to comment on a draft EIS can now do so through online portals instead of having to mail in written comments, there are additional opportunities to take the choreographed stages of review and introduce coordination that is currently missing.

Under the framework of a modern, digital, analytic protocol, there would be opportunities to introduce disciplines for reviewing some of the mistakes and inefficiencies embedded in the existing regulations and guidance, and perhaps even codify and replace the countless pages of existing guidance proven to be redundant or unnecessary. Just as important, broad use of interactive digital platforms would enable the development of a broadly accessible national environmental data network which would limit the need to “reinvent the wheel” in environmental reviews of previously studied areas. The result might be creation of a comprehensive environmental database that includes subject specific information capable of being drawn upon to inform future projects. For example, U.S. Fish and Wildlife has a rudimentary system for archiving conservation plans across the country. It’s not terribly user-friendly but it does allow landowners and developers a chance to see what’s been done before and what they might reasonably expect going forward in similar situations. Artificial intelligence and networking capabilities ought to be employed to compile something that is (i) informative; (ii) comprehensive; (iii) user-friendly; and (iv) capable of cutting down redundancy with previous work.

In addition to introducing efficiencies that could cut down on delay and associated development costs, there is reason to believe that digitization and analytics could not only provide a quality of analysis currently lacking in NEPA review but could also substantially reduce Government costs. Two NEPA-related studies completed by federal agencies show clearly that there is no current “handle” on the total governmental cost of NEPA compliance. A 2007 Forest Service report on competitive sourcing for NEPA compliance stated that it is “very difficult to track the actual cost of performing NEPA. Positions that perform NEPA-related activities are currently located within nearly every staff group, and are funded by a large number of budget line items.

There is no single budget line item or budget object code to follow in attempting to calculate the costs of doing NEPA.”<sup>17</sup> Similarly, a 2003 study funded by the Federal Highway Administration evaluating the performance of environmental “streamlining” noted that NEPA cost data would be difficult to segregate for analysis.”<sup>18</sup> Since, as noted the *outside contractor cost* of environmental review of a single proposal can range to \$85 million or beyond it is clear that the overall cost of NEPA review is very, very substantial. , Digitization could introduce analytics that break down the silos of knowledge described in the Forest Service report and allow us to know, at least, what NEPA is costing.

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<sup>17</sup> U.S. FOREST SERVICE, COMPETITIVE SOURCING PROGRAM OFFICE, *Feasibility Study of Activities Related to National Environmental Policy Act (NEPA) Compliance* (Washington, D.C., Aug. 10, 2007).

<sup>18</sup> U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, *Evaluating the Performance of Environmental Streamlining: Phase II* (Washington, D.C. 2003).

Even more important, the use of modern communications and analytical technologies can allow us to obtain more effective reviews, more expeditiously and at a much lower cost. Witnesses at a recent hearing before the Senate Environment and Public Works Committee estimated that NEPA related delays in permitting processes may be inflating our nation's infrastructure costs by as much as 50% and there is at least some evidence to suggest that estimate is on the low side. There is little doubt that inefficiencies in environmental review processes, in addition to handicapping our country's ability to keep pace with global competition, are resulting in costs well into the billions and possibly beyond.

### *Conclusion*

Over the past several decades, we've split the atom, we've spliced the gene, and we've harnessed the modern electron. New science and new technology is fostering change at a breakneck pace and we are at a crossroads. The need to bring NEPA — arguably one of the most influential pieces of environmental legislation ever enacted — up to speed in a way that's attendant to the needs of 21<sup>st</sup> century development is not a partisan issue. This was recognized in the FAST Act by specifically including a title designed to improve the timeliness, predictability, and transparency of the Federal environmental review and authorization process for covered infrastructure projects.<sup>19</sup> President Trump has issued executive orders which further support the FAST 41 objectives and has targeted nearly a trillion dollars in infrastructure packages across the country given the state of our bridges, highways, and waterways. We are in a unique position to leverage knowledge available from actors in both the public and private sectors to bring to bear the full measure of our know-how on environmental review. Now is the time to bring the full resources of the federal government and the full reach of our collective expertise to this fundamental goal: we must modernize the NEPA environmental review process.

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<sup>19</sup> See 42 U.S.C. § 4370m *et seq.*

## FW: First batch of ANOPR comments ready for review

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**From:** "Szabo, Aaron L. EOP/CEQ" <(b) (6)>

**To:** "Neumayr, Mary B. EOP/CEQ" <(b) (6)>

**Date:** Tue, 21 Aug 2018 21:18:23 -0400

Mary,

I would usually not send these to you, but want to provide to you for your awareness.

**From:** Szabo, Aaron L. EOP/CEQ

**Sent:** Tuesday, August 21, 2018 9:15 PM

**To:** Mansoor, Yardena M. EOP/CEQ <(b) (6)> Barnett, Steven W. EOP/CEQ

<(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)>

Drummond, Michael R. EOP/CEQ <(b) (6)> Loyola, Mario A. EOP/CEQ

<(b) (6)> Osterhues, Marlys A. EOP/CEQ <(b) (6)>

Seale, Viktoria Z. EOP/CEQ <(b) (6)> Sharp, Thomas L. EOP/CEQ

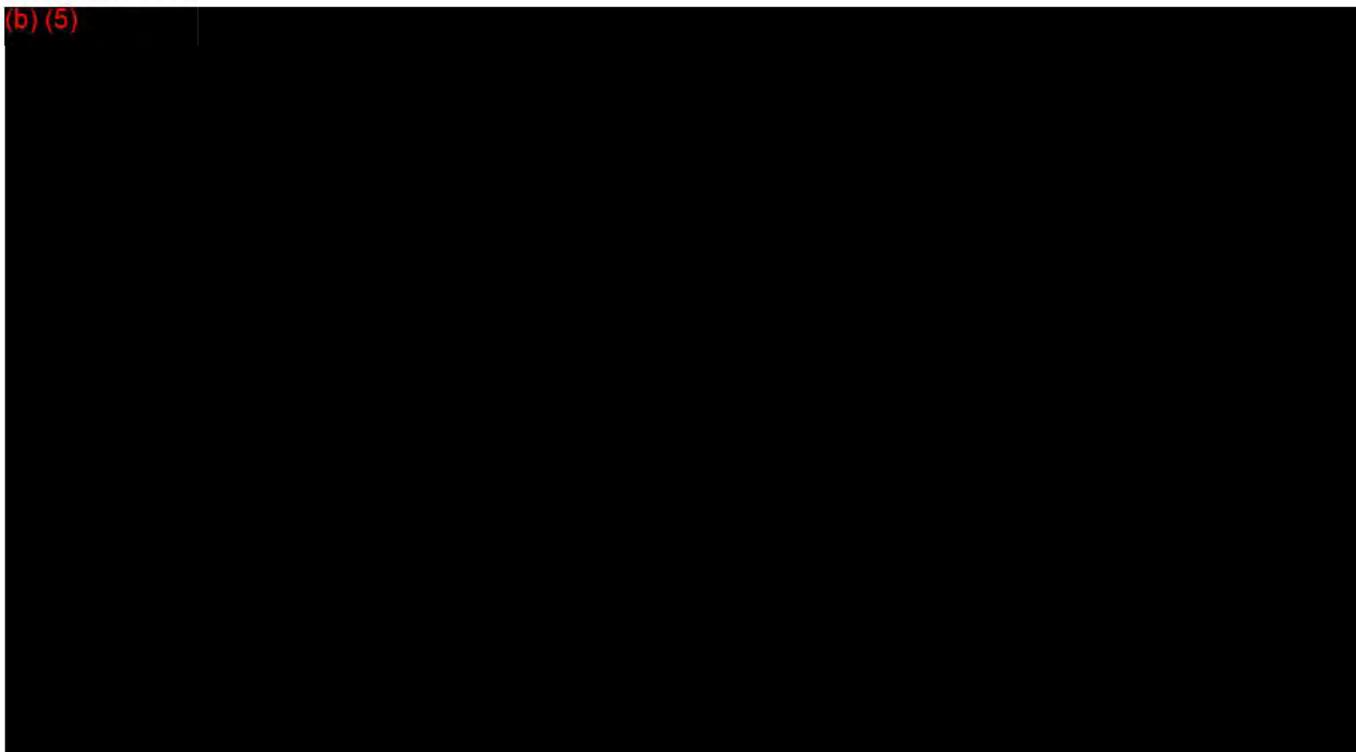
<(b) (6)> Smith, Katherine R. EOP/CEQ <(b) (6)>

**Cc:** Szabo, Aaron L. EOP/CEQ <(b) (6)>

**Subject:** RE: First batch of ANOPR comments ready for review

Yardena,

(b) (5)



(b) (5)

Thank you very much and please let me know if you have any questions.

**From:** Mansoor, Yardena M. EOP/CEQ  
**Sent:** Friday, August 17, 2018 4:09 PM  
**To:** Barnett, Steven W. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ  
<(b) (6)> Drummond, Michael R. EOP/CEQ  
<(b) (6)> Loyola, Mario A. EOP/CEQ <(b) (6)>  
Mansoor, Yardena M. EOP/CEQ <(b) (6)> Osterhues, Marlys A. EOP/CEQ  
<(b) (6)> Seale, Viktoria Z. EOP/CEQ <(b) (6)> Sharp,  
Thomas L. EOP/CEQ <(b) (6)>  
**Cc:** Szabo, Aaron L. EOP/CEQ <(b) (6)>  
**Subject:** First batch of ANOPR comments ready for review

(b) (5)

Let me know if you are having difficulties handling the pdf files or have other questions.

Yardena Mansoor  
Deputy Associate Director for NEPA  
Council on Environmental Quality  
(b) (6) / (b) (6)

# Fwd: Dept. of the Interior Comments on CEQ's ANPRM "Update to the Regulations for Implementing the Procedural Provisions of the NEPA"

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**From:** "Neumayr, Mary B. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=4e618ec0a8d749c29c9f64889897f4bb-ne">  
**To:** "Szabo, Aaron L. EOP/CEQ" <(b) (6)>  
**Date:** Tue, 21 Aug 2018 20:22:23 -0400  
**Attachments**  
: DOI Comments on CEQ ANPRM.pdf (382.2 kB)

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Sent from my iPhone

Begin forwarded message:

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**From:** Justin Abernathy <[justin\\_abernathy@ios.doi.gov](mailto:justin_abernathy@ios.doi.gov)>  
**Date:** August 21, 2018 at 6:29:08 PM EDT  
**To:** <(b) (6)> <(b) (6)>  
**Cc:** James Voyles <[james\\_voyles@ios.doi.gov](mailto:james_voyles@ios.doi.gov)>  
**Subject:** Dept. of the Interior Comments on CEQ's ANPRM "Update to the Regulations for Implementing the Procedural Provisions of the NEPA"

Ms. Neumayr and Mr. Barnett,

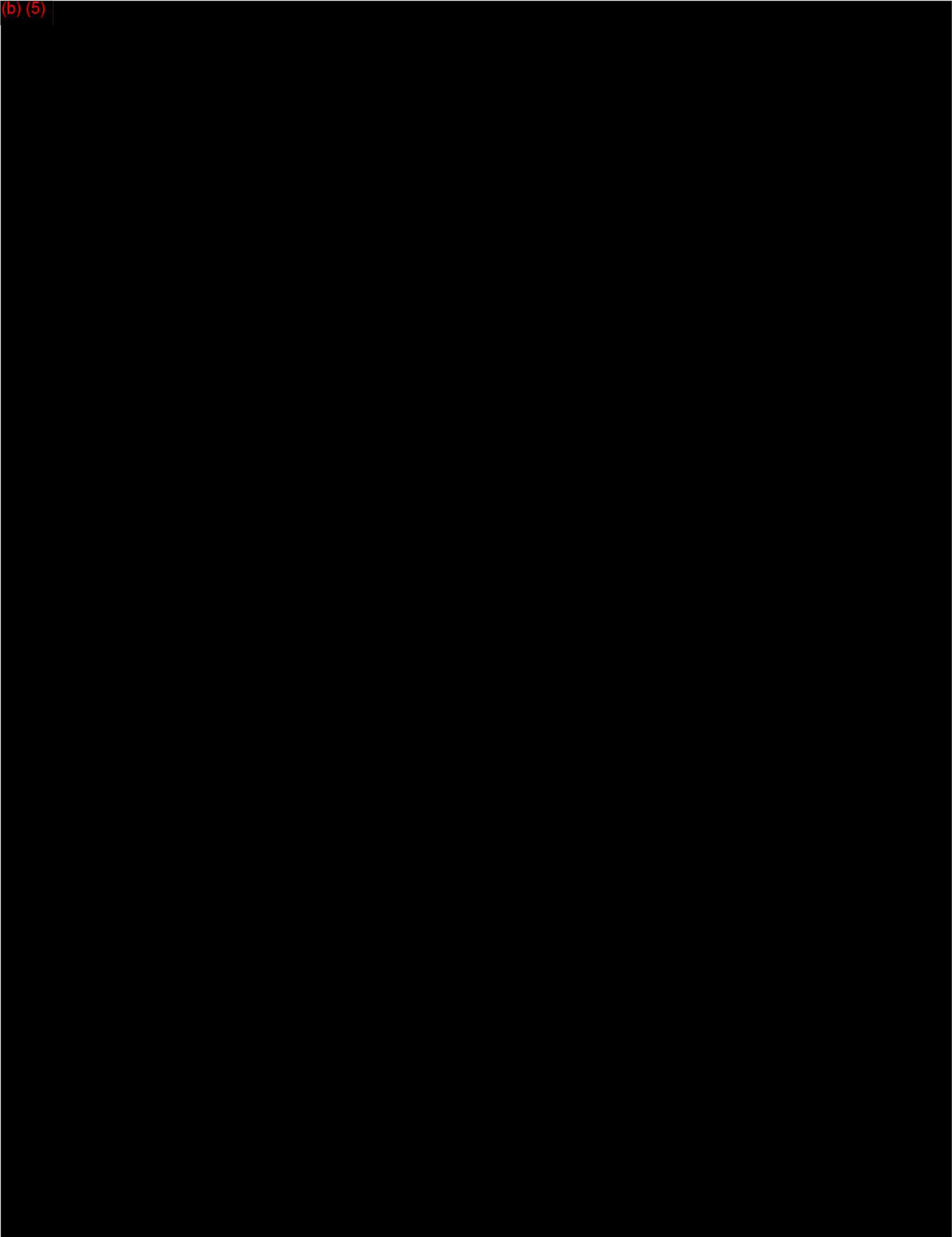
Comments from the Department of the Interior (Department) in response to the Council on Environmental Quality's (CEQ) Advanced Notice of Proposed Rulemaking, titled "Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act," are attached for your consideration. The Department looks forward to assisting CEQ with this and other efforts that achieve the goals of Executive Order 13807.

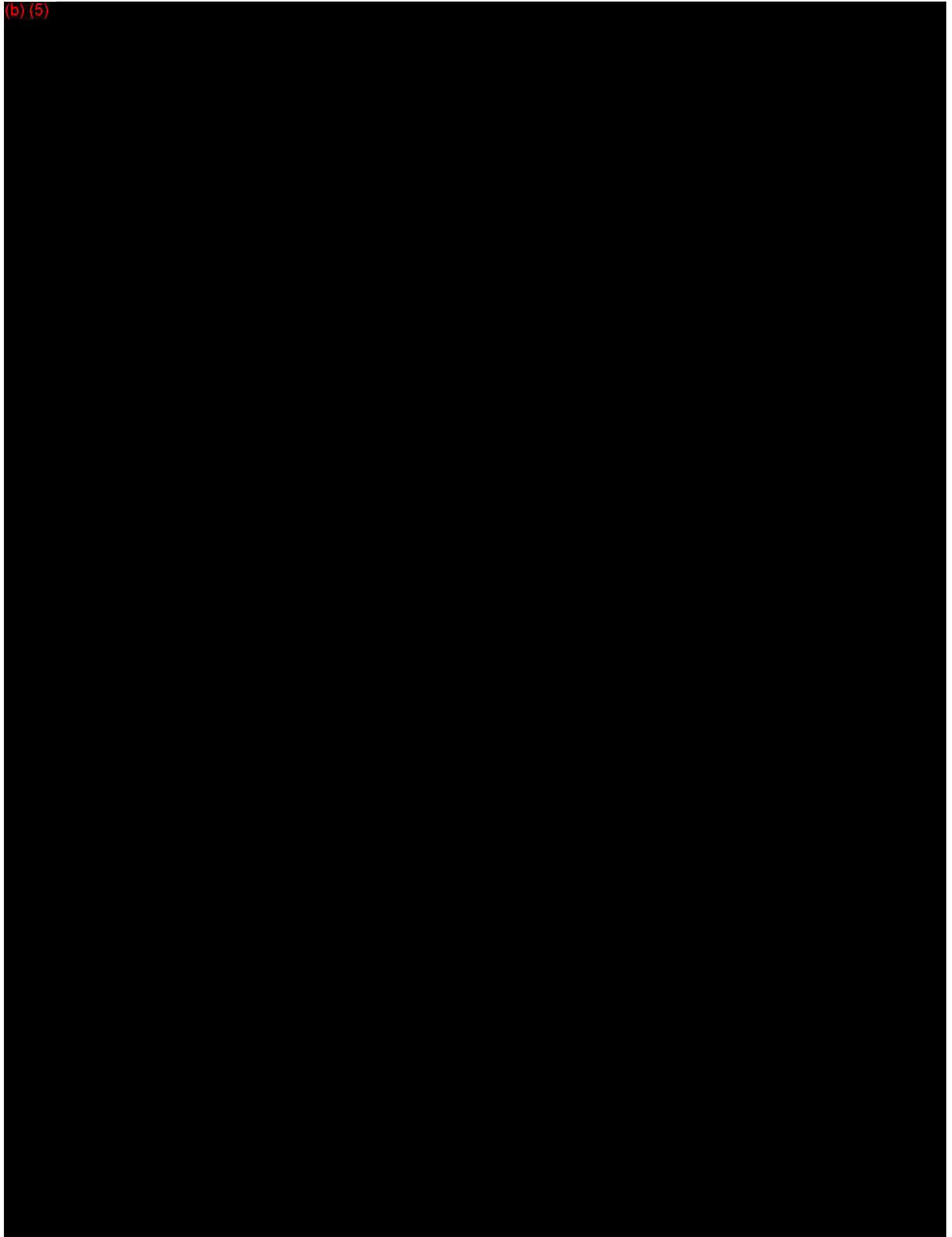
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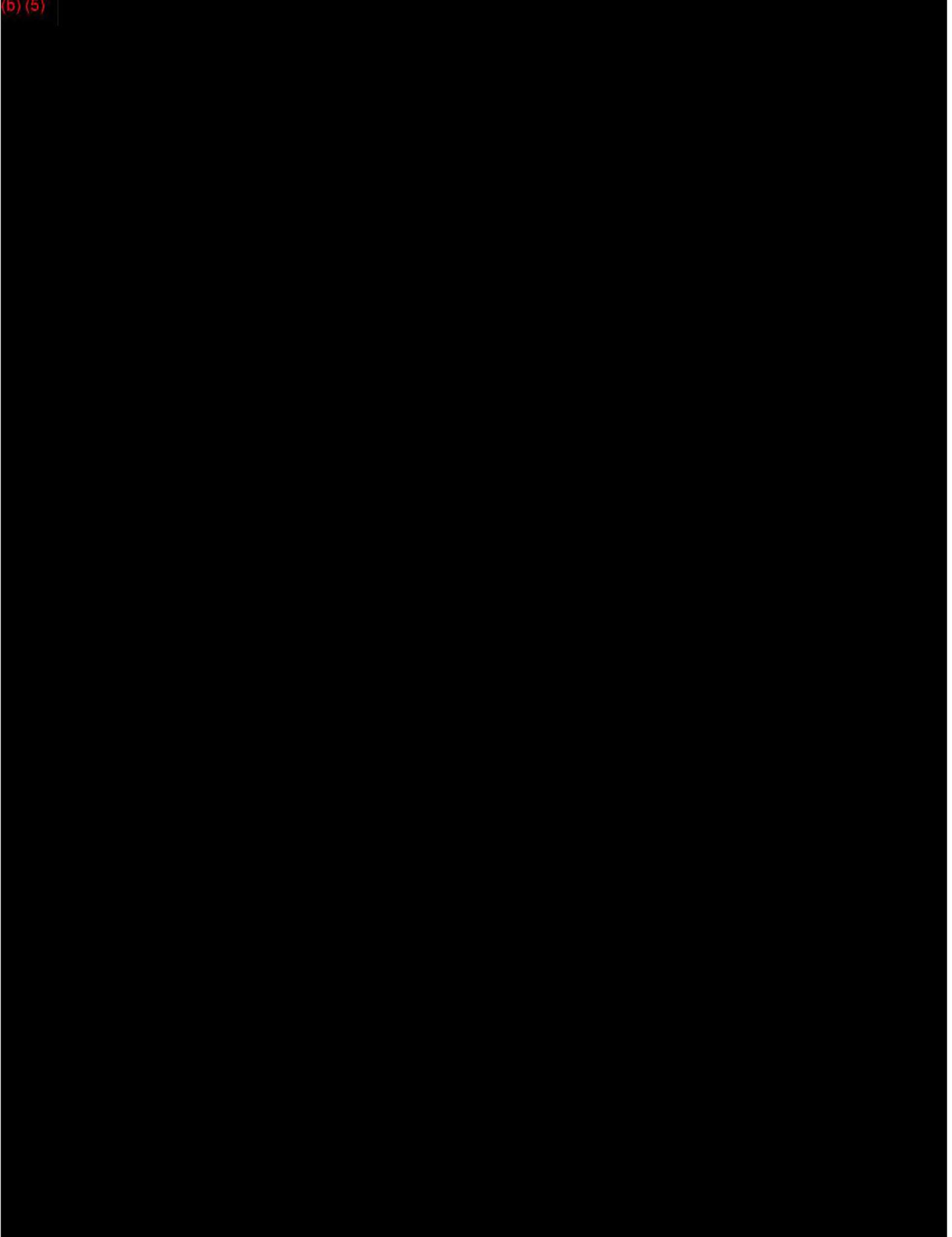
Justin Abernathy  
Policy and Regulatory Affairs Supervisor  
Office of the Executive Secretariat and Regulatory Affairs  
Office of the Secretary  
U.S. Department of the Interior  
1849 C Street NW  
Room 7311  
Washington, DC 20240

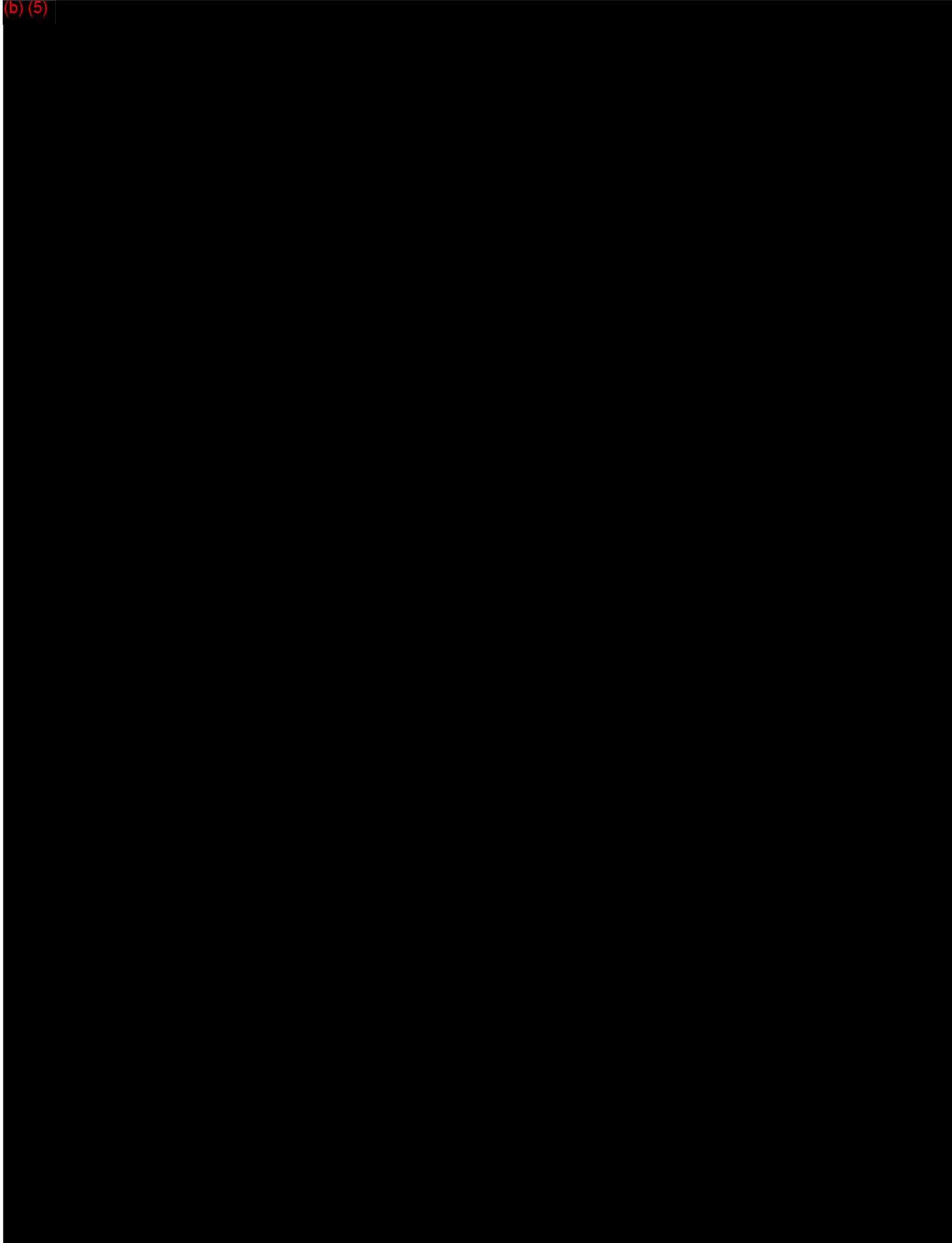
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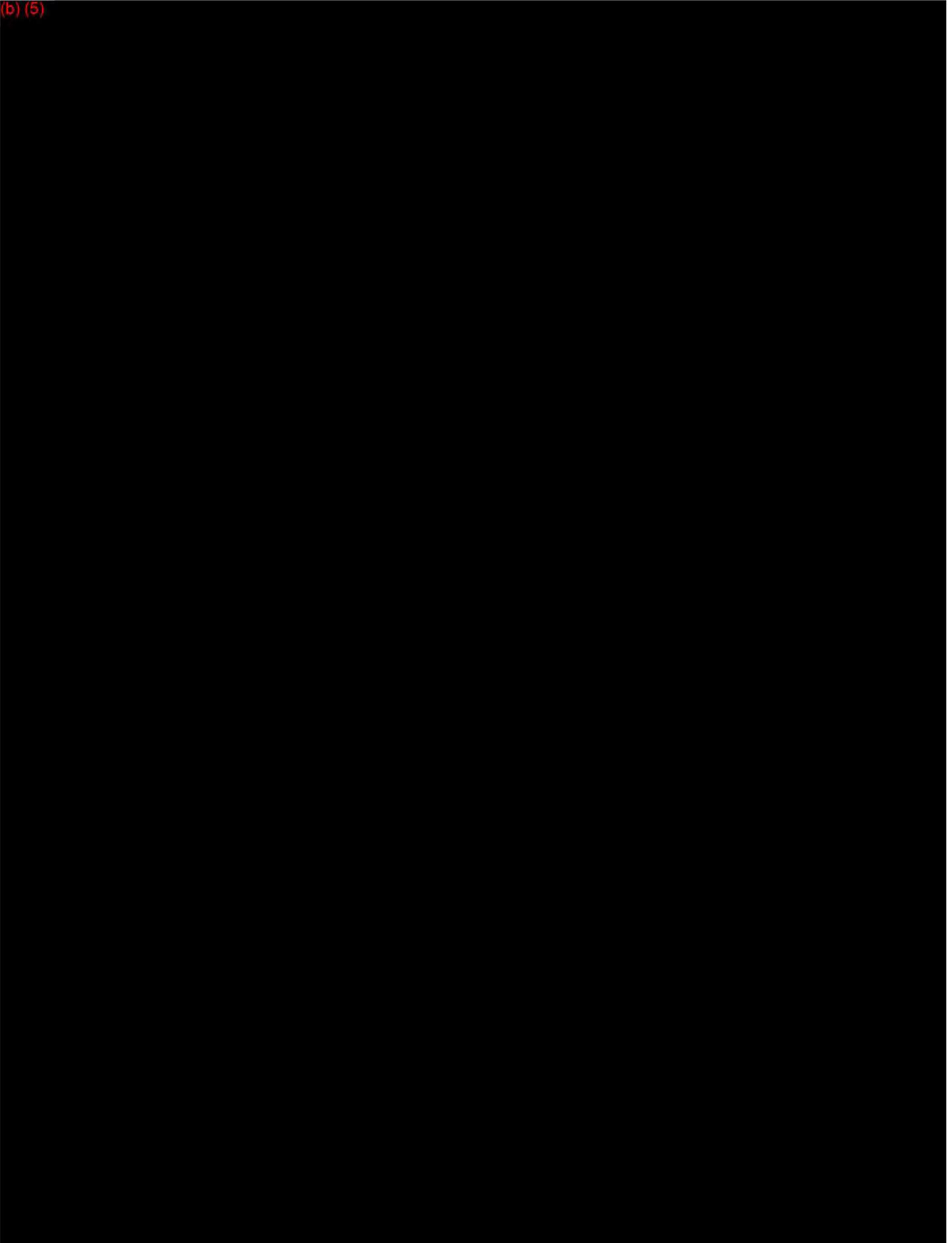
E-mail: [justin\\_bernathy@ios.doi.gov](mailto:justin_bernathy@ios.doi.gov)  
Office Phone: 202-513-0357  
Cell Phone: (b) (6)

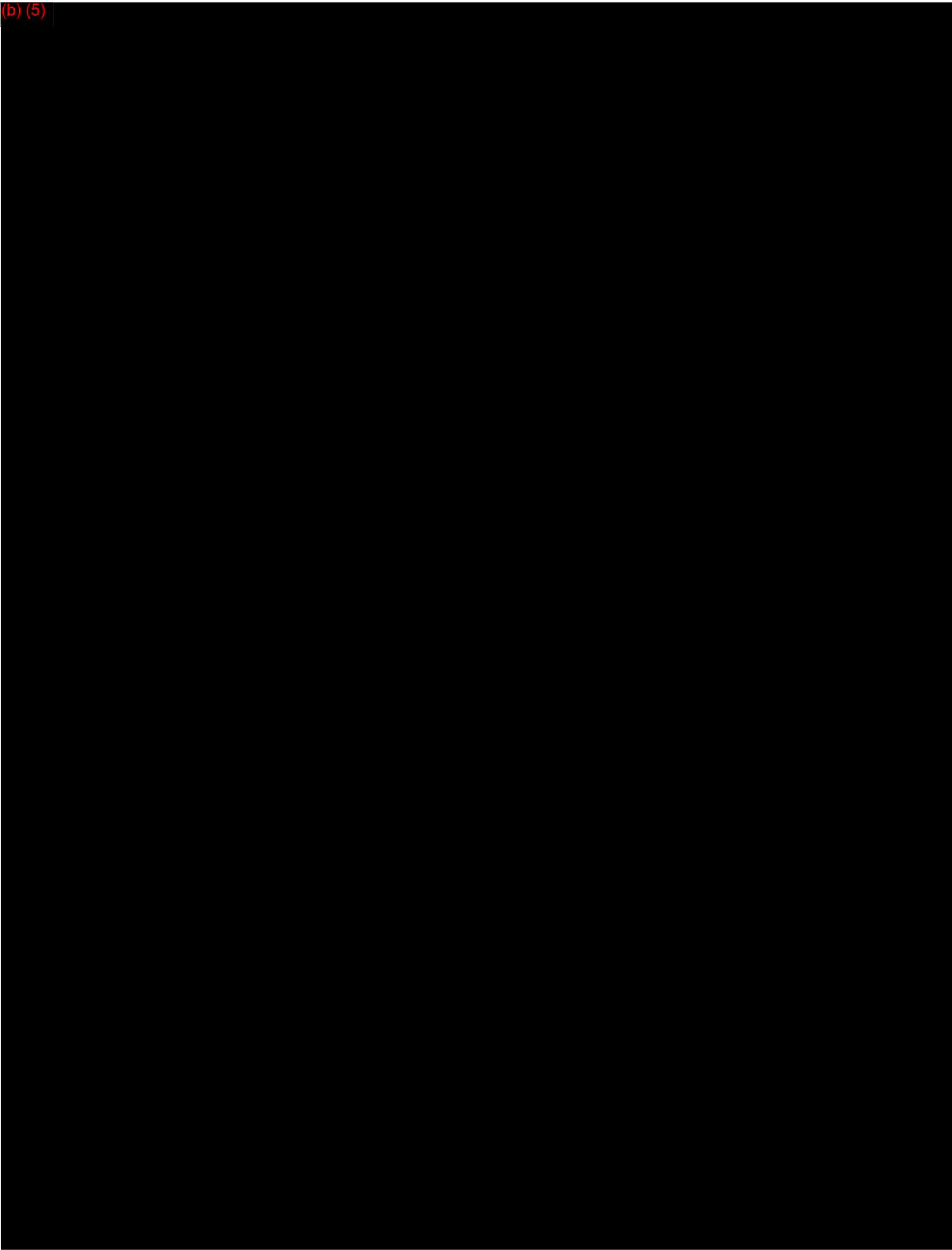


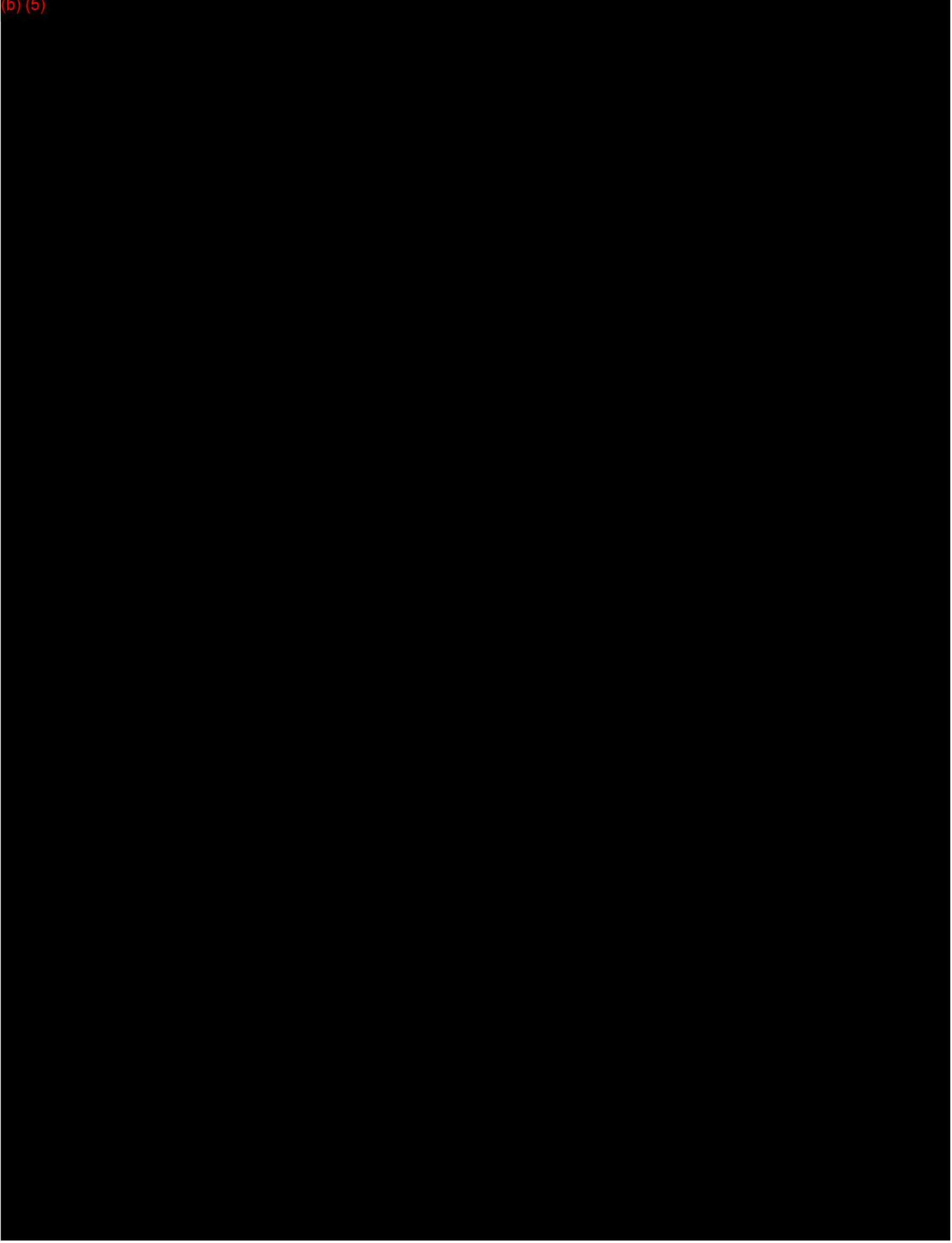


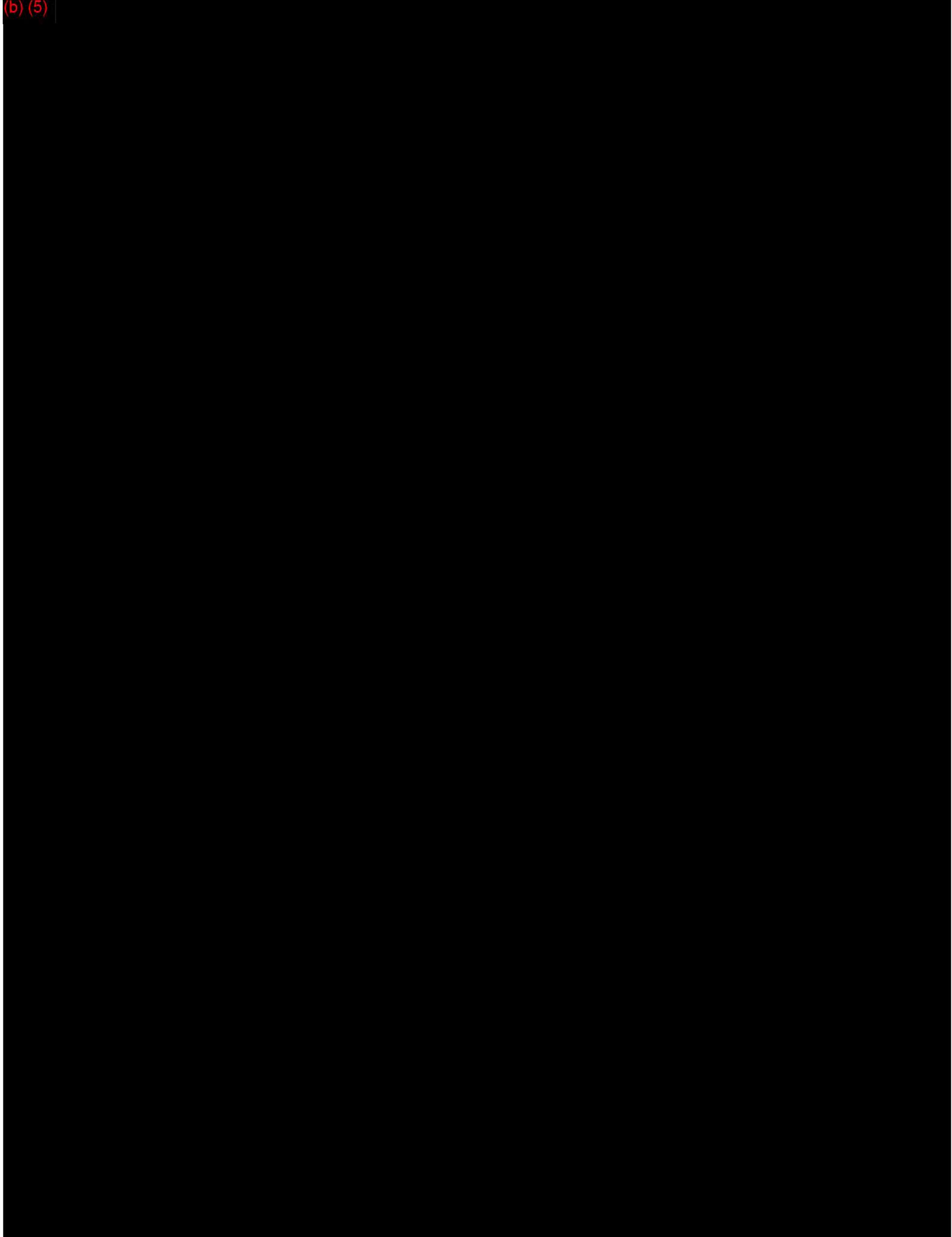


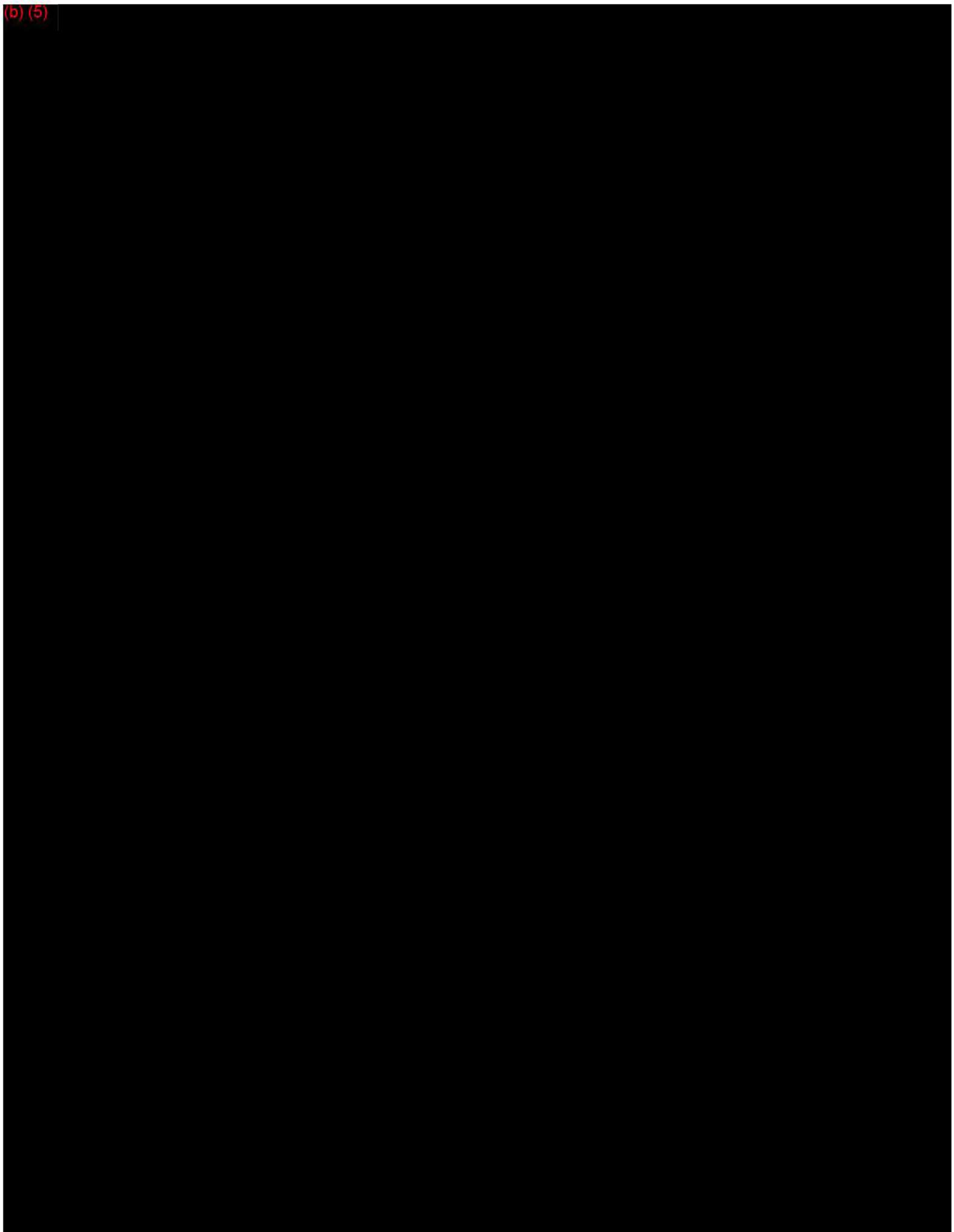


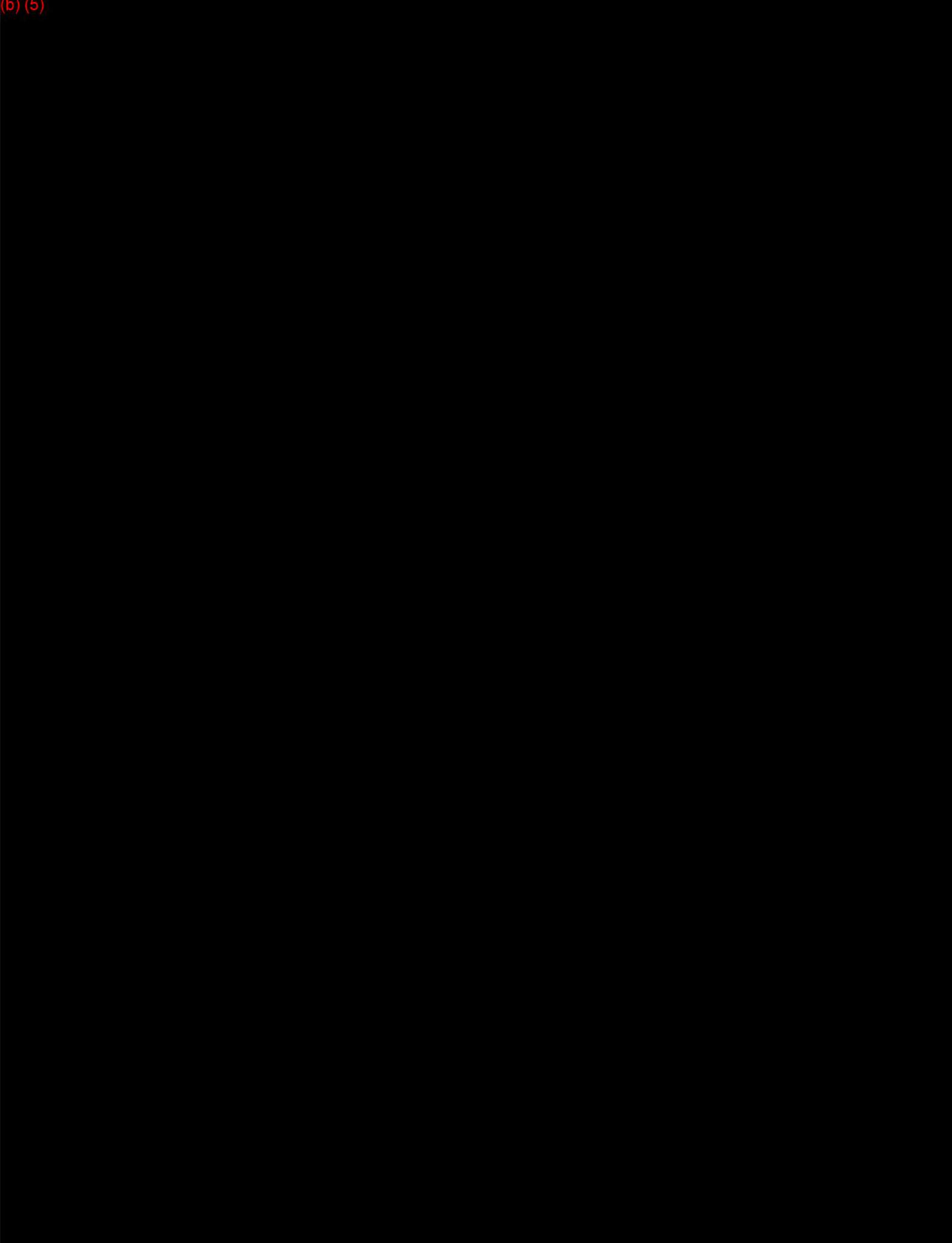


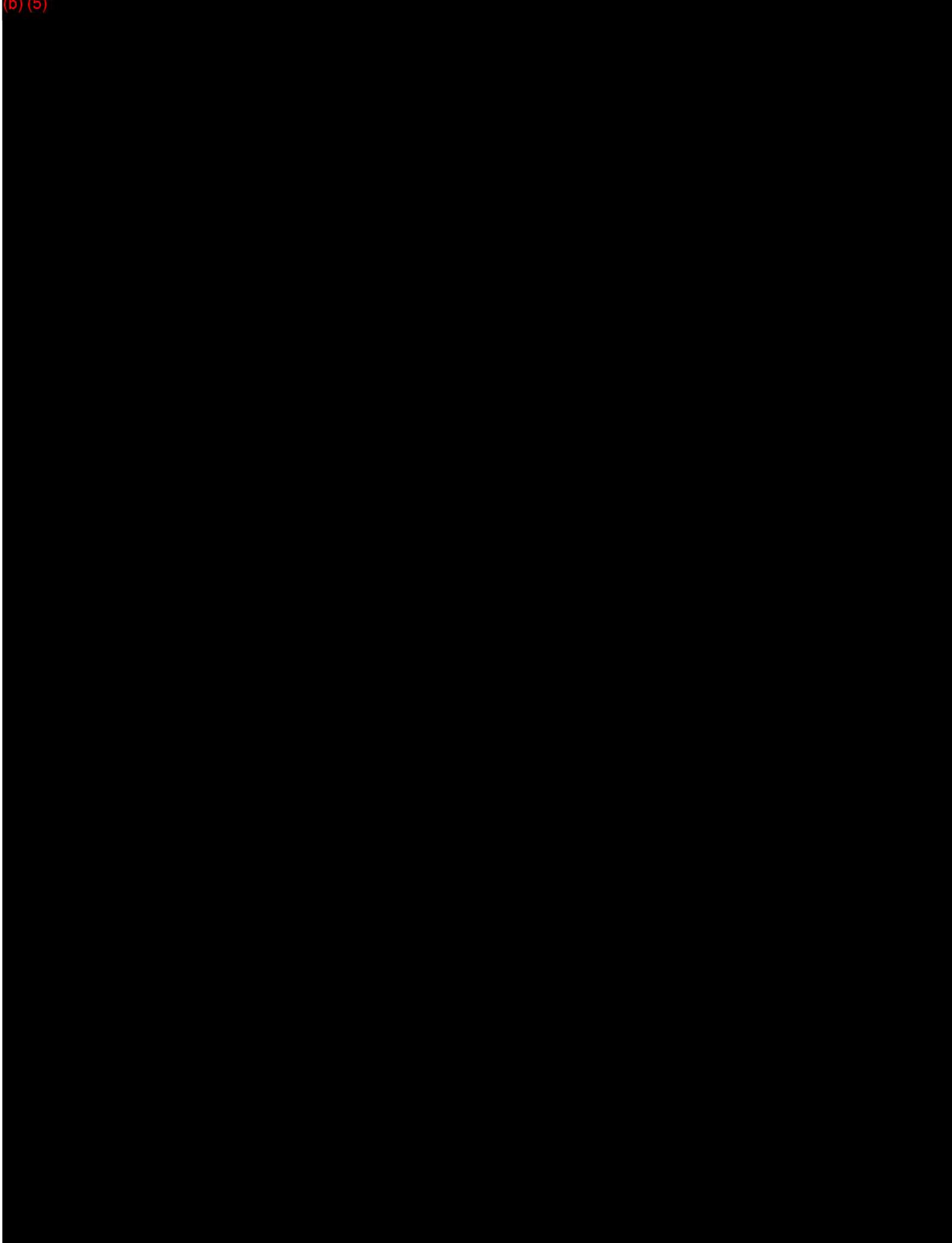


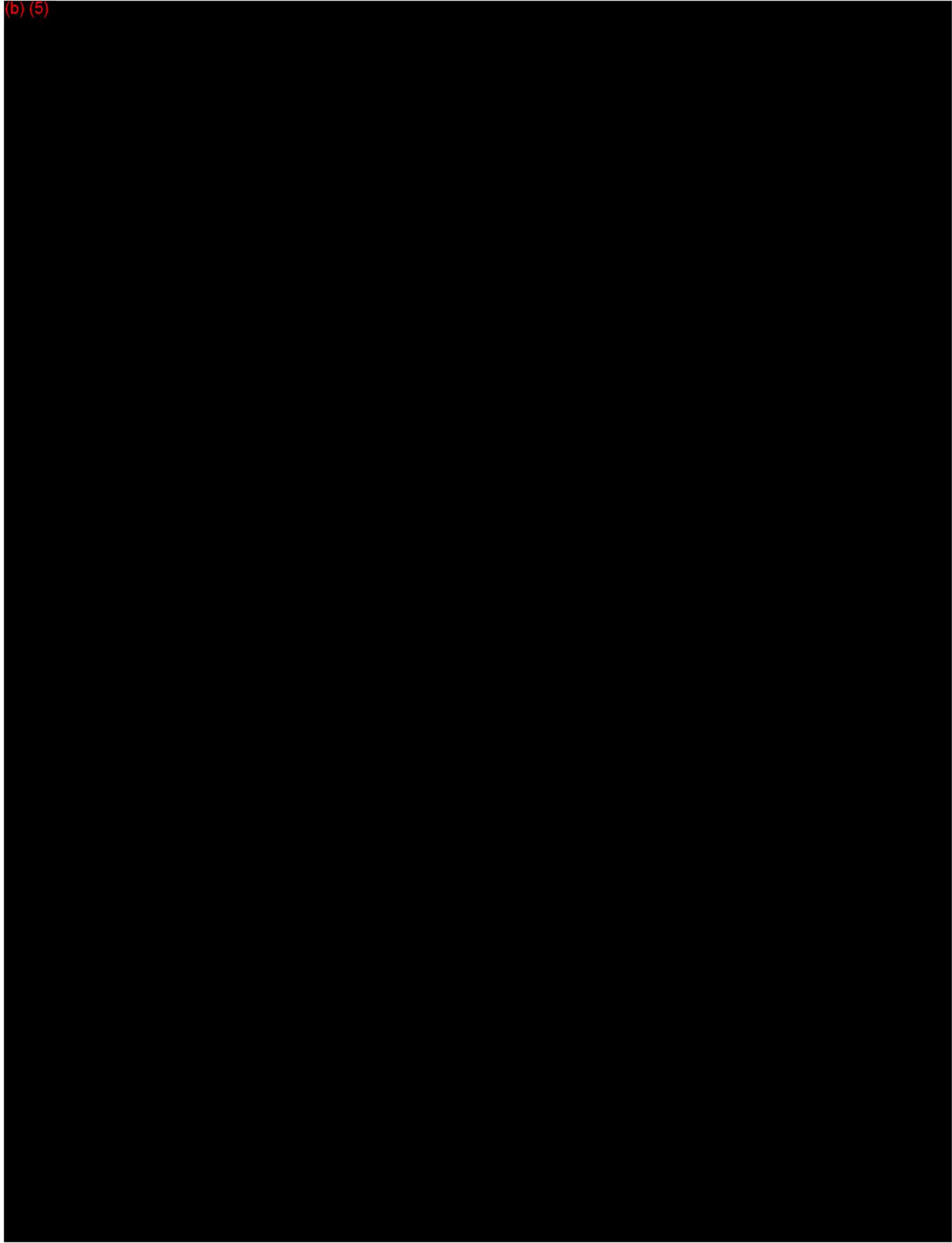


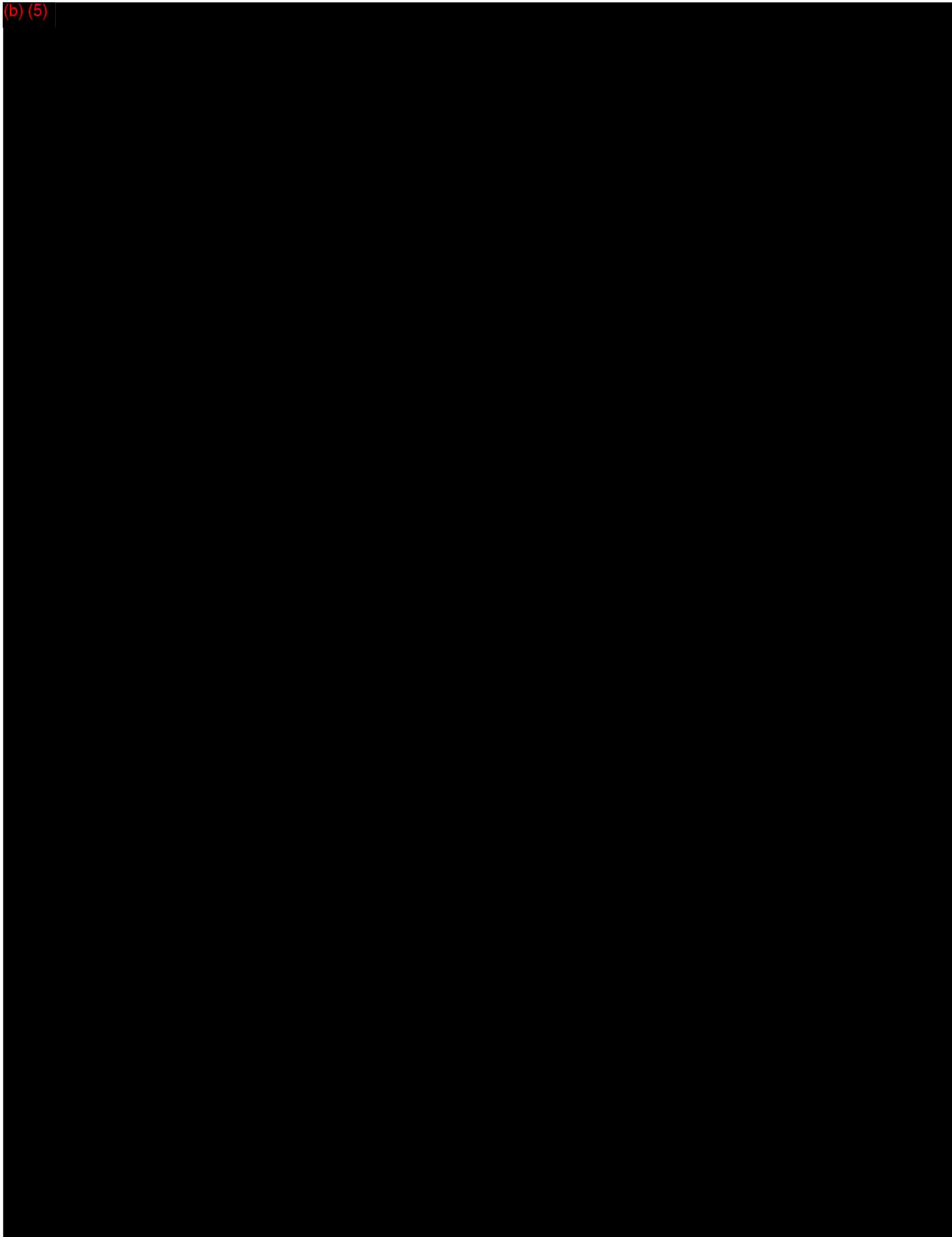


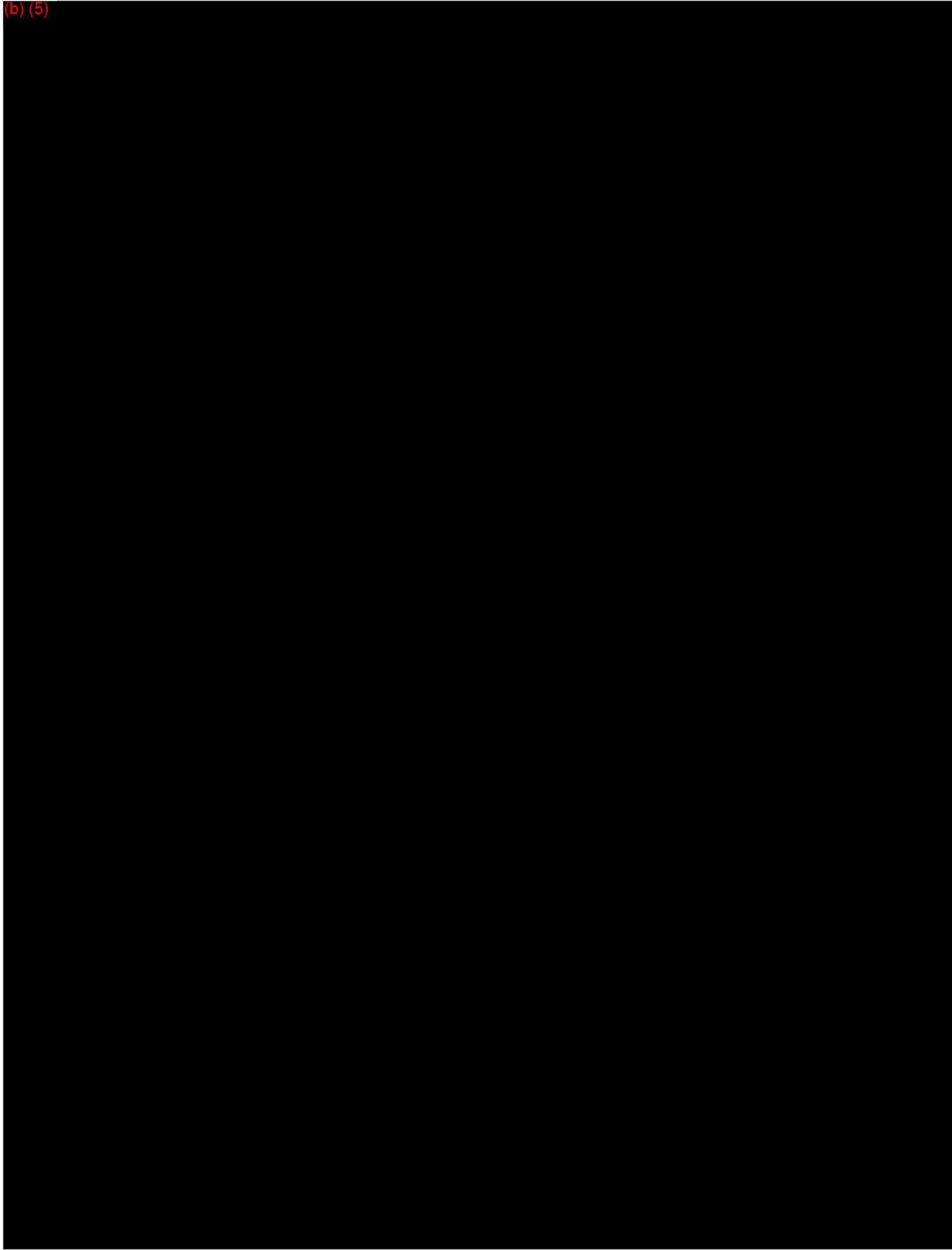


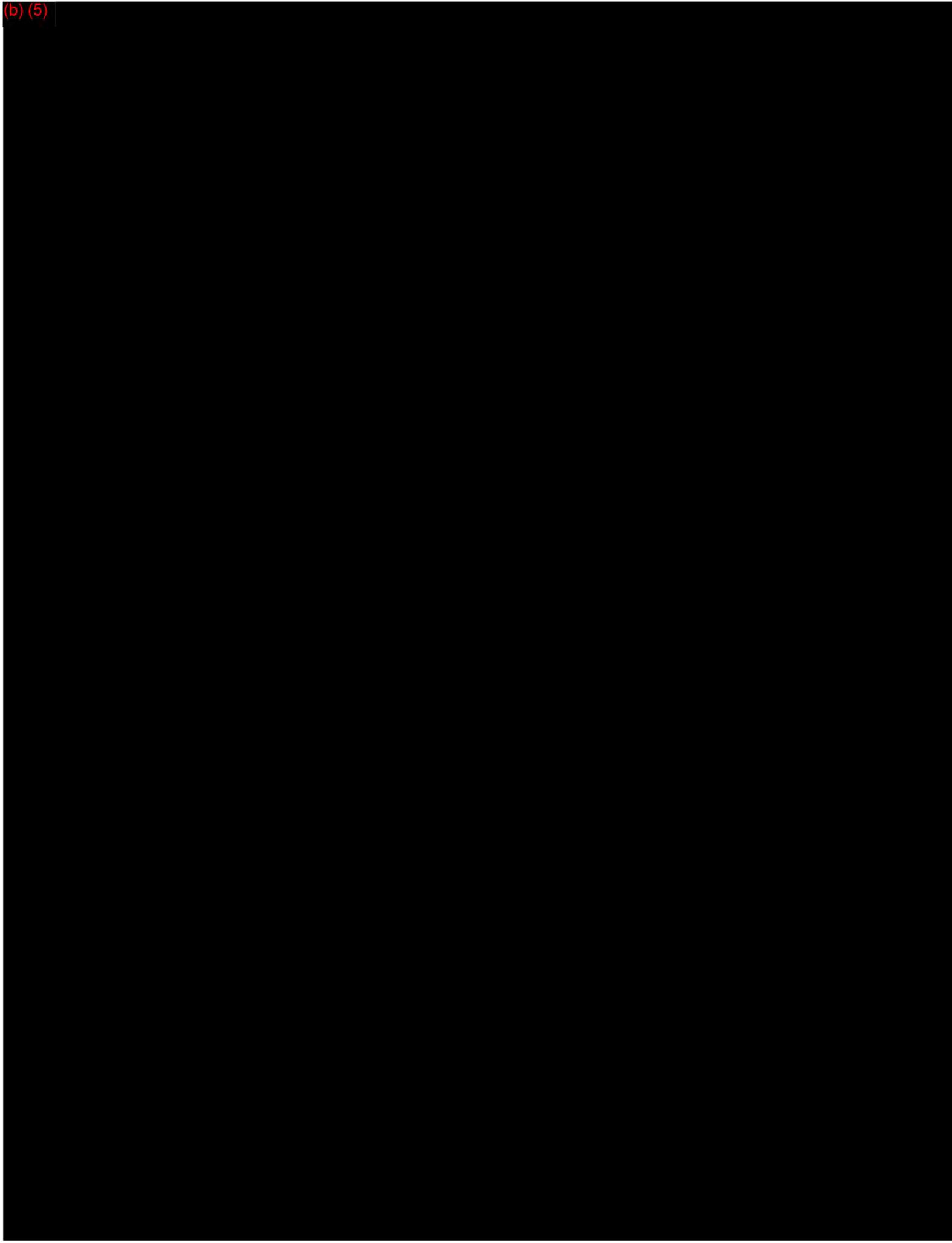


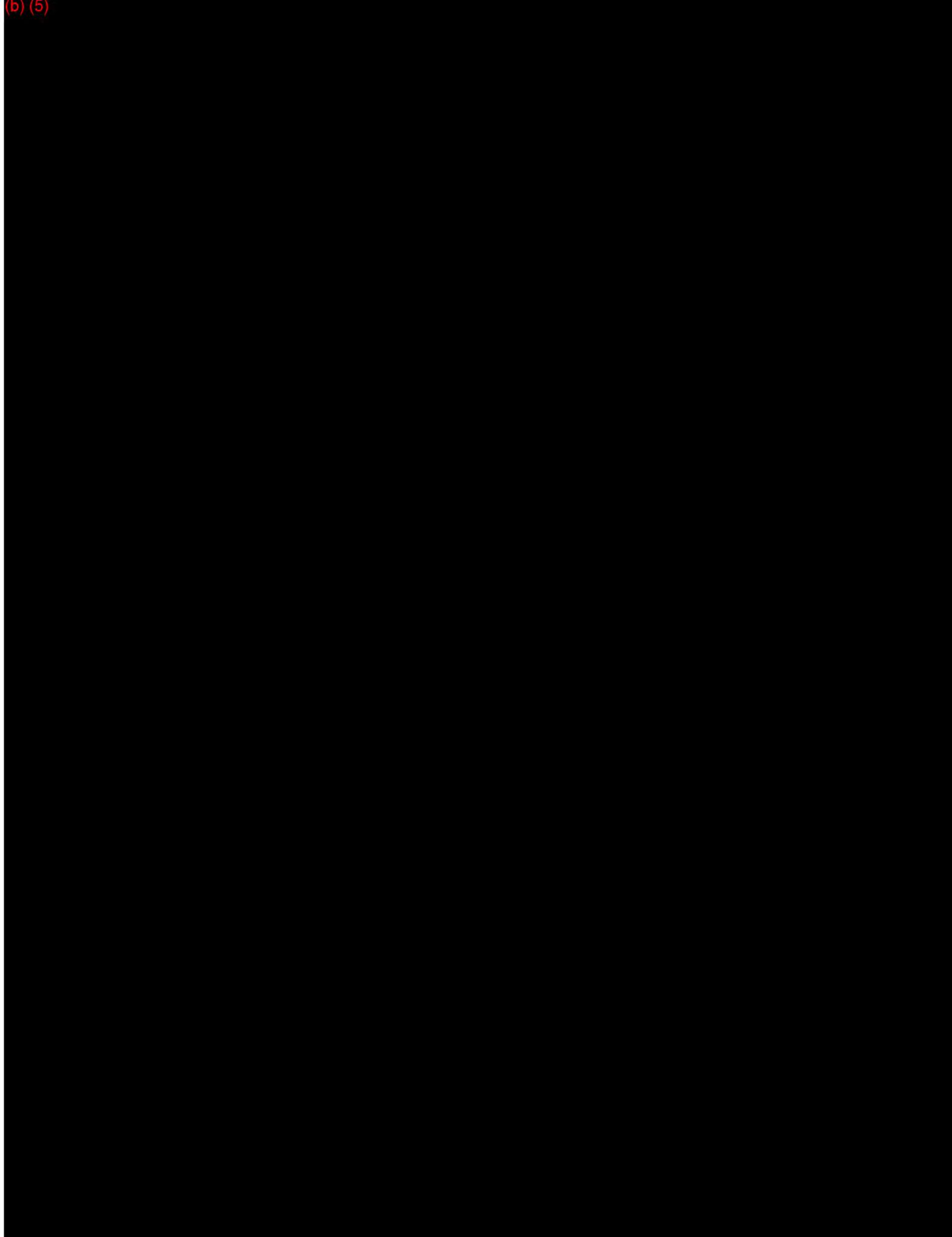


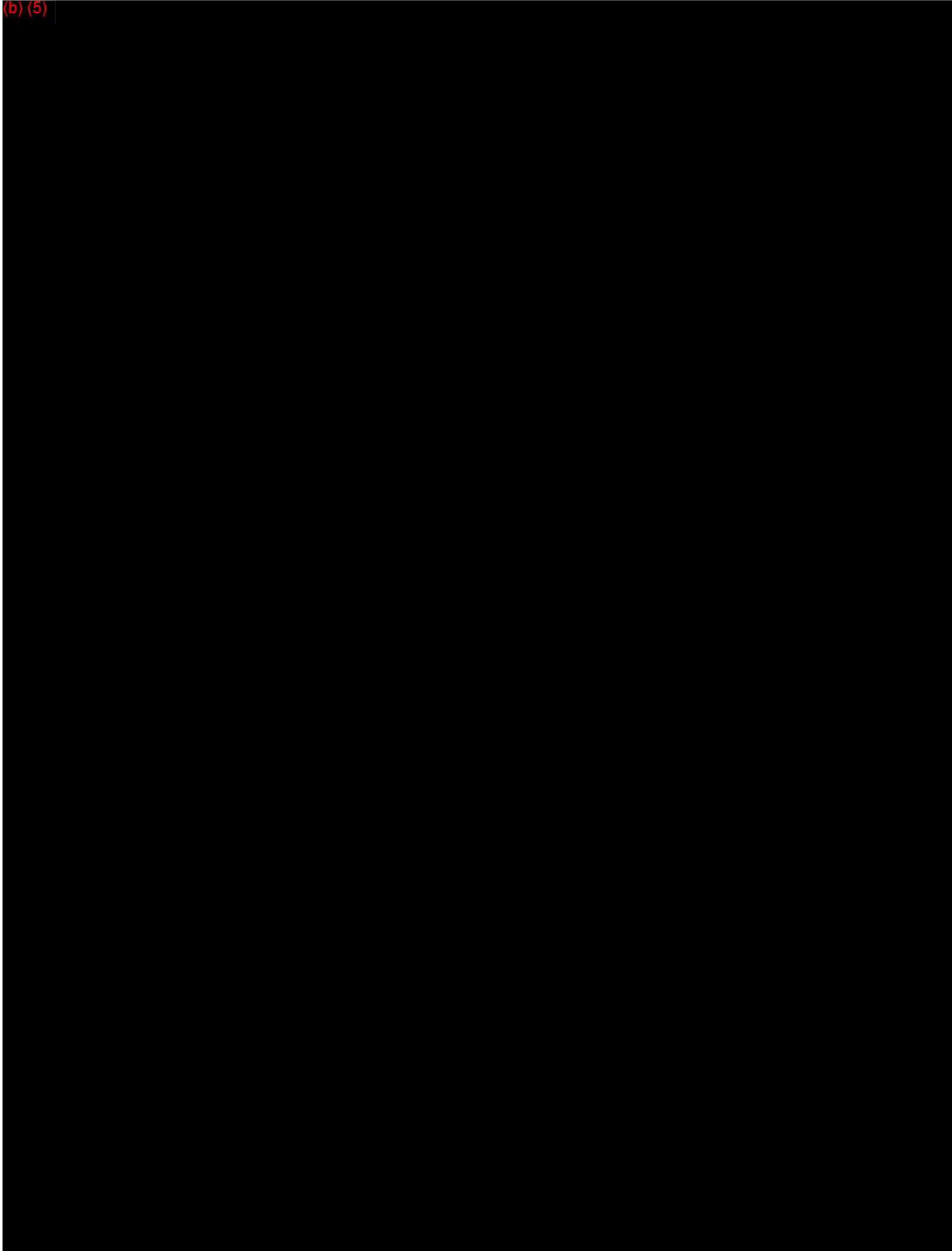




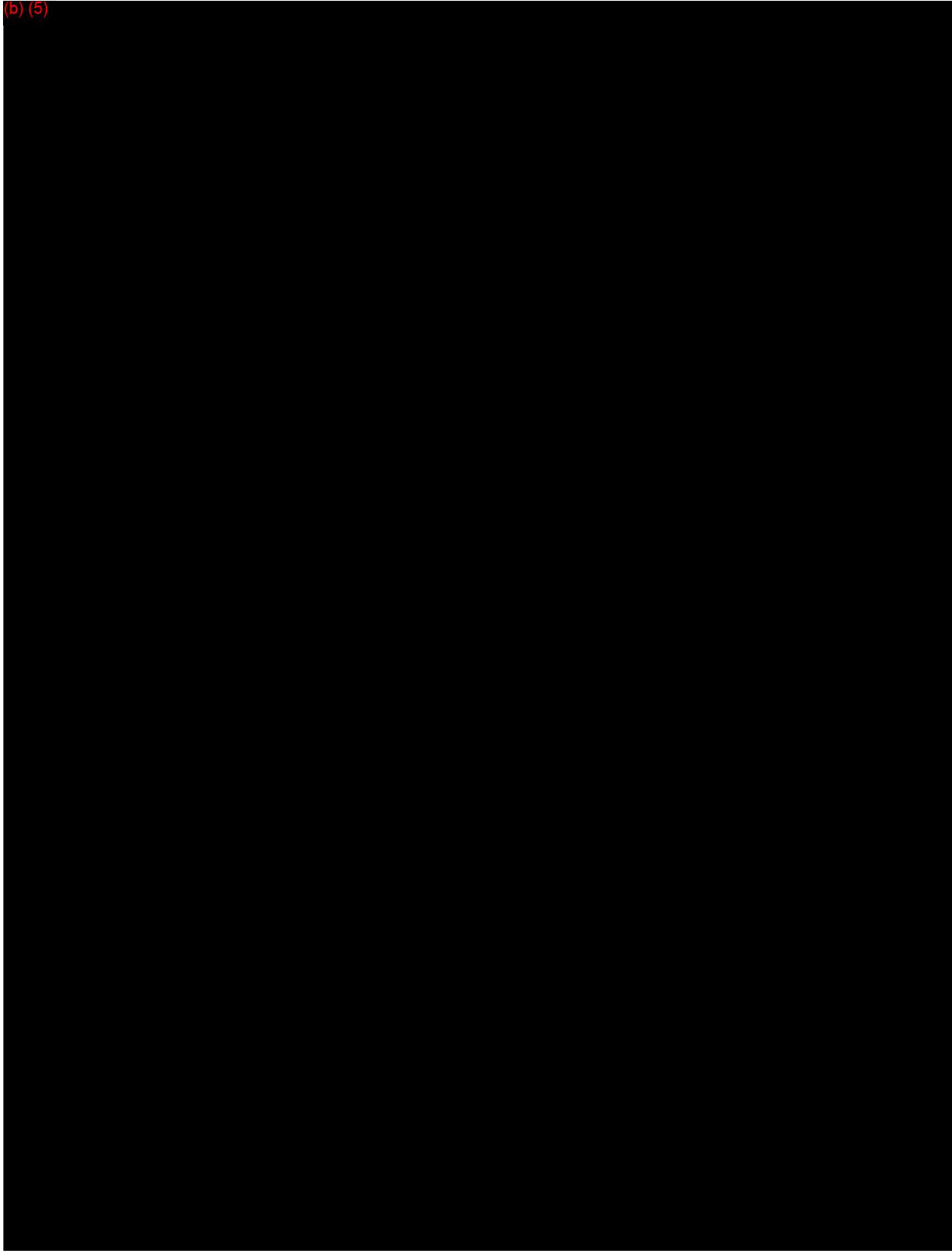


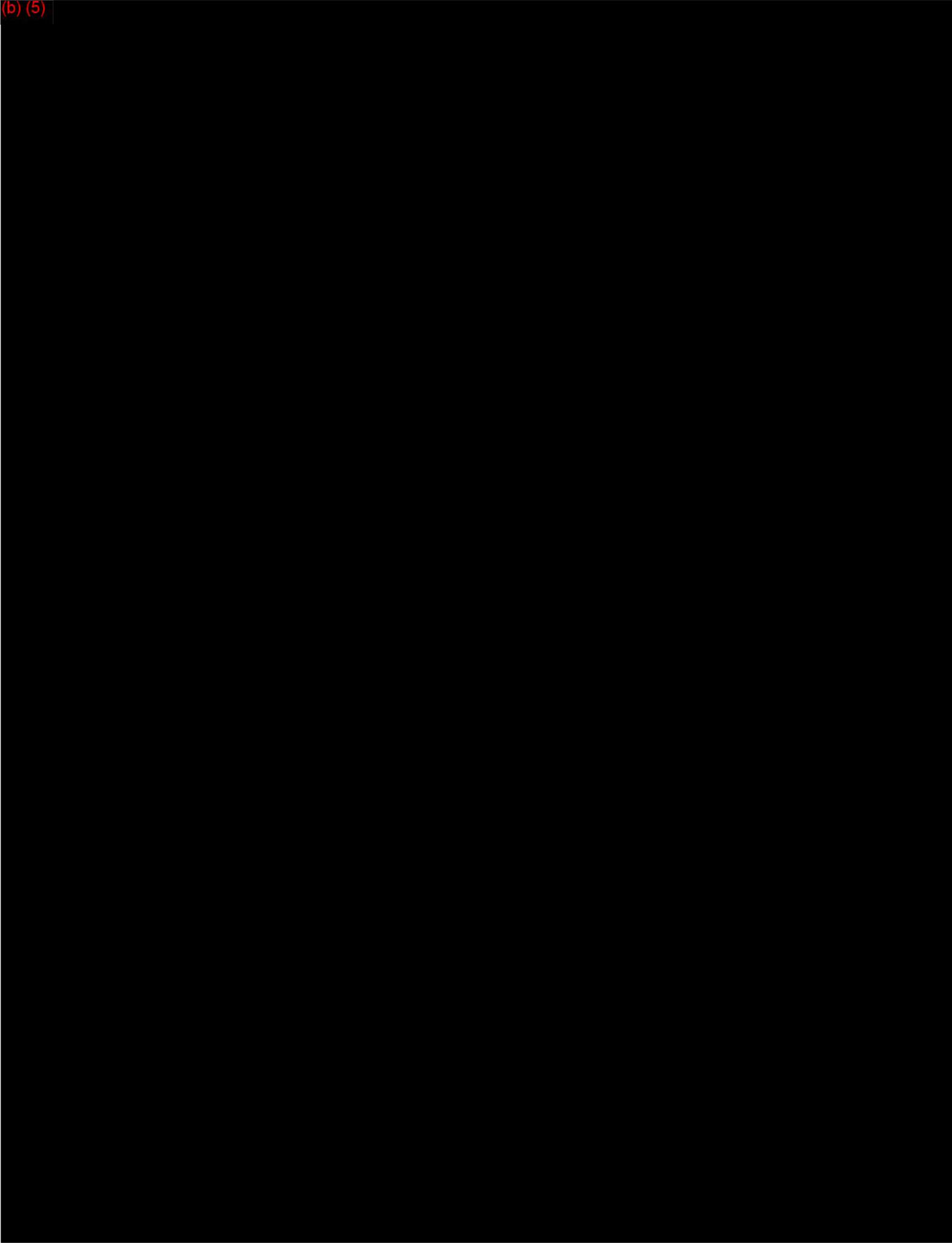


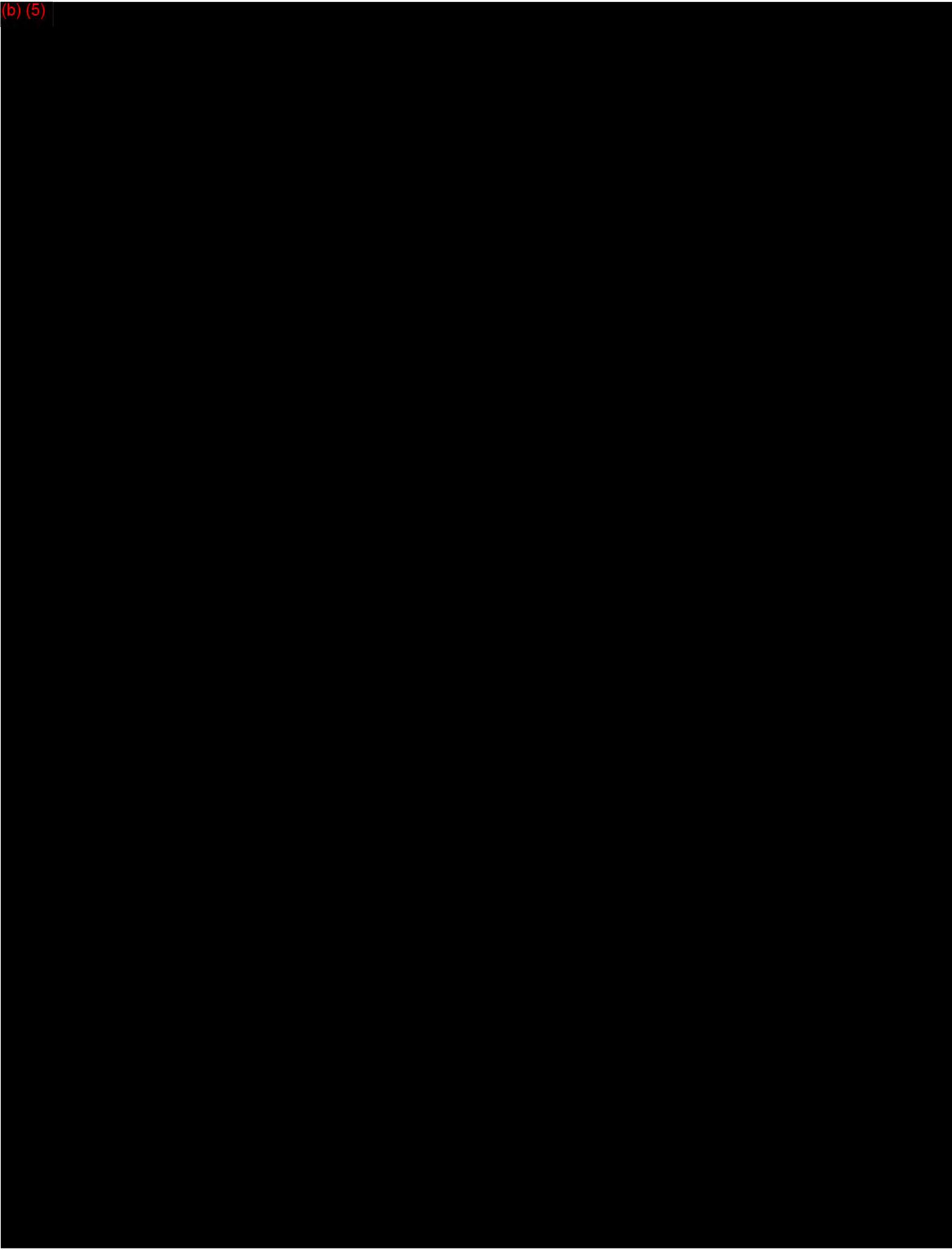












# Dept. of the Interior Comments on CEQ's ANPRM "Update to the Regulations for Implementing the Procedural Provisions of the NEPA"

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**From:** Justin Abernathy <justin\_abernathy@ios.doi.gov>  
**To:** "Neumayr, Mary B. EOP/CEQ" <(b) (6)> "Barnett, Steven W. EOP/CEQ" <(b) (6)>  
**Cc:** James Voyles <james\_voyles@ios.doi.gov>  
**Date:** Tue, 21 Aug 2018 18:29:08 -0400  
**Attachments**  
: DOI Comments on CEQ ANPRM.pdf (382.2 kB)

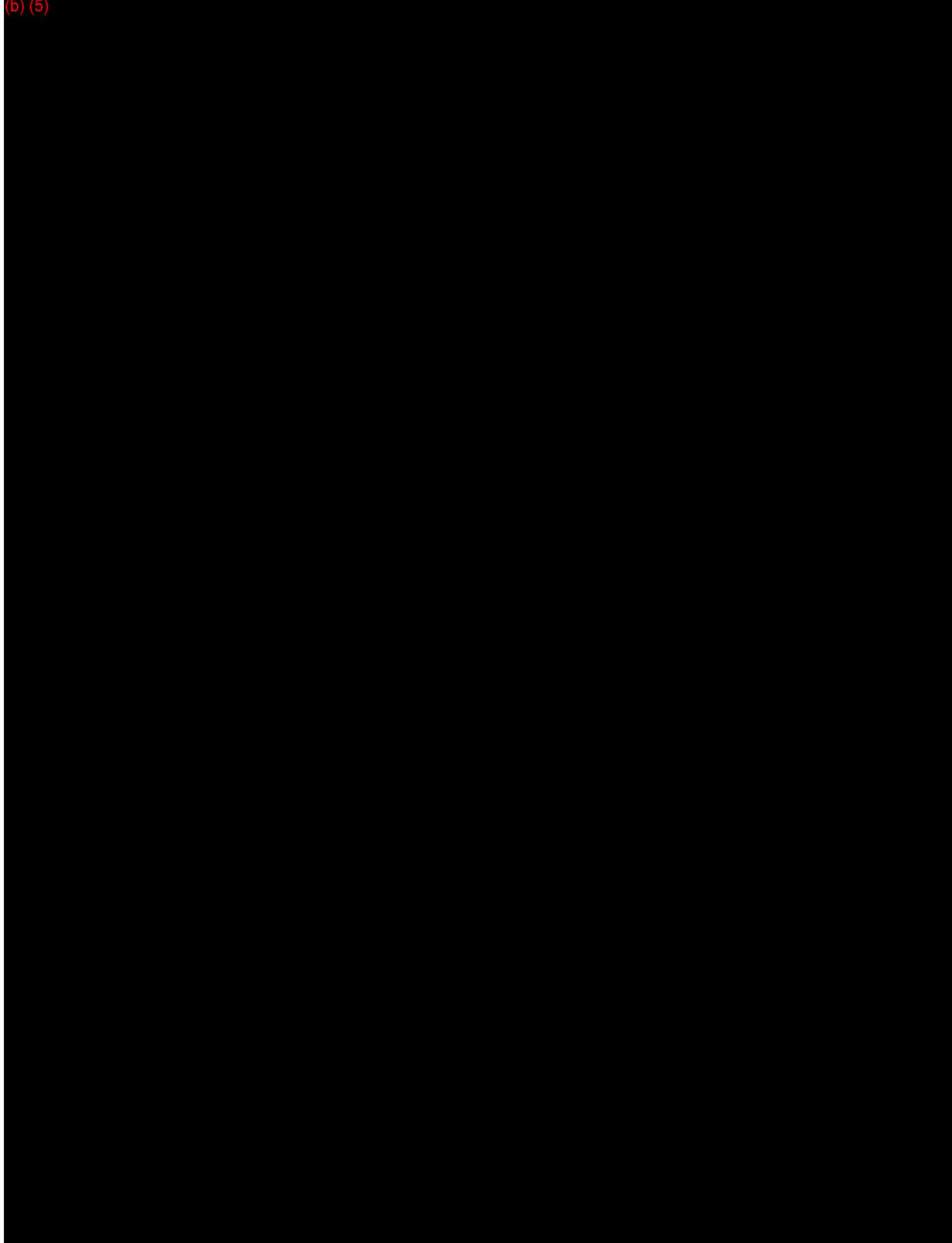
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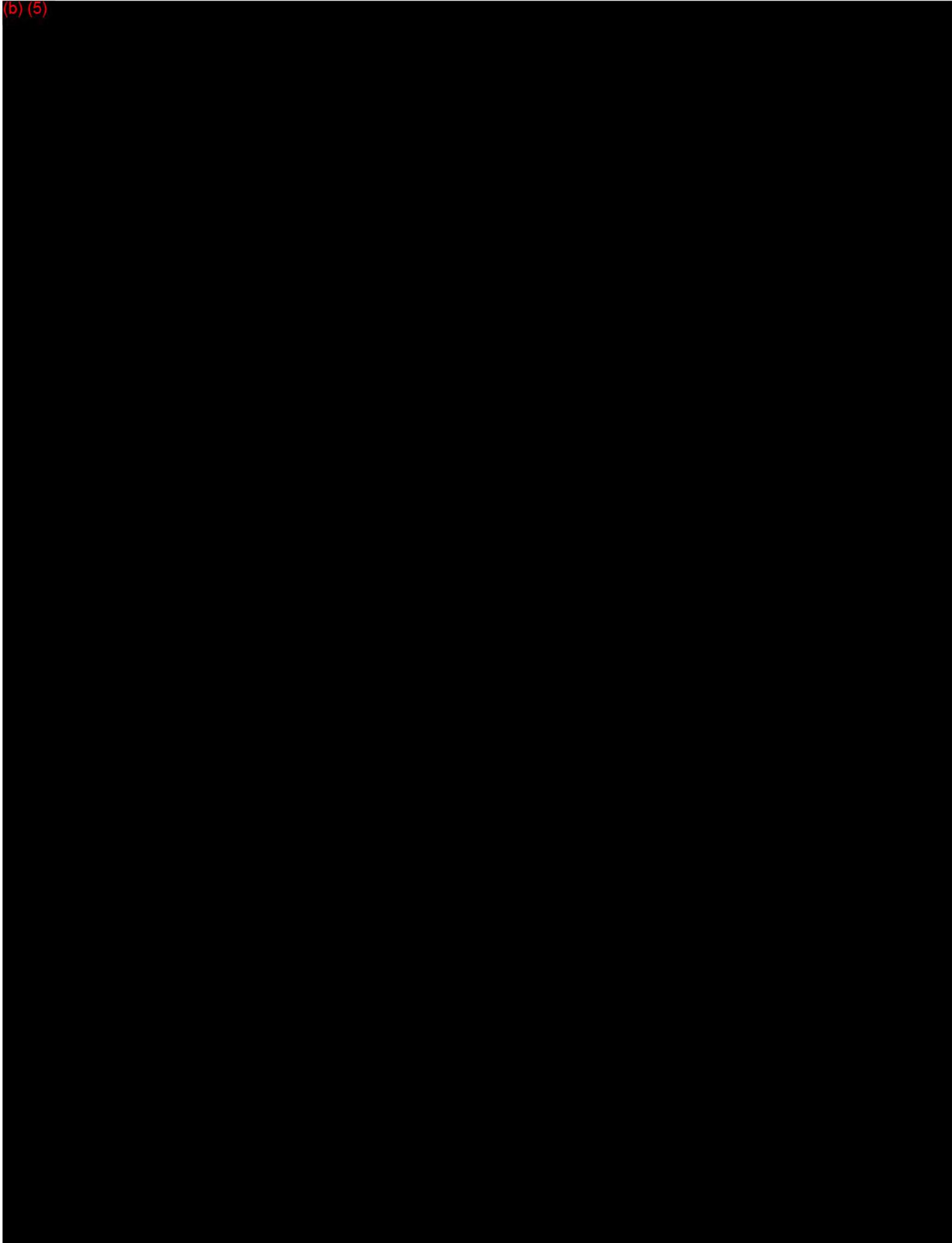
Ms. Neumayr and Mr. Barnett,

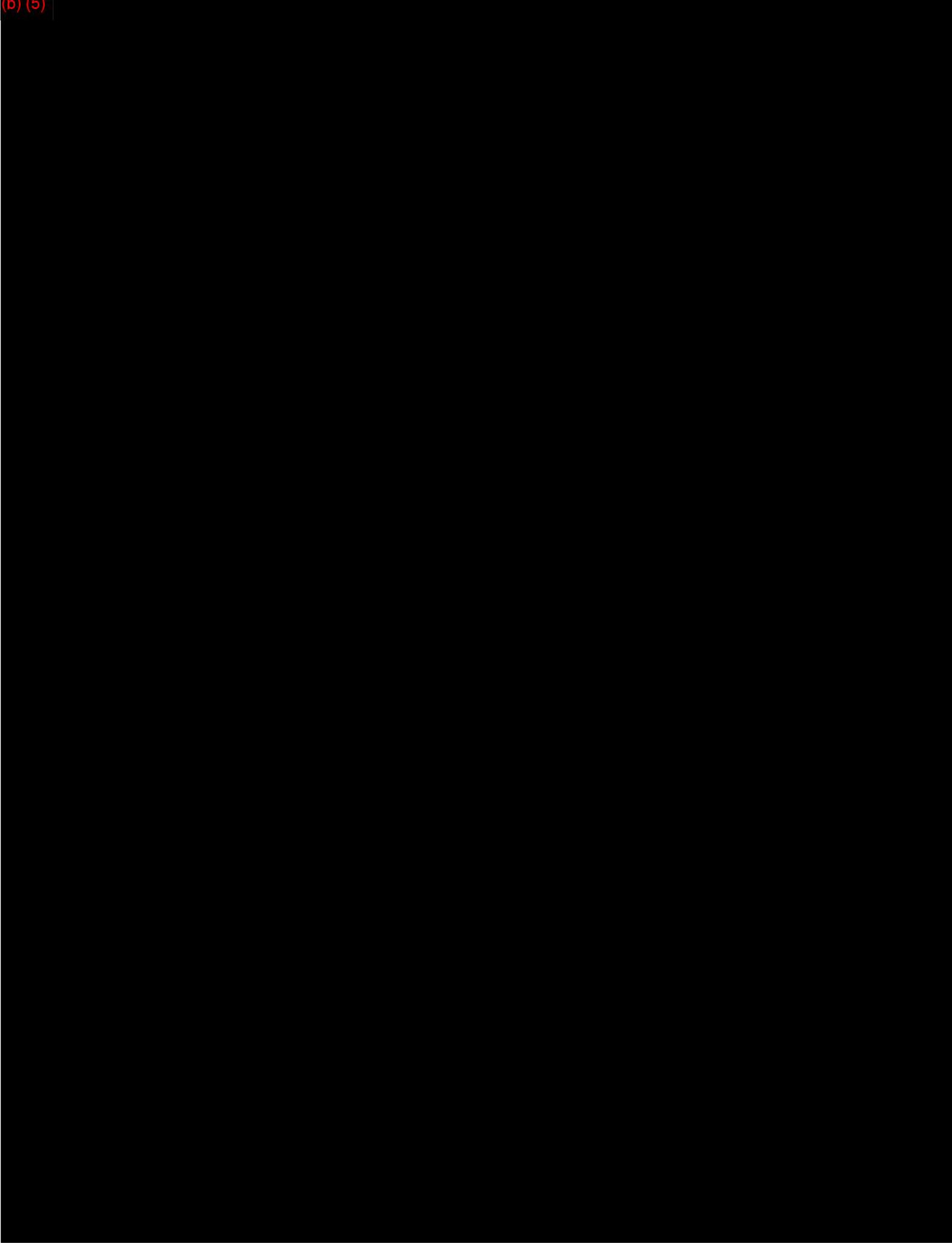
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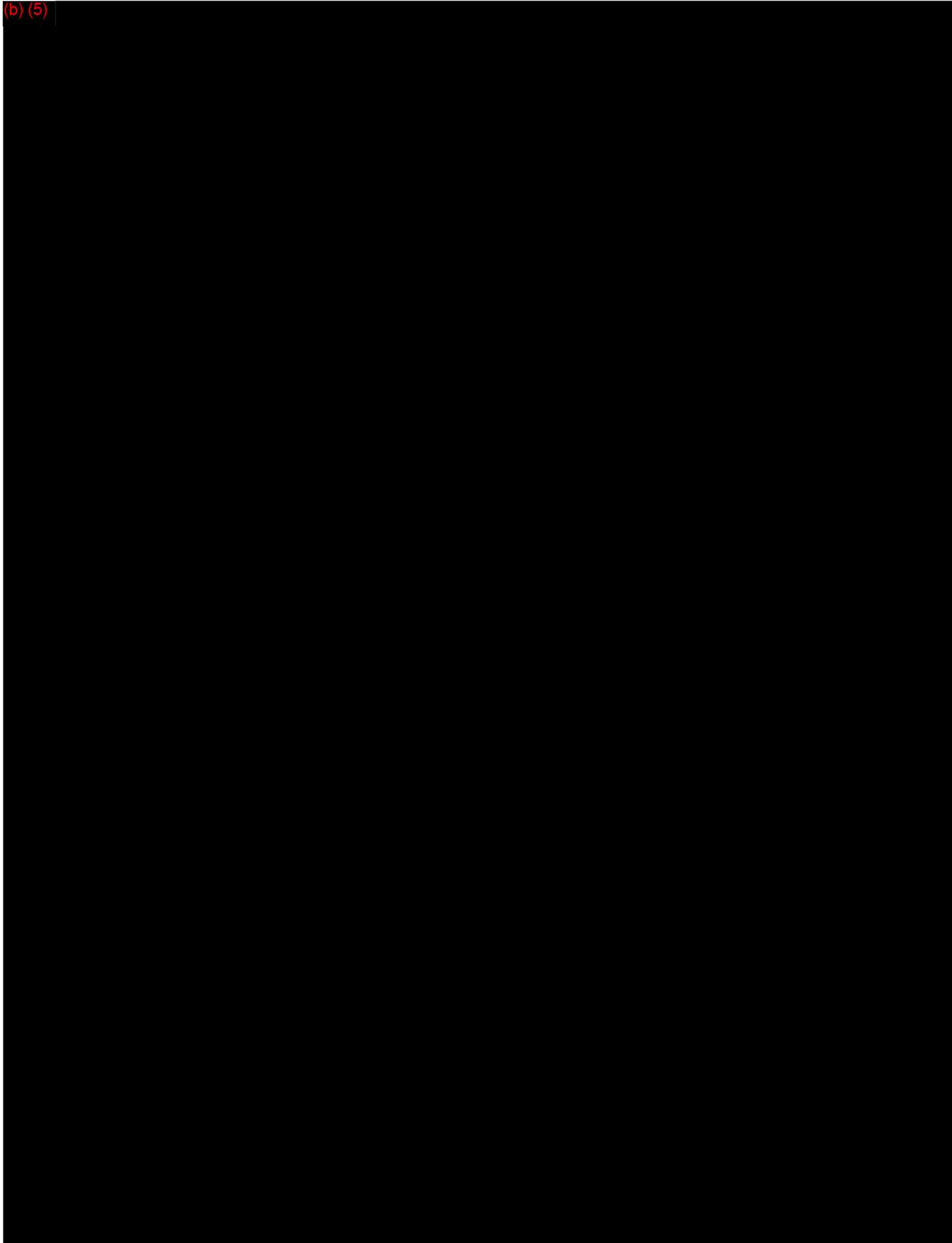
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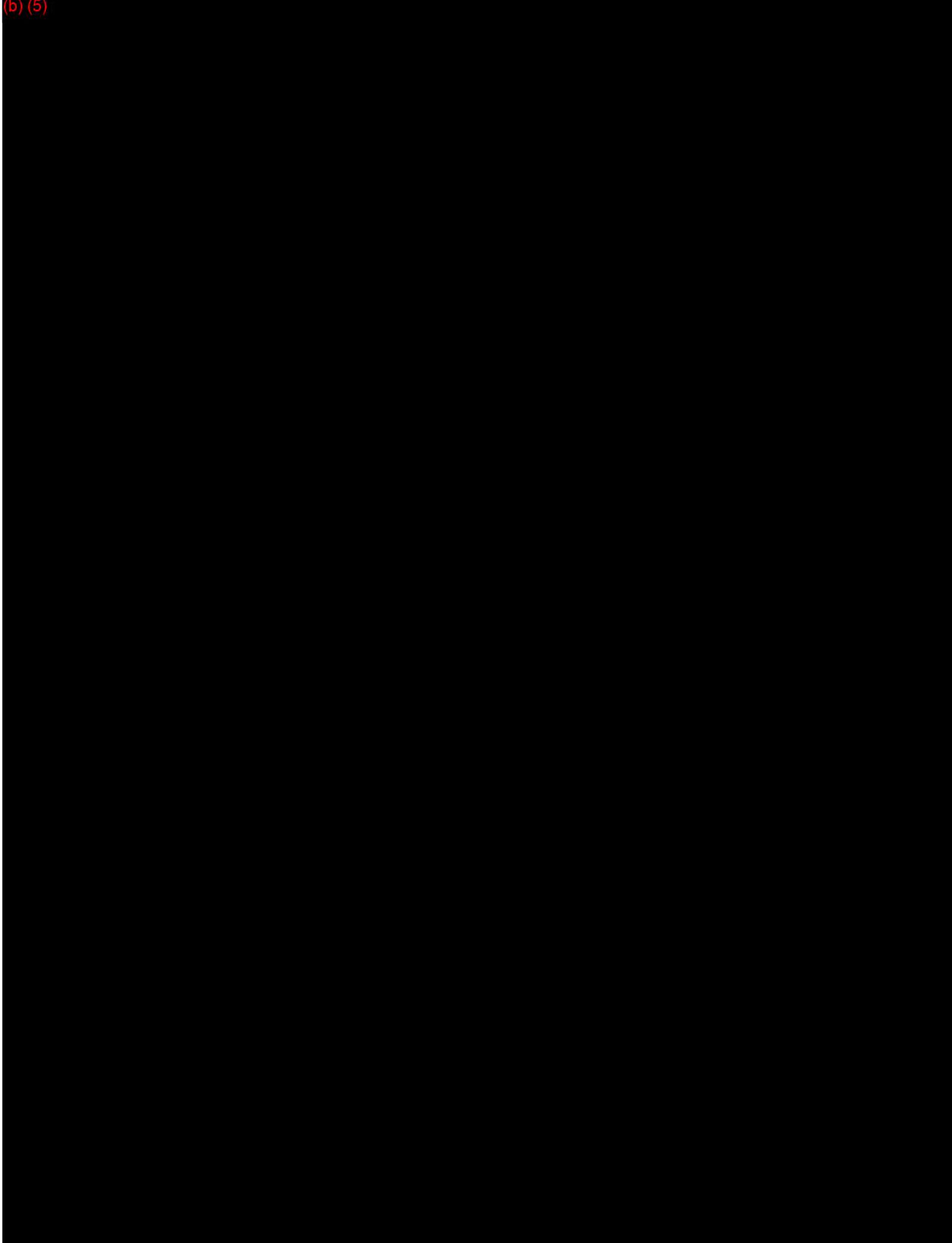
Justin Abernathy  
Policy and Regulatory Affairs Supervisor  
Office of the Executive Secretariat and Regulatory Affairs  
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1849 C Street NW  
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Office Phone: 202-513-0357  
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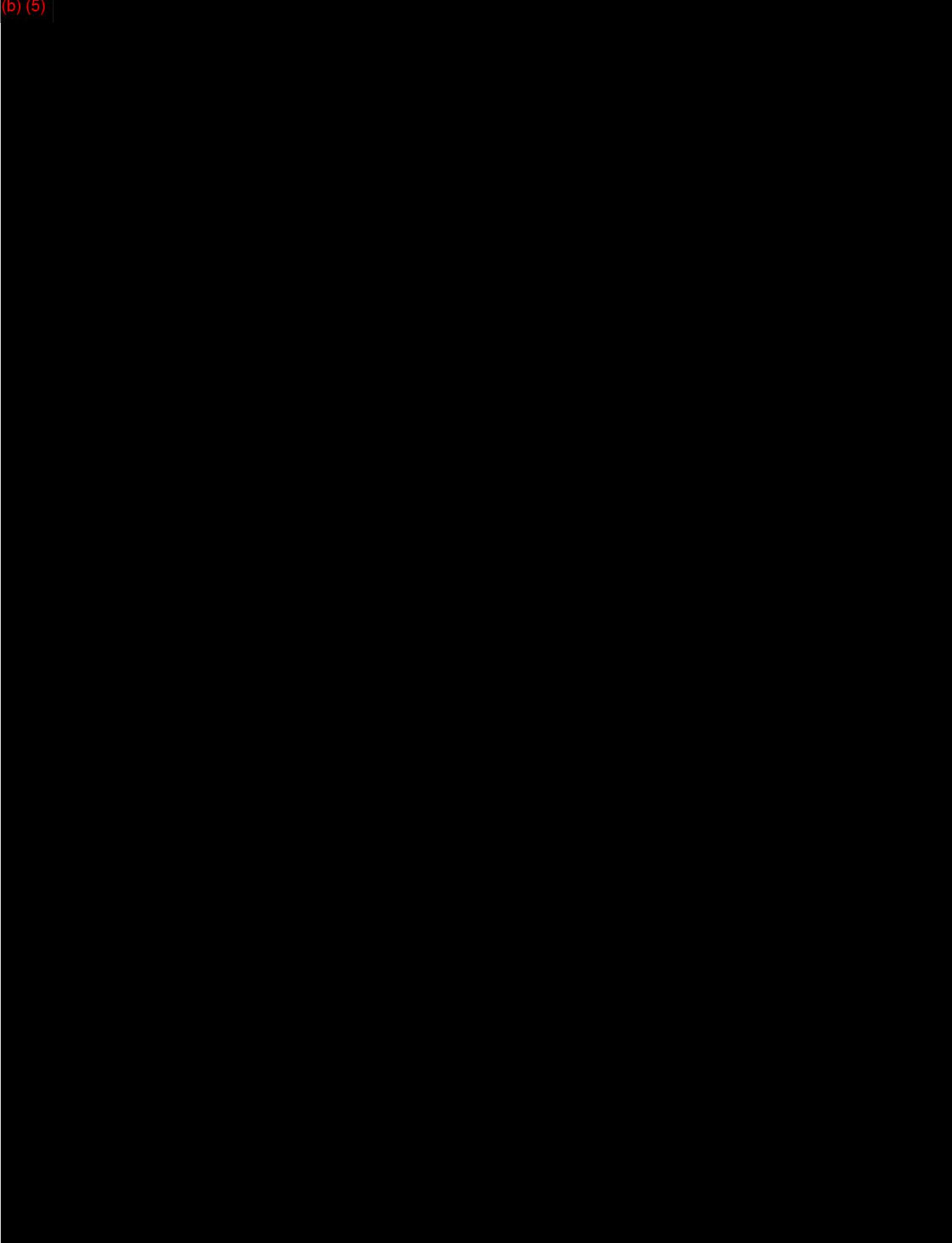


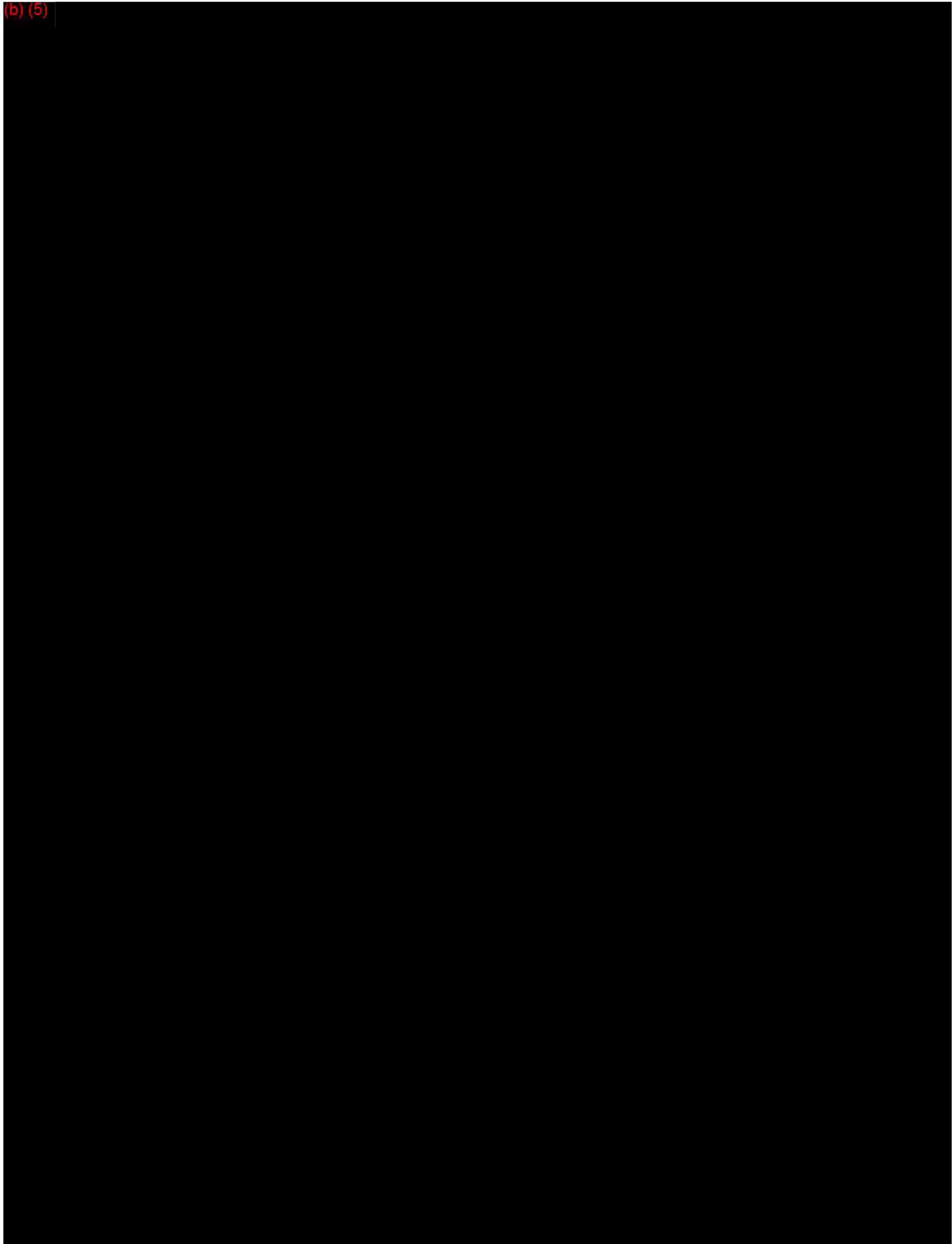


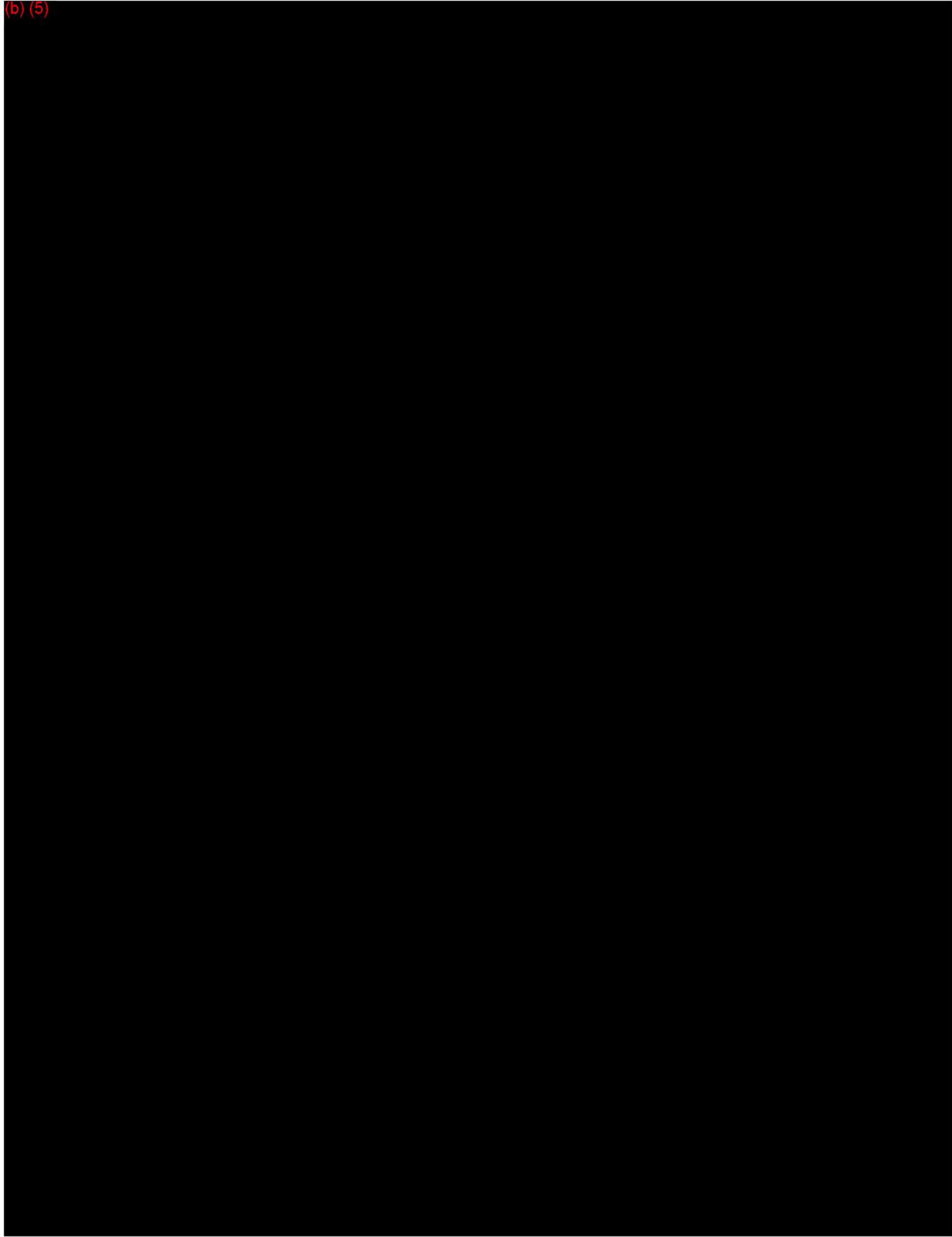


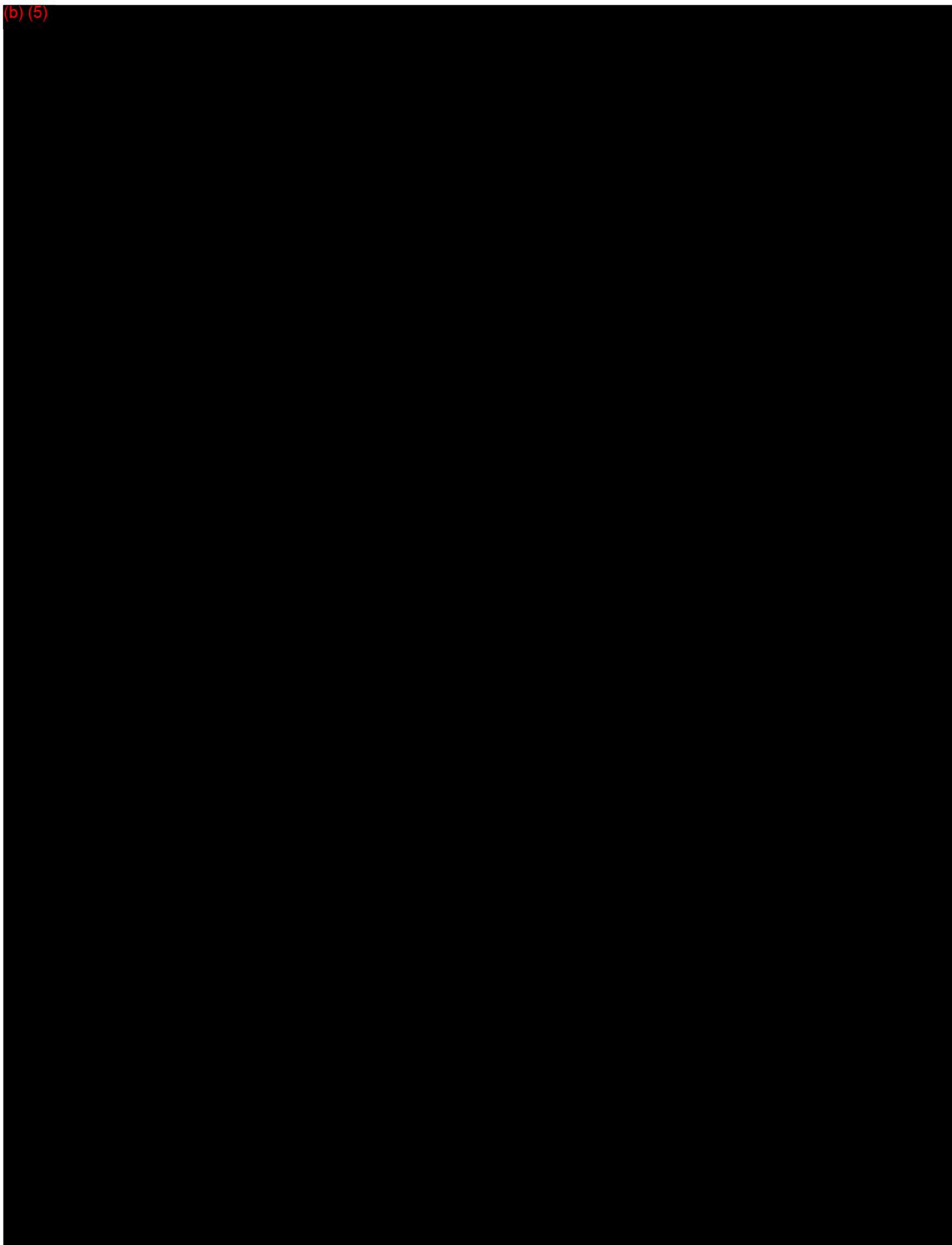


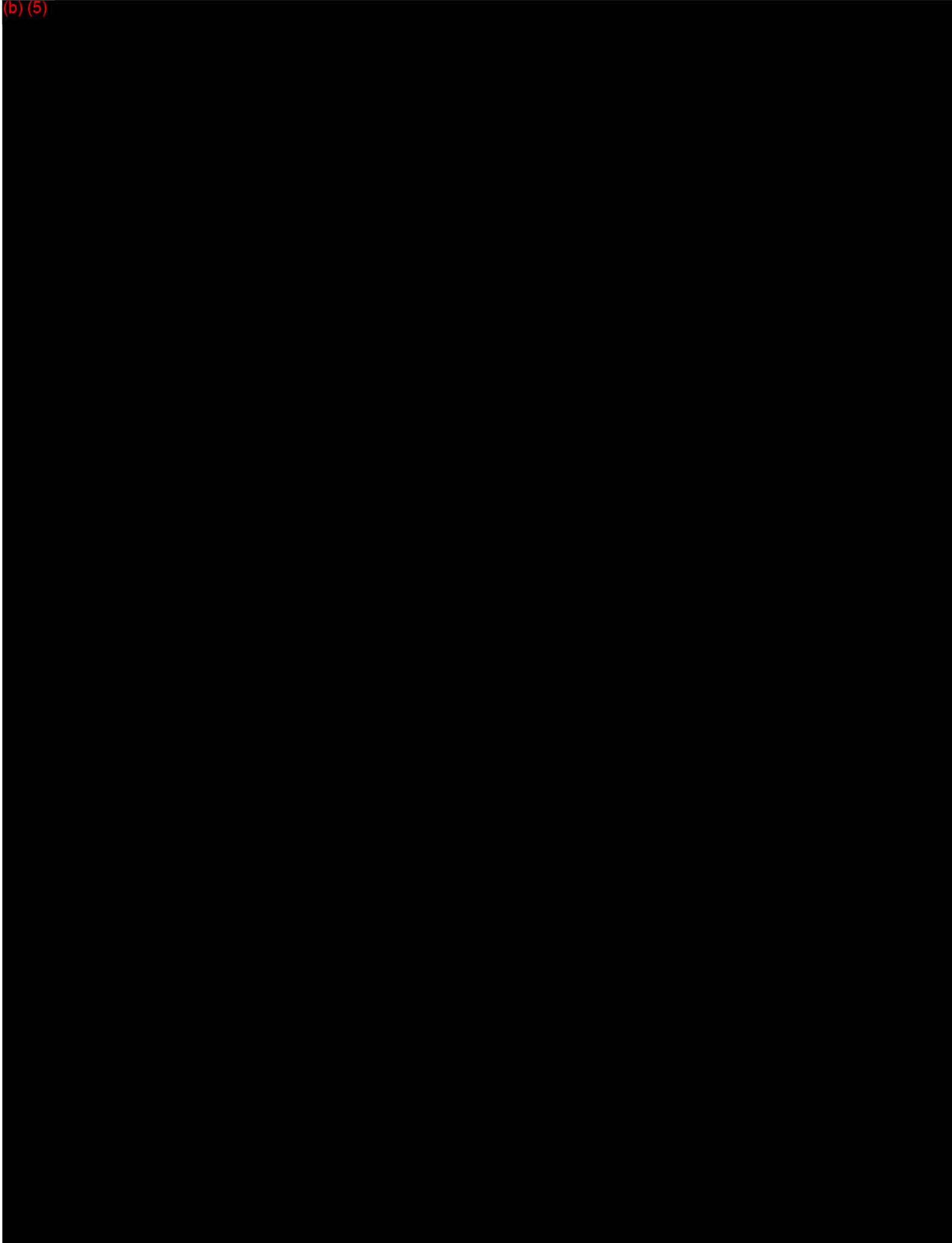


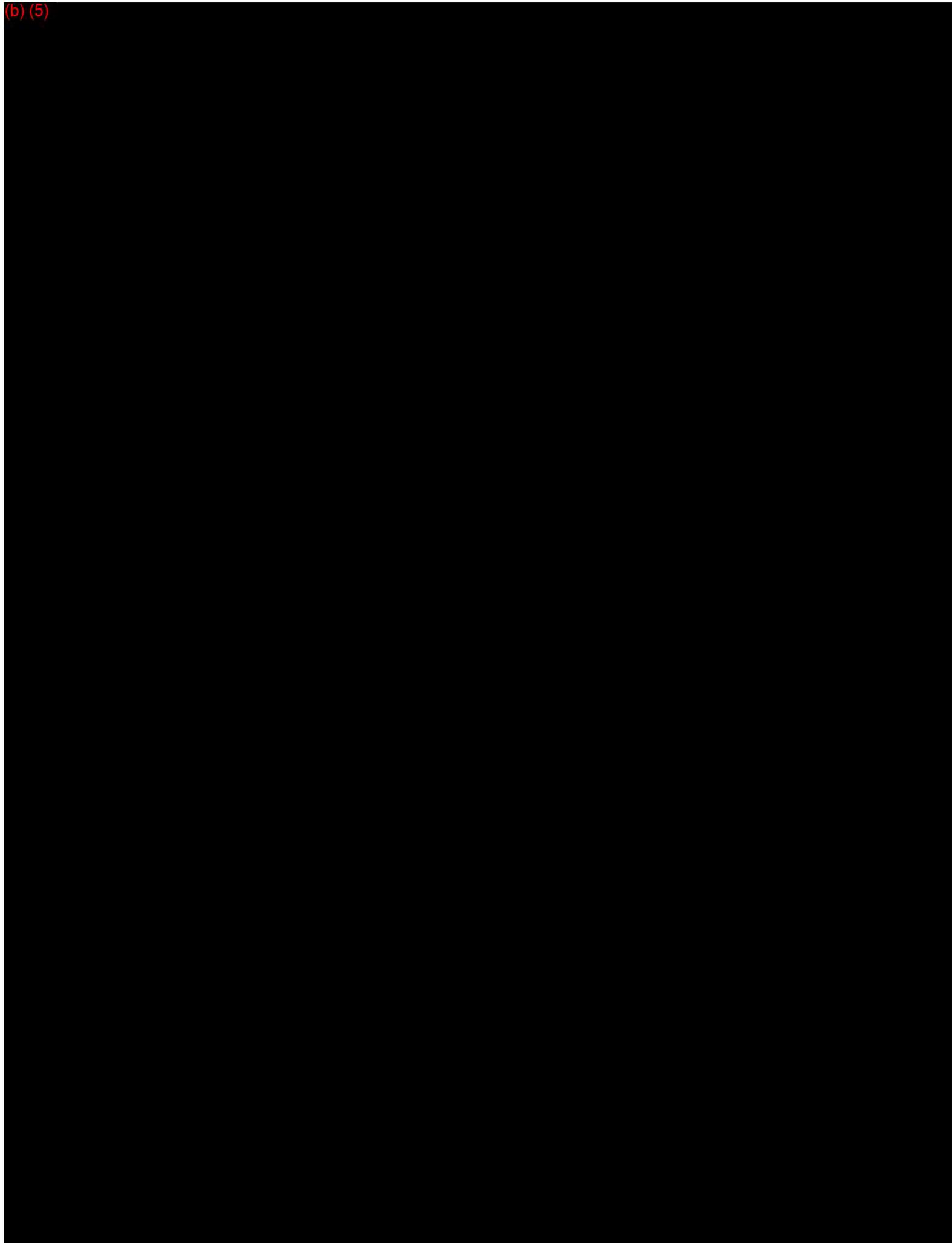


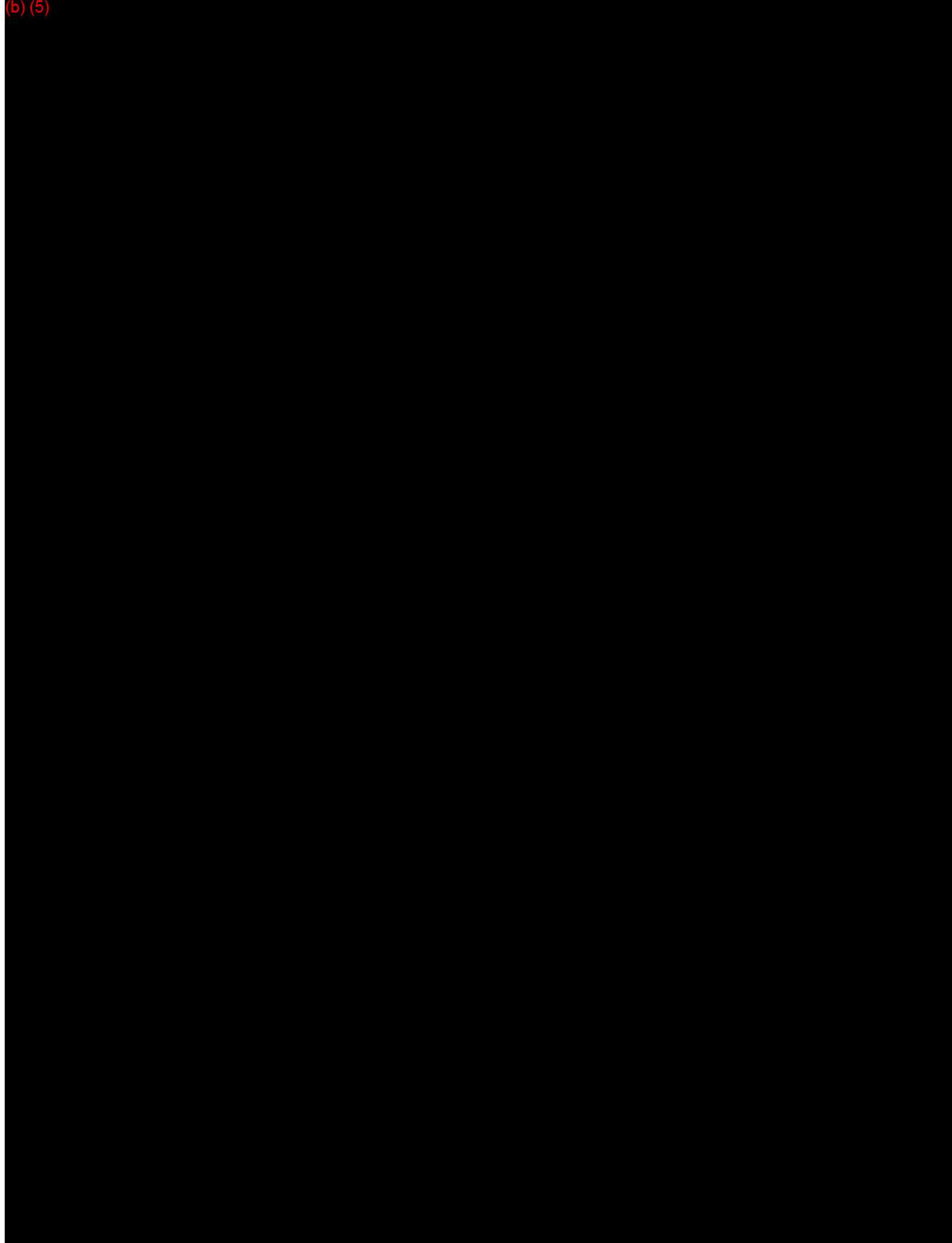


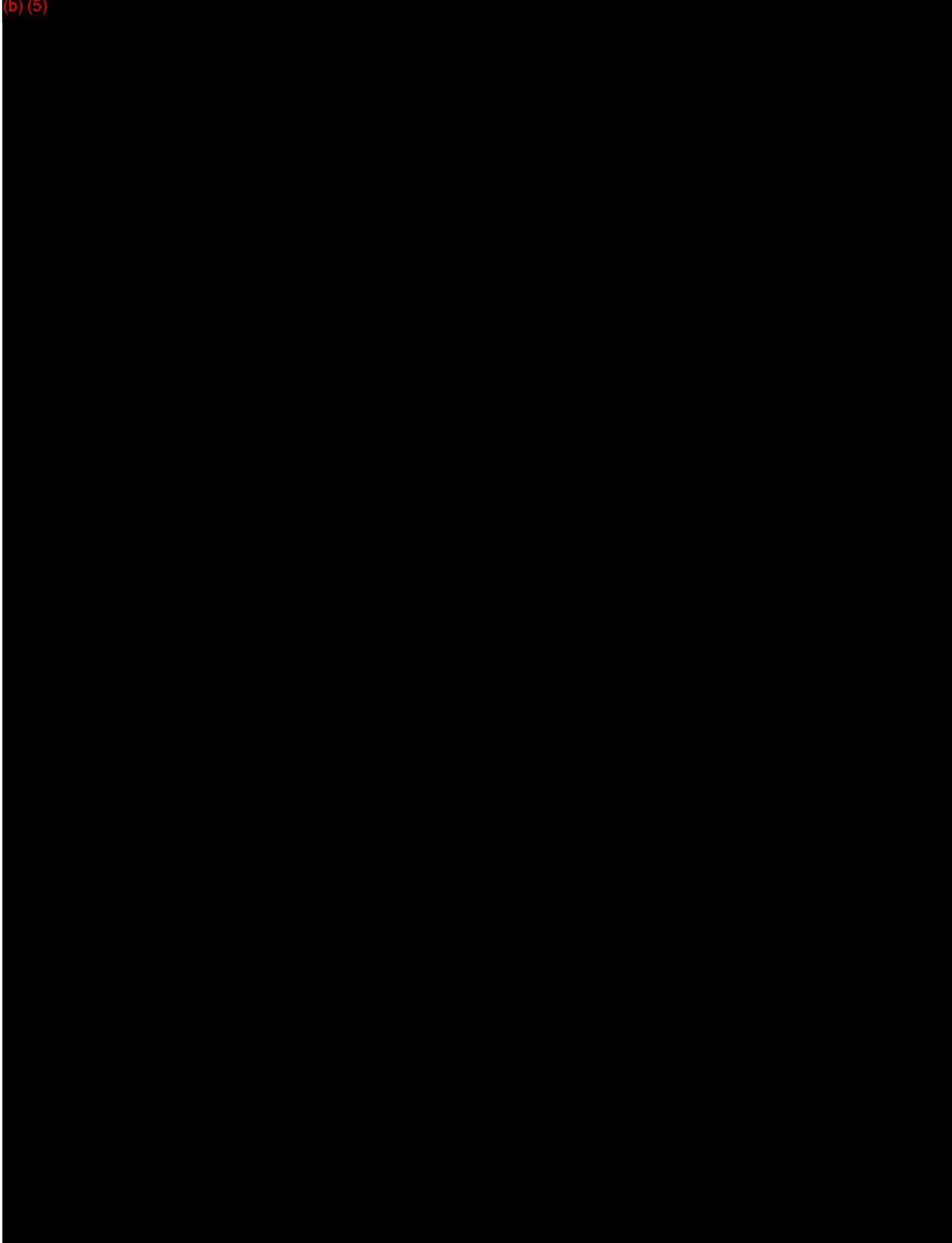


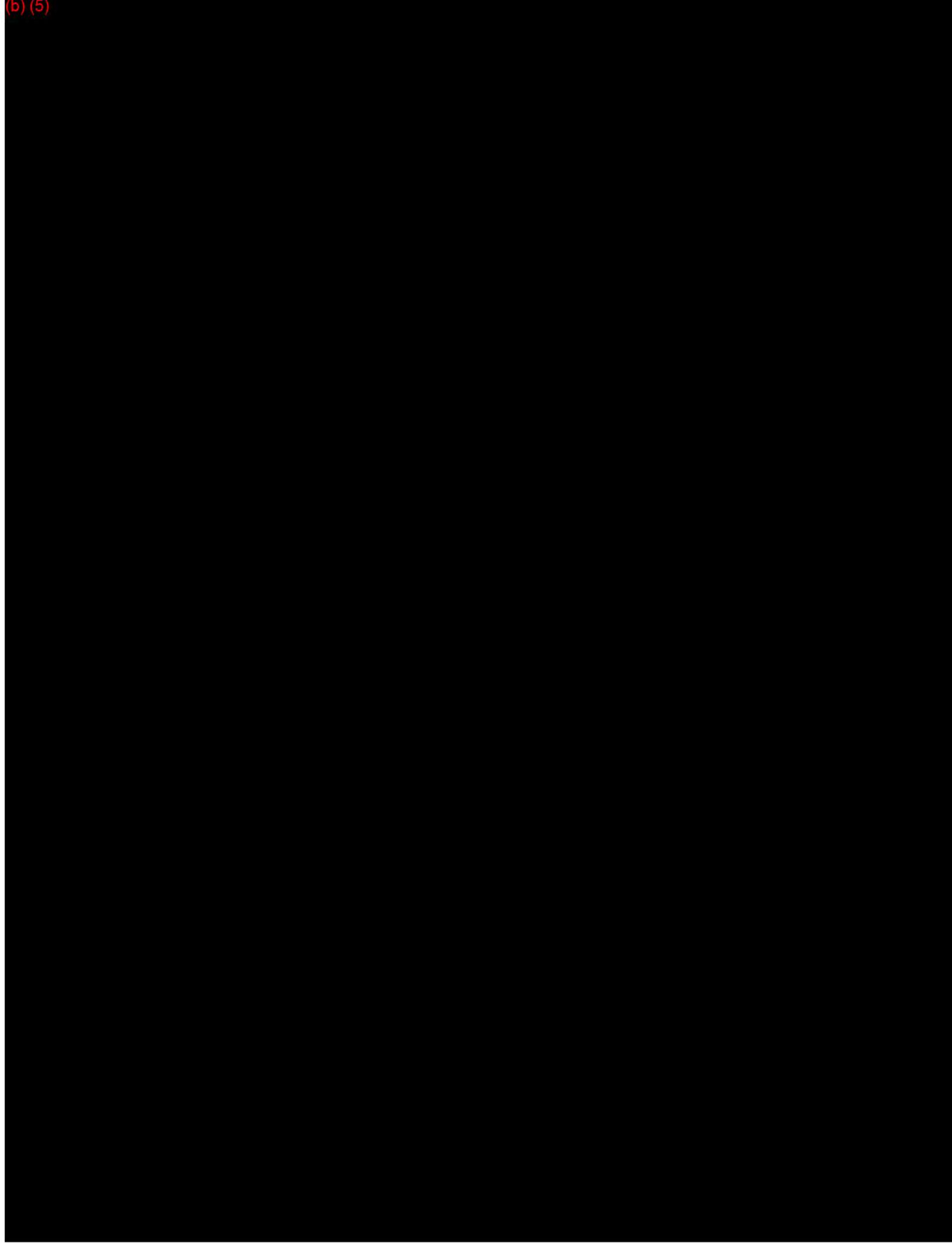


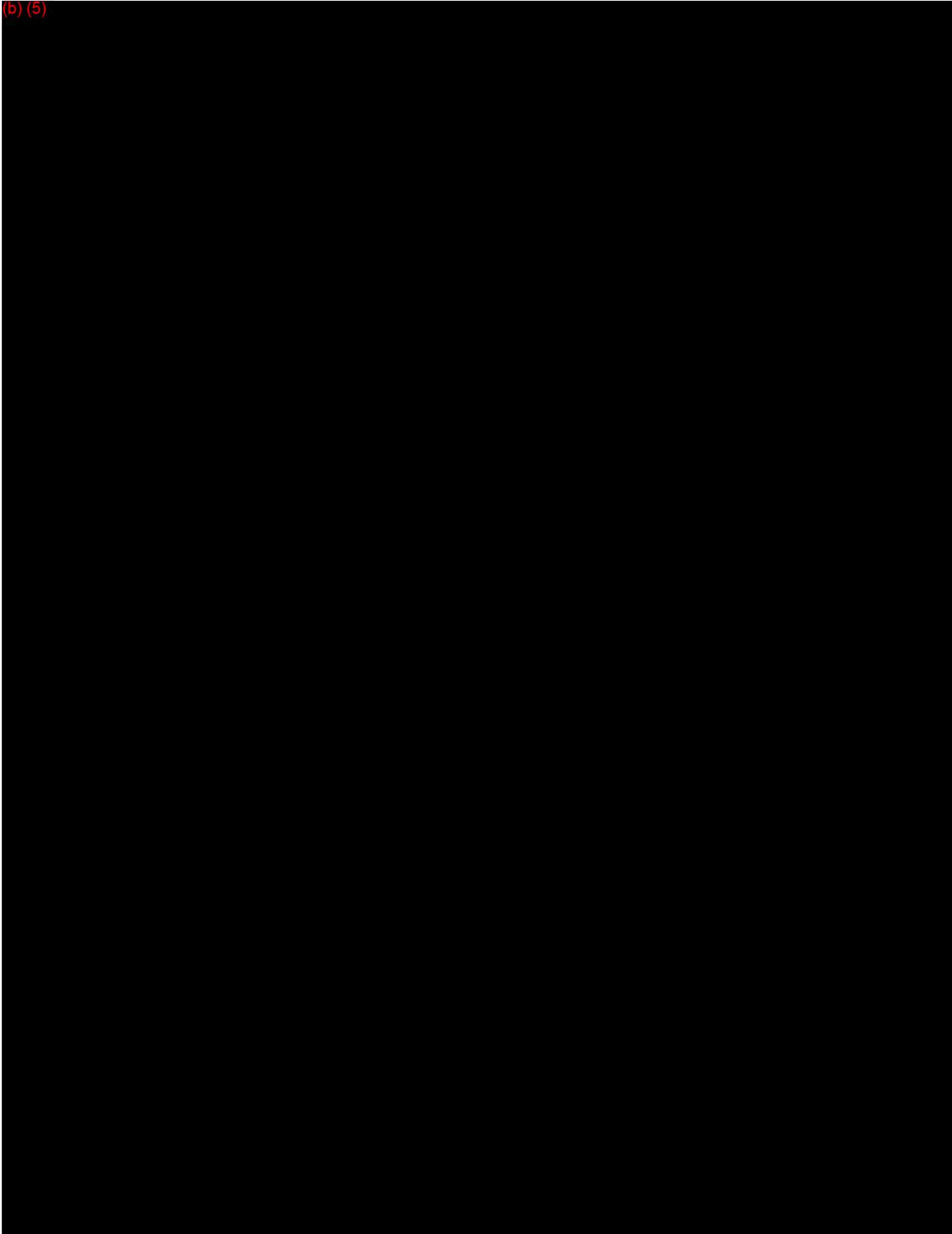


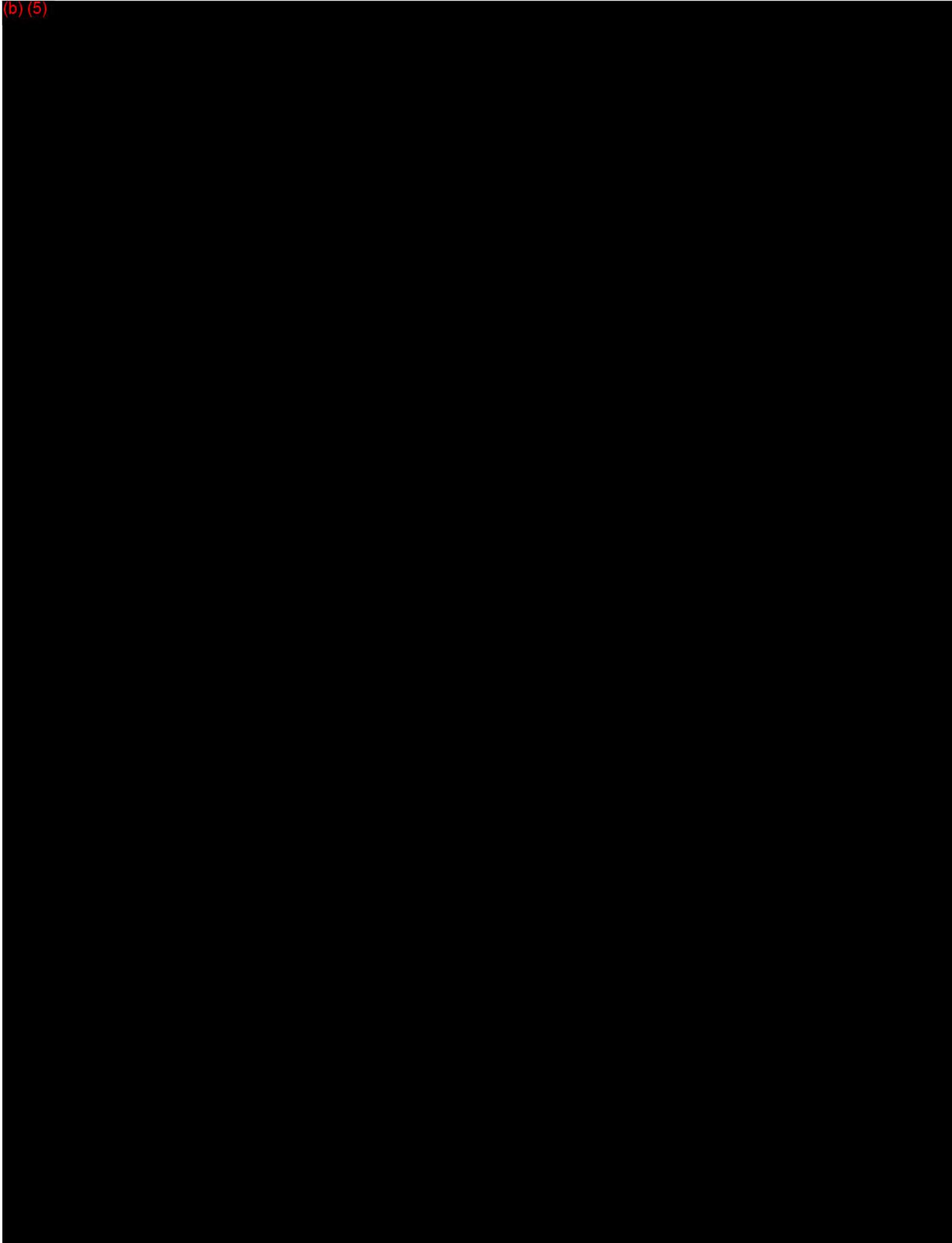


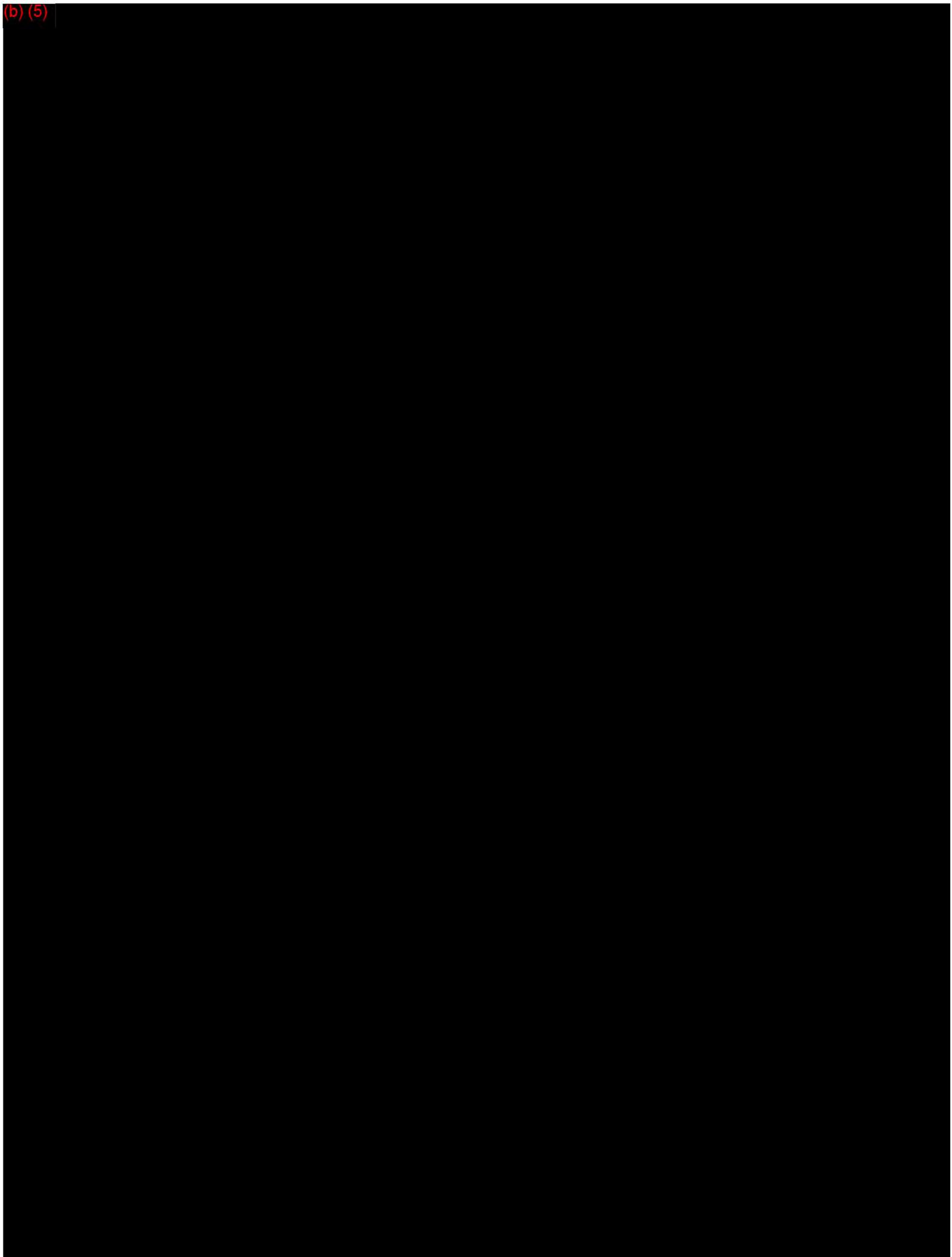


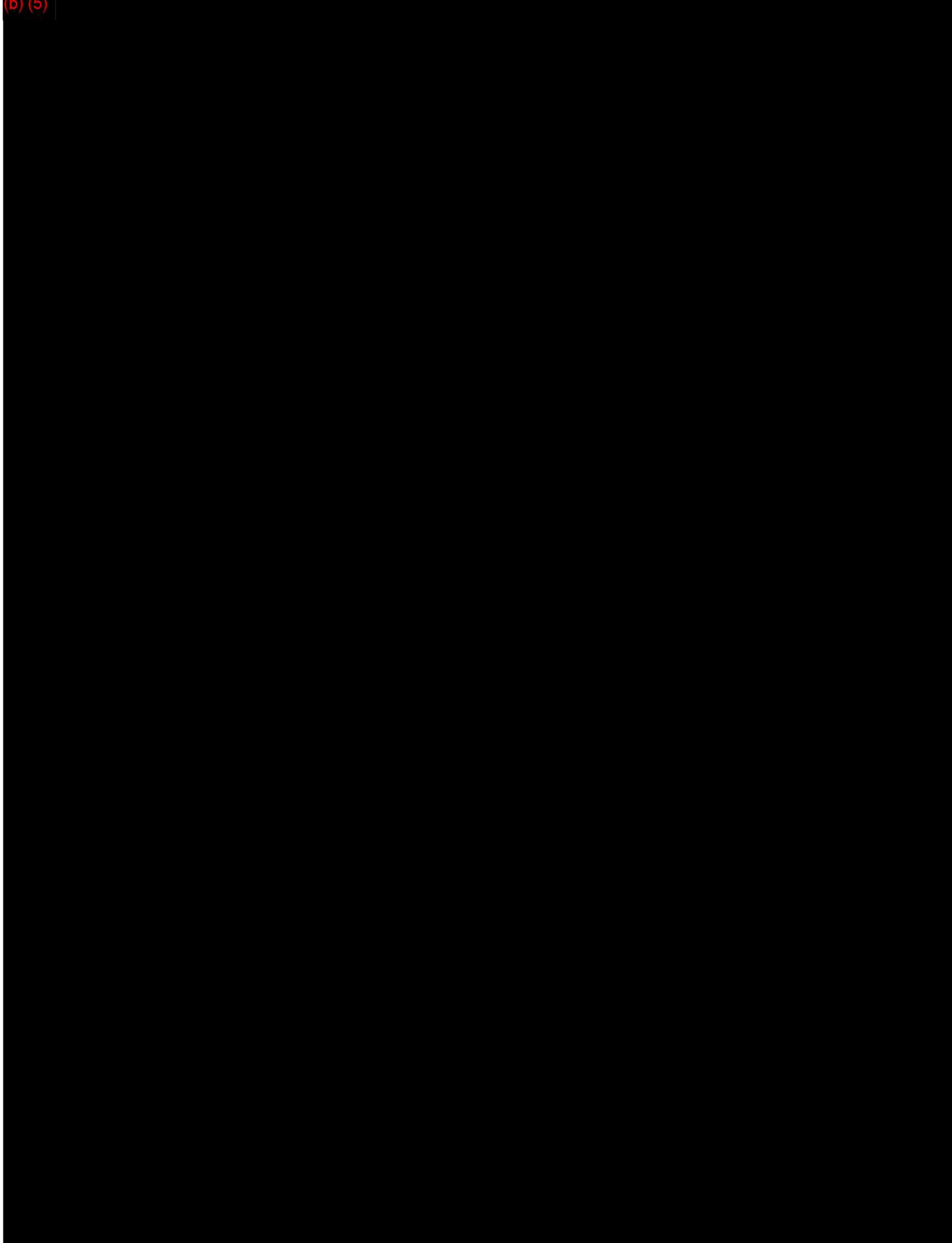


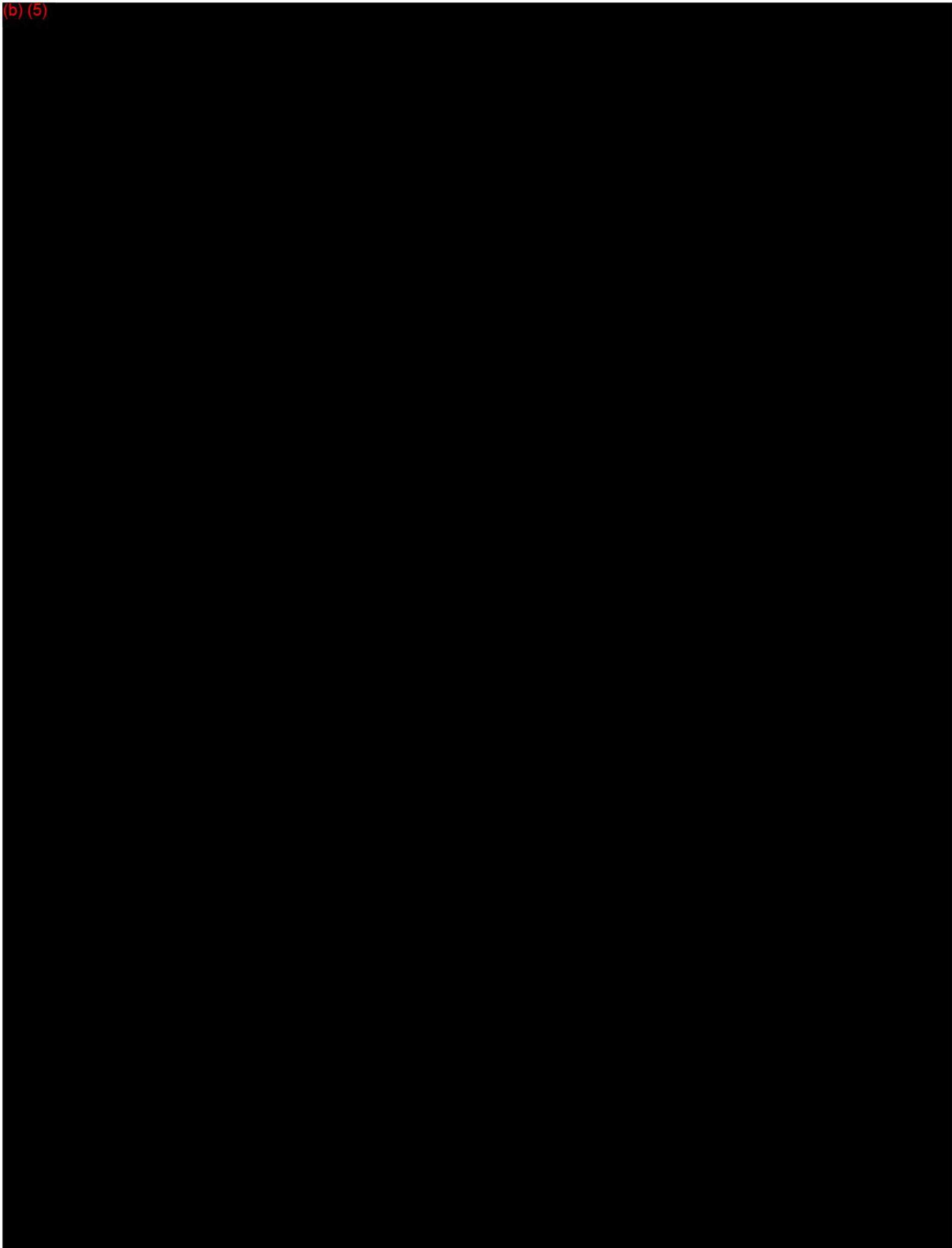


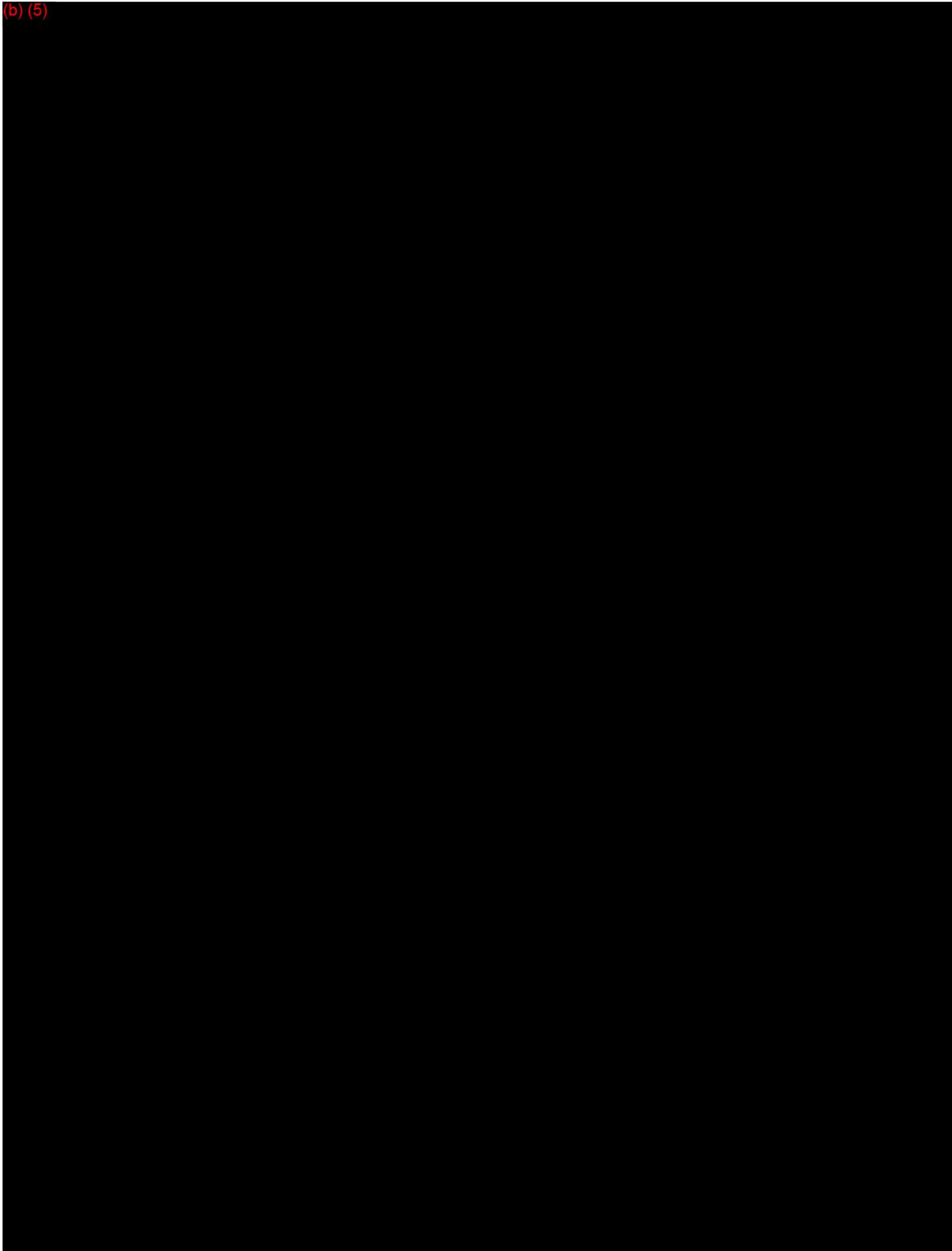


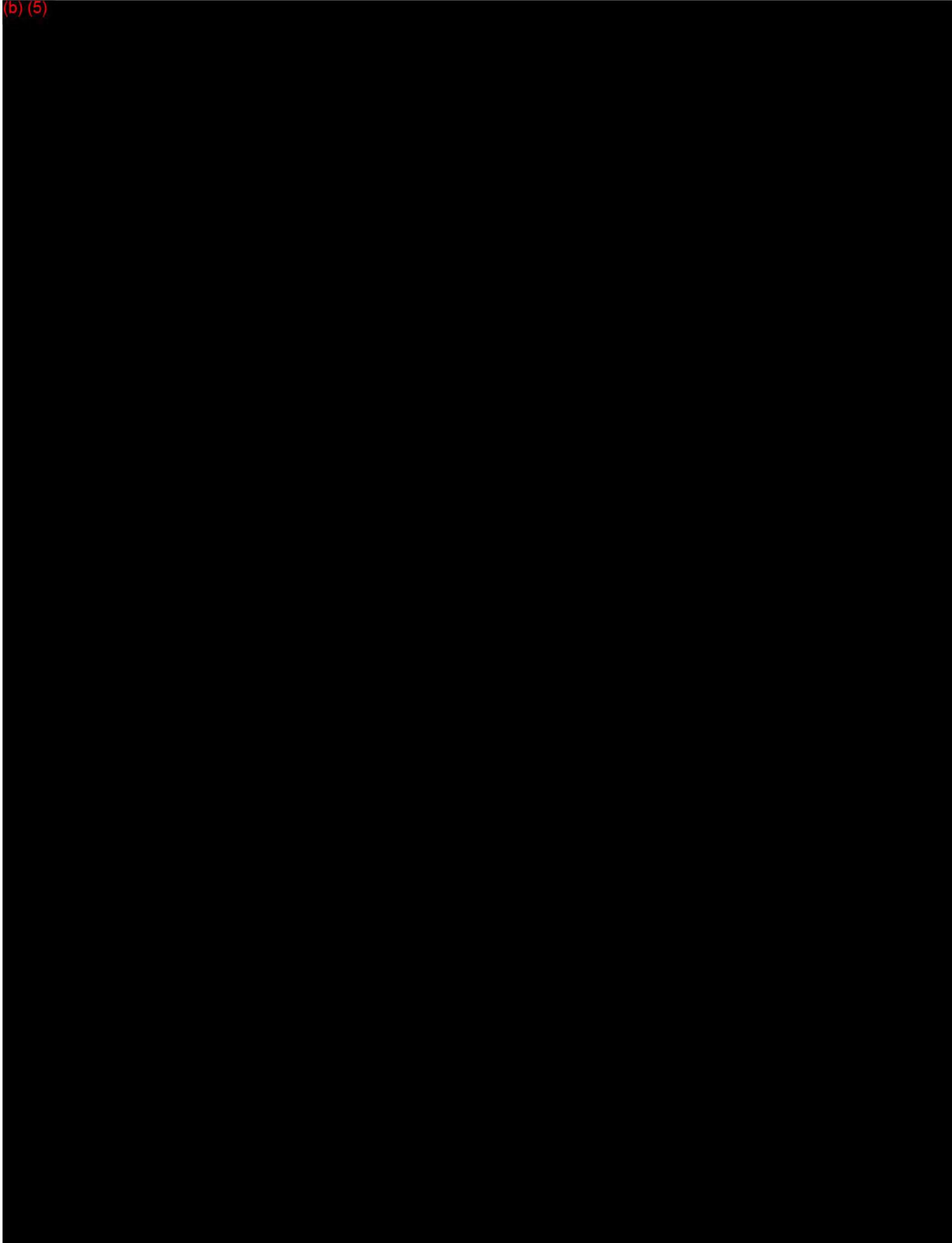












## FW: First batch of ANOPR comments ready for review

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**From:** "Szabo, Aaron L. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdf)/cn=recipients/cn=f93a8d1dd2b4420ca81e53ff8199b780-sz">

**To:** "Daniel J. EOP/CEQ Schneider (b) (6)"  
<(b) (6)>

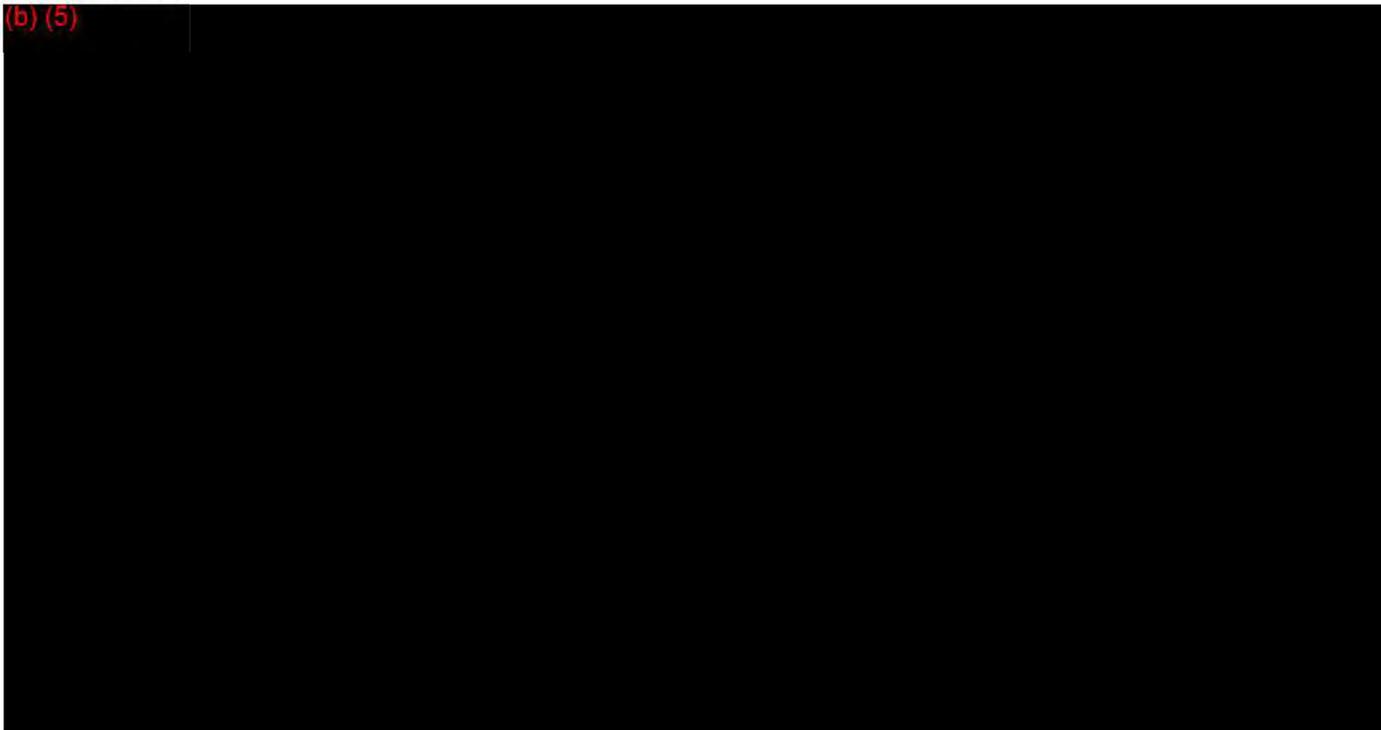
**Date:** Tue, 21 Aug 2018 21:18:57 -0400

FYI

**From:** Szabo, Aaron L. EOP/CEQ  
**Sent:** Tuesday, August 21, 2018 9:15 PM  
**To:** Mansoor, Yarden M. EOP/CEQ <(b) (6)> Barnett, Steven W. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)> Drummond, Michael R. EOP/CEQ <(b) (6)> Loyola, Mario A. EOP/CEQ <(b) (6)> Osterhues, Marlys A. EOP/CEQ <(b) (6)> Seale, Viktoria Z. EOP/CEQ <(b) (6)> Sharp, Thomas L. EOP/CEQ <(b) (6)> Smith, Katherine R. EOP/CEQ <(b) (6)>  
**Cc:** Szabo, Aaron L. EOP/CEQ <(b) (6)>  
**Subject:** RE: First batch of ANOPR comments ready for review

Yarden,

(b) (5)



(b) (5)

Thank you very much and please let me know if you have any questions.

**From:** Mansoor, Yardena M. EOP/CEQ  
**Sent:** Friday, August 17, 2018 4:09 PM  
**To:** Barnett, Steven W. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ  
<(b) (6)> Drummond, Michael R. EOP/CEQ  
<(b) (6)> Loyola, Mario A. EOP/CEQ <(b) (6)>  
Mansoor, Yardena M. EOP/CEQ <(b) (6)> Osterhues, Marlys A. EOP/CEQ  
<(b) (6)> Seale, Viktoria Z. EOP/CEQ <(b) (6)> Sharp,  
Thomas L. EOP/CEQ <(b) (6)>  
**Cc:** Szabo, Aaron L. EOP/CEQ <(b) (6)>  
**Subject:** First batch of ANOPR comments ready for review

(b) (5)

Yardena Mansoor  
Deputy Associate Director for NEPA  
Council on Environmental Quality  
(b) (6) / (b) (6)

## FW: [EXTERNAL] Comment submission

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**From:** "McLaurin, Juschelle D. EOP/CEQ" <(b) (6)>  
**To:** "Drummond, Michael R. EOP/CEQ" (b) (6)  
**Date:** Wed, 22 Aug 2018 08:51:07 -0400  
**Attachments:** Proposed NEPA Changes 8-20-18 for filing (2).pdf (1.41 MB)

Good Morning,

Michael this was sent to my email on yesterday , and as you know it's my day off.

Juschelle

**From:** Marina Micic <marina@cg-la.com>  
**Sent:** Monday, August 20, 2018 4:54 PM  
**To:** McLaurin, Juschelle D. EOP/CEQ <(b) (6)>  
**Subject:** [EXTERNAL] Comment submission

Hello,

We tried to submit our comment by mailing it to the address noted on the filing instructions, but the delivery was not possible. Could you please help us deliver the attached document to the right person/department?

Thank you so much for your assistance!

Marina

The CEQ is extending the comment period on the ANPRM, which was scheduled to close on July 20, 2018, for 31 days until August 20, 2018. The CEQ is making this change in response to public requests for an extension of the comment period.

**DATES:** Comments should be submitted on or before August 20, 2018. **ADDRESSES:** Submit your comments, identified by docket identification number CEQ-2018-0001 through the Federal eRulemaking portal at [https:// >www.regulations.gov<](https://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information \(CBI\) or other information whose disclosure is restricted by statute. Multimedia submissions \(e.g., audio, video\) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make.](https:// >www.regulations.gov<</a>. CEQ may publish</p></div><div data-bbox=)

Comments may also be submitted by mail. Send your comments to: Council on Environmental Quality, 730 Jackson Place NW, Washington, DC 20503, Attn: Docket No. CEQ-2018-0001.

**FOR FURTHER INFORMATION CONTACT:**

Edward A. Boling, Associate Director for the National Environmental Policy Act, Council on Environmental Quality, 730 Jackson Place NW, Washington, DC 20503. Telephone: (202) 395-5750.

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**MARINA MICIC**

Office Manager

[729 15th Street NW, Suite 600, Washington, DC 20005](https://www.cg-la.com)

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[3225-F8]

August 20, 2018

Comments of Blueprint 2025

Re: Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

AGENCY: Council on Environmental Quality (CEQ).

ACTION: Advance Notice of Proposed Rulemaking.

Docket No. CEQ-2018-0001 - RIN: 0331-AA03

The Blueprint 2025 (“BP2025”) initiative is collaboration among infrastructure professionals, leading infrastructure development companies and public sector project managers, which advances and supports plans and policies to restore the U.S. position as the country with the world’s best, most efficient and most productive infrastructure. A central tenet of BP 2025’s policy is the recognition that reform of the permitting process for major infrastructure projects is absolutely essential if the U.S. is to modernize its infrastructure in time to allow development of the new technologies which will enable us to keep pace with the modernization programs of our major global competitors. As outlined in our recently updated position paper on modernization of the NEPA process (Annex A attached), the current process is cumbersome, inefficient and antiquated, it needs to be modernized and brought into the 21st century through better use of available technology.

A major reason for the failure, up to this point, to optimize the NEPA process lies in the facts, outlined in Annex A, that no one knows what NEPA review costs the government and the private sector and there are no performance metrics to evaluate the government’s performance. In this context, there has been no incentive to make the process more efficient or to reduce its cost. These deficiencies should be addressed as priority subjects pursuant to this ANPR as it is clear that the NEPA process imposes very direct and substantial costs on both government and the private sector. Perhaps more important, costs arising from NEPA delays may increase project costs by 50% or more and, for cutting edge projects, may substantially reduce the useful life between startup and technical obsolescence.

Against that background, we have the following comments in response to the specific questions presented in the advance notice:

1. Should CEQ’s NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?

*Both the FAST 41 efforts and those pursuant to the President’s “One Federal Action” order have operated on the basis of consensus among agencies and, as a result, have yielded complex and convoluted compromise procedures. An appropriate environmental*

*review procedure would adopt the “one window” approach mandated by laws such as the Deepwater Port Act and the Deep Seabed Hard Mineral Resources Act in which the lead agency is, in fact, the lead agency, with final decision making authority. Other affected agencies should be required to participate and exercise only the authorities granted by the laws which they are responsible for implementing. Experience shows that, by this approach, complex and controversial environmental reviews can be completed in less than a year.*

*As noted above, the time delay associated with the current NEPA review process not only imposes substantial costs on both government and the private sector, it impedes the development of the technology of the future and handicaps our Country's efforts to maintain its global leadership position.<sup>1</sup>*

2. Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions , and if so, how?

*Yes. As noted in the attached Update, the use of modern technologies can facilitate the development and maintenance of a National Environmental Database which can be drawn upon as necessary and relevant. Modern Data analytics can speed and regularize the environmental review process, minimize opportunities for agency bias and make judicial review more expeditious and predictable.*

3. Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?

*Yes. See response to Question 1 above.*

#### **Scope of NEPA Review:**

4. Should the provisions in CEQ's NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?

*The current suggested page limits seem appropriate, but should be enforced through appropriate entry software. To the extent necessary, supporting data can be included in*

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<sup>1</sup> As we have noted on a number of occasions, the Congress used to identify and “put its shoulder behind” projects which it believed to be of national importance and the agencies were by and large responsive to directives under laws such as the Trans Alaska Pipeline System Act, the Deepwater Port Act, the Deep Seabed Hard Mineral Resources Act and the Alaska Natural Gas Transportation System Act. In recent years, there has been more reluctance to address specific projects and projects which have been high on BP 2025's top fifty list, such as the Cadiz Water Project in California, the Clean Line Transmission Project, the Texas Central Rail Project the SeaOne Energy Transportation Project have languished and a few have been stalled by opposition from a very small number of members. President Trump's Executive Order 13766, directing priority processing of critical infrastructure projects has largely been ignored. If we are to keep pace with “Made in China” this situation must be remedied.

*searchable and linked data attachments. A digitized process would allow more expeditious review and enforcement of hard time limits.*

5. Should CEQ's NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decision makers and the public, and if so, how?

*In accordance with the existing statutes and regulations, NEPA analysis should address only the direct and indirect effects which are subject to regulation by the lead or participating agencies, NEPA documents should not address federal actions which are non-discretionary or impacts which are not subject to federal regulation. Agencies should participate in the lead agency process throughout the life of the project and their input should be limited to matters within their jurisdiction.<sup>2</sup>*

6. Should the provisions in CEQ's NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?

*Public involvement regulations should be predicated on an assumed basic level of computer literacy, should be developed with a view towards maintenance of efficient digital processes and should have timing requirements consistent with the capabilities of digital processes. Software protocols should seek to enforce basic requirements regarding relevance and supporting references.*

7. Should definitions of any key NEPA terms in CEQ's NEPA regulations, such as those listed below, be revised, and if so, how?

a. Major Federal Action;

*The existing formulation—a federal action which will have a direct or indirect effect which is within federal jurisdiction and which has the potential for significant environmental impacts – is appropriate but often not followed. The “within federal jurisdiction” element is too often ignored. Agencies often interpret the “no action” alternative to mean “no project” and thus allow them to expand their jurisdiction to cover the entire project rather than only the aspect, such as an air or water discharge, over which they exercise jurisdiction. It needs to be made clear that NEPA does not expand agency jurisdiction but only permits agencies to consider effects within their jurisdiction. It should also be made clear that “categorical exclusion” is not the first step in the environmental review process. The CATEX*

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<sup>2</sup> The Deepwater Port Act provides for a perpetual license which functions to provide all authorizations required for the construction and operation of the Ports and put in place a continuous environmental review process to assure that the Ports continue to utilize best available technology to minimize impacts on the marine environment. EPA participates in the licensing process and issues Clean Water Act Permits for the very minor domestic and cooling water discharges associated with Port Operations. Some EPA officials have taken the position that since the Ports are originally “new sources” and since water permits expire every five years, new and separate environmental reviews addressing the Ports' operations are required at five year intervals PS.

*review should only take place after the decision maker has concluded that a federal action has the potential to significantly affect the environment.*

**b. Effects;**

*Again, the effect must be within federal jurisdiction. NEPA does not expand federal jurisdiction and an interpretation which would, for example, allow consideration of the construction of a facility which is beyond the agency's jurisdiction would be contrary to the clear intention that agencies' jurisdiction should not be affected. A proper interpretation of this requirement would be consistent with NEPA's original intent and would greatly simplify its application.*

**c. Cumulative Impact;**

*Effects to be considered in cumulative impact analysis must be subject to federal regulatory authority. For example, if the federal government is prohibited from restricting the export of crude oil, crude oil exports should not be the subject of cumulative impact analysis. Cumulative effects, like other effects, must be within in an agency's jurisdiction in order to merit consideration in the environmental review process.*

**d. Significantly;**

*Under the Act, the decision maker must exercise discretion, subject to judicial review, to decide whether the a proposed federal action may have an effect, within her or his agency's jurisdiction, which has the potential to be "significant" As noted above, limitation of this requirement through improper application of the "categorical exclusion" is inappropriate and counterproductive. The "significantly" definition might be amended to make clear that the decision maker retains this authority.*

**e. Scope;**

*Environmental reviews must focus precisely on the foreseeable direct and indirect effects subject to federal regulation of the proposed federal action or reasonable alternatives to the federal action. Alternatives which are not within federal jurisdiction need not be assessed. The No Federal Action alternative need not be addressed unless the agency has discretion to take no action.*

8. Should any new definitions of key NEPA terms, such as those noted below, be added, and if so, which terms?

- a. Alternatives;
- b. Purpose and Need;
- c. Reasonably Foreseeable;
- d. Trivial Violation; and

f. Other NEPA terms.

9. Should the provisions in CEQ's NEPA regulations relating to any of the types of documents listed below be revised, and if so, how?

a. Notice of Intent;

b. Categorical Exclusions Documentation;

*As noted above, the "categorical exclusion" methodology is being misapplied in many agencies to impose additional limits on decision makers' discretion rather than to provide a "safe harbor" to be relied upon by decision makers facing decisions on close questions. It needs to be made clear that categorical exclusions do not preclude the exercise of agency discretion regarding the question of whether a "major federal action" is proposed and that extensive documentation and public comment is not required. Otherwise the CATEX functions essentially as a redundant environmental assessment. The millions and perhaps billions that have been spent by agencies in adopting CATEX regulations will have been wasted. Finally the exception in many agencies' CATEX regulations for matters involving substantial public interest or opposition essentially defeats the purpose of CATEXs. Those exceptions should be eliminated.*

c. Environmental Assessments;

*We need to know what Environmental Assessments cost, in both federal and private sector dollars and in project delay costs. Since nearly all EAs result in FONSI the cost benefit ratio of this process may be subject to question. Fortunately, the EA process should be amenable to radical attenuation through the application of modern technology. That potential should be explored intensively.*

d. Findings of No Significant Impact;

c. Environmental Impact Statements;

e. Records of Decision;

*As noted in the attached report, all of these elements of the NEPA review process have become unnecessarily complex and stylized. Digitization of the review process will provide an opportunity to enhance clarity and predictability. CEQ must take full advantage of that opportunity; and*

f. Supplements;

*The role of supplements should be clarified. There is no need for supplementation where there is no continuing federal oversight or periodic permitting. Where there is continued oversight or regulatory engagement, periodic updating should be a matter of course. Scoping and public participation requirements for supplements are likely very different from those for original EISs and should be tailored accordingly.*

10. Should the provisions in CEQ's NEPA regulations relating to the timing of agency action be revised, and if so, how?

*Addressing at the earliest practicable date is important and should be rigorously enforced. Particularly in adjudicatory proceedings, environmental documentation should be available prior to finding and application to be complete, certainly prior to commencement of the proceeding. Any necessary environmental review should be integrated into the proceeding and certainly should not be a basis for reopening a proceeding after the record is closed. There is no need for FEIS or ROD when a judicial decision is issued after a trial type proceeding. Time limits for final approval should be provided.*

11. Should the provisions in CEQ's NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised, and if so, how?

*Existing procedures for third party preparation of environmental review documents are cumbersome, create perverse incentives and should be eliminated. Reasoned review of applicant prepared documents should be a fully accepted protocol.*

12. Should the provisions in CEQ's NEPA regulations relating to programmatic NEPA documents and tiering be revised, and if so, how?

*Programmatic documentation is extremely useful and should be more effectively utilized. It should be made clear, however, that there is not a moratorium on permit issuance during the pendency of programmatic review and reviews should be completed within a reasonable time period. Digitization and data analytics will allow continuous input to programmatic review processes and would greatly improve the usefulness of this tool.*

13. Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised, and if so, how?

*Alternatives which are not within the regulatory purview of the reviewing agencies should be eliminated. Where an agency lacks authority to withhold action based on public interest considerations, the "no action" alternative is not available. Agency regulations restricting consideration of "mitigation" in choosing among alternatives or requiring selection of the "least impact" alternative should be examined to determine their statutory basis.*

**General:**

1. Are any provisions of the CEQ's NEPA regulations currently obsolete? If so, please provide specific recommendations on whether they should be modified, rescinded, or replaced.

*As noted above, the NEPA regulations require a comprehensive overhaul to enable full utilization of modern technology.*

2. Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient?

*As noted, we believe a comprehensive review of the entire process is required.*

3. Are there additional ways CEQ's NEPA regulations should be revised to promote coordination of environmental review and authorization decisions, such as combining NEPA analysis and other decision documents, and if so, how?

*Reliance on relevant State Environmental Review Documents should be mandatory.*

4. Are there additional ways CEQ's NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA, and if so, how?

*The Regulations should include a specific expedited review procedure with time limits for priority projects identified pursuant to E.O. 13766.*

5. Are there ways in which the role of tribal governments in the NEPA process should be clarified in CEQ's NEPA regulations, and if so, how?

6. Are there additional ways CEQ's NEPA regulations should be revised to ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible, and if so, how?

*Although it is clear that delays in permit issuance can have environmental consequences as adverse and severe as those of imprudent permit issuance, there are few consequences or disincentives for unnecessary or unreasonable delays in permit issuance. CEQ should work to provide appropriate performance metrics, cost monitoring and related mechanisms for providing a more appropriate balance.*

7. Are there additional ways CEQ's NEPA regulations related to mitigation should be revised, and if so, how?

*While the basic concept of mitigation may be relatively well understood, the details are not. Is it appropriate to require mitigation when the statute does not allow for a broad "public interest" determination? (We think the answer should be "No"). Should mitigation be taken into account in determining the "best" environmental alternative?<sup>3</sup> (We think the answer must be "Yes".) There are a number of these kinds of questions which must be answered in order to achieve fair and predictable results in this context.*

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<sup>3</sup> In circumstances where environmental review is linked with a substantive finding such as the Corps of Engineers LEDPA determination on water projects the question of how mitigation should be taken into account is critical. The provision in the Corps' guidance to the effect that mitigation cannot be taken into account in LEDPA determinations is unauthorized by law and counterproductive. In general, the basis for agency authority to require mitigation need to be clarified.

Blueprint 2025 greatly appreciates the opportunity to submit these comments and is, of course, available to clarify or expand upon them at your convenience.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'Norman Anderson', with a long horizontal stroke extending to the right.

Norman Anderson  
President

## **Blueprint 2025 Position Paper Modernizing the NEPA Environmental Review Process**

Over the last fifty or so years (since enactment of the National Environmental Policy Act “NEPA”) serious deficiencies have developed in the way the U.S. Government goes about the planning and authorization of infrastructure projects. This unnecessarily burdensome administrative process delays decisions on critical infrastructure projects, severely restricting our country’s ability to modernize infrastructure to enable the technologies of the future or even to maintain the infrastructure which is now in place.

China and our other competitors have in place not only programs to plan and prioritize the infrastructure to be built, but highly efficient computer aided approaches for individual projects beginning with the early planning stages and continuing throughout their development. Though the governance systems of these major competitors might be more conducive to efficient management of the development process than is our “rule of law” system, it should be possible to at least narrow the gap by simplifying and improving the U.S. system as it has evolved (or devolved) over the last 50 years and enabling the use of modern technology to make the authorization process work more efficiently. This note outlines possible steps toward that end.

### ***The Process for Achieving NEPA’s Goals is Outmoded and Inefficient***

Despite the well-intentioned goals of NEPA to help public officials make decisions based on an informed understanding of environmental consequences, there is a large and growing number of actors in both the public and private sectors that feel the Act has evolved into an unintended project-stalling process of administrative hurdles. What was originally designed to encourage simple informed decision making has become a burdensome and expensive process resulting in undue delays, loss of investment and, perhaps, even environmental harm.<sup>1</sup>

According to this view:

- Environmental analyses are routinely conducted for actions that reasoned judgment would conclude are not major and should not be subject to such onerous agency oversight.
- Though the act was intended to facilitate public input and participation, the environmental review process as it currently exists is esoteric and inaccessible to the average citizen who might like to weigh in. Data on the average length of an EIS is lacking, but it is not uncommon for these reports to span in excess of 1,000, 2,000, and

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<sup>1</sup> See *Modernizing NEPA for the 21<sup>st</sup> Century: Oversight Hearing Before the H. Comm. on Natural Resources*, 115<sup>th</sup> Cong. (2017) (statement of Philip Howard, Chairman Common Good).

even 3,000 pages, though CEQ regulations state that the text of final EIS reports should “normally be less than 150 pages and for proposals of unusual scope or complexity ... be less than 300 pages.”<sup>2</sup> This added complexity often means that participation only comes from well-funded organizations or experts in a particular field. While expert comments are appreciated, and encouraged, the process was meant to invite participation on a much broader scale.

- While agencies do not routinely track data on the cost of completing NEPA analyses, it is clear that the cost of an environmental review process for a single project can run into the millions of dollars. For instance, the Department of Energy (DOE) tracks limited cost data associated with NEPA analyses, specifically, funds the agency pays to contractors to prepare NEPA analyses. According to DOE data, the average payment to a contractor to prepare an EIS from calendar year 2003 through calendar year 2012 was \$6.6 million, with the range being a low of \$60,000 and a high of \$85 million.<sup>3</sup> DOE’s median EIS contractor cost was \$1.4 million over that time period.<sup>4</sup>

Though the extent and impact of these problems may be subject to debate, it seems clear that there is a great deal of room for improvement in order to mitigate what many interpret to be excessive delay, cost, and complexity.

As a recent House Natural Resources Committee hearing on the need to modernize NEPA highlighted, there remains broad support for the act’s basic objective of informing agency decision makers.<sup>5</sup> However, there seems to be a consensus that the process is plagued by the kinds of problems outlined here and that as a result, NEPA has failed to fulfill the basic purpose for which it was enacted, resulting in unintended adverse impacts on the U.S. economy, the quality of our infrastructure, and in fact, on the environment itself. Solutions like those suggested at the hearing, by former CEQ General Counsel, Dinah Bear, that more and better-trained federal employees are needed—are both unrealistic and rooted in the past.<sup>6</sup> NEPA, like other elements of our infrastructure, needs to be updated and brought into the 21<sup>st</sup> century. New tools including data analysis, artificial intelligence, and even virtual reality modeling can and should be effectively utilized to expedite and simplify the NEPA process, making it more accessible to ordinary citizens and yielding superior analytical results.

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<sup>2</sup> 40 C.F.R. § 1502.7.

<sup>3</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-14-370, NATIONAL ENVIRONMENTAL POLICY ACT: LITTLE INFORMATION EXISTS ON NEPA ANALYSES 13 (2014) (According to DOE, the cost for the \$85 million Hanford Tank Closure and Waste Management EIS includes the costs for three major EISs—waste management, high-level waste tank closure, and disposition of a nuclear reactor—that were started separately and ultimately integrated into one document spanning 3,600+ pages including agency responses to public comments).

<sup>4</sup> *Id.*

<sup>5</sup> See 42 U.S.C. § 4321 (NEPA’s congressional declaration of purpose states that the purposes of the act are “to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.”).

<sup>6</sup> See *Modernizing NEPA for the 21<sup>st</sup> Century: Oversight Hearing Before the H. Comm. on Natural Resources*, 115<sup>th</sup> Cong. (2017) (statement of Dinah Bear, Former General Counsel, Council on Environmental Quality).

## *Current Process Dynamics*

NEPA requires federal agencies to analyze both the nature and the extent of a project's potential environmental effects and, in many cases, document these analyses.<sup>7</sup> While much has been said about the merits of this process in furthering a public dialogue and improving the quality of decision making at the federal level, CEQ regulations make explicit the need for a level of analysis that is timely, efficient, and genuinely useful. For instance, under the CEQ's own articulation of NEPA's purpose, "NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail."<sup>8</sup> "NEPA's purpose is *not* to generate paperwork—even excellent paperwork—but to foster excellent action."<sup>9</sup> "Ultimately, it is not better documents but better decisions that count."<sup>10</sup> The regulations go on to include specific instructions targeted at two additional goals: (i) to reduce paperwork and (ii) reduce delay.<sup>11</sup> These instructions highlight the needs for agencies to reduce the length of environmental impact statements (EIS); emphasize the portions of the EIS that are useful to decision makers and the public; integrate NEPA requirements with other environmental review and consultation requirements; require comments to be as specific as possible; eliminate duplication with state and local procedures by providing for joint preparation; emphasize interagency cooperation before the EIS is prepared; establish appropriate time limits for the EIS process; and use accelerated procedures for proposals for legislation.<sup>12</sup>

Title 41 of the "Fixing America's Surface Transportation" Act ("FAST Act") --- establishes a new interagency committee (the Federal Permitting Improvement Steering Council "FPISC"), which is directed to ensure use of most efficient and timely processes for environmental review, and establishment of performance schedules for the completion of the environmental reviews. Title 41 thus both confirms the basic principles outlined above and augments them by a requirement that the Council established by the Act must ensure that "best technology" will be fully utilized in the environmental review process. The Title 41 mandate requires timely action to integrate modern technology into the NEPA process. An approach to such an effort is roughly outlined below.

### **The Process Now in Place**

NEPA is primarily a procedural statute. It does not require an agency to pursue the least environmentally harmful alternative, only that the agency give adequate consideration to the potential benefits and harms of the proposed action in order to demonstrate informed decision making.<sup>13</sup>

Over the last 50 years, NEPA practitioners and the courts have developed a well choreographed set of procedures designed to fulfill these procedural requirements.<sup>14</sup>

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<sup>7</sup> Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (CEQ regulations), 40 C.F.R. Parts 1500-1508, set out the level of analysis and documentation for complying with NEPA. The scope and form of these analyses can take the form of a Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS).

<sup>8</sup> 40 C.F.R. § 1500.1(b).

<sup>9</sup> *Id.* at § 1500.1(c) (emphasis added).

<sup>10</sup> *Id.*

<sup>11</sup> See 40 C.F.R. §§ 1500.4-1500.5.

<sup>12</sup> *Id.*

<sup>13</sup> See *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989); *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978).

- Identify the need for action in connection with a proposal.
- Determine whether the action is a federal action subject to NEPA review.
- Determine whether the proposed action is a “major federal action” i.e. could it have direct or indirect effects which have the *potential* to significantly affect the quality of the human environment.<sup>15</sup>
  - If “yes,” determine whether the project qualifies for a categorical exclusion (CE).
  - If significant environmental effects are uncertain and the action fails to qualify for a CE, then agencies must move forward with an environmental assessment (EA) providing for public involvement to the extent practicable.<sup>16</sup>
- Determine whether the EA reveals a potential for significant environmental effects.
  - If “no,” then agencies must issue a Finding of No Significant Impact explaining the reasoning for their decision.
  - If, however, in the process of completing the EA, it is determined that significant environmental effects *are* likely to result, a notice must be published in the federal register of intent to prepare an Environmental Impact Statement (EIS).
- A public process to determine the “scope” of the EIS must be conducted.
- A draft EIS will be prepared and published, with a minimum 90-day period for public review and further comment.
- After addressing public input, a final EIS is published (no time limit).
- Finally, a Record of Decision is issued by the lead agency detailing its decision to move forward with the proposal or not.

### NEPA for the 21<sup>st</sup> Century

Clearly there is ample room for this process to benefit from the economies and efficiencies associated with the digitization, data analytics and networking available to us in 2018, but, unfortunately, much of the analysis and “streamlining” attempted to date, whether pursuant to the FAST Act or the several Trump Administration executive orders in furtherance of those objectives,

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<sup>14</sup> See COUNCIL ON ENVIRONMENTAL QUALITY, A CITIZEN’S GUIDE TO THE NEPA: HAVING YOUR VOICE HEARD 8 (2007).

<sup>15</sup> See 40 C.F.R. § 1508.27.

<sup>16</sup> There is no statutory basis for the position taken by some agencies that there must be environmental review unless there is an applicable categorical exclusion. The mandatory C.E exercise is unduly cumbersome and unduly restricts the exercise of reasoned judgment by the agency head in determining whether an action is “major” An intelligent computer aided approach to this analysis could provide the equivalent of reasoned judgment based on the thousands of relevant factors which might affect a reasoned human decision.

has been developed by consensus among multiple agencies and predicated on traditional “paper trail” oriented administrative processes. It has failed to take into account the advances achievable through use of modern technology.

As a result, the environmental review process has yet to embrace the efficiencies associated with software development and technological integration. While people who wish to comment on a draft EIS can now do so through online portals instead of having to mail in written comments, there are additional opportunities to take the choreographed stages of review and introduce coordination that is currently missing.

Under the framework of a modern, digital, analytic protocol, there would be opportunities to introduce disciplines for reviewing some of the mistakes and inefficiencies embedded in the existing regulations and guidance, and perhaps even codify and replace the countless pages of existing guidance proven to be redundant or unnecessary. Just as important, broad use of interactive digital platforms would enable the development of a broadly accessible national environmental data network which would limit the need to “reinvent the wheel” in environmental reviews of previously studied areas. The result might be creation of a comprehensive environmental database that includes subject specific information capable of being drawn upon to inform future projects. For example, U.S. Fish and Wildlife has a rudimentary system for archiving conservation plans across the country. It’s not terribly user-friendly but it does allow landowners and developers a chance to see what’s been done before and what they might reasonably expect going forward in similar situations. Artificial intelligence and networking capabilities ought to be employed to compile something that is (i) informative; (ii) comprehensive; (iii) user-friendly; and (iv) capable of cutting down redundancy with previous work.

In addition to introducing efficiencies that could cut down on delay and associated development costs, there is reason to believe that digitization and analytics could not only provide a quality of analysis currently lacking in NEPA review but could also substantially reduce Government costs. Two NEPA-related studies completed by federal agencies show clearly that there is no current “handle” on the total governmental cost of NEPA compliance. A 2007 Forest Service report on competitive sourcing for NEPA compliance stated that it is “very difficult to track the actual cost of performing NEPA. Positions that perform NEPA-related activities are currently located within nearly every staff group, and are funded by a large number of budget line items.

There is no single budget line item or budget object code to follow in attempting to calculate the costs of doing NEPA.”<sup>17</sup> Similarly, a 2003 study funded by the Federal Highway Administration evaluating the performance of environmental “streamlining” noted that NEPA cost data would be difficult to segregate for analysis.”<sup>18</sup> Since, as noted the *outside contractor cost* of environmental review of a single proposal can range to \$85 million or beyond it is clear that the overall cost of NEPA review is very, very substantial. , Digitization could introduce analytics that break down the silos of knowledge described in the Forest Service report and allow us to know, at least, what NEPA is costing.

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<sup>17</sup> U.S. FOREST SERVICE, COMPETITIVE SOURCING PROGRAM OFFICE, *Feasibility Study of Activities Related to National Environmental Policy Act (NEPA) Compliance* (Washington, D.C., Aug. 10, 2007).

<sup>18</sup> U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, *Evaluating the Performance of Environmental Streamlining: Phase II* (Washington, D.C. 2003).

Even more important, the use of modern communications and analytical technologies can allow us to obtain more effective reviews, more expeditiously and at a much lower cost. Witnesses at a recent hearing before the Senate Environment and Public Works Committee estimated that NEPA related delays in permitting processes may be inflating our nation's infrastructure costs by as much as 50% and there is at least some evidence to suggest that estimate is on the low side. There is little doubt that inefficiencies in environmental review processes, in addition to handicapping our country's ability to keep pace with global competition, are resulting in costs well into the billions and possibly beyond.

### ***Conclusion***

Over the past several decades, we've split the atom, we've spliced the gene, and we've harnessed the modern electron. New science and new technology is fostering change at a breakneck pace and we are at a crossroads. The need to bring NEPA — arguably one of the most influential pieces of environmental legislation ever enacted — up to speed in a way that's attendant to the needs of 21<sup>st</sup> century development is not a partisan issue. This was recognized in the FAST Act by specifically including a title designed to improve the timeliness, predictability, and transparency of the Federal environmental review and authorization process for covered infrastructure projects.<sup>19</sup> President Trump has issued executive orders which further support the FAST 41 objectives and has targeted nearly a trillion dollars in infrastructure packages across the country given the state of our bridges, highways, and waterways. We are in a unique position to leverage knowledge available from actors in both the public and private sectors to bring to bear the full measure of our know-how on environmental review. Now is the time to bring the full resources of the federal government and the full reach of our collective expertise to this fundamental goal: we must modernize the NEPA environmental review process.

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<sup>19</sup> See 42 U.S.C. § 4370m *et seq.*

# [EXTERNAL] RE: National Hydropower Association Comments on NEPA ANOPR

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**From:** "Jeff Leahey (NHA)" <jeff@hydro.org>  
:  
**To:** "Sensiba, Charles R." <charles.sensiba@troutmansanders.com>, "Herrgott, Alex H. EOP/CEQ" <(b) (6)>  
**Date:** Thu, 23 Aug 2018 10:08:44 -0400

Thanks Chuck. And yes, Alex, let us know if there is any follow-up you would like to do.

**From:** Sensiba, Charles R. <Charles.Sensiba@troutmansanders.com>  
**Sent:** Tuesday, August 21, 2018 11:33 PM  
**To:** Herrgott, Alex H. EOP/CEQ <(b) (6)>  
**Cc:** Jeff Leahey (NHA) <jeff@hydro.org>  
**Subject:** National Hydropower Association Comments on NEPA ANOPR

Alex,

Jeff Leahey asked that I forward you the attached comment letter, which the National Hydropower Association filed with CEQ yesterday in response to the NEPA Advance Notice of Proposed Rulemaking.

NHA appreciates the opportunity to comment on the ANOPR. Please let us know if you have any questions or wish to discuss.

Best regards,  
Chuck

**Charles R. Sensiba**

Direct: 202.274.2850 | Mobile: (b) (6)  
[charles.sensiba@troutman.com](mailto:charles.sensiba@troutman.com)

**troutman sanders**

401 9th Street, NW, Suite 1000  
Washington, DC 20004  
[troutman.com](http://troutman.com)

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# RE: DO OUTS for August 28, 2018 NEPA Implementing Regulations Working Group Meeting

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**From:** "Szabo, Aaron L. EOP/CEQ" <(b) (6)>  
**To:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**Cc:** "Sharp, Thomas L. EOP/CEQ" <(b) (6)>  
**Date:** Thu, 30 Aug 2018 09:02:54 -0400

Hahaha.

**From:** Drummond, Michael R. EOP/CEQ  
**Sent:** Thursday, August 30, 2018 8:58 AM  
**To:** Szabo, Aaron L. EOP/CEQ <(b) (6)>  
**Cc:** Sharp, Thomas L. EOP/CEQ <(b) (6)>  
**Subject:** RE: DO OUTS for August 28, 2018 NEPA Implementing Regulations Working Group Meeting

Do Outs? Don't you mean Due Outs? Or Dew Outs (if copious amounts of Mountain Dew are required to accomplish said Dew Outs)?

**From:** Szabo, Aaron L. EOP/CEQ  
**Sent:** Wednesday, August 29, 2018 5:22 PM  
**To:** Barnett, Steven W. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ  
<(b) (6)> Drummond, Michael R. EOP/CEQ  
<(b) (6)> Loyola, Mario A. EOP/CEQ <(b) (6)>  
Mansoor, Yarden M. EOP/CEQ <(b) (6)> Pettigrew, Theresa L. EOP/CEQ  
<(b) (6)> Schneider, Daniel J. EOP/CEQ <(b) (6)>  
Seale, Viktoria Z. EOP/CEQ <(b) (6)> Sharp, Thomas L. EOP/CEQ  
<(b) (6)> Smith, Katherine R. EOP/CEQ <(b) (6)>  
**Cc:** Szabo, Aaron L. EOP/CEQ <(b) (6)>  
**Subject:** DO OUTS for August 28, 2018 NEPA Implementing Regulations Working Group Meeting

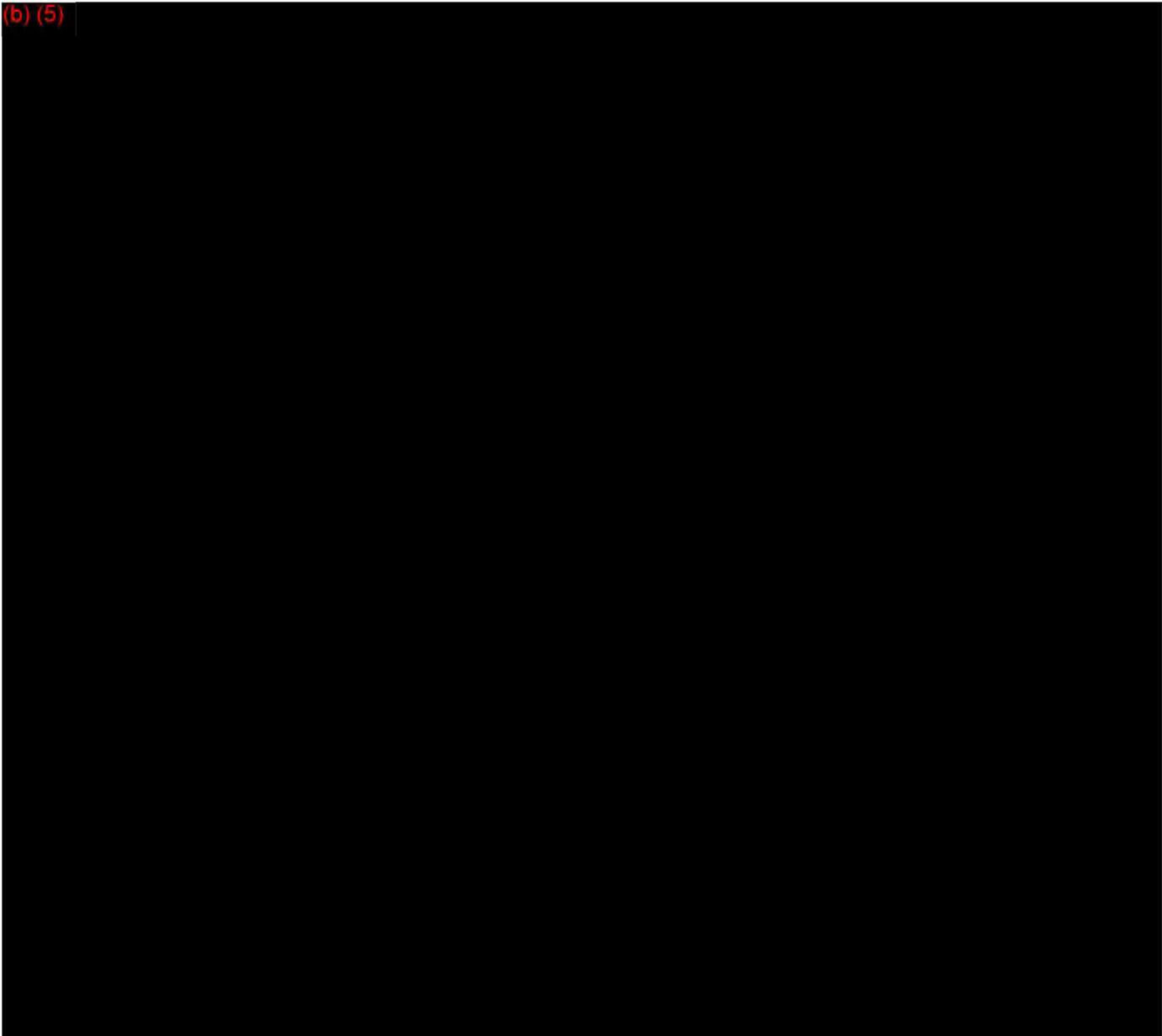
WG,

As discussed in the meeting today, I will try and provide "Do Outs" for everyone in writing by close of business of the day of our WG meeting.

For the meeting, I have the following Do Outs:

(b) (5)

(b) (5)



Thank you very much. If you need additional time on your Do Outs, please let me know as soon as possible.

**Aaron L. Szabo**  
Senior Counsel  
Council on Environmental Quality

(b) (6) (Desk)

(b) (6) (Cell)

(b) (6)

# RE: DO OUTS for August 28, 2018 NEPA Implementing Regulations Working Group Meeting

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**From:** "Drummond, Michael R. EOP/CEQ" </o=exchange organization/ou=exchange administrative group : (fydibohf23spdlt)/cn=recipients/cn=a0bc62c0a5454e6fb7a1be504b7d284a-dr">  
**To:** "Szabo, Aaron L. EOP/CEQ" <(b) (6)>  
**Cc:** "Sharp, Thomas L. EOP/CEQ" <(b) (6)>  
**Date:** Thu, 30 Aug 2018 08:58:00 -0400

Do Outs? Don't you mean Due Outs? Or Dew Outs (if copious amounts of Mountain Dew are required to accomplish said Dew Outs)?

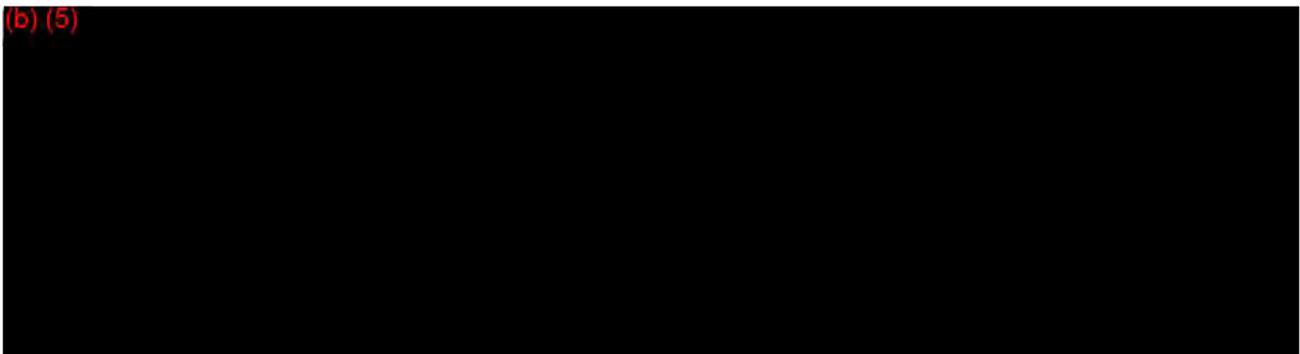
**From:** Szabo, Aaron L. EOP/CEQ  
**Sent:** Wednesday, August 29, 2018 5:22 PM  
**To:** Barnett, Steven W. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)> Drummond, Michael R. EOP/CEQ <(b) (6)> Loyola, Mario A. EOP/CEQ <(b) (6)> Mansoor, Yardena M. EOP/CEQ <(b) (6)> Pettigrew, Theresa L. EOP/CEQ <(b) (6)> Schneider, Daniel J. EOP/CEQ <(b) (6)> Seale, Viktoria Z. EOP/CEQ <(b) (6)> Sharp, Thomas L. EOP/CEQ <(b) (6)> Smith, Katherine R. EOP/CEQ <(b) (6)>  
**Cc:** Szabo, Aaron L. EOP/CEQ <(b) (6)>  
**Subject:** DO OUTS for August 28, 2018 NEPA Implementing Regulations Working Group Meeting

WG,

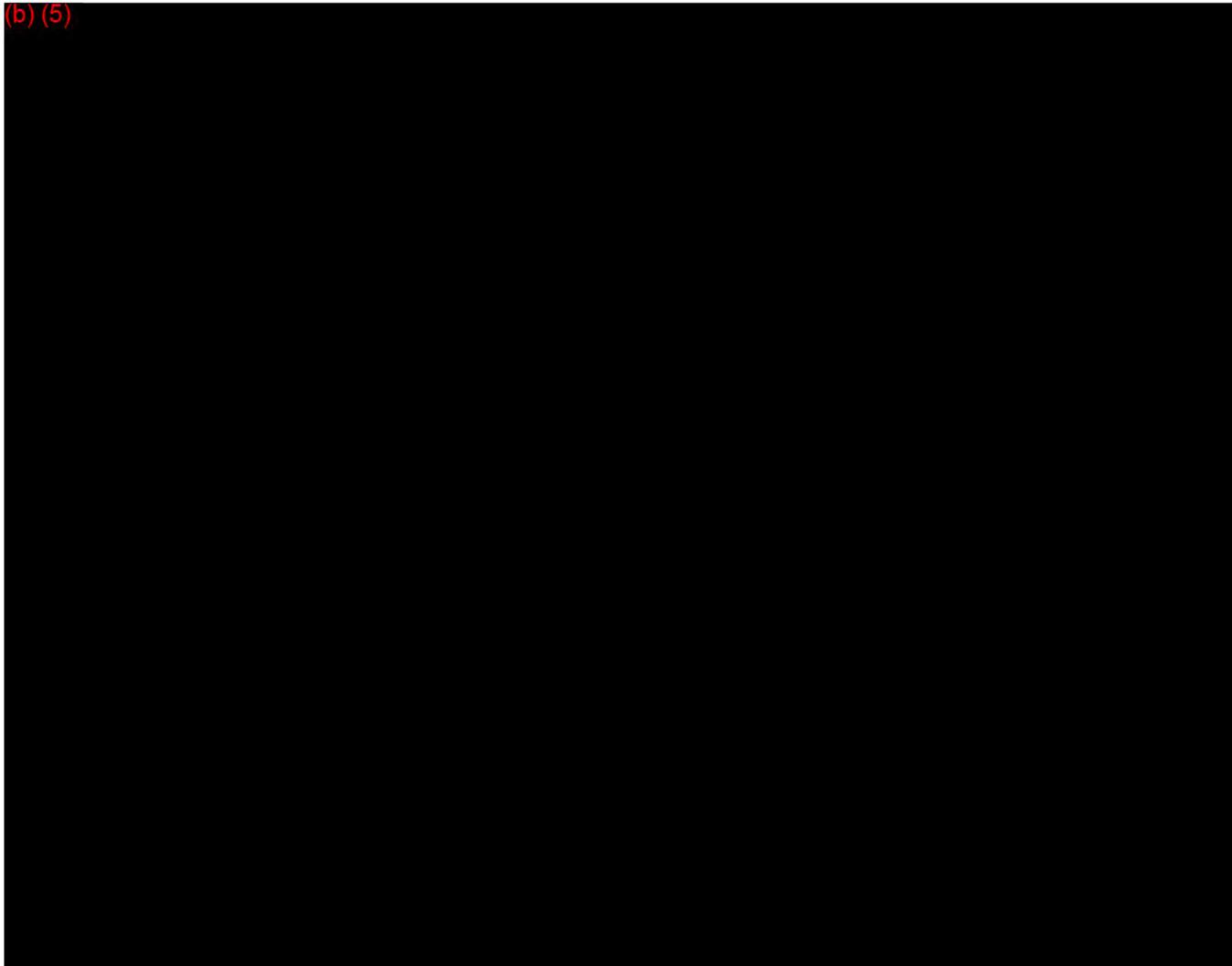
As discussed in the meeting today, I will try and provide "Do Outs" for everyone in writing by close of business of the day of our WG meeting.

For the meeting, I have the following Do Outs:

(b) (5)



(b) (5)



Thank you very much. If you need additional time on your Do Outs, please let me know as soon as possible.

**Aaron L. Szabo**  
Senior Counsel  
Council on Environmental Quality

(b) (6) (Desk)

(b) (6) (Cell)

(b) (6)

## Blueprint 2025

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**From:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
**To:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
**Date:** Thu, 30 Aug 2018 12:46:19 -0400  
**Attachments:** Proposed NEPA Changes 8-20-18 for filing (2).pdf (1.41 MB); Blueprint 2025.pdf (1.41 MB)

**From:** Drummond, Michael R. EOP/CEQ  
**Sent:** Wednesday, August 22, 2018 9:03 AM  
**To:** Boling, Ted A. EOP/CEQ <(b) (6)> Mansoor, Yardena M. EOP/CEQ <(b) (6)>  
**Subject:** Fwd: [EXTERNAL] Comment submission

Ted,

Shall we scan and post this late entry? I have a feeling they attempted to send via fedex or similar and were turned away due to our security protocols.

Michael Drummond  
Deputy Associate Director for NEPA  
Council on Environmental Quality  
(b) (6)

Begin forwarded message:

**From:** "McLaurin, Juschelle D. EOP/CEQ" <(b) (6)>  
**Date:** August 22, 2018 at 8:51:07 AM EDT  
**To:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**Subject:** FW: [EXTERNAL] Comment submission

Good Morning,

Michael this was sent to my email on yesterday , and as you know it's my day off.

Juschelle

**From:** Marina Micic <[marina@cg-la.com](mailto:marina@cg-la.com)>  
**Sent:** Monday, August 20, 2018 4:54 PM

To: McLaurin, Juschelle D. EOP/CEQ <(b) (6)>

Subject: [EXTERNAL] Comment submission

Hello,

We tried to submit our comment by mailing it to the address noted on the filing instructions, but the delivery was not possible. Could you please help us deliver the attached document to the right person/department?

Thank you so much for your assistance!

Marina

The CEQ is extending the comment period on the ANPRM, which was scheduled to close on July 20, 2018, for 31 days until August 20, 2018. The CEQ is making this change in response to public requests for an extension of the comment period.

**DATES:** Comments should be submitted on or before August 20, 2018. **ADDRESSES:** Submit your comments, identified by docket identification number CEQ-2018-0001 through the Federal eRulemaking portal at [https:// >www.regulations.gov<](https://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [https:// >www.regulations.gov<](https://www.regulations.gov). CEQ may publish

any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (e.g., audio, video) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make.

Comments may also be submitted by mail. Send your comments to: Council on Environmental Quality, 730 Jackson Place NW, Washington, DC 20503, Attn: Docket No. CEQ-2018-0001.

**FOR FURTHER INFORMATION CONTACT:**

Edward A. Boling, Associate Director for the National Environmental Policy Act, Council on Environmental Quality, 730 Jackson Place NW, Washington, DC 20503. Telephone: (202) 395-5750.

--



**MARINA MICIC**

Office Manager

[729 15th Street NW, Suite 600, Washington, DC 20005](https://www.regulations.gov)

O: (202) 776-0990 | [marina@cg-la.com](mailto:marina@cg-la.com)

[>www.cg-la.com<](https://www.regulations.gov)



[3225-F8]

August 20, 2018

Comments of Blueprint 2025

Re: Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

AGENCY: Council on Environmental Quality (CEQ).

ACTION: Advance Notice of Proposed Rulemaking.

Docket No. CEQ-2018-0001 - RIN: 0331-AA03

The Blueprint 2025 (“BP2025”) initiative is collaboration among infrastructure professionals, leading infrastructure development companies and public sector project managers, which advances and supports plans and policies to restore the U.S. position as the country with the world’s best, most efficient and most productive infrastructure. A central tenet of BP 2025’s policy is the recognition that reform of the permitting process for major infrastructure projects is absolutely essential if the U.S. is to modernize its infrastructure in time to allow development of the new technologies which will enable us to keep pace with the modernization programs of our major global competitors. As outlined in our recently updated position paper on modernization of the NEPA process (Annex A attached), the current process is cumbersome, inefficient and antiquated, it needs to be modernized and brought into the 21st century through better use of available technology.

A major reason for the failure, up to this point, to optimize the NEPA process lies in the facts, outlined in Annex A, that no one knows what NEPA review costs the government and the private sector and there are no performance metrics to evaluate the government’s performance. In this context, there has been no incentive to make the process more efficient or to reduce its cost. These deficiencies should be addressed as priority subjects pursuant to this ANPR as it is clear that the NEPA process imposes very direct and substantial costs on both government and the private sector. Perhaps more important, costs arising from NEPA delays may increase project costs by 50% or more and, for cutting edge projects, may substantially reduce the useful life between startup and technical obsolescence.

Against that background, we have the following comments in response to the specific questions presented in the advance notice:

1. Should CEQ’s NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?

*Both the FAST 41 efforts and those pursuant to the President’s “One Federal Action” order have operated on the basis of consensus among agencies and, as a result, have yielded complex and convoluted compromise procedures. An appropriate environmental*

*review procedure would adopt the “one window” approach mandated by laws such as the Deepwater Port Act and the Deep Seabed Hard Mineral Resources Act in which the lead agency is, in fact, the lead agency, with final decision making authority. Other affected agencies should be required to participate and exercise only the authorities granted by the laws which they are responsible for implementing. Experience shows that, by this approach, complex and controversial environmental reviews can be completed in less than a year.*

*As noted above, the time delay associated with the current NEPA review process not only imposes substantial costs on both government and the private sector, it impedes the development of the technology of the future and handicaps our Country's efforts to maintain its global leadership position.<sup>1</sup>*

2. Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions , and if so, how?

*Yes. As noted in the attached Update, the use of modern technologies can facilitate the development and maintenance of a National Environmental Database which can be drawn upon as necessary and relevant. Modern Data analytics can speed and regularize the environmental review process, minimize opportunities for agency bias and make judicial review more expeditious and predictable.*

3. Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?

*Yes. See response to Question 1 above.*

#### **Scope of NEPA Review:**

4. Should the provisions in CEQ's NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?

*The current suggested page limits seem appropriate, but should be enforced through appropriate entry software. To the extent necessary, supporting data can be included in*

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<sup>1</sup> As we have noted on a number of occasions, the Congress used to identify and “put its shoulder behind” projects which it believed to be of national importance and the agencies were by and large responsive to directives under laws such as the Trans Alaska Pipeline System Act, the Deepwater Port Act, the Deep Seabed Hard Mineral Resources Act and the Alaska Natural Gas Transportation System Act. In recent years, there has been more reluctance to address specific projects and projects which have been high on BP 2025's top fifty list, such as the Cadiz Water Project in California, the Clean Line Transmission Project, the Texas Central Rail Project the SeaOne Energy Transportation Project have languished and a few have been stalled by opposition from a very small number of members. President Trump's Executive Order 13766, directing priority processing of critical infrastructure projects has largely been ignored. If we are to keep pace with “Made in China” this situation must be remedied.

*searchable and linked data attachments. A digitized process would allow more expeditious review and enforcement of hard time limits.*

5. Should CEQ's NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decision makers and the public, and if so, how?

*In accordance with the existing statutes and regulations, NEPA analysis should address only the direct and indirect effects which are subject to regulation by the lead or participating agencies, NEPA documents should not address federal actions which are non-discretionary or impacts which are not subject to federal regulation. Agencies should participate in the lead agency process throughout the life of the project and their input should be limited to matters within their jurisdiction.<sup>2</sup>*

6. Should the provisions in CEQ's NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?

*Public involvement regulations should be predicated on an assumed basic level of computer literacy, should be developed with a view towards maintenance of efficient digital processes and should have timing requirements consistent with the capabilities of digital processes. Software protocols should seek to enforce basic requirements regarding relevance and supporting references.*

7. Should definitions of any key NEPA terms in CEQ's NEPA regulations, such as those listed below, be revised, and if so, how?

a. Major Federal Action;

*The existing formulation a federal action which will have a direct or indirect effect which is within federal jurisdiction and which has the potential for significant environmental impacts is appropriate but often not followed. The "within federal jurisdiction" element is too often ignored. Agencies often interpret the "no action" alternative to mean "no project" and thus allow them to expand their jurisdiction to cover the entire project rather than only the aspect, such as an air or water discharge, over which they exercise jurisdiction. It needs to be made clear that NEPA does not expand agency jurisdiction but only permits agencies to consider effects within their jurisdiction. It should also be made clear that "categorical exclusion" is not the first step in the environmental review process. The CATEX*

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<sup>2</sup> The Deepwater Port Act provides for a perpetual license which functions to provide all authorizations required for the construction and operation of the Ports and put in place a continuous environmental review process to assure that the Ports continue to utilize best available technology to minimize impacts on the marine environment. EPA participates in the licensing process and issues Clean Water Act Permits for the very minor domestic and cooling water discharges associated with Port Operations. Some EPA officials have taken the position that since the Ports are originally "new sources" and since water permits expire every five years, new and separate environmental reviews addressing the Ports' operations are required at five year intervals PS.

*review should only take place after the decision maker has concluded that a federal action has the potential to significantly affect the environment.*

**b. Effects;**

*Again, the effect must be within federal jurisdiction. NEPA does not expand federal jurisdiction and an interpretation which would, for example, allow consideration of the construction of a facility which is beyond the agency's jurisdiction would be contrary to the clear intention that agencies' jurisdiction should not be affected. A proper interpretation of this requirement would be consistent with NEPA's original intent and would greatly simplify its application.*

**c. Cumulative Impact;**

*Effects to be considered in cumulative impact analysis must be subject to federal regulatory authority. For example, if the federal government is prohibited from restricting the export of crude oil, crude oil exports should not be the subject of cumulative impact analysis. Cumulative effects, like other effects, must be within in an agency's jurisdiction in order to merit consideration in the environmental review process.*

**d. Significantly;**

*Under the Act, the decision maker must exercise discretion, subject to judicial review, to decide whether the a proposed federal action may have an effect, within her or his agency's jurisdiction, which has the potential to be "significant" As noted above, limitation of this requirement through improper application of the "categorical exclusion" is inappropriate and counterproductive. The "significantly" definition might be amended to make clear that the decision maker retains this authority.*

**e. Scope;**

*Environmental reviews must focus precisely on the foreseeable direct and indirect effects subject to federal regulation of the proposed federal action or reasonable alternatives to the federal action. Alternatives which are not within federal jurisdiction need not be assessed. The No Federal Action alternative need not be addressed unless the agency has discretion to take no action.*

**8. Should any new definitions of key NEPA terms, such as those noted below, be added, and if so, which terms?**

- a. Alternatives;
- b. Purpose and Need;
- c. Reasonably Foreseeable;
- d. Trivial Violation; and

f. Other NEPA terms.

9. Should the provisions in CEQ's NEPA regulations relating to any of the types of documents listed below be revised, and if so, how?

a. Notice of Intent;

b. Categorical Exclusions Documentation;

*As noted above, the "categorical exclusion" methodology is being misapplied in many agencies to impose additional limits on decision makers' discretion rather than to provide a "safe harbor" to be relied upon by decision makers facing decisions on close questions. It needs to be made clear that categorical exclusions do not preclude the exercise of agency discretion regarding the question of whether a "major federal action" is proposed and that extensive documentation and public comment is not required. Otherwise the CATEX functions essentially as a redundant environmental assessment. The millions and perhaps billions that have been spent by agencies in adopting CATEX regulations will have been wasted. Finally the exception in many agencies' CATEX regulations for matters involving substantial public interest or opposition essentially defeats the purpose of CATEXs. Those exceptions should be eliminated.*

c. Environmental Assessments;

*We need to know what Environmental Assessments cost, in both federal and private sector dollars and in project delay costs. Since nearly all EAs result in FONSI the cost benefit ratio of this process may be subject to question. Fortunately, the EA process should be amenable to radical attenuation through the application of modern technology. That potential should be explored intensively.*

d. Findings of No Significant Impact;

c. Environmental Impact Statements;

e. Records of Decision;

*As noted in the attached report, all of these elements of the NEPA review process have become unnecessarily complex and stylized. Digitization of the review process will provide an opportunity to enhance clarity and predictability. CEQ must take full advantage of that opportunity; and*

f. Supplements;

*The role of supplements should be clarified. There is no need for supplementation where there is no continuing federal oversight or periodic permitting. Where there is continued oversight or regulatory engagement, periodic updating should be a matter of course. Scoping and public participation requirements for supplements are likely very different from those for original EISs and should be tailored accordingly.*

10. Should the provisions in CEQ's NEPA regulations relating to the timing of agency action be revised, and if so, how?

*Addressing at the earliest practicable date is important and should be rigorously enforced. Particularly in adjudicatory proceedings, environmental documentation should be available prior to finding and application to be complete, certainly prior to commencement of the proceeding. Any necessary environmental review should be integrated into the proceeding and certainly should not be a basis for reopening a proceeding after the record is closed. There is no need for FEIS or ROD when a judicial decision is issued after a trial type proceeding. Time limits for final approval should be provided.*

11. Should the provisions in CEQ's NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised, and if so, how?

*Existing procedures for third party preparation of environmental review documents are cumbersome, create perverse incentives and should be eliminated. Reasoned review of applicant prepared documents should be a fully accepted protocol.*

12. Should the provisions in CEQ's NEPA regulations relating to programmatic NEPA documents and tiering be revised, and if so, how?

*Programmatic documentation is extremely useful and should be more effectively utilized. It should be made clear, however, that there is not a moratorium on permit issuance during the pendency of programmatic review and reviews should be completed within a reasonable time period. Digitization and data analytics will allow continuous input to programmatic review processes and would greatly improve the usefulness of this tool.*

13. Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised, and if so, how?

*Alternatives which are not within the regulatory purview of the reviewing agencies should be eliminated. Where an agency lacks authority to withhold action based on public interest considerations, the "no action" alternative is not available. Agency regulations restricting consideration of "mitigation" in choosing among alternatives or requiring selection of the "least impact" alternative should be examined to determine their statutory basis.*

**General:**

1. Are any provisions of the CEQ's NEPA regulations currently obsolete? If so, please provide specific recommendations on whether they should be modified, rescinded, or replaced.

*As noted above, the NEPA regulations require a comprehensive overhaul to enable full utilization of modern technology.*

2. Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient?

*As noted, we believe a comprehensive review of the entire process is required.*

3. Are there additional ways CEQ's NEPA regulations should be revised to promote coordination of environmental review and authorization decisions, such as combining NEPA analysis and other decision documents, and if so, how?

*Reliance on relevant State Environmental Review Documents should be mandatory.*

4. Are there additional ways CEQ's NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA, and if so, how?

*The Regulations should include a specific expedited review procedure with time limits for priority projects identified pursuant to E.O. 13766.*

5. Are there ways in which the role of tribal governments in the NEPA process should be clarified in CEQ's NEPA regulations, and if so, how?

6. Are there additional ways CEQ's NEPA regulations should be revised to ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible, and if so, how?

*Although it is clear that delays in permit issuance can have environmental consequences as adverse and severe as those of imprudent permit issuance, there are few consequences or disincentives for unnecessary or unreasonable delays in permit issuance. CEQ should work to provide appropriate performance metrics, cost monitoring and related mechanisms for providing a more appropriate balance.*

7. Are there additional ways CEQ's NEPA regulations related to mitigation should be revised, and if so, how?

*While the basic concept of mitigation may be relatively well understood, the details are not. Is it appropriate to require mitigation when the statute does not allow for a broad "public interest" determination? (We think the answer should be "No"). Should mitigation be taken into account in determining the "best" environmental alternative?<sup>3</sup> (We think the answer must be "Yes".) There are a number of these kinds of questions which must be answered in order to achieve fair and predictable results in this context.*

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<sup>3</sup> In circumstances where environmental review is linked with a substantive finding such as the Corps of Engineers LEDPA determination on water projects the question of how mitigation should be taken into account is critical. The provision in the Corps' guidance to the effect that mitigation cannot be taken into account in LEDPA determinations is unauthorized by law and counterproductive. In general, the basis for agency authority to require mitigation need to be clarified.

Blueprint 2025 greatly appreciates the opportunity to submit these comments and is, of course, available to clarify or expand upon them at your convenience.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'Norman Anderson', with a long horizontal stroke extending to the right.

Norman Anderson  
President

## **Blueprint 2025 Position Paper Modernizing the NEPA Environmental Review Process**

Over the last fifty or so years (since enactment of the National Environmental Policy Act “NEPA”) serious deficiencies have developed in the way the U.S. Government goes about the planning and authorization of infrastructure projects. This unnecessarily burdensome administrative process delays decisions on critical infrastructure projects, severely restricting our country’s ability to modernize infrastructure to enable the technologies of the future or even to maintain the infrastructure which is now in place.

China and our other competitors have in place not only programs to plan and prioritize the infrastructure to be built, but highly efficient computer aided approaches for individual projects beginning with the early planning stages and continuing throughout their development. Though the governance systems of these major competitors might be more conducive to efficient management of the development process than is our “rule of law” system, it should be possible to at least narrow the gap by simplifying and improving the U.S. system as it has evolved (or devolved) over the last 50 years and enabling the use of modern technology to make the authorization process work more efficiently. This note outlines possible steps toward that end.

### ***The Process for Achieving NEPA’s Goals is Outmoded and Inefficient***

Despite the well-intentioned goals of NEPA to help public officials make decisions based on an informed understanding of environmental consequences, there is a large and growing number of actors in both the public and private sectors that feel the Act has evolved into an unintended project-stalling process of administrative hurdles. What was originally designed to encourage simple informed decision making has become a burdensome and expensive process resulting in undue delays, loss of investment and, perhaps, even environmental harm.<sup>1</sup>

According to this view:

- Environmental analyses are routinely conducted for actions that reasoned judgment would conclude are not major and should not be subject to such onerous agency oversight.
- Though the act was intended to facilitate public input and participation, the environmental review process as it currently exists is esoteric and inaccessible to the average citizen who might like to weigh in. Data on the average length of an EIS is lacking, but it is not uncommon for these reports to span in excess of 1,000, 2,000, and

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<sup>1</sup> See *Modernizing NEPA for the 21<sup>st</sup> Century: Oversight Hearing Before the H. Comm. on Natural Resources*, 115<sup>th</sup> Cong. (2017) (statement of Philip Howard, Chairman Common Good).

even 3,000 pages, though CEQ regulations state that the text of final EIS reports should “normally be less than 150 pages and for proposals of unusual scope or complexity ... be less than 300 pages.”<sup>2</sup> This added complexity often means that participation only comes from well-funded organizations or experts in a particular field. While expert comments are appreciated, and encouraged, the process was meant to invite participation on a much broader scale.

- While agencies do not routinely track data on the cost of completing NEPA analyses, it is clear that the cost of an environmental review process for a single project can run into the millions of dollars. For instance, the Department of Energy (DOE) tracks limited cost data associated with NEPA analyses, specifically, funds the agency pays to contractors to prepare NEPA analyses. According to DOE data, the average payment to a contractor to prepare an EIS from calendar year 2003 through calendar year 2012 was \$6.6 million, with the range being a low of \$60,000 and a high of \$85 million.<sup>3</sup> DOE’s median EIS contractor cost was \$1.4 million over that time period.<sup>4</sup>

Though the extent and impact of these problems may be subject to debate, it seems clear that there is a great deal of room for improvement in order to mitigate what many interpret to be excessive delay, cost, and complexity.

As a recent House Natural Resources Committee hearing on the need to modernize NEPA highlighted, there remains broad support for the act’s basic objective of informing agency decision makers.<sup>5</sup> However, there seems to be a consensus that the process is plagued by the kinds of problems outlined here and that as a result, NEPA has failed to fulfill the basic purpose for which it was enacted, resulting in unintended adverse impacts on the U.S. economy, the quality of our infrastructure, and in fact, on the environment itself. Solutions like those suggested at the hearing, by former CEQ General Counsel, Dinah Bear, that more and better-trained federal employees are needed—are both unrealistic and rooted in the past.<sup>6</sup> NEPA, like other elements of our infrastructure, needs to be updated and brought into the 21<sup>st</sup> century. New tools including data analysis, artificial intelligence, and even virtual reality modeling can and should be effectively utilized to expedite and simplify the NEPA process, making it more accessible to ordinary citizens and yielding superior analytical results.

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<sup>2</sup> 40 C.F.R. § 1502.7.

<sup>3</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-14-370, NATIONAL ENVIRONMENTAL POLICY ACT: LITTLE INFORMATION EXISTS ON NEPA ANALYSES 13 (2014) (According to DOE, the cost for the \$85 million Hanford Tank Closure and Waste Management EIS includes the costs for three major EISs—waste management, high-level waste tank closure, and disposition of a nuclear reactor—that were started separately and ultimately integrated into one document spanning 3,600+ pages including agency responses to public comments).

<sup>4</sup> *Id.*

<sup>5</sup> See 42 U.S.C. § 4321 (NEPA’s congressional declaration of purpose states that the purposes of the act are “to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.”).

<sup>6</sup> See *Modernizing NEPA for the 21<sup>st</sup> Century: Oversight Hearing Before the H. Comm. on Natural Resources*, 115<sup>th</sup> Cong. (2017) (statement of Dinah Bear, Former General Counsel, Council on Environmental Quality).

## *Current Process Dynamics*

NEPA requires federal agencies to analyze both the nature and the extent of a project's potential environmental effects and, in many cases, document these analyses.<sup>7</sup> While much has been said about the merits of this process in furthering a public dialogue and improving the quality of decision making at the federal level, CEQ regulations make explicit the need for a level of analysis that is timely, efficient, and genuinely useful. For instance, under the CEQ's own articulation of NEPA's purpose, "NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail."<sup>8</sup> "NEPA's purpose is *not* to generate paperwork—even excellent paperwork—but to foster excellent action."<sup>9</sup> "Ultimately, it is not better documents but better decisions that count."<sup>10</sup> The regulations go on to include specific instructions targeted at two additional goals: (i) to reduce paperwork and (ii) reduce delay.<sup>11</sup> These instructions highlight the needs for agencies to reduce the length of environmental impact statements (EIS); emphasize the portions of the EIS that are useful to decision makers and the public; integrate NEPA requirements with other environmental review and consultation requirements; require comments to be as specific as possible; eliminate duplication with state and local procedures by providing for joint preparation; emphasize interagency cooperation before the EIS is prepared; establish appropriate time limits for the EIS process; and use accelerated procedures for proposals for legislation.<sup>12</sup>

Title 41 of the "Fixing America's Surface Transportation" Act ("FAST Act") --- establishes a new interagency committee (the Federal Permitting Improvement Steering Council "FPISC"), which is directed to ensure use of most efficient and timely processes for environmental review, and establishment of performance schedules for the completion of the environmental reviews. Title 41 thus both confirms the basic principles outlined above and augments them by a requirement that the Council established by the Act must ensure that "best technology" will be fully utilized in the environmental review process. The Title 41 mandate requires timely action to integrate modern technology into the NEPA process. An approach to such an effort is roughly outlined below.

### **The Process Now in Place**

NEPA is primarily a procedural statute. It does not require an agency to pursue the least environmentally harmful alternative, only that the agency give adequate consideration to the potential benefits and harms of the proposed action in order to demonstrate informed decision making.<sup>13</sup>

Over the last 50 years, NEPA practitioners and the courts have developed a well choreographed set of procedures designed to fulfill these procedural requirements.<sup>14</sup>

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<sup>7</sup> Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (CEQ regulations), 40 C.F.R. Parts 1500-1508, set out the level of analysis and documentation for complying with NEPA. The scope and form of these analyses can take the form of a Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS).

<sup>8</sup> 40 C.F.R. § 1500.1(b).

<sup>9</sup> *Id.* at § 1500.1(c) (emphasis added).

<sup>10</sup> *Id.*

<sup>11</sup> See 40 C.F.R. §§ 1500.4-1500.5.

<sup>12</sup> *Id.*

<sup>13</sup> See *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989); *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978).

- Identify the need for action in connection with a proposal.
- Determine whether the action is a federal action subject to NEPA review.
- Determine whether the proposed action is a “major federal action” i.e. could it have direct or indirect effects which have the *potential* to significantly affect the quality of the human environment.<sup>15</sup>
  - If “yes,” determine whether the project qualifies for a categorical exclusion (CE).
  - If significant environmental effects are uncertain and the action fails to qualify for a CE, then agencies must move forward with an environmental assessment (EA) providing for public involvement to the extent practicable.<sup>16</sup>
- Determine whether the EA reveals a potential for significant environmental effects.
  - If “no,” then agencies must issue a Finding of No Significant Impact explaining the reasoning for their decision.
  - If, however, in the process of completing the EA, it is determined that significant environmental effects *are* likely to result, a notice must be published in the federal register of intent to prepare an Environmental Impact Statement (EIS).
- A public process to determine the “scope” of the EIS must be conducted.
- A draft EIS will be prepared and published, with a minimum 90-day period for public review and further comment.
- After addressing public input, a final EIS is published (no time limit).
- Finally, a Record of Decision is issued by the lead agency detailing its decision to move forward with the proposal or not.

### NEPA for the 21<sup>st</sup> Century

Clearly there is ample room for this process to benefit from the economies and efficiencies associated with the digitization, data analytics and networking available to us in 2018, **but**, unfortunately, much of the analysis and “streamlining” attempted to date, whether pursuant to the FAST Act or the several Trump Administration executive orders in furtherance of those objectives,

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<sup>14</sup> See COUNCIL ON ENVIRONMENTAL QUALITY, A CITIZEN’S GUIDE TO THE NEPA: HAVING YOUR VOICE HEARD 8 (2007).

<sup>15</sup> See 40 C.F.R. § 1508.27.

<sup>16</sup> There is no statutory basis for the position taken by some agencies that there must be environmental review unless there is an applicable categorical exclusion. The mandatory C.E exercise is **unduly cumbersome** and **unduly restricts** the exercise of reasoned judgment by the agency head in determining whether an action is “major” An intelligent computer aided approach to this analysis could provide the equivalent of reasoned judgment based on the thousands of relevant factors which might affect a reasoned human decision.

has been developed by consensus among multiple agencies and predicated on traditional “paper trail” oriented administrative processes. It has failed to take into account the advances achievable through use of modern technology.

As a result, the environmental review process has yet to embrace the efficiencies associated with software development and technological integration. While people who wish to comment on a draft EIS can now do so through online portals instead of having to mail in written comments, there are additional opportunities to take the choreographed stages of review and introduce coordination that is currently missing.

Under the framework of a modern, digital, analytic protocol, there would be opportunities to introduce disciplines for reviewing some of the mistakes and inefficiencies embedded in the existing regulations and guidance, and perhaps even codify and replace the countless pages of existing guidance proven to be redundant or unnecessary. Just as important, broad use of interactive digital platforms would enable the development of a broadly accessible national environmental data network which would limit the need to “reinvent the wheel” in environmental reviews of previously studied areas. The result might be creation of a comprehensive environmental database that includes subject specific information capable of being drawn upon to inform future projects. For example, U.S. Fish and Wildlife has a rudimentary system for archiving conservation plans across the country. It’s not terribly user-friendly but it does allow landowners and developers a chance to see what’s been done before and what they might reasonably expect going forward in similar situations. Artificial intelligence and networking capabilities ought to be employed to compile something that is (i) informative; (ii) comprehensive; (iii) user-friendly; and (iv) capable of cutting down redundancy with previous work.

In addition to introducing efficiencies that could cut down on delay and associated development costs, there is reason to believe that digitization and analytics could not only provide a quality of analysis currently lacking in NEPA review but could also substantially reduce Government costs. Two NEPA-related studies completed by federal agencies show clearly that there is no current “handle” on the total governmental cost of NEPA compliance. A 2007 Forest Service report on competitive sourcing for NEPA compliance stated that it is “very difficult to track the actual cost of performing NEPA. Positions that perform NEPA-related activities are currently located within nearly every staff group, and are funded by a large number of budget line items.

There is no single budget line item or budget object code to follow in attempting to calculate the costs of doing NEPA.”<sup>17</sup> Similarly, a 2003 study funded by the Federal Highway Administration evaluating the performance of environmental “streamlining” noted that NEPA cost data would be difficult to segregate for analysis.”<sup>18</sup> Since, as noted the *outside contractor cost* of environmental review of a single proposal can range to \$85 million or beyond it is clear that the overall cost of NEPA review is very, very substantial. , Digitization could introduce analytics that break down the silos of knowledge described in the Forest Service report and allow us to know, at least, what NEPA is costing.

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<sup>17</sup> U.S. FOREST SERVICE, COMPETITIVE SOURCING PROGRAM OFFICE, *Feasibility Study of Activities Related to National Environmental Policy Act (NEPA) Compliance* (Washington, D.C., Aug. 10, 2007).

<sup>18</sup> U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, *Evaluating the Performance of Environmental Streamlining: Phase II* (Washington, D.C. 2003).

Even more important, the use of modern communications and analytical technologies can allow us to obtain more effective reviews, more expeditiously and at a much lower cost. Witnesses at a recent hearing before the Senate Environment and Public Works Committee estimated that NEPA related delays in permitting processes may be inflating our nation's infrastructure costs by as much as 50% and there is at least some evidence to suggest that estimate is on the low side. There is little doubt that inefficiencies in environmental review processes, in addition to handicapping our country's ability to keep pace with global competition, are resulting in costs well into the billions and possibly beyond.

### ***Conclusion***

Over the past several decades, we've split the atom, we've spliced the gene, and we've harnessed the modern electron. New science and new technology is fostering change at a breakneck pace and we are at a crossroads. The need to bring NEPA — arguably one of the most influential pieces of environmental legislation ever enacted — up to speed in a way that's attendant to the needs of 21<sup>st</sup> century development is not a partisan issue. This was recognized in the FAST Act by specifically including a title designed to improve the timeliness, predictability, and transparency of the Federal environmental review and authorization process for covered infrastructure projects.<sup>19</sup> President Trump has issued executive orders which further support the FAST 41 objectives and has targeted nearly a trillion dollars in infrastructure packages across the country given the state of our bridges, highways, and waterways. We are in a unique position to leverage knowledge available from actors in both the public and private sectors to bring to bear the full measure of our know-how on environmental review. Now is the time to bring the full resources of the federal government and the full reach of our collective expertise to this fundamental goal: we must modernize the NEPA environmental review process.

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<sup>19</sup> See 42 U.S.C. § 4370m *et seq.*



[3225-F8]

August 20, 2018

## Comments of Blueprint 2025

Re: Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

AGENCY: Council on Environmental Quality (CEQ).

ACTION: Advance Notice of Proposed Rulemaking.

Docket No. CEQ-2018-0001 - RIN: 0331-AA03

The Blueprint 2025 (“BP2025”) initiative is collaboration among infrastructure professionals, leading infrastructure development companies and public sector project managers, which advances and supports plans and policies to restore the U.S. position as the country with the world’s best, most efficient and most productive infrastructure. A central tenet of BP 2025’s policy is the recognition that reform of the permitting process for major infrastructure projects is absolutely essential if the U.S. is to modernize its infrastructure in time to allow development of the new technologies which will enable us to keep pace with the modernization programs of our major global competitors. As outlined in our recently updated position paper on modernization of the NEPA process (Annex A attached), the current process is cumbersome, inefficient and antiquated, it needs to be modernized and brought into the 21st century through better use of available technology.

A major reason for the failure, up to this point, to optimize the NEPA process lies in the facts, outlined in Annex A, that no one knows what NEPA review costs the government and the private sector and there are no performance metrics to evaluate the government’s performance. In this context, there has been no incentive to make the process more efficient or to reduce its cost. These deficiencies should be addressed as priority subjects pursuant to this ANPR as it is clear that the NEPA process imposes very direct and substantial costs on both government and the private sector. Perhaps more important, costs arising from NEPA delays may increase project costs by 50% or more and, for cutting edge projects, may substantially reduce the useful life between startup and technical obsolescence.

Against that background, we have the following comments in response to the specific questions presented in the advance notice:

1. Should CEQ’s NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?

*Both the FAST 41 efforts and those pursuant to the President’s “One Federal Action” order have operated on the basis of consensus among agencies and, as a result, have yielded complex and convoluted compromise procedures. An appropriate environmental*

*review procedure would adopt the “one window” approach mandated by laws such as the Deepwater Port Act and the Deep Seabed Hard Mineral Resources Act in which the lead agency is, in fact, the lead agency, with final decision making authority. Other affected agencies should be required to participate and exercise only the authorities granted by the laws which they are responsible for implementing. Experience shows that, by this approach, complex and controversial environmental reviews can be completed in less than a year.*

*As noted above, the time delay associated with the current NEPA review process not only imposes substantial costs on both government and the private sector, it impedes the development of the technology of the future and handicaps our Country's efforts to maintain its global leadership position.<sup>1</sup>*

2. Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions , and if so, how?

*Yes. As noted in the attached Update, the use of modern technologies can facilitate the development and maintenance of a National Environmental Database which can be drawn upon as necessary and relevant. Modern Data analytics can speed and regularize the environmental review process, minimize opportunities for agency bias and make judicial review more expeditious and predictable.*

3. Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?

*Yes. See response to Question 1 above.*

#### **Scope of NEPA Review:**

4. Should the provisions in CEQ's NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?

*The current suggested page limits seem appropriate, but should be enforced through appropriate entry software. To the extent necessary, supporting data can be included in*

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<sup>1</sup> As we have noted on a number of occasions, the Congress used to identify and “put its shoulder behind” projects which it believed to be of national importance and the agencies were by and large responsive to directives under laws such as the Trans Alaska Pipeline System Act, the Deepwater Port Act, the Deep Seabed Hard Mineral Resources Act and the Alaska Natural Gas Transportation System Act. In recent years, there has been more reluctance to address specific projects and projects which have been high on BP 2025's top fifty list, such as the Cadiz Water Project in California, the Clean Line Transmission Project, the Texas Central Rail Project the SeaOne Energy Transportation Project have languished and a few have been stalled by opposition from a very small number of members. President Trump's Executive Order 13766, directing priority processing of critical infrastructure projects has largely been ignored. If we are to keep pace with “Made in China” this situation must be remedied.

*searchable and linked data attachments. A digitized process would allow more expeditious review and enforcement of hard time limits.*

5. Should CEQ's NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decision makers and the public, and if so, how?

*In accordance with the existing statutes and regulations, NEPA analysis should address only the direct and indirect effects which are subject to regulation by the lead or participating agencies, NEPA documents should not address federal actions which are non-discretionary or impacts which are not subject to federal regulation. Agencies should participate in the lead agency process throughout the life of the project and their input should be limited to matters within their jurisdiction.<sup>2</sup>*

6. Should the provisions in CEQ's NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?

*Public involvement regulations should be predicated on an assumed basic level of computer literacy, should be developed with a view towards maintenance of efficient digital processes and should have timing requirements consistent with the capabilities of digital processes. Software protocols should seek to enforce basic requirements regarding relevance and supporting references.*

7. Should definitions of any key NEPA terms in CEQ's NEPA regulations, such as those listed below, be revised, and if so, how?

a. Major Federal Action;

*The existing formulation—a federal action which will have a direct or indirect effect which is within federal jurisdiction and which has the potential for significant environmental impacts – is appropriate but often not followed. The “within federal jurisdiction” element is too often ignored. Agencies often interpret the “no action” alternative to mean “no project” and thus allow them to expand their jurisdiction to cover the entire project rather than only the aspect, such as an air or water discharge, over which they exercise jurisdiction. It needs to be made clear that NEPA does not expand agency jurisdiction but only permits agencies to consider effects within their jurisdiction. It should also be made clear that “categorical exclusion” is not the first step in the environmental review process. The CATEX*

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<sup>2</sup> The Deepwater Port Act provides for a perpetual license which functions to provide all authorizations required for the construction and operation of the Ports and put in place a continuous environmental review process to assure that the Ports continue to utilize best available technology to minimize impacts on the marine environment. EPA participates in the licensing process and issues Clean Water Act Permits for the very minor domestic and cooling water discharges associated with Port Operations. Some EPA officials have taken the position that since the Ports are originally “new sources” and since water permits expire every five years, new and separate environmental reviews addressing the Ports' operations are required at five year intervals PS.

*review should only take place after the decision maker has concluded that a federal action has the potential to significantly affect the environment.*

**b. Effects;**

*Again, the effect must be within federal jurisdiction. NEPA does not expand federal jurisdiction and an interpretation which would, for example, allow consideration of the construction of a facility which is beyond the agency's jurisdiction would be contrary to the clear intention that agencies' jurisdiction should not be affected. A proper interpretation of this requirement would be consistent with NEPA's original intent and would greatly simplify its application.*

**c. Cumulative Impact;**

*Effects to be considered in cumulative impact analysis must be subject to federal regulatory authority. For example, if the federal government is prohibited from restricting the export of crude oil, crude oil exports should not be the subject of cumulative impact analysis. Cumulative effects, like other effects, must be within in an agency's jurisdiction in order to merit consideration in the environmental review process.*

**d. Significantly;**

*Under the Act, the decision maker must exercise discretion, subject to judicial review, to decide whether the a proposed federal action may have an effect, within her or his agency's jurisdiction, which has the potential to be "significant" As noted above, limitation of this requirement through improper application of the "categorical exclusion" is inappropriate and counterproductive. The "significantly" definition might be amended to make clear that the decision maker retains this authority.*

**e. Scope;**

*Environmental reviews must focus precisely on the foreseeable direct and indirect effects subject to federal regulation of the proposed federal action or reasonable alternatives to the federal action. Alternatives which are not within federal jurisdiction need not be assessed. The No Federal Action alternative need not be addressed unless the agency has discretion to take no action.*

**8. Should any new definitions of key NEPA terms, such as those noted below, be added, and if so, which terms?**

- a. Alternatives;
- b. Purpose and Need;
- c. Reasonably Foreseeable;
- d. Trivial Violation; and

f. Other NEPA terms.

9. Should the provisions in CEQ's NEPA regulations relating to any of the types of documents listed below be revised, and if so, how?

a. Notice of Intent;

b. Categorical Exclusions Documentation;

*As noted above, the "categorical exclusion" methodology is being misapplied in many agencies to impose additional limits on decision makers' discretion rather than to provide a "safe harbor" to be relied upon by decision makers facing decisions on close questions. It needs to be made clear that categorical exclusions do not preclude the exercise of agency discretion regarding the question of whether a "major federal action" is proposed and that extensive documentation and public comment is not required. Otherwise the CATEX functions essentially as a redundant environmental assessment. The millions and perhaps billions that have been spent by agencies in adopting CATEX regulations will have been wasted. Finally the exception in many agencies' CATEX regulations for matters involving substantial public interest or opposition essentially defeats the purpose of CATEXs. Those exceptions should be eliminated.*

c. Environmental Assessments;

*We need to know what Environmental Assessments cost, in both federal and private sector dollars and in project delay costs. Since nearly all EAs result in FONSI the cost benefit ratio of this process may be subject to question. Fortunately, the EA process should be amenable to radical attenuation through the application of modern technology. That potential should be explored intensively.*

d. Findings of No Significant Impact;

c. Environmental Impact Statements;

e. Records of Decision;

*As noted in the attached report, all of these elements of the NEPA review process have become unnecessarily complex and stylized. Digitization of the review process will provide an opportunity to enhance clarity and predictability. CEQ must take full advantage of that opportunity; and*

f. Supplements;

*The role of supplements should be clarified. There is no need for supplementation where there is no continuing federal oversight or periodic permitting. Where there is continued oversight or regulatory engagement, periodic updating should be a matter of course. Scoping and public participation requirements for supplements are likely very different from those for original EISs and should be tailored accordingly.*

10. Should the provisions in CEQ's NEPA regulations relating to the timing of agency action be revised, and if so, how?

*Addressing at the earliest practicable date is important and should be rigorously enforced. Particularly in adjudicatory proceedings, environmental documentation should be available prior to finding and application to be complete, certainly prior to commencement of the proceeding. Any necessary environmental review should be integrated into the proceeding and certainly should not be a basis for reopening a proceeding after the record is closed. There is no need for FEIS or ROD when a judicial decision is issued after a trial type proceeding. Time limits for final approval should be provided.*

11. Should the provisions in CEQ's NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised, and if so, how?

*Existing procedures for third party preparation of environmental review documents are cumbersome, create perverse incentives and should be eliminated. Reasoned review of applicant prepared documents should be a fully accepted protocol.*

12. Should the provisions in CEQ's NEPA regulations relating to programmatic NEPA documents and tiering be revised, and if so, how?

*Programmatic documentation is extremely useful and should be more effectively utilized. It should be made clear, however, that there is not a moratorium on permit issuance during the pendency of programmatic review and reviews should be completed within a reasonable time period. Digitization and data analytics will allow continuous input to programmatic review processes and would greatly improve the usefulness of this tool.*

13. Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised, and if so, how?

*Alternatives which are not within the regulatory purview of the reviewing agencies should be eliminated. Where an agency lacks authority to withhold action based on public interest considerations, the "no action" alternative is not available. Agency regulations restricting consideration of "mitigation" in choosing among alternatives or requiring selection of the "least impact" alternative should be examined to determine their statutory basis.*

**General:**

1. Are any provisions of the CEQ's NEPA regulations currently obsolete? If so, please provide specific recommendations on whether they should be modified, rescinded, or replaced.

*As noted above, the NEPA regulations require a comprehensive overhaul to enable full utilization of modern technology.*

2. Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient?

*As noted, we believe a comprehensive review of the entire process is required.*

3. Are there additional ways CEQ's NEPA regulations should be revised to promote coordination of environmental review and authorization decisions, such as combining NEPA analysis and other decision documents, and if so, how?

*Reliance on relevant State Environmental Review Documents should be mandatory.*

4. Are there additional ways CEQ's NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA, and if so, how?

*The Regulations should include a specific expedited review procedure with time limits for priority projects identified pursuant to E.O. 13766.*

5. Are there ways in which the role of tribal governments in the NEPA process should be clarified in CEQ's NEPA regulations, and if so, how?

6. Are there additional ways CEQ's NEPA regulations should be revised to ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible, and if so, how?

*Although it is clear that delays in permit issuance can have environmental consequences as adverse and severe as those of imprudent permit issuance, there are few consequences or disincentives for unnecessary or unreasonable delays in permit issuance. CEQ should work to provide appropriate performance metrics, cost monitoring and related mechanisms for providing a more appropriate balance.*

7. Are there additional ways CEQ's NEPA regulations related to mitigation should be revised, and if so, how?

*While the basic concept of mitigation may be relatively well understood, the details are not. Is it appropriate to require mitigation when the statute does not allow for a broad "public interest" determination? (We think the answer should be "No"). Should mitigation be taken into account in determining the "best" environmental alternative?<sup>3</sup> (We think the answer must be "Yes".) There are a number of these kinds of questions which must be answered in order to achieve fair and predictable results in this context.*

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<sup>3</sup> In circumstances where environmental review is linked with a substantive finding such as the Corps of Engineers LEDPA determination on water projects the question of how mitigation should be taken into account is critical. The provision in the Corps' guidance to the effect that mitigation cannot be taken into account in LEDPA determinations is unauthorized by law and counterproductive. In general, the basis for agency authority to require mitigation need to be clarified.

Blueprint 2025 greatly appreciates the opportunity to submit these comments and is, of course, available to clarify or expand upon them at your convenience.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'Norman Anderson', with a long horizontal stroke extending to the right.

Norman Anderson  
President

## **Blueprint 2025 Position Paper Modernizing the NEPA Environmental Review Process**

Over the last fifty or so years (since enactment of the National Environmental Policy Act “NEPA”) serious deficiencies have developed in the way the U.S. Government goes about the planning and authorization of infrastructure projects. This unnecessarily burdensome administrative process delays decisions on critical infrastructure projects, severely restricting our country’s ability to modernize infrastructure to enable the technologies of the future or even to maintain the infrastructure which is now in place.

China and our other competitors have in place not only programs to plan and prioritize the infrastructure to be built, but highly efficient computer aided approaches for individual projects beginning with the early planning stages and continuing throughout their development. Though the governance systems of these major competitors might be more conducive to efficient management of the development process than is our “rule of law” system, it should be possible to at least narrow the gap by simplifying and improving the U.S. system as it has evolved (or devolved) over the last 50 years and enabling the use of modern technology to make the authorization process work more efficiently. This note outlines possible steps toward that end.

### ***The Process for Achieving NEPA’s Goals is Outmoded and Inefficient***

Despite the well-intentioned goals of NEPA to help public officials make decisions based on an informed understanding of environmental consequences, there is a large and growing number of actors in both the public and private sectors that feel the Act has evolved into an unintended project-stalling process of administrative hurdles. What was originally designed to encourage simple informed decision making has become a burdensome and expensive process resulting in undue delays, loss of investment and, perhaps, even environmental harm.<sup>1</sup>

According to this view:

- Environmental analyses are routinely conducted for actions that reasoned judgment would conclude are not major and should not be subject to such onerous agency oversight.
- Though the act was intended to facilitate public input and participation, the environmental review process as it currently exists is esoteric and inaccessible to the average citizen who might like to weigh in. Data on the average length of an EIS is lacking, but it is not uncommon for these reports to span in excess of 1,000, 2,000, and

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<sup>1</sup> See *Modernizing NEPA for the 21<sup>st</sup> Century: Oversight Hearing Before the H. Comm. on Natural Resources*, 115<sup>th</sup> Cong. (2017) (statement of Philip Howard, Chairman Common Good).

even 3,000 pages, though CEQ regulations state that the text of final EIS reports should “normally be less than 150 pages and for proposals of unusual scope or complexity ... be less than 300 pages.”<sup>2</sup> This added complexity often means that participation only comes from well-funded organizations or experts in a particular field. While expert comments are appreciated, and encouraged, the process was meant to invite participation on a much broader scale.

- While agencies do not routinely track data on the cost of completing NEPA analyses, it is clear that the cost of an environmental review process for a single project can run into the millions of dollars. For instance, the Department of Energy (DOE) tracks limited cost data associated with NEPA analyses, specifically, funds the agency pays to contractors to prepare NEPA analyses. According to DOE data, the average payment to a contractor to prepare an EIS from calendar year 2003 through calendar year 2012 was \$6.6 million, with the range being a low of \$60,000 and a high of \$85 million.<sup>3</sup> DOE’s median EIS contractor cost was \$1.4 million over that time period.<sup>4</sup>

Though the extent and impact of these problems may be subject to debate, it seems clear that there is a great deal of room for improvement in order to mitigate what many interpret to be excessive delay, cost, and complexity.

As a recent House Natural Resources Committee hearing on the need to modernize NEPA highlighted, there remains broad support for the act’s basic objective of informing agency decision makers.<sup>5</sup> However, there seems to be a consensus that the process is plagued by the kinds of problems outlined here and that as a result, NEPA has failed to fulfill the basic purpose for which it was enacted, resulting in unintended adverse impacts on the U.S. economy, the quality of our infrastructure, and in fact, on the environment itself. Solutions like those suggested at the hearing, by former CEQ General Counsel, Dinah Bear, that more and better-trained federal employees are needed—are both unrealistic and rooted in the past.<sup>6</sup> NEPA, like other elements of our infrastructure, needs to be updated and brought into the 21<sup>st</sup> century. New tools including data analysis, artificial intelligence, and even virtual reality modeling can and should be effectively utilized to expedite and simplify the NEPA process, making it more accessible to ordinary citizens and yielding superior analytical results.

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<sup>2</sup> 40 C.F.R. § 1502.7.

<sup>3</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-14-370, NATIONAL ENVIRONMENTAL POLICY ACT: LITTLE INFORMATION EXISTS ON NEPA ANALYSES 13 (2014) (According to DOE, the cost for the \$85 million Hanford Tank Closure and Waste Management EIS includes the costs for three major EISs—waste management, high-level waste tank closure, and disposition of a nuclear reactor—that were started separately and ultimately integrated into one document spanning 3,600+ pages including agency responses to public comments).

<sup>4</sup> *Id.*

<sup>5</sup> See 42 U.S.C. § 4321 (NEPA’s congressional declaration of purpose states that the purposes of the act are “to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.”).

<sup>6</sup> See *Modernizing NEPA for the 21<sup>st</sup> Century: Oversight Hearing Before the H. Comm. on Natural Resources*, 115<sup>th</sup> Cong. (2017) (statement of Dinah Bear, Former General Counsel, Council on Environmental Quality).

## *Current Process Dynamics*

NEPA requires federal agencies to analyze both the nature and the extent of a project's potential environmental effects and, in many cases, document these analyses.<sup>7</sup> While much has been said about the merits of this process in furthering a public dialogue and improving the quality of decision making at the federal level, CEQ regulations make explicit the need for a level of analysis that is timely, efficient, and genuinely useful. For instance, under the CEQ's own articulation of NEPA's purpose, "NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail."<sup>8</sup> "NEPA's purpose is *not* to generate paperwork—even excellent paperwork—but to foster excellent action."<sup>9</sup> "Ultimately, it is not better documents but better decisions that count."<sup>10</sup> The regulations go on to include specific instructions targeted at two additional goals: (i) to reduce paperwork and (ii) reduce delay.<sup>11</sup> These instructions highlight the needs for agencies to reduce the length of environmental impact statements (EIS); emphasize the portions of the EIS that are useful to decision makers and the public; integrate NEPA requirements with other environmental review and consultation requirements; require comments to be as specific as possible; eliminate duplication with state and local procedures by providing for joint preparation; emphasize interagency cooperation before the EIS is prepared; establish appropriate time limits for the EIS process; and use accelerated procedures for proposals for legislation.<sup>12</sup>

Title 41 of the "Fixing America's Surface Transportation" Act ("FAST Act") --- establishes a new interagency committee (the Federal Permitting Improvement Steering Council "FPISC"), which is directed to ensure use of most efficient and timely processes for environmental review, and establishment of performance schedules for the completion of the environmental reviews. Title 41 thus both confirms the basic principles outlined above and augments them by a requirement that the Council established by the Act must ensure that "best technology" will be fully utilized in the environmental review process. The Title 41 mandate requires timely action to integrate modern technology into the NEPA process. An approach to such an effort is roughly outlined below.

## **The Process Now in Place**

NEPA is primarily a procedural statute. It does not require an agency to pursue the least environmentally harmful alternative, only that the agency give adequate consideration to the potential benefits and harms of the proposed action in order to demonstrate informed decision making.<sup>13</sup>

Over the last 50 years, NEPA practitioners and the courts have developed a well choreographed set of procedures designed to fulfill these procedural requirements.<sup>14</sup>

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<sup>7</sup> Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (CEQ regulations), 40 C.F.R. Parts 1500-1508, set out the level of analysis and documentation for complying with NEPA. The scope and form of these analyses can take the form of a Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS).

<sup>8</sup> 40 C.F.R. § 1500.1(b).

<sup>9</sup> *Id.* at § 1500.1(c) (emphasis added).

<sup>10</sup> *Id.*

<sup>11</sup> See 40 C.F.R. §§ 1500.4-1500.5.

<sup>12</sup> *Id.*

<sup>13</sup> See *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989); *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978).

- Identify the need for action in connection with a proposal.
- Determine whether the action is a federal action subject to NEPA review.
- Determine whether the proposed action is a “major federal action” i.e. could it have direct or indirect effects which have the *potential* to significantly affect the quality of the human environment.<sup>15</sup>
  - If “yes,” determine whether the project qualifies for a categorical exclusion (CE).
  - If significant environmental effects are uncertain and the action fails to qualify for a CE, then agencies must move forward with an environmental assessment (EA) providing for public involvement to the extent practicable.<sup>16</sup>
- Determine whether the EA reveals a potential for significant environmental effects.
  - If “no,” then agencies must issue a Finding of No Significant Impact explaining the reasoning for their decision.
  - If, however, in the process of completing the EA, it is determined that significant environmental effects *are* likely to result, a notice must be published in the federal register of intent to prepare an Environmental Impact Statement (EIS).
- A public process to determine the “scope” of the EIS must be conducted.
- A draft EIS will be prepared and published, with a minimum 90-day period for public review and further comment.
- After addressing public input, a final EIS is published (no time limit).
- Finally, a Record of Decision is issued by the lead agency detailing its decision to move forward with the proposal or not.

### NEPA for the 21<sup>st</sup> Century

Clearly there is ample room for this process to benefit from the economies and efficiencies associated with the digitization, data analytics and networking available to us in 2018, but, unfortunately, much of the analysis and “streamlining” attempted to date, whether pursuant to the FAST Act or the several Trump Administration executive orders in furtherance of those objectives,

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<sup>14</sup> See COUNCIL ON ENVIRONMENTAL QUALITY, A CITIZEN’S GUIDE TO THE NEPA: HAVING YOUR VOICE HEARD 8 (2007).

<sup>15</sup> See 40 C.F.R. § 1508.27.

<sup>16</sup> There is no statutory basis for the position taken by some agencies that there must be environmental review unless there is an applicable categorical exclusion. The mandatory C.E exercise is unduly cumbersome and unduly restricts the exercise of reasoned judgment by the agency head in determining whether an action is “major” An intelligent computer aided approach to this analysis could provide the equivalent of reasoned judgment based on the thousands of relevant factors which might affect a reasoned human decision.

has been developed by consensus among multiple agencies and predicated on traditional “paper trail” oriented administrative processes. It has failed to take into account the advances achievable through use of modern technology.

As a result, the environmental review process has yet to embrace the efficiencies associated with software development and technological integration. While people who wish to comment on a draft EIS can now do so through online portals instead of having to mail in written comments, there are additional opportunities to take the choreographed stages of review and introduce coordination that is currently missing.

Under the framework of a modern, digital, analytic protocol, there would be opportunities to introduce disciplines for reviewing some of the mistakes and inefficiencies embedded in the existing regulations and guidance, and perhaps even codify and replace the countless pages of existing guidance proven to be redundant or unnecessary. Just as important, broad use of interactive digital platforms would enable the development of a broadly accessible national environmental data network which would limit the need to “reinvent the wheel” in environmental reviews of previously studied areas. The result might be creation of a comprehensive environmental database that includes subject specific information capable of being drawn upon to inform future projects. For example, U.S. Fish and Wildlife has a rudimentary system for archiving conservation plans across the country. It’s not terribly user-friendly but it does allow landowners and developers a chance to see what’s been done before and what they might reasonably expect going forward in similar situations. Artificial intelligence and networking capabilities ought to be employed to compile something that is (i) informative; (ii) comprehensive; (iii) user-friendly; and (iv) capable of cutting down redundancy with previous work.

In addition to introducing efficiencies that could cut down on delay and associated development costs, there is reason to believe that digitization and analytics could not only provide a quality of analysis currently lacking in NEPA review but could also substantially reduce Government costs. Two NEPA-related studies completed by federal agencies show clearly that there is no current “handle” on the total governmental cost of NEPA compliance. A 2007 Forest Service report on competitive sourcing for NEPA compliance stated that it is “very difficult to track the actual cost of performing NEPA. Positions that perform NEPA-related activities are currently located within nearly every staff group, and are funded by a large number of budget line items.

There is no single budget line item or budget object code to follow in attempting to calculate the costs of doing NEPA.”<sup>17</sup> Similarly, a 2003 study funded by the Federal Highway Administration evaluating the performance of environmental “streamlining” noted that NEPA cost data would be difficult to segregate for analysis.”<sup>18</sup> Since, as noted the *outside contractor cost* of environmental review of a single proposal can range to \$85 million or beyond it is clear that the overall cost of NEPA review is very, very substantial. , Digitization could introduce analytics that break down the silos of knowledge described in the Forest Service report and allow us to know, at least, what NEPA is costing.

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<sup>17</sup> U.S. FOREST SERVICE, COMPETITIVE SOURCING PROGRAM OFFICE, *Feasibility Study of Activities Related to National Environmental Policy Act (NEPA) Compliance* (Washington, D.C., Aug. 10, 2007).

<sup>18</sup> U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, *Evaluating the Performance of Environmental Streamlining: Phase II* (Washington, D.C. 2003).

Even more important, the use of modern communications and analytical technologies can allow us to obtain more effective reviews, more expeditiously and at a much lower cost. Witnesses at a recent hearing before the Senate Environment and Public Works Committee estimated that NEPA related delays in permitting processes may be inflating our nation's infrastructure costs by as much as 50% and there is at least some evidence to suggest that estimate is on the low side. There is little doubt that inefficiencies in environmental review processes, in addition to handicapping our country's ability to keep pace with global competition, are resulting in costs well into the billions and possibly beyond.

### ***Conclusion***

Over the past several decades, we've split the atom, we've spliced the gene, and we've harnessed the modern electron. New science and new technology is fostering change at a breakneck pace and we are at a crossroads. The need to bring NEPA — arguably one of the most influential pieces of environmental legislation ever enacted — up to speed in a way that's attendant to the needs of 21<sup>st</sup> century development is not a partisan issue. This was recognized in the FAST Act by specifically including a title designed to improve the timeliness, predictability, and transparency of the Federal environmental review and authorization process for covered infrastructure projects.<sup>19</sup> President Trump has issued executive orders which further support the FAST 41 objectives and has targeted nearly a trillion dollars in infrastructure packages across the country given the state of our bridges, highways, and waterways. We are in a unique position to leverage knowledge available from actors in both the public and private sectors to bring to bear the full measure of our know-how on environmental review. Now is the time to bring the full resources of the federal government and the full reach of our collective expertise to this fundamental goal: we must modernize the NEPA environmental review process.

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<sup>19</sup> See 42 U.S.C. § 4370m *et seq.*

## South Dakota Dept Game, Fish and Parks

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**From:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
**To:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
**Date:** Thu, 30 Aug 2018 09:56:02 -0400  
**Attachments** 20180830092045535.pdf (1.15 MB); South Dakota Dept Game, Fish and Parks.pdf  
: (1.1 MB)

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-----Original Message-----

**From:** (b) (6) <(b) (6)>  
**Sent:** Thursday, August 30, 2018 9:21 AM  
**To:** Mansoor, Yardena M. EOP/CEQ <(b) (6)>  
**Subject:** Message from "RNP00267332FCB5"

This E-mail was sent from "RNP00267332FCB5" (C9155).

**Scan Date:** 08.30.2018 09:20:45 (-0400)  
**Queries to:** (b) (6)



## SOUTH DAKOTA DEPARTMENT OF GAME, FISH AND PARKS

523 EAST CAPITOL AVENUE | PIERRE, SD 57501

August 21, 2018

Edward A. Boling  
Associate Director for NEPA  
Council on Environmental Quality  
730 Jackson Place, NW  
Washington, DC 20503

Re: Advanced Notice of Proposed Rulemaking  
e-mail Subject: Docket ID number CEQ-2018-0001  
e-mail: Portal though <https://www.regulations.gov>

Dear Mr. Boling,

The South Dakota Department of Game, Fish and Parks (SDGFP) submits comments on the above-referenced matter. We appreciate the opportunity to respond to the Council on Environmental Quality's (CEQ) 18 questions and proposal to review the National Environmental Policy Act's (NEPA) procedural provisions. CEQ's intent is to review NEPA and identify if any changes may be needed to update and clarify regulations.

Our participation in environmental review of federal documents through National Environmental Policy Act (NEPA) is critical to our State's outdoor heritage, trust resources, and our citizens. If CEQ elects to streamline NEPA, we advocate that requirements for effects analyses on natural resources and processes remain accurate and robust through mandatory use of local and applicable science. In general, States have broad trustee and management authority of fish and wildlife within their borders, including species which occur on federal lands. Therefore, our relationship with federal agencies subject to NEPA is central to ensure that projects consider all impacts to wildlife, fisheries, and the ecological services they provide to our citizens.

Please continue to send future correspondence to the SDGFP.

Sincerely,

Kelly R. Hepler  
Cabinet Secretary



**South Dakota Department of Game, Fish and Parks**  
**Responses are Enumerated Identical to CEQ's questions**

NEPA is an essential public input process, which influences environmental management of our nation's treasured resources. NEPA is the foundation for environmental review, which requires transparency to the citizens of this country. NEPA should be afforded every opportunity to survive either as it is, or have thoughtful revisions, which do not weaken NEPA's intent. Federal agencies interpret and apply NEPA differently. Courts add another level of interpretations. The SDGFP has considerable experience reviewing federal agency NEPA but CEQ's questions will be interpreted by us according to the NEPA with we are most familiar: USDI Fish and Wildlife Service and Bureau of Land Management, or USDA Forest Service.

SDGFP struggled to provide useful, insightful responses to the CEQ questions. The results are that we cannot provide the types of responses we prefer. It is the SDGFP's opinion that some CEQ's questions may not lead to rigorous, methodical analyses of the current NEPA process. Therefore, we are concerned that CEQ's assessment may not accurately portray how publics understand and engage in NEPA. For example, we found both leading and ambiguous questions. Terminology is central to understanding and participating in the NEPA process and yet terms were not defined within the notice. Some Federal agency's interpretation of NEPA has resulted in a culture of putting an excessive burden on the public to research regulations and interpret terminology. Environmental review can become overwhelming for publics. The irony, in our opinion, is that this same culture of assuming publics know these critical details is prevalent within this scoping notice.

It would have been useful to commenters if CEQ had included term definitions and corresponding 40 CFR 1500+ and other regulations within this notice. NEPA documents offer a strategy of how projects will be assessed. This notice should also inform publics how inquiries will be assessed and the possible thresholds which could trigger change. Therefore, we kindly suggest that CEQ re-scope questions and provide the missing information.

***NEPA Process***

*1. Should CEQ's NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?*

We assume this question implies multiple *federal* agencies, which have a single NEPA document due to overlapping federal jurisdictions. The multiple federal agency NEPA proposals we have reviewed have not been at issue.

*2. Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions, and if so, how?*

One definition of efficiency includes operations as measured by a comparison of production with costs such as energy, time, personnel, and budgets. Efficiency is about the best possible use of resources. Efficiency is also a level of performance that employs the least amount of input to achieve the highest amount of output. Please describe how CEQ defines efficiency and the metrics to be measured.

A citation to this regulation would have been helpful. Having none, SDGFP opines that NEPA regulations absolutely should not demand page length. NEPA should not be reduced to subjective page length, rather held to a standard of substantive content. Some topics require little coverage while others, such as effects analysis on endangered species, climate change, water, and air could be quite detailed, as they should be. Science should not be abbreviated. CEQ should entrust the NEPA preparers to write a concise and thorough document. Some topics are controversial and to shorten the information, could lead to unnecessary objections and court litigation, which again, can be unnecessary and inefficient.

Clarification is needed by CEQ to define “*time limits for completion*”. If this is related to public commenting periods, these should absolutely not be shortened but lengthened. If this is related to timing *between* public commenting periods and the federal agency’s preparation timing, again, no. We witness the extreme pressure on federal employees to conduct day-to-day tasks, which include implementation of previously approved NEPA projects as well as preparation of new NEPA. Without additional personnel and sufficient budgets, federal agencies are under pressure to implement NEPA-approved projects or plans while preparing new NEPA. Federal agencies should have the discretion and be trusted to determine how much time is needed for NEPA within current CEQ guidelines. In addition, if cooperators are not forthcoming in their agreed-upon deliverables, it will jeopardize exceeding CEQ imposed deadlines. Until CEQ provides clarification on this question, we reserve additional comments.

*5. Should CEQ’s NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decision-makers and the public, and if so, how?*

Clarification: define “*significant issues*”. Under CEQ regulation, significance is determined through NEPA identification teams using specific issue identification processes. Therefore, “*significant issues*” terminology is defined much differently than the average public’s definition. CEQ’s definition should be within this question and not left open to interpretation. Until it is defined in this potential rule revision, we reserve additional comments.

Suggested revised CEQ regulations: How federal identification teams determine significance is often shortsighted to only considering federal processes and procedures, an incomplete picture of the environment and social values. By collaborating with non-federal cooperators on NEPA projects and planning, holistic perspectives are gained.

*6. Should the provisions in CEQ’s NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?*

See our previous comments and responses to questions 7-9.

*7 – 9. Questions on key terms and documents used in NEPA.*

CEQ should revise and re-scope this notice. CEQ requires NEPA documents to be forthcoming and transparent which are achieved, in part, by including glossaries and explanations of certain terms. It is unnecessarily burdensome for publics, and inefficient, to research the 16 terms and uses in questions 7-9. We reserve comment until such time CEQ provides current definitions and uses.

*10. Should the provisions in CEQ’s NEPA regulations relating to the timing of agency action be revised, and if so, how?*

Biased alternatives do not accurately consider an expanse of mitigation, design measures, or holistic public input. Two alternatives should be eliminated in favor of at least three.

**General**

*14. Are any provisions of the CEQ's NEPA regulations currently obsolete? If so, please provide specific recommendations on whether they should be modified, rescinded, or replaced.*

Unknown at this time.

*15. Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient?*

NEPA mailing lists should be a standard, shared database within a federal agency rather than each regional office having its own list with selected recipients. Discrete mailing lists inadvertently have omissions and proper public scoping is absent. Secondly, with land ownership databases available for most counties, federal agencies should be required to notify adjacent landowners to the best of their ability rather than rely on publications in the Federal Register or authorized newspaper.

*16. Are there additional ways CEQ's NEPA regulations should be revised to promote coordination of environmental review and authorization decisions, such as combining NEPA analysis and other decision documents, and if so, how?*

Clarification is needed as to "combining NEPA analysis and other decision documents". Examples of "other decision documents" would be helpful. NEPA's intent is not to regurgitate existing, viable decisions, laws and regulations but rather tier to those decisions. Previous NEPA decisions are presumably already incorporated into new NEPA documents through connected actions and cumulative effects analyses.

*17. Are there additional ways CEQ's NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA, and if so, how?*

Continued use of "efficiency" implies NEPA is in fact, inefficient. Again, what metrics are implied with this terminology? The question as to "what do you believe is working accurately with NEPA" could have also been asked by CEQ.

In SDGFP's experience, the federal agencies are overly concerned with process rather than content due to years of NEPA litigation. Our participation on federal projects has demonstrated that Federal agencies concentrate more on avoiding litigation by adhering to a stringent, methodical NEPA matrix, rather than content accuracy. Unfortunately, we find that process is the driver in NEPA, and accurate, relevant science is often sidelined. Courts interpretations of laws can be result in decisions which are still contrary to the science behind the project. There should be an avenue for science considerations as well as process.

*18. Are there ways in which the role of tribal governments in the NEPA process should be clarified in CEQ's NEPA regulations, and if so, how? No comment.*



## SOUTH DAKOTA DEPARTMENT OF GAME, FISH AND PARKS

523 EAST CAPITOL AVENUE | PIERRE, SD 57501

August 21, 2018

Edward A. Boling  
Associate Director for NEPA  
Council on Environmental Quality  
730 Jackson Place, NW  
Washington, DC 20503

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*5. Should CEQ’s NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decision-makers and the public, and if so, how?*

Clarification: define “*significant issues*”. Under CEQ regulation, significance is determined through NEPA identification teams using specific issue identification processes. Therefore, “*significant issues*” terminology is defined much differently than the average public’s definition. CEQ’s definition should be within this question and not left open to interpretation. Until it is defined in this potential rule revision, we reserve additional comments.

Suggested revised CEQ regulations: How federal identification teams determine significance is often shortsighted to only considering federal processes and procedures, an incomplete picture of the environment and social values. By collaborating with non-federal cooperators on NEPA projects and planning, holistic perspectives are gained.

*6. Should the provisions in CEQ’s NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?*

See our previous comments and responses to questions 7-9.

*7 – 9. Questions on key terms and documents used in NEPA.*

CEQ should revise and re-scope this notice. CEQ requires NEPA documents to be forthcoming and transparent which are achieved, in part, by including glossaries and explanations of certain terms. It is unnecessarily burdensome for publics, and inefficient, to research the 16 terms and uses in questions 7-9. We reserve comment until such time CEQ provides current definitions and uses.

*10. Should the provisions in CEQ’s NEPA regulations relating to the timing of agency action be revised, and if so, how?*

Biased alternatives do not accurately consider an expanse of mitigation, design measures, or holistic public input. Two alternatives should be eliminated in favor of at least three.

**General**

14. *Are any provisions of the CEQ's NEPA regulations currently obsolete? If so, please provide specific recommendations on whether they should be modified, rescinded, or replaced.*

Unknown at this time.

15. *Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient?*

NEPA mailing lists should be a standard, shared database within a federal agency rather than each regional office having its own list with selected recipients. Discrete mailing lists inadvertently have omissions and proper public scoping is absent. Secondly, with land ownership databases available for most counties, federal agencies should be required to notify adjacent landowners to the best of their ability rather than rely on publications in the Federal Register or authorized newspaper.

16. *Are there additional ways CEQ's NEPA regulations should be revised to promote coordination of environmental review and authorization decisions, such as combining NEPA analysis and other decision documents, and if so, how?*

Clarification is needed as to "combining NEPA analysis and other decision documents". Examples of "other decision documents" would be helpful. NEPA's intent is not to regurgitate existing, viable decisions, laws and regulations but rather tier to those decisions. Previous NEPA decisions are presumably already incorporated into new NEPA documents through connected actions and cumulative effects analyses.

17. *Are there additional ways CEQ's NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA, and if so, how?*

Continued use of "efficiency" implies NEPA is in fact, inefficient. Again, what metrics are implied with this terminology? The question as to "what do you believe is working accurately with NEPA" could have also been asked by CEQ.

In SDGFP's experience, the federal agencies are overly concerned with process rather than content due to years of NEPA litigation. Our participation on federal projects has demonstrated that Federal agencies concentrate more on avoiding litigation by adhering to a stringent, methodical NEPA matrix, rather than content accuracy. Unfortunately, we find that process is the driver in NEPA, and accurate, relevant science is often sidelined. Courts interpretations of laws can be result in decisions which are still contrary to the science behind the project. There should be an avenue for science considerations as well as process.

18. *Are there ways in which the role of tribal governments in the NEPA process should be clarified in CEQ's NEPA regulations, and if so, how?* No comment.

## RE: Draft background for NPRM

---

**From:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
**To:** "Loyola, Mario A. EOP/CEQ" <(b) (6)>  
**Date:** Tue, 04 Sep 2018 13:22:21 -0400  
**Attachments:** FR Document Drafting Handbook May 2018.pdf (2.94 MB); DOE NPR Jan 3, 2011.pdf (280.79 kB)

Section 2.12 of the Federal Register *Document Drafting Handbook* covers Authority Citations. This is normally a statement after the Supplementary Information and signature, leading into the sections that provides the [proposed] amendatory language, covered in Section 2.14.

(b) (5)  
[Redacted]

**From:** Loyola, Mario A. EOP/CEQ  
**Sent:** Tuesday, September 4, 2018 1:02 PM  
**To:** Mansoor, Yardena M. EOP/CEQ <(b) (6)>  
**Subject:** RE: Draft background for NPRM

Yardena I'm sorry but could you please explain this sentence. "The points made in your authority paragraph are already in the text"

And could please explain "and will appear in the amendatory language"

Sorry I'm being so obtuse, just trying to understand. Thank you.

Mario Loyola  
Associate Director, Regulatory Reform  
White House Council on Environmental Quality  
(o) (b) (6) | (c) (b) (6)

**From:** Mansoor, Yardena M. EOP/CEQ  
**Sent:** Tuesday, September 4, 2018 12:59 PM  
**To:** Loyola, Mario A. EOP/CEQ <(b) (6)>  
**Subject:** RE: Draft background for NPRM

(b) (5)  
[Redacted]  
[Redacted]  
[Redacted]

**From:** Loyola, Mario A. EOP/CEQ  
**Sent:** Tuesday, September 4, 2018 12:46 PM  
**To:** Mansoor, Yardená M. EOP/CEQ <(b) (6)>  
**Subject:** RE: Draft background for NPRM

Yardená thank you. (b) (5)  
[Redacted]  
[Redacted]

Mario Loyola  
Associate Director, Regulatory Reform  
White House Council on Environmental Quality  
(o) (b) (6) | (c) (b) (6)

**From:** Mansoor, Yardená M. EOP/CEQ  
**Sent:** Tuesday, September 4, 2018 12:27 PM  
**To:** Loyola, Mario A. EOP/CEQ <(b) (6)>  
**Cc:** Drummond, Michael R. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** Draft background for NPRM

Here is the draft responding to the task list item due today, for your review.

Some notes:

(b) (5)  
[Redacted]

(b) (5)



Yardena Mansoor  
Deputy Associate Director for NEPA  
Council on Environmental Quality

(b) (6) / (b) (6)

## RE: Can you fill this out for tomorrow?

---

**From:** "Barnett, Steven W. EOP/CEQ" <(b) (6)>  
**To:** "Szabo, Aaron L. EOP/CEQ" <(b) (6)>  
**Date:** Wed, 05 Sep 2018 17:52:38 -0400  
**Attachments:** Draft Agenda .09062018.docx (15.72 kB)

---

-----Original Message-----

**From:** Szabo, Aaron L. EOP/CEQ  
**Sent:** Wednesday, September 5, 2018 3:06 PM  
**To:** Barnett, Steven W. EOP/CEQ <(b) (6)>  
**Subject:** Can you fill this out for tomorrow?

Thanks and let me know if you have any questions.

**CEQ's NEPA Implementing Regulations Working Group**

**AGENDA**

September 6, 2018, 1:00 – 2:00PM

1. NEPA Background-History Discussion—Ted Boling, Mario Loyola (presenting), Working Group (discussion)—30 minutes
2. Initial Review of Priority List of Issues—Working Group—15 minutes
  - a. Determine Issues to Address in Next Week's Discussion
3. Brief Update on ANPRM Comments—Aaron Szabo—5 minutes
4. Discuss Highlights from Representative ANPRM Comments—Working Group—10 minutes

## RE: Updated Version of Spring Agenda

---

**From:** "Seale, Viktoria Z. EOP/CEQ" <(b) (6)>  
"Szabo, Aaron L. EOP/CEQ" <(b) (6)> "Neumayr, Mary B.  
**To:** EOP/CEQ" <(b) (6)> "Boling, Ted A. EOP/CEQ"  
<(b) (6)>  
**Date:** Mon, 05 Mar 2018 11:32:24 -0500

**Attachments**  
: CEQ Unified Agenda Entries--Spring 2018 vzs edit.docx (27.61 kB)

A few minor suggested edits.

(b) (5)

**From:** Szabo, Aaron L. EOP/CEQ  
**Sent:** Monday, March 5, 2018 10:59 AM  
**To:** Neumayr, Mary B. EOP/CEQ <(b) (6)> Seale, Viktoria Z. EOP/CEQ  
<(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** Updated Version of Spring Agenda

All,

Please find attached for an updated version that takes into account the comments from earlier this morning.

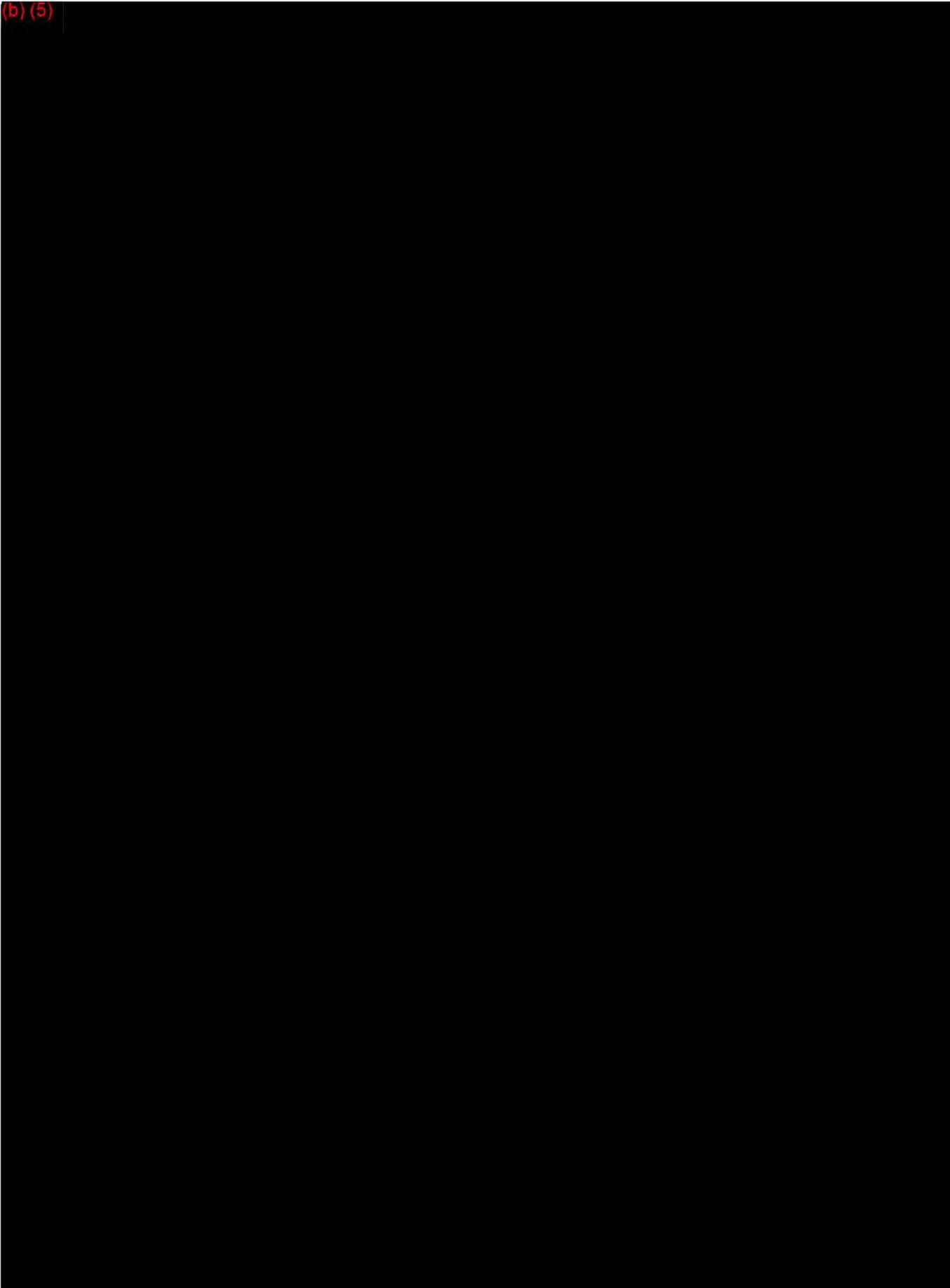
Please let me know if you have any additional comments.

Thank you very much.

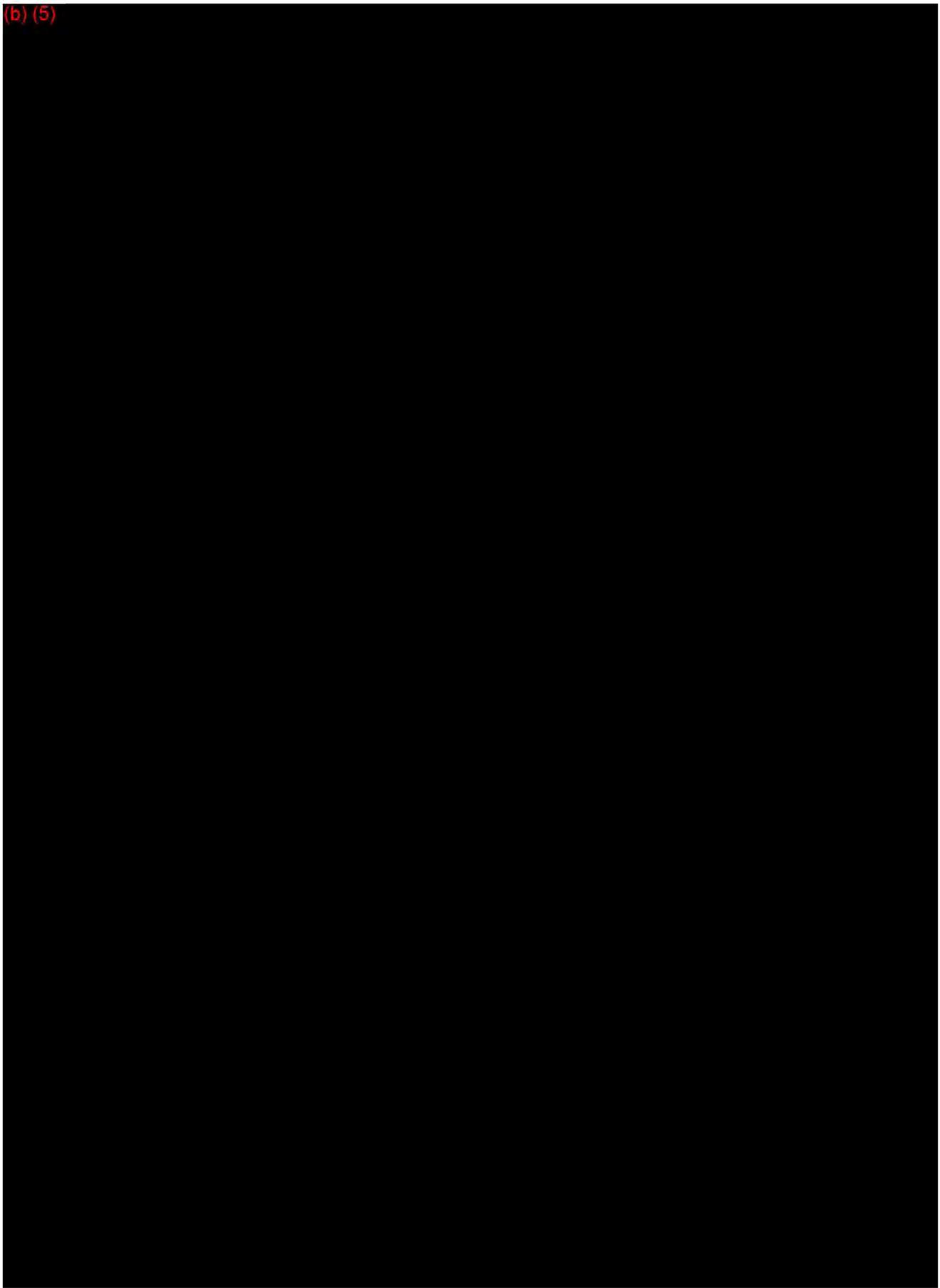
**Aaron L. Szabo**  
Senior Counsel  
Council on Environmental Quality  
(b) (6) (Desk)  
(b) (6) (Cell)  
(b) (6)

(b) (5)

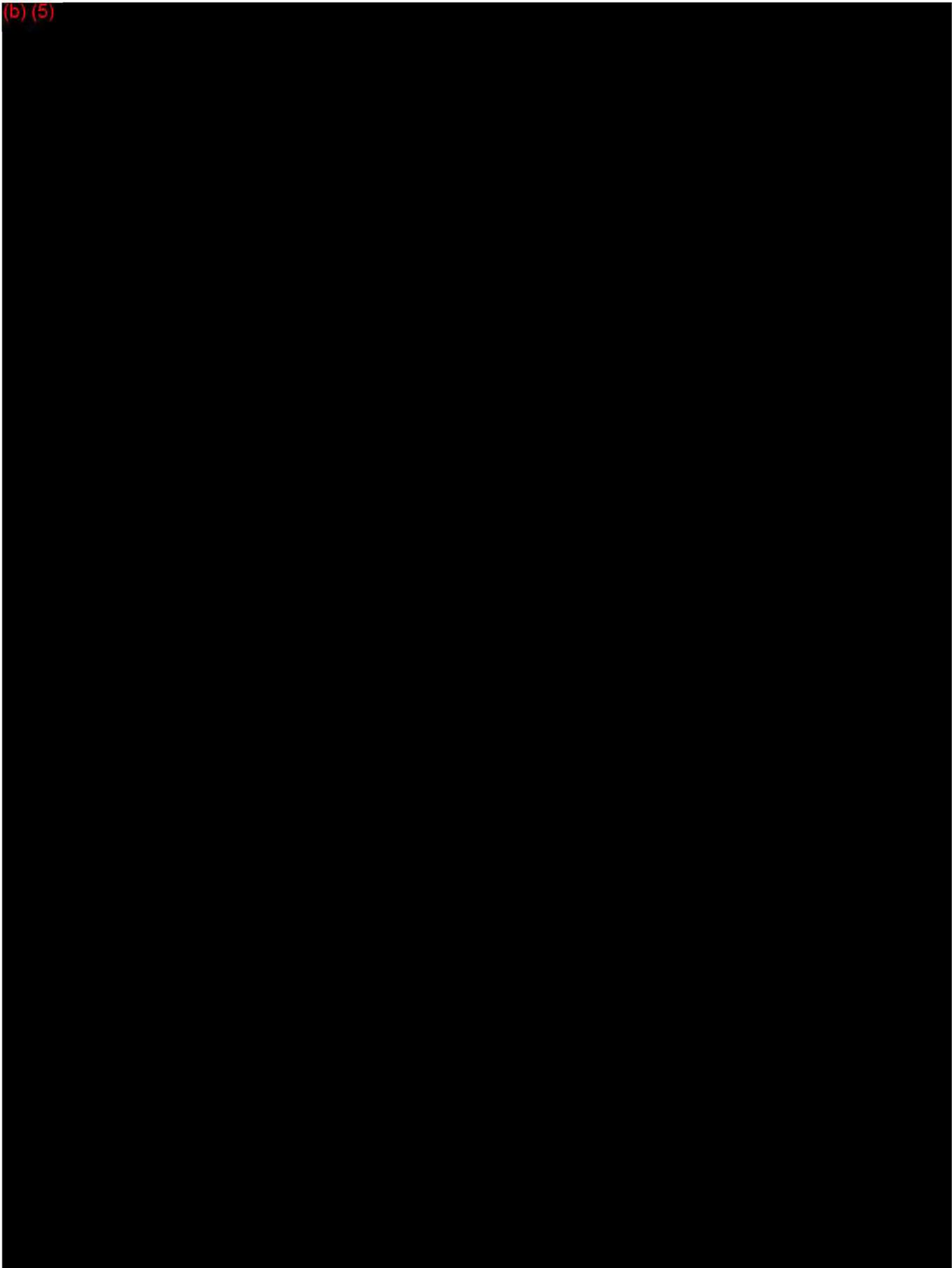
(b) (5)



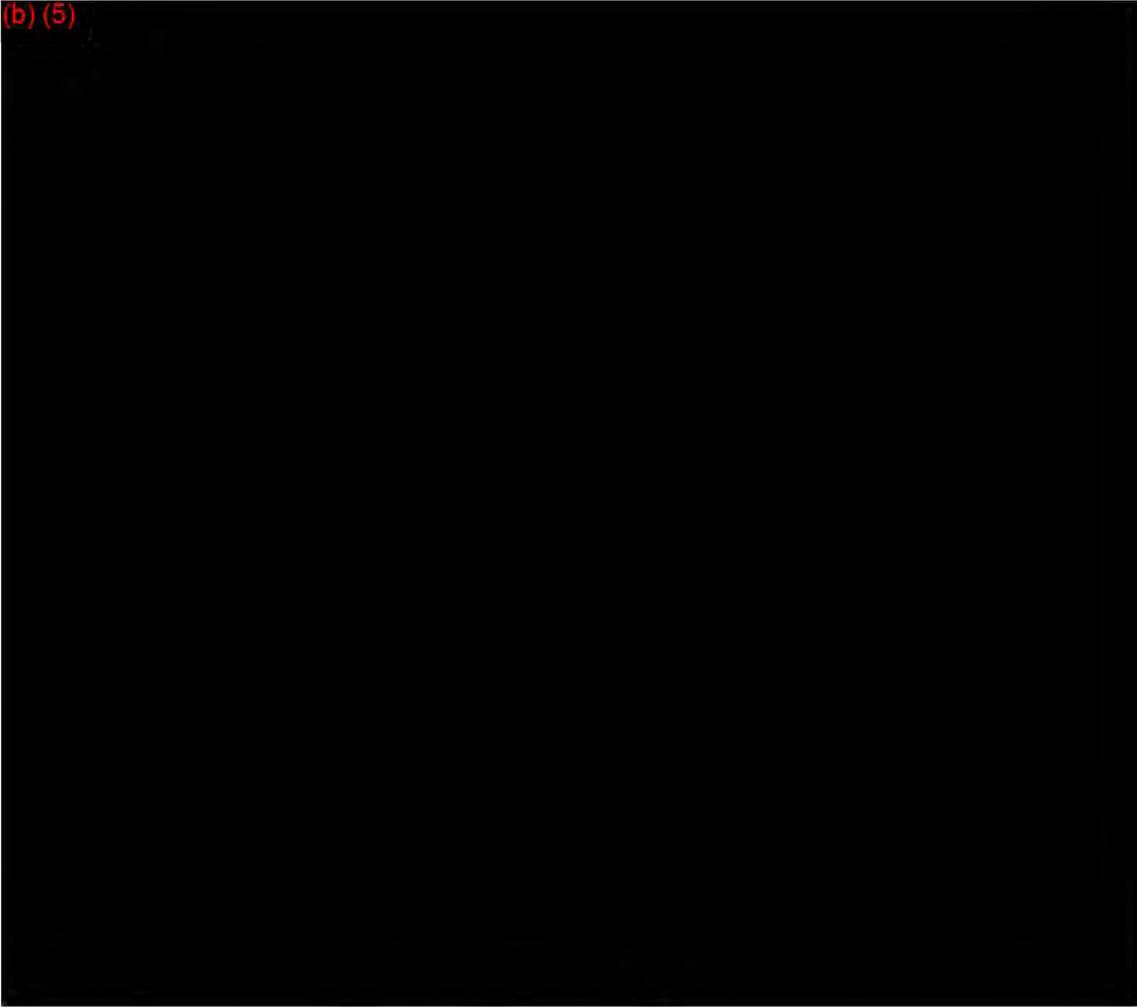
(b) (5)



(b) (5)



(b) (5)



DRAFT

[APG]

## RE: Revised ANPR

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**From:** "Seale, Viktoria Z. EOP/CEQ" <(b) (6)>  
"Loyola, Mario A. EOP/CEQ" (b) (6) "Neumayr, Mary B. EOP/CEQ" <(b) (6)> "Boling, Ted A. EOP/CEQ"  
**To:** <(b) (6)> "Szabo, Aaron L. EOP/CEQ"  
<(b) (6)> "Smith, Katherine R. EOP/CEQ"  
<(b) (6)>  
**Date:** Thu, 29 Mar 2018 11:15:57 -0400

**Attachments**  
: FR Notice for ANPRM - 3-28-2018 VZS edits.DOCX (52.84 kB)

Mario,

Attached please find suggested edits to conform with the Document Drafting Handbook, correct citations, and address a few other minor issues.

Thanks

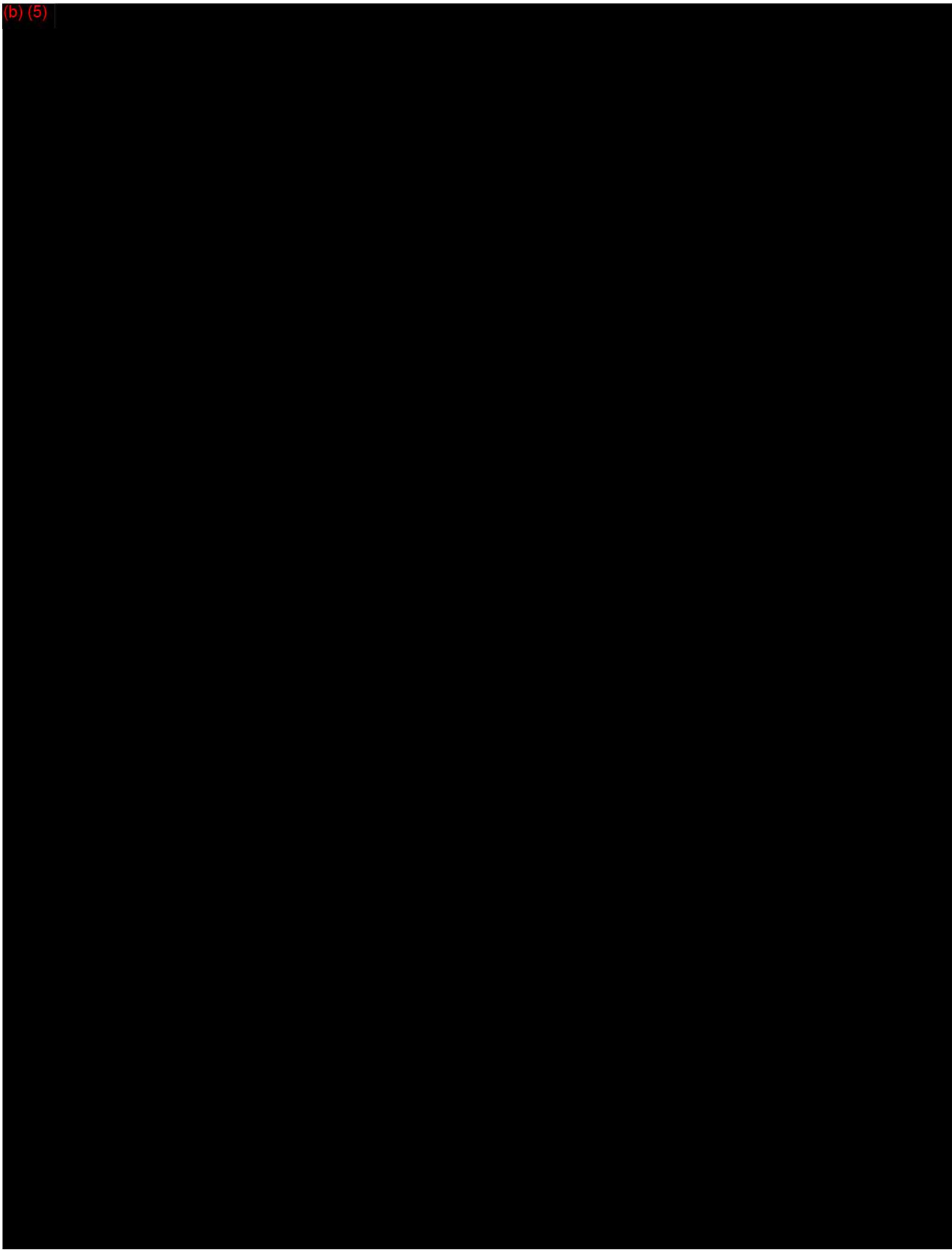
Viktoria

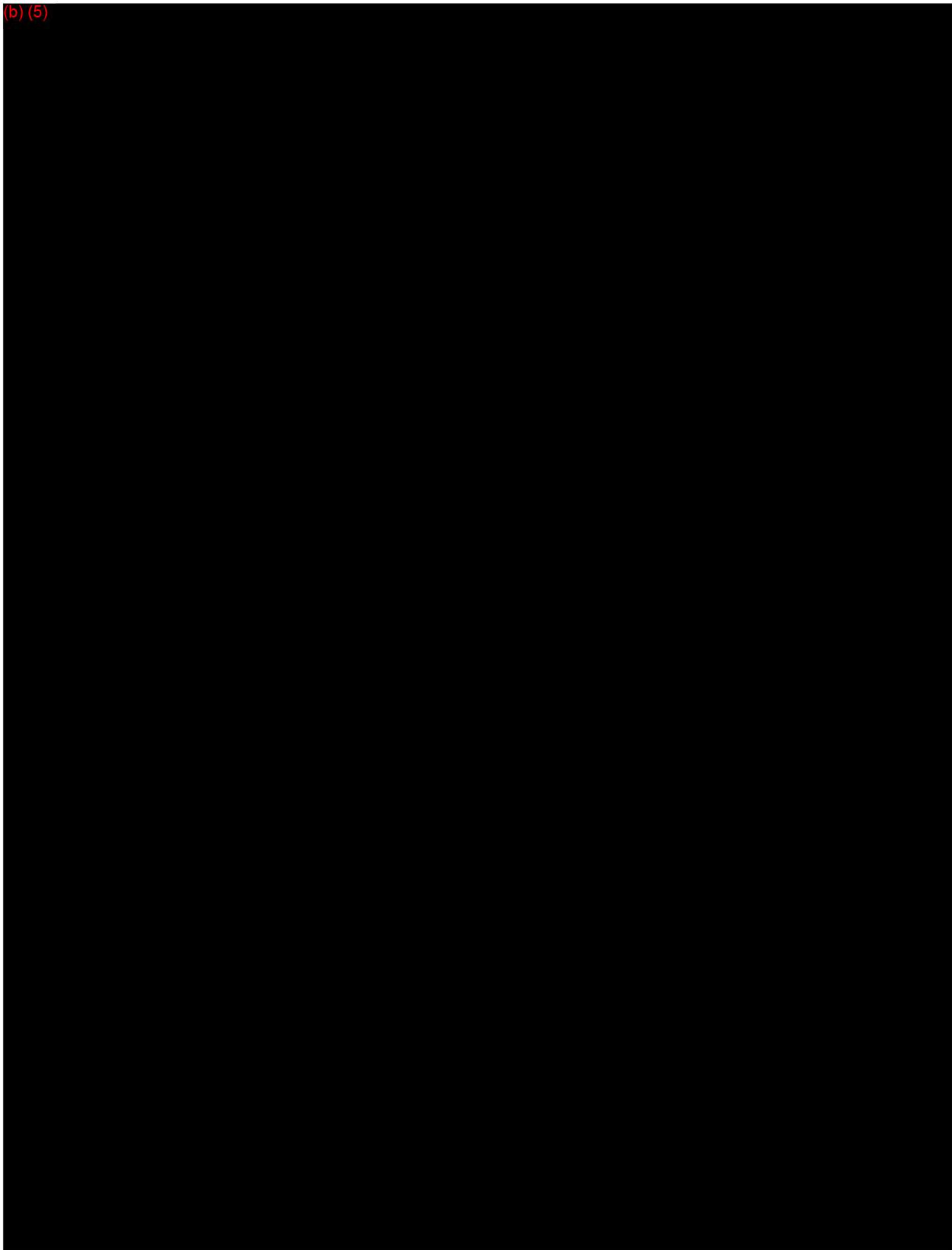
**From:** Loyola, Mario A. EOP/CEQ  
**Sent:** Wednesday, March 28, 2018 2:25 PM  
**To:** Neumayr, Mary B. EOP/CEQ <(b) (6)> Seale, Viktoria Z. EOP/CEQ  
<(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)> Szabo, Aaron L. EOP/CEQ <(b) (6)> Smith, Katherine R. EOP/CEQ  
<(b) (6)>  
**Subject:** Revised ANPR

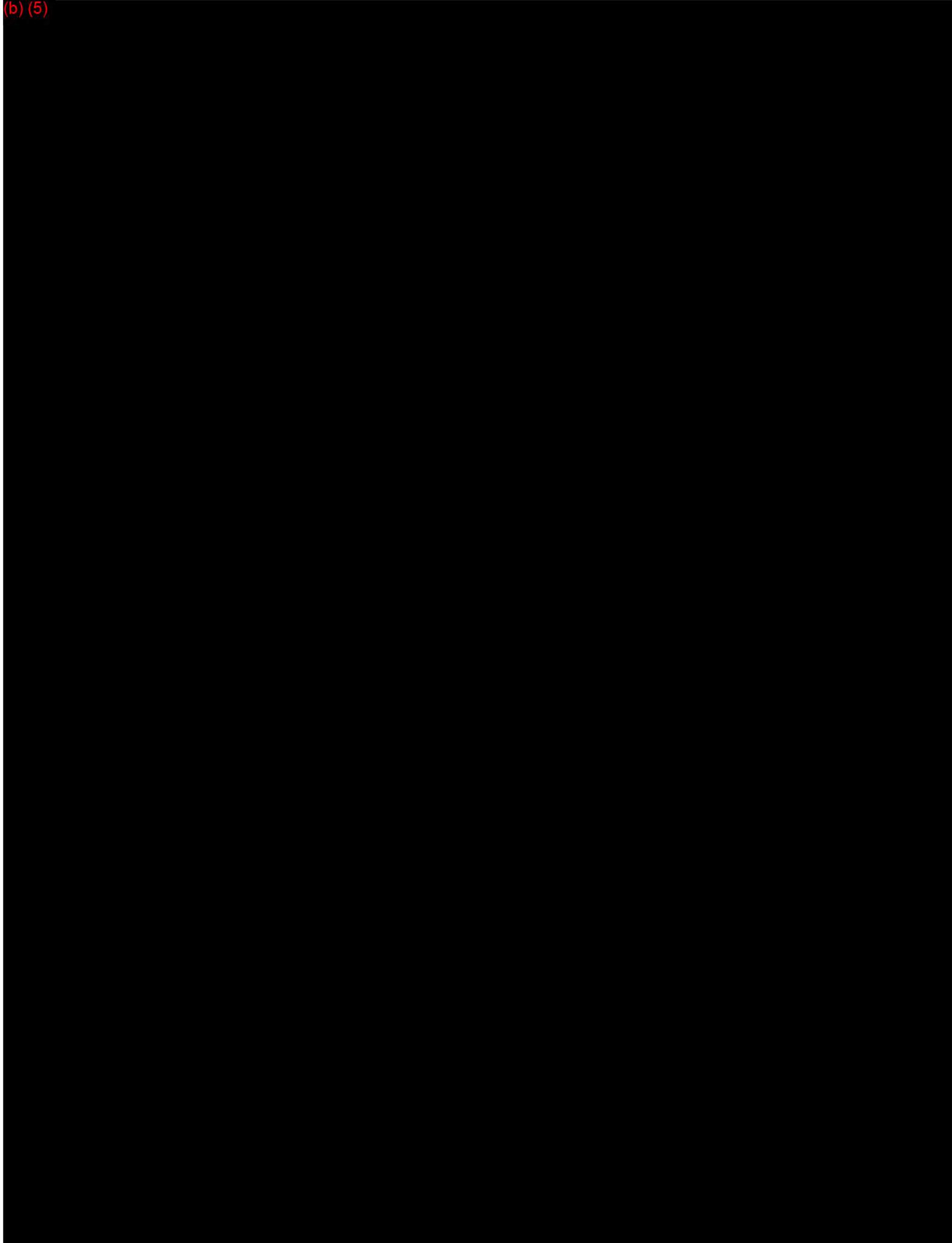
Dear friends – Please see attached a clean revised draft reflecting all changes so far. Please review and get back to me with any further suggested changes. Thank you.

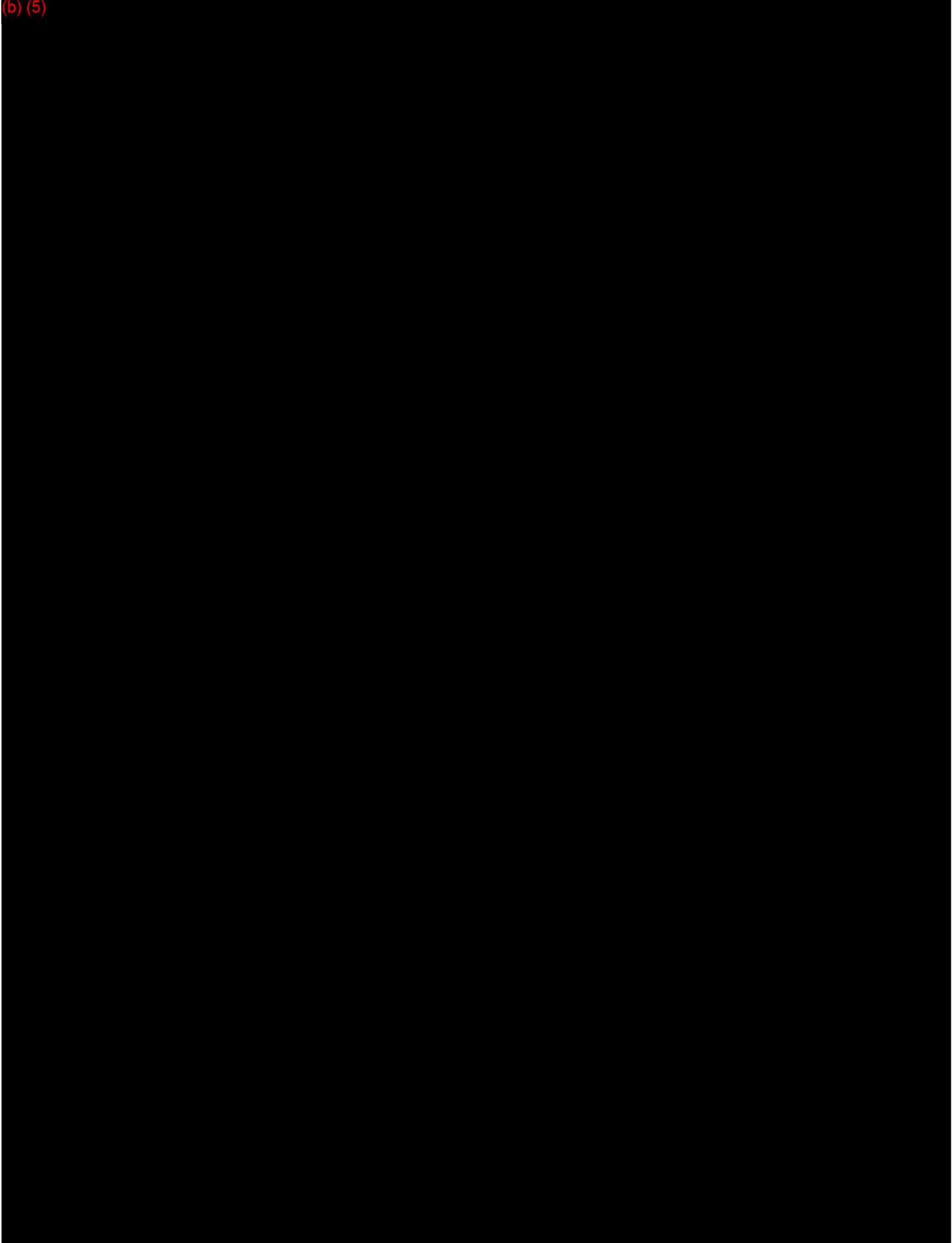
(b) (5)  
[Redacted]

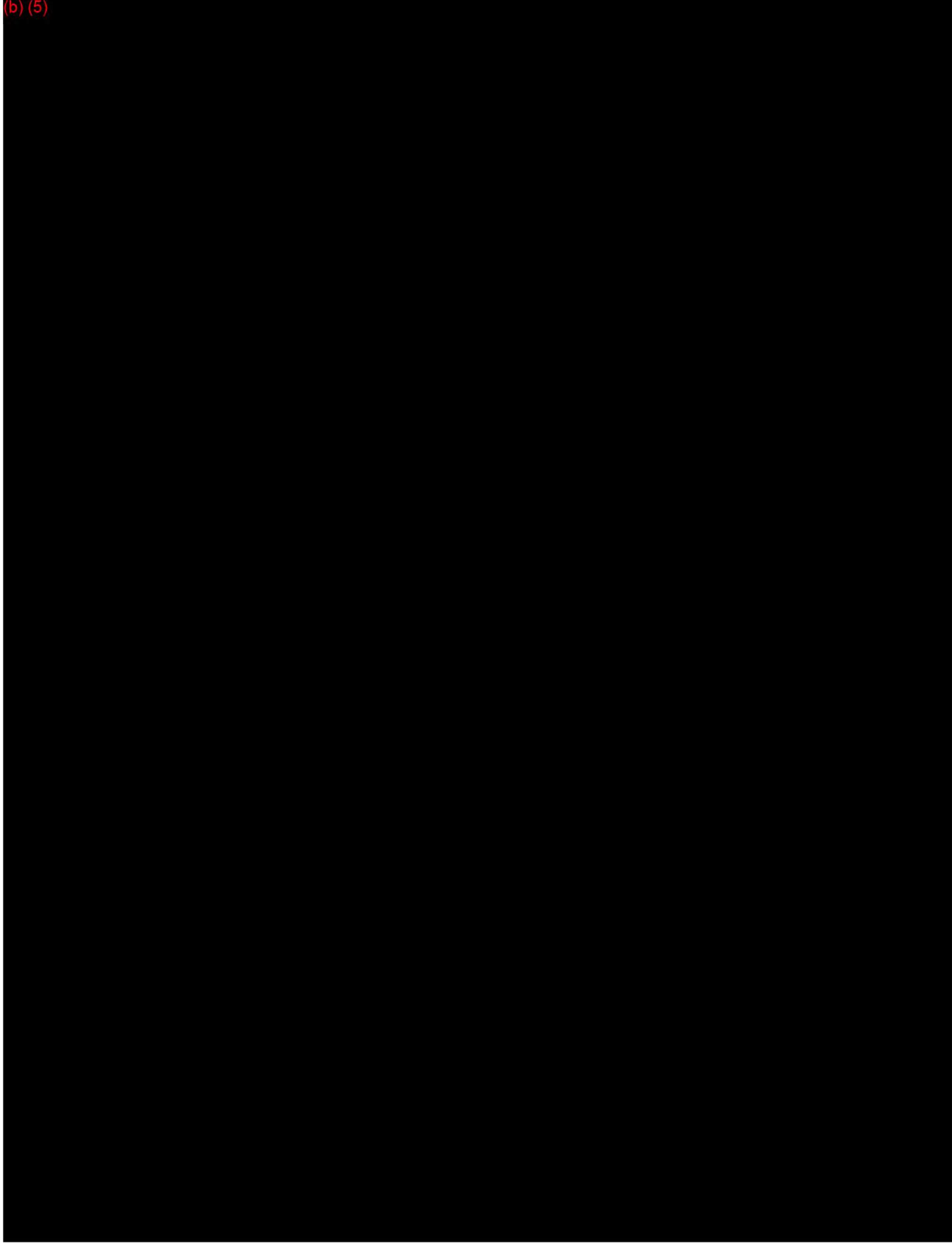
Mario Loyola  
Associate Director, Regulatory Reform  
White House Council on Environmental Quality  
(o) (b) (6) | (c) (b) (6)

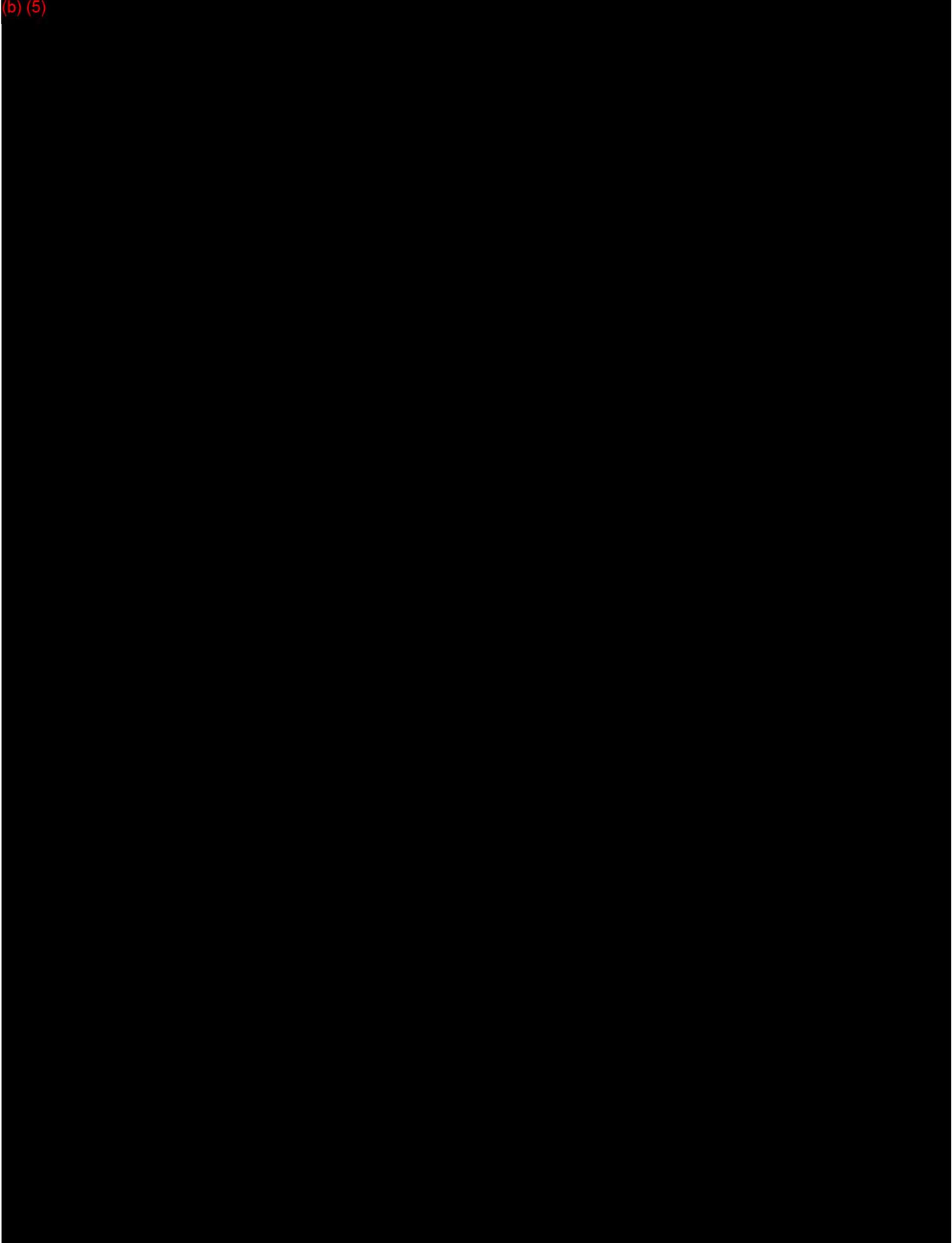


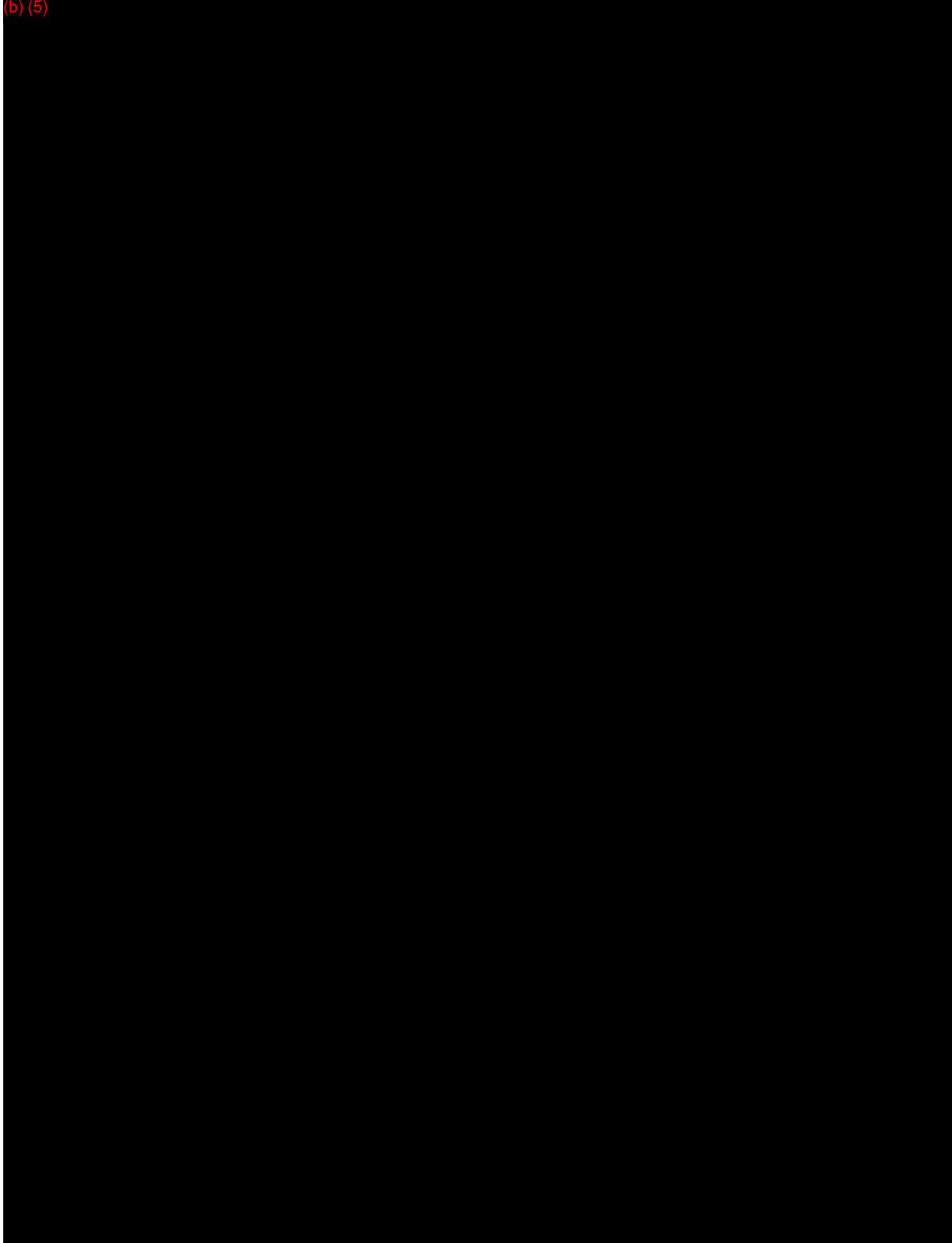


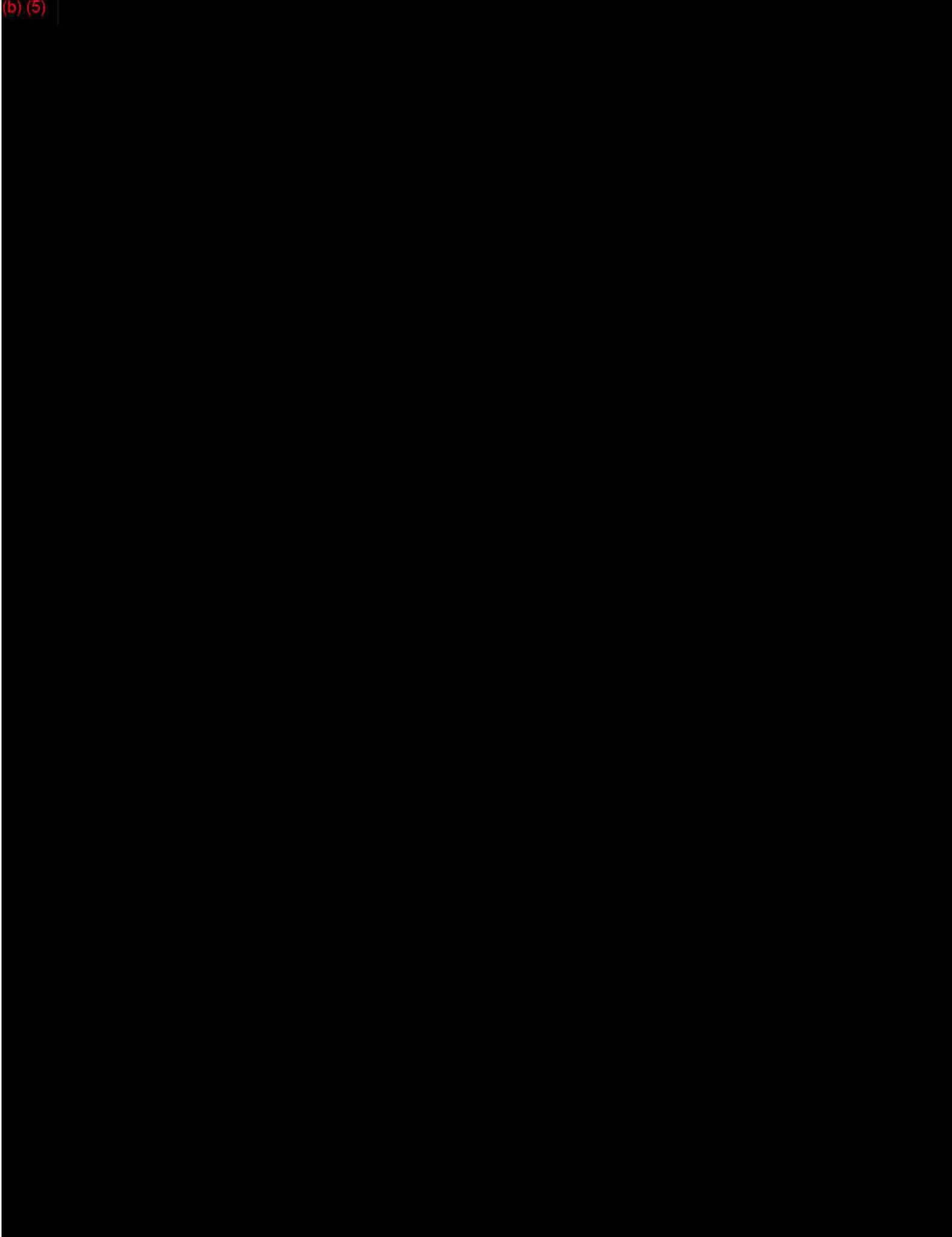












**FW: EO 12866 Review of CEQ NEPA Procedural Provisions**

**Prerule** (b) (5) comments (b) (5)

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**From:** "Whiteman, Chad S. EOP/OMB" <(b) (6)>  
"Szabo, Aaron L. EOP/CEQ" <(b) (6)> "Boling, Ted A. EOP/CEQ" <(b) (6)> "Drummond, Michael R. EOP/CEQ" <(b) (6)> "Barnett, Steven W. EOP/CEQ" <(b) (6)>  
**To:** "Sharp, Thomas L. EOP/CEQ" <(b) (6)> "Loyola, Mario A. EOP/CEQ" <(b) (6)> "Gignoux, Caroline M. EOP/CEQ (Intern)" <(b) (6)> "Smith, Katherine R. EOP/CEQ" <(b) (6)>

**Date:** Mon, 21 May 2018 10:26:54 -0400

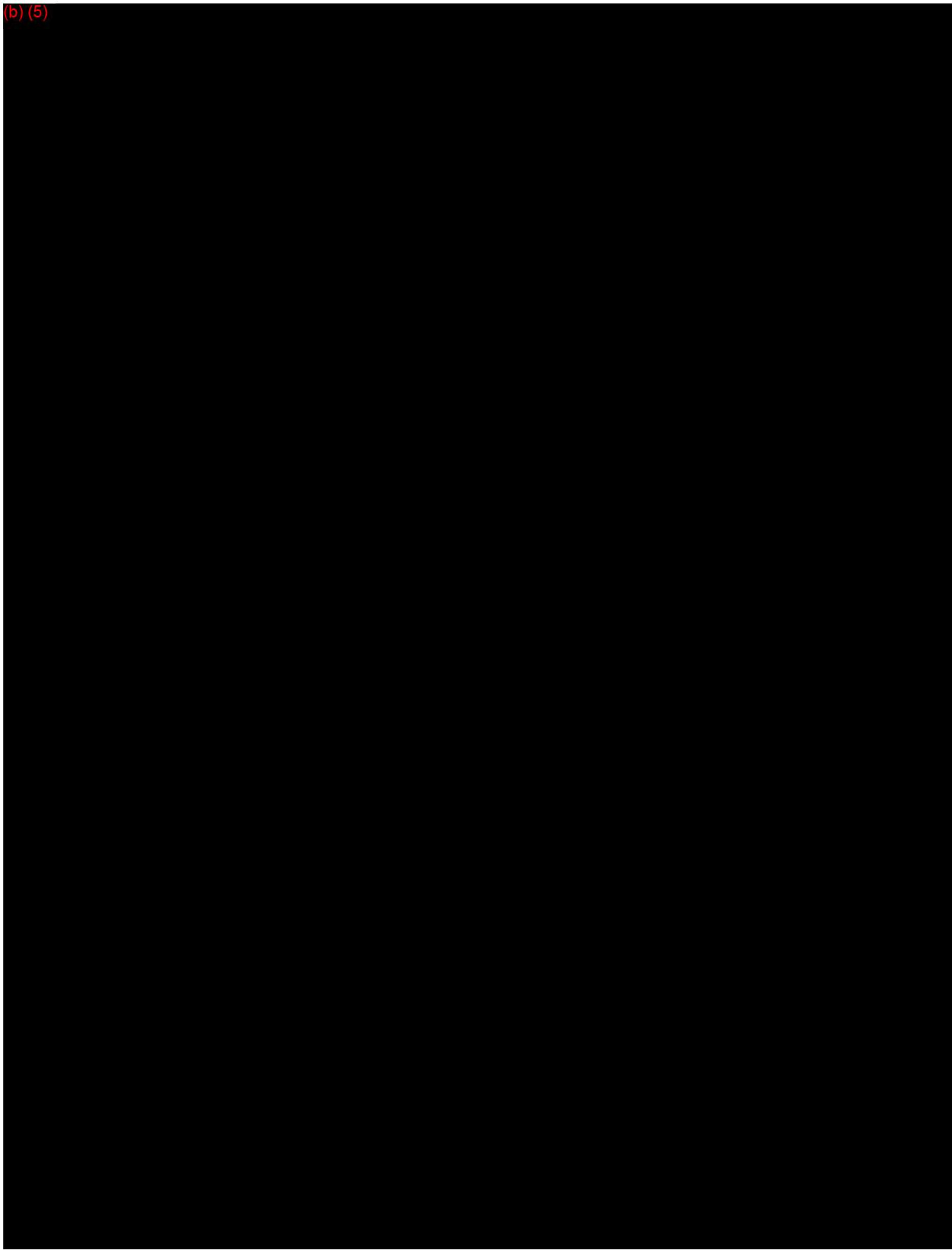
**Attachments**  
: Docket Number CEQ-2018-0001.docx (18.49 kB)

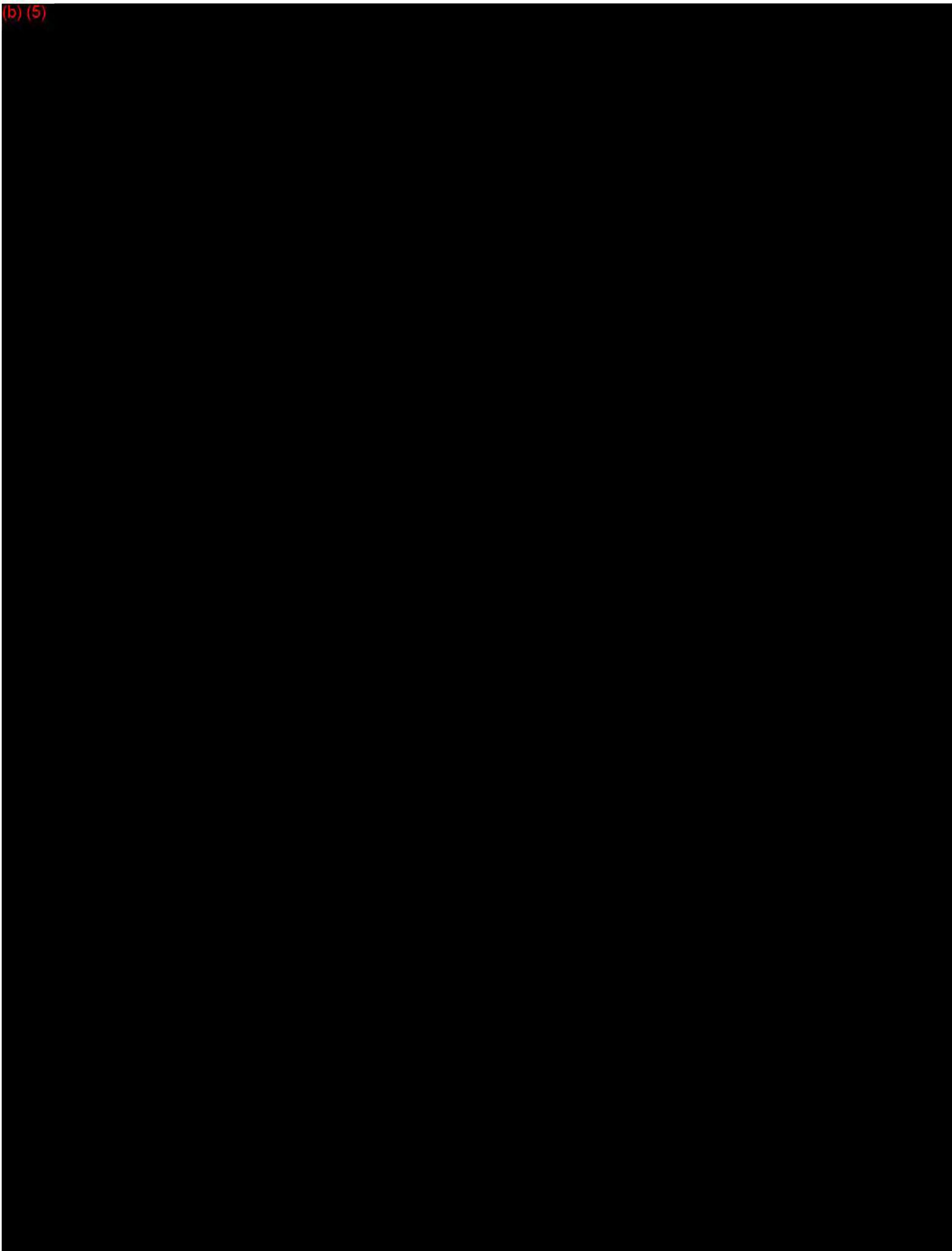
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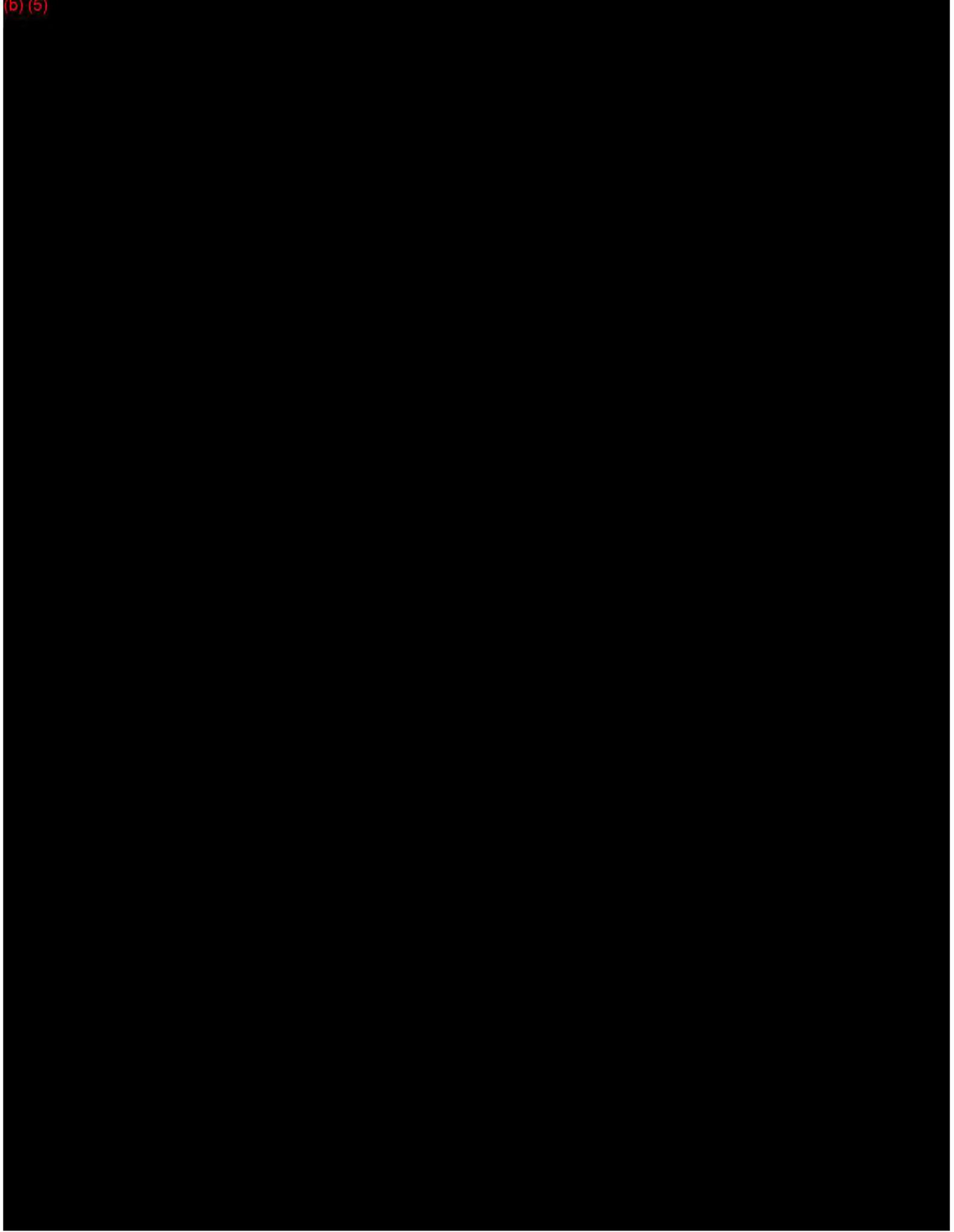
Attached and below are (b) (5) comments. (b) (5)

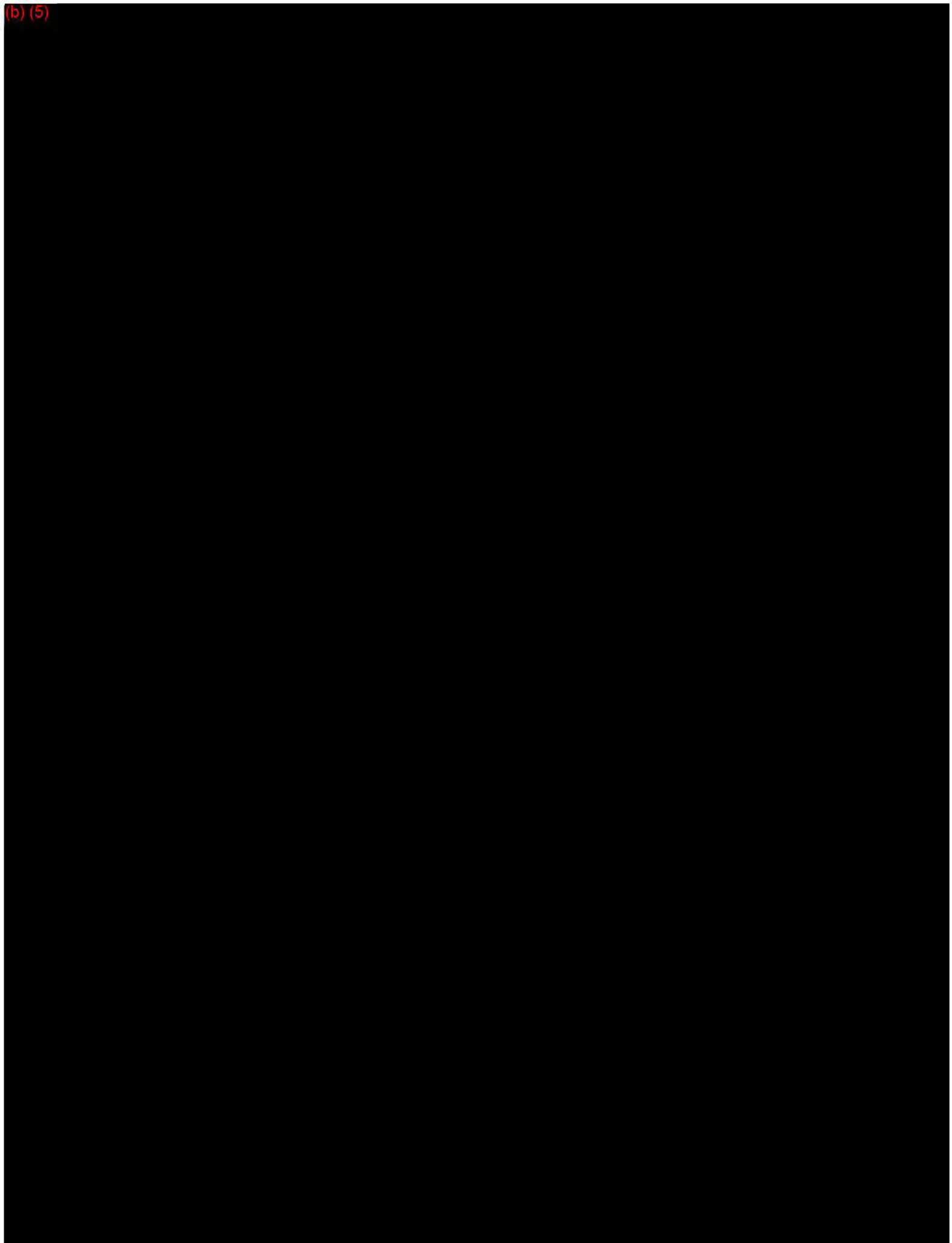
In addition to the attached comments, we have the following general comments:

(b) (5)









## Fwd: CEQ ANPRM

---

**From:** "Schneider, Daniel J. EOP/CEQ" <"o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=70576341fcb44ab780c5f4d1ca218647-sc">  
**To:** "Pettigrew, Theresa L. EOP/CEQ" <(b) (6)>  
**Date:** Thu, 14 Jun 2018 17:24:41 -0400  
**Attachments**  
: Draft FINAL ANPRM Fact Sheet 6-15-18.docx (19.82 kB)

---

Sent from my iPhone

Begin forwarded message:

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**From:** "Schneider, Daniel J. EOP/CEQ" <(b) (6)>  
**Date:** June 14, 2018 at 5:15:15 PM EDT  
**To:** "Love, Kelly A. EOP/WHO" <(b) (6)>  
**Cc:** "Ditto, Jessica E. EOP/WHO" <(b) (6)>  
**Subject:** CEQ ANPRM

FYI - Tomorrow, we're planning on posting the attached fact sheet on our NEPA Advanced Notice of Proposed Rulemaking to the CEQ page of the website. In this ANPRM, we're proposing a series of 20 questions for public comment on the NEPA process and the scope of NEPA review in an effort to solicit feedback on any potential future revisions to NEPA. Over the last four decades, CEQ has issued numerous guidance documents but has only substantially amended its regulations once. This ANPRM is part of our list of actions under E.O. 13807 to modernize the federal environmental review and authorization process. I don't foresee this generating much attention in that it's just an ANPRM but we may hear from EE News or another publication who pays particular attention to issues like this.

Let me know if you have any questions.

Dan

Dan Schneider  
Associate Director for Communications  
Council on Environmental Quality  
Executive Office of the President  
(b) (6) (desk)  
(b) (6)  
[www.whitehouse.gov/ceq](http://www.whitehouse.gov/ceq)



Version 6.15.18

## **Council on Environmental Quality Requests Public Comment on Potential Revisions to Update National Environment Policy Act Regulations**

On **June XX**, 2018, the Council on Environmental Quality (CEQ) submitted an Advance Notice of Proposed Rulemaking (ANPRM) titled “Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act” to the *Federal Register* for publication and public comment.

### **Background:**

- On August 15, 2017, President Trump issued [Executive Order 13807](#) which directed CEQ to develop an initial list of actions it would take to enhance and modernize the Federal environmental review and authorization process.
- In its [initial list of actions](#) published in the *Federal Register* on September 14, 2017, CEQ stated that it intended to review its 1978 regulations implementing the procedural requirements of the National Environmental Policy Act (NEPA) in order to identify potential updates and clarifications to those regulations.
- Over the past four decades, CEQ has issued numerous guidance documents but has amended its NEPA regulations substantively only once in 1986. Given the length of time since those regulations were issued, CEQ has determined it appropriate to solicit public comment on potential revisions to update the regulations.

### **Request for Public Comment:**

- CEQ requests comment on potential revisions to update and clarify CEQ’s NEPA regulations. Comments should be submitted on or before 30 days after the date of publication in the *Federal Register*. To comment, go to <https://www.regulations.gov> and follow the online instructions for submitting comments to Docket ID No. CEQ-2018-0001.
- Through a series of 20 questions, CEQ is requesting comments on provisions of the regulations related to the NEPA process and the scope of NEPA review.

### **Next Steps:**

- Following the conclusion of the public comment period, CEQ will review the comments before taking any potential further action.

## FW: FR 2018-13246\_1644312 redline edit

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**From:** "Boling, Ted A. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=eae5b047f871428b9b46baf8afd1176a-bo">  
**To:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**Date:** Fri, 15 Jun 2018 13:58:23 -0400  
**Attachments**  
: FR 2018-13246\_1644312 redline edit.docx (47.66 kB)

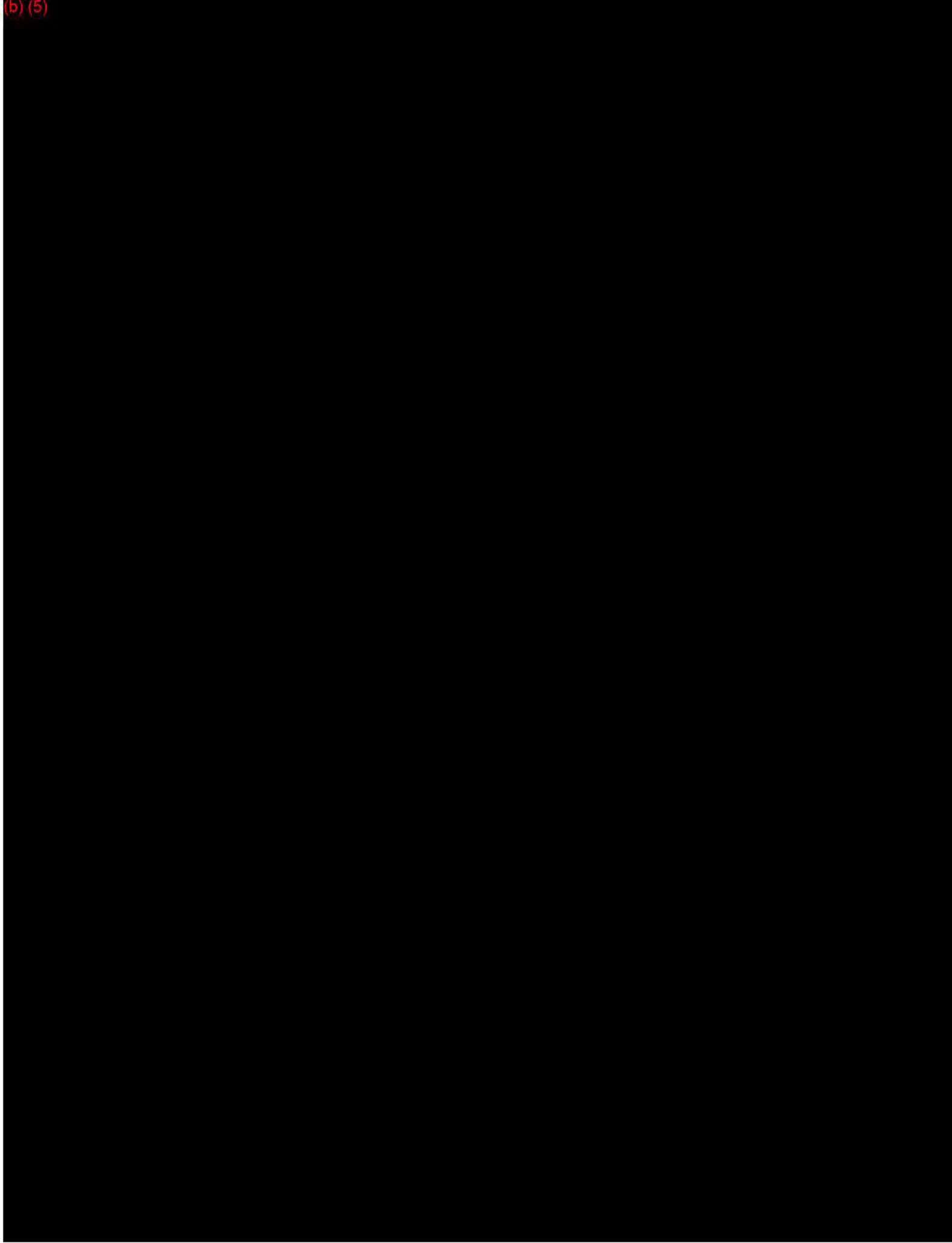
**From:** Seale, Viktoria Z. EOP/CEQ  
**Sent:** Friday, June 15, 2018 1:34 PM  
**To:** Neumayr, Mary B. EOP/CEQ <(b) (6)> Szabo, Aaron L. EOP/CEQ <(b) (6)>  
**Cc:** Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** FR 2018-13246\_1644312 redline edit

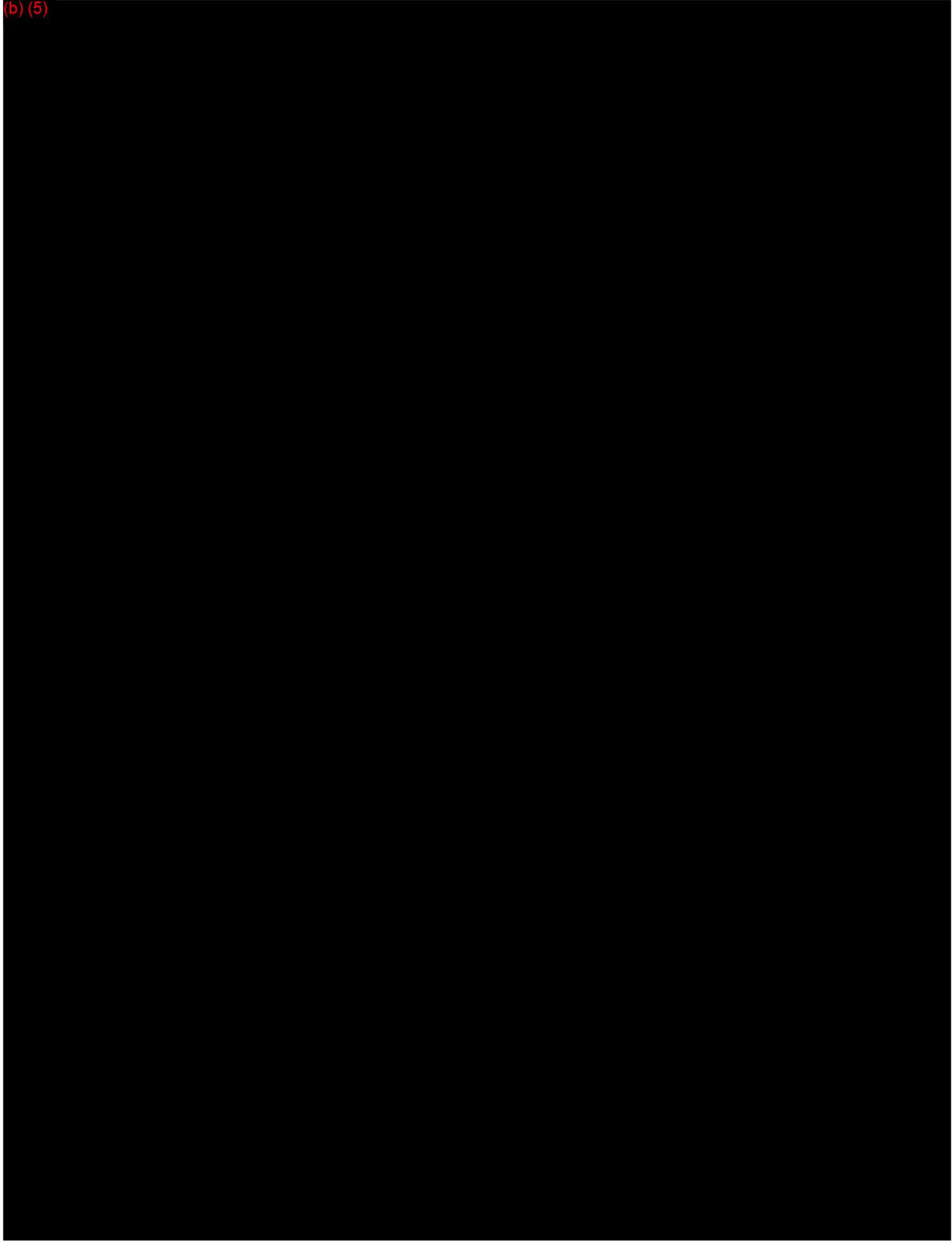
Mary and Aaron,

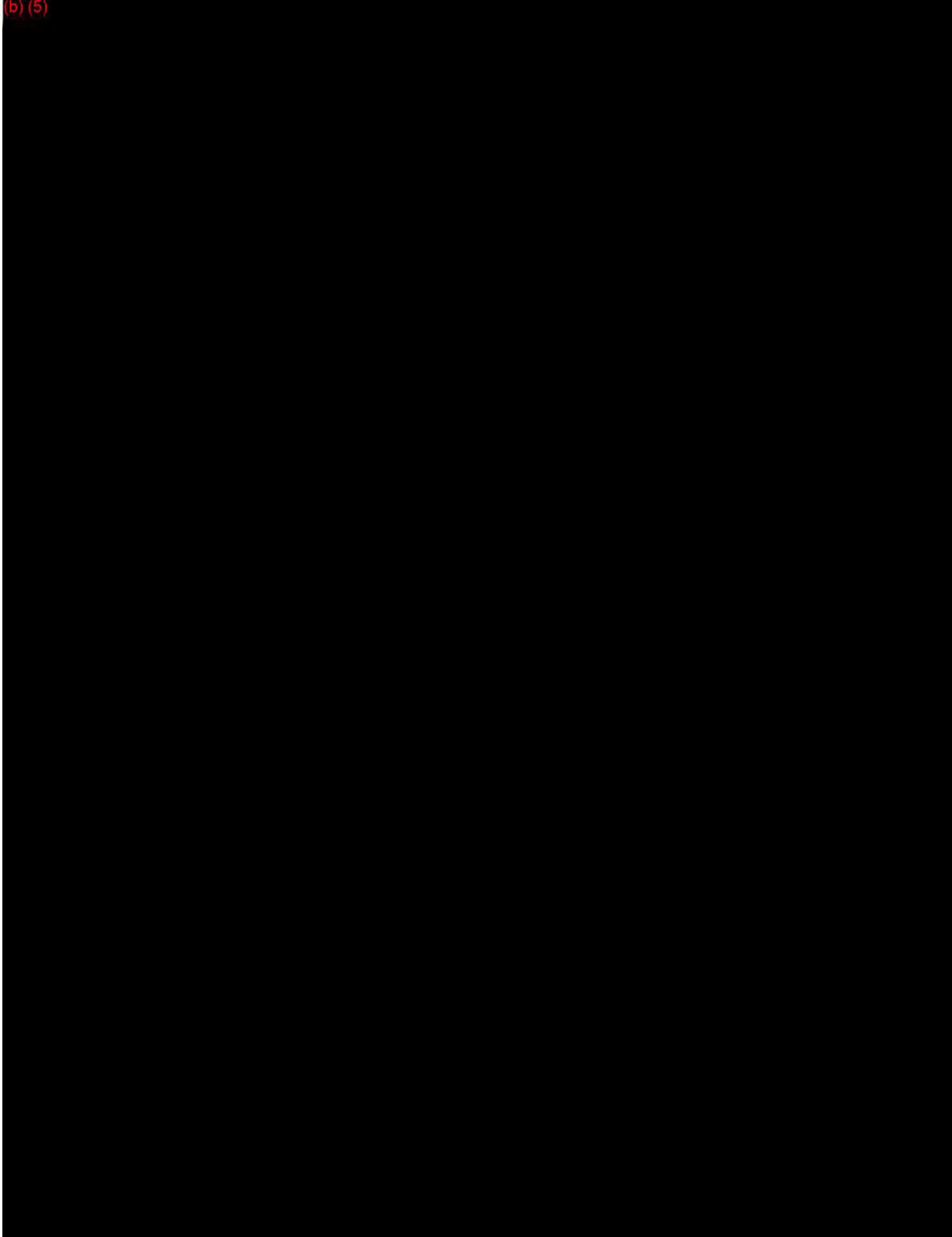
(b) (5)

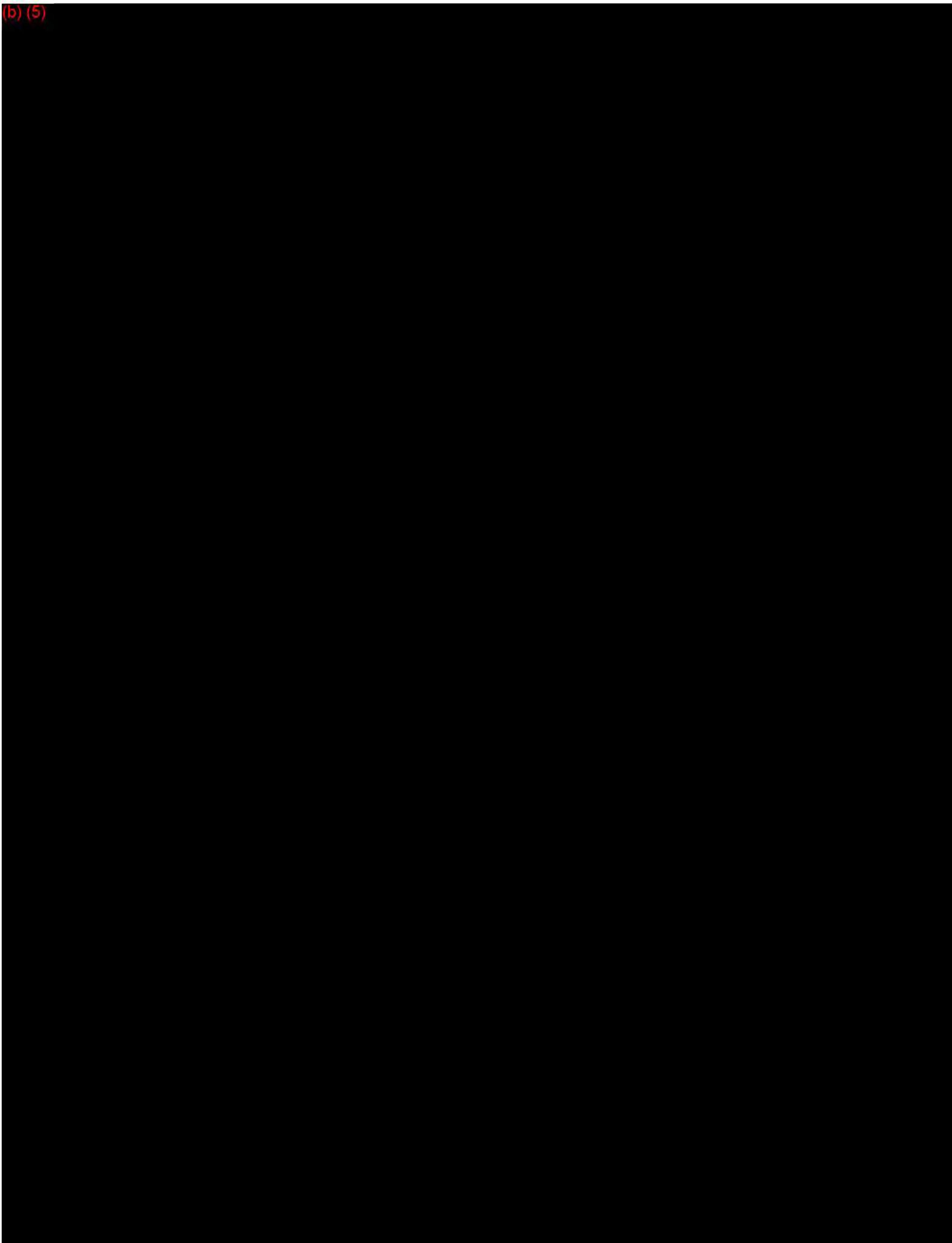
Thank you,

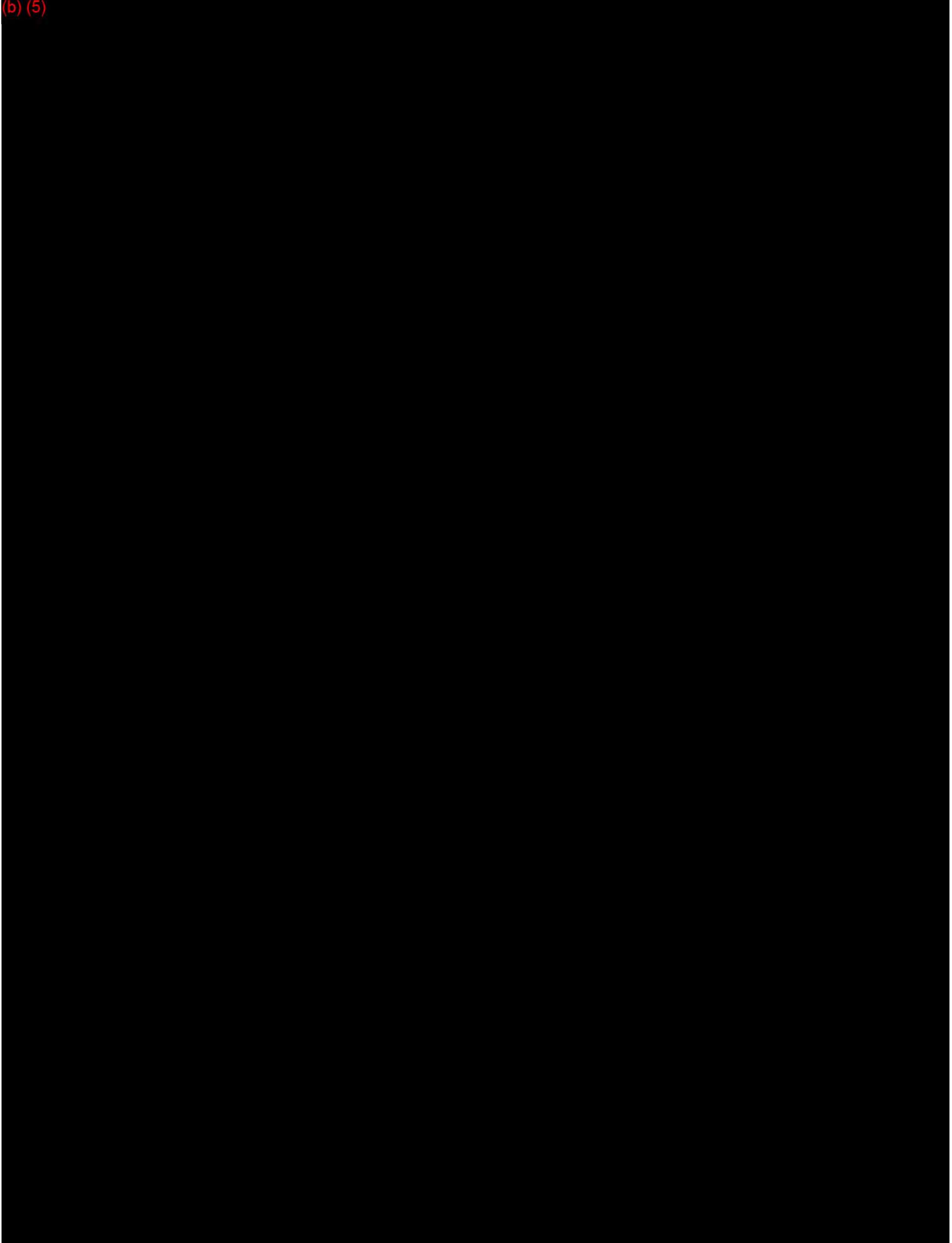
Viktoria

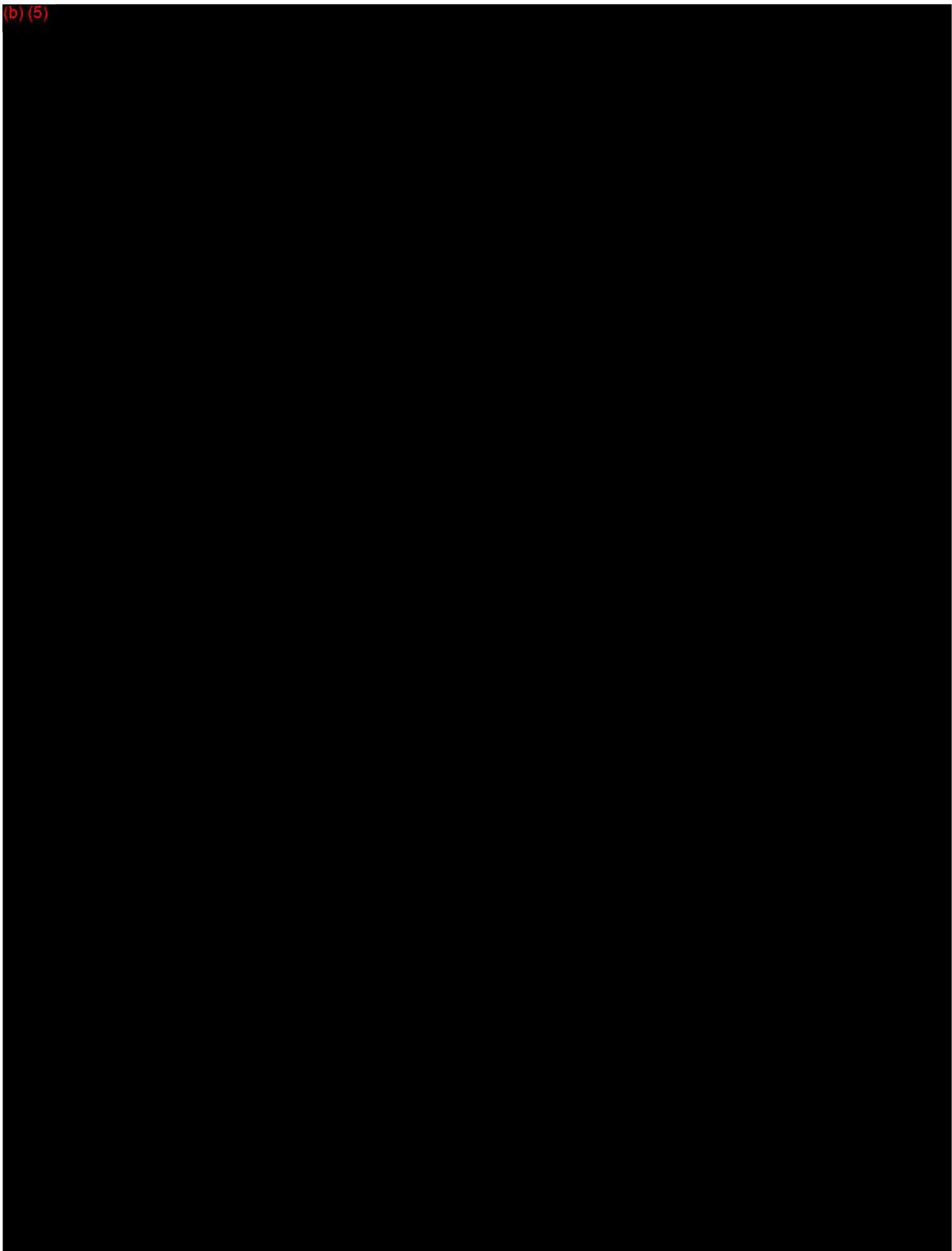


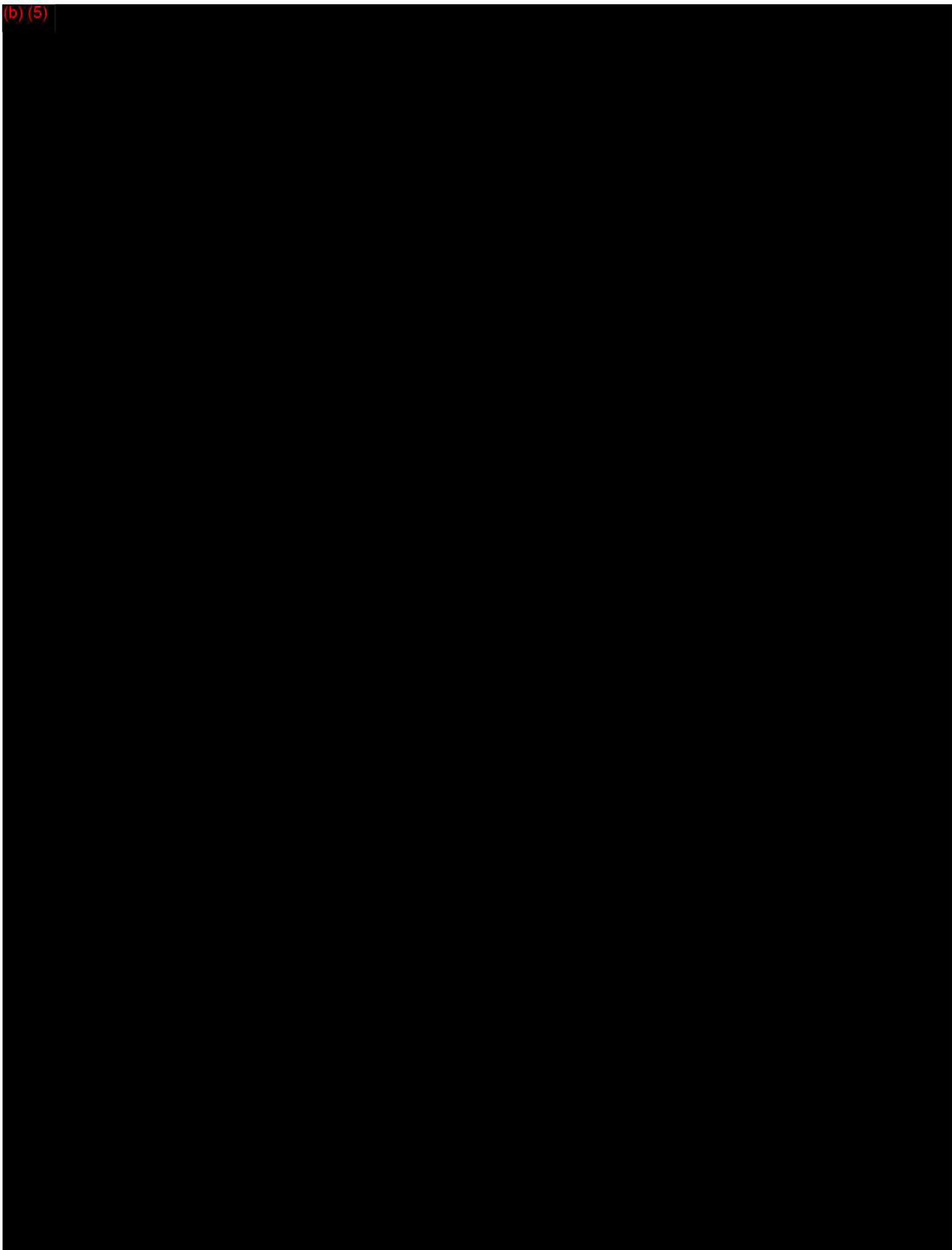


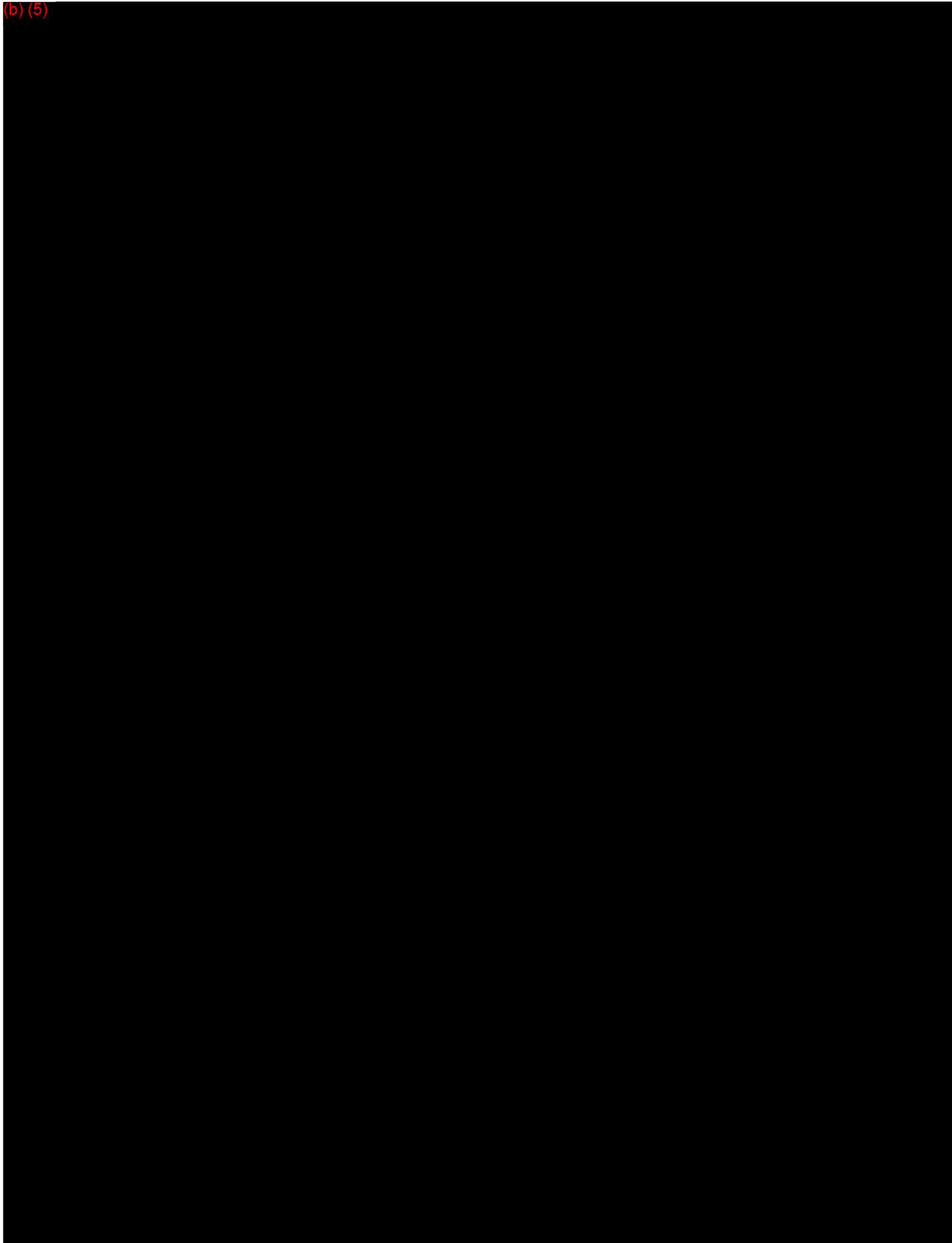












## FR 2018-13246\_1644312 redline edit

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**From:** "Seale, Viktoria Z. EOP/CEQ" <(b) (6)>  
**To:** "Neumayr, Mary B. EOP/CEQ" <(b) (6)> "Szabo, Aaron L. EOP/CEQ" <(b) (6)>  
**Cc:** "Boling, Ted A. EOP/CEQ" <(b) (6)>  
**Date:** Fri, 15 Jun 2018 13:33:59 -0400

**Attachments**  
: FR 2018-13246\_1644312 redline edit.docx (47.66 kB)

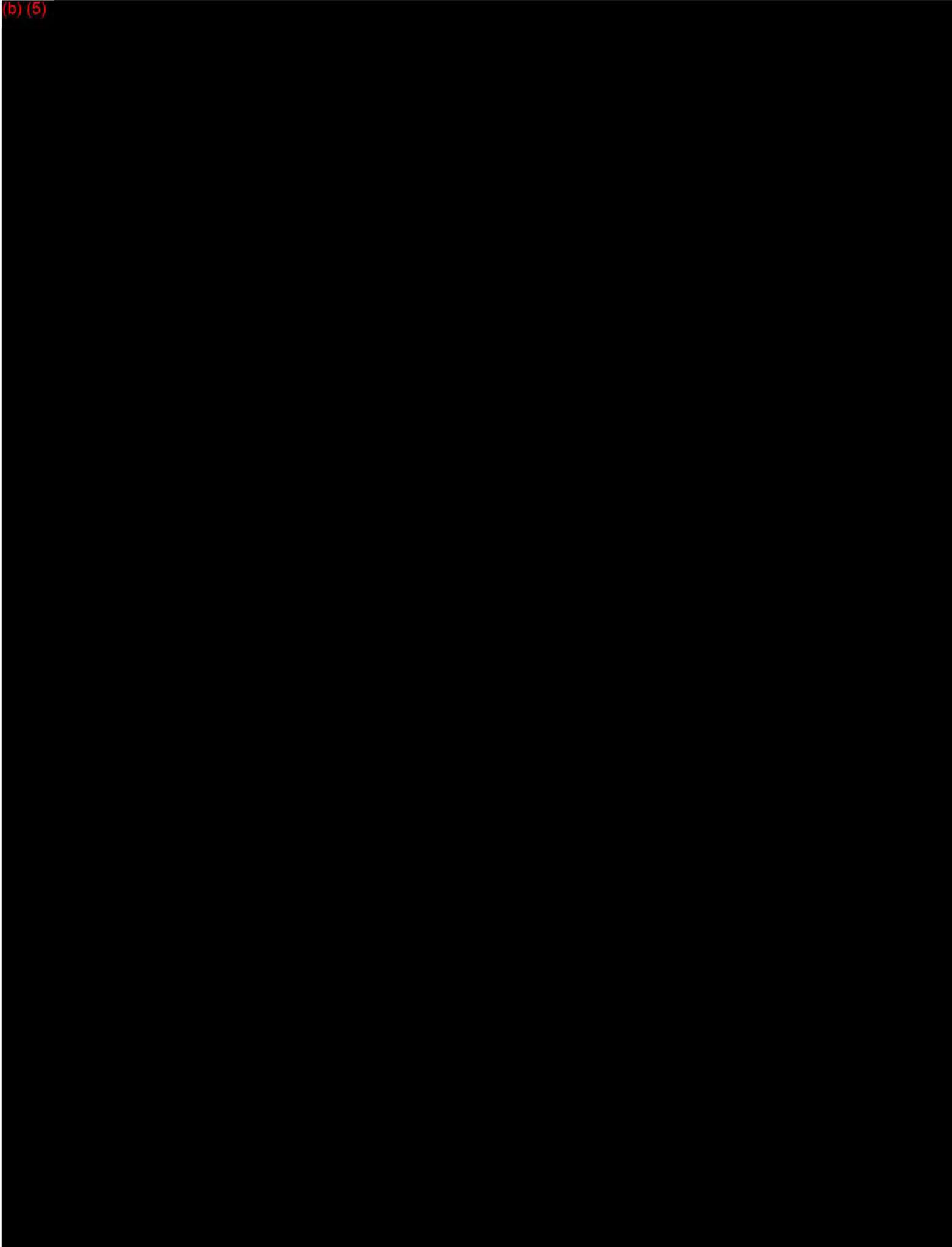
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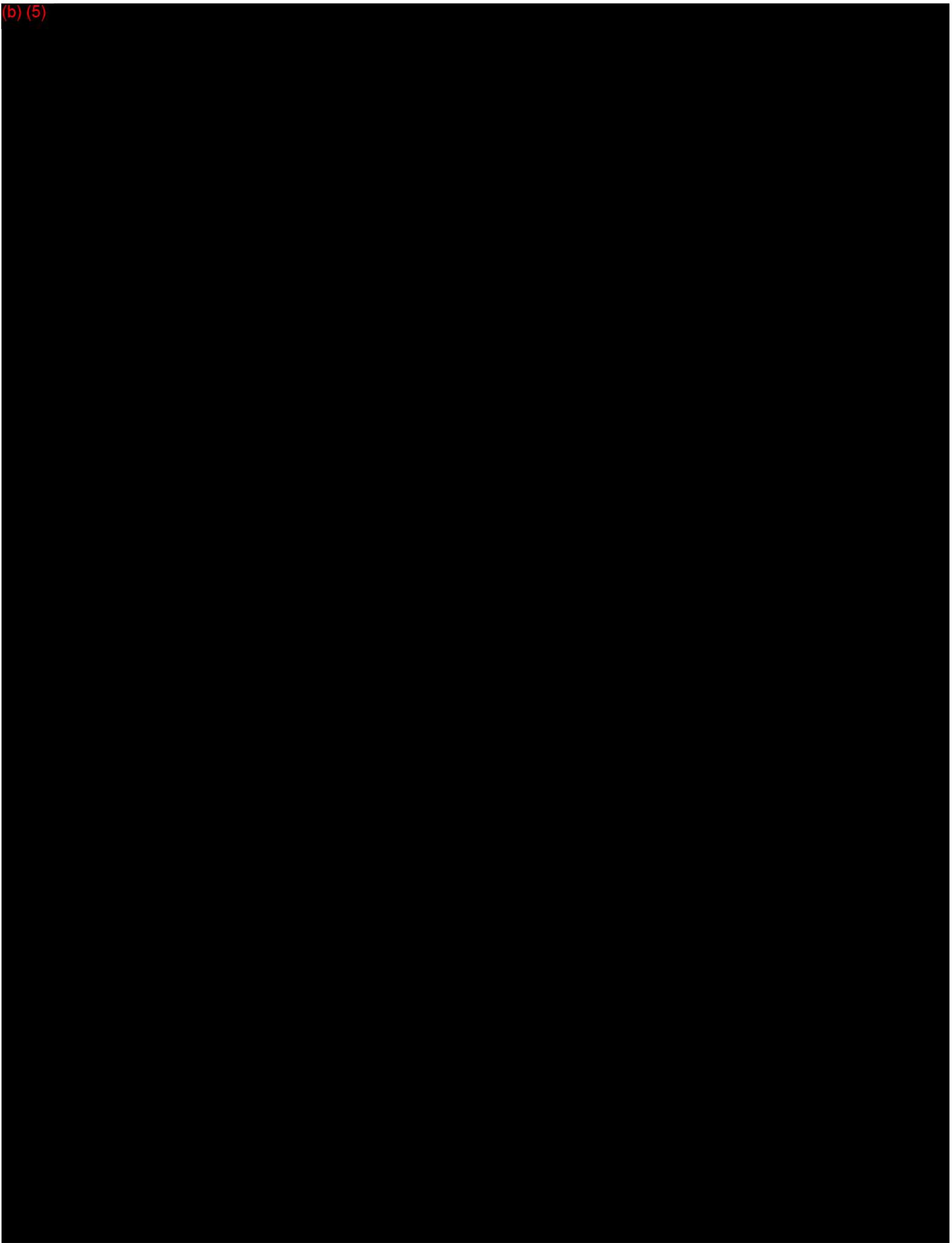
Mary and Aaron,

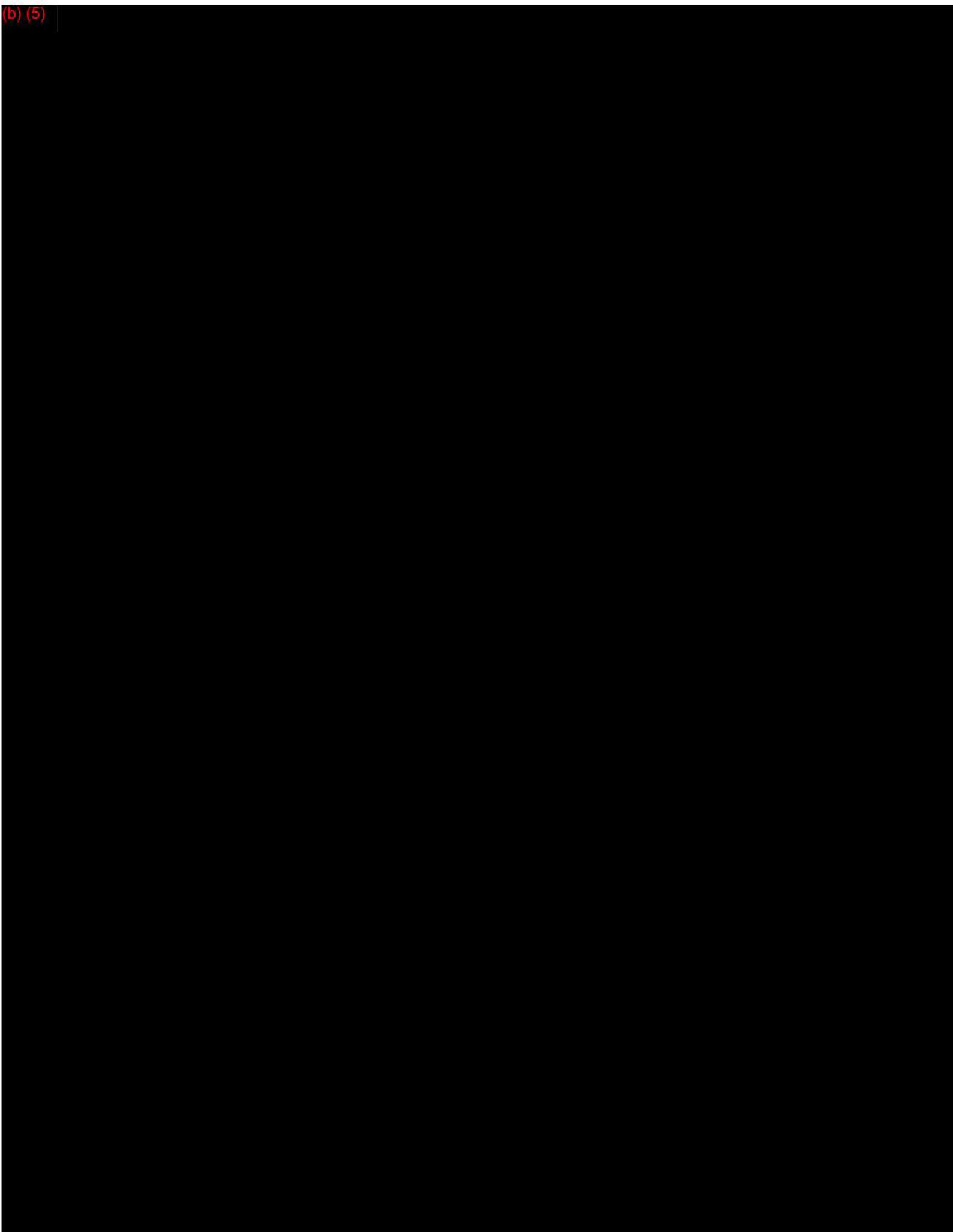
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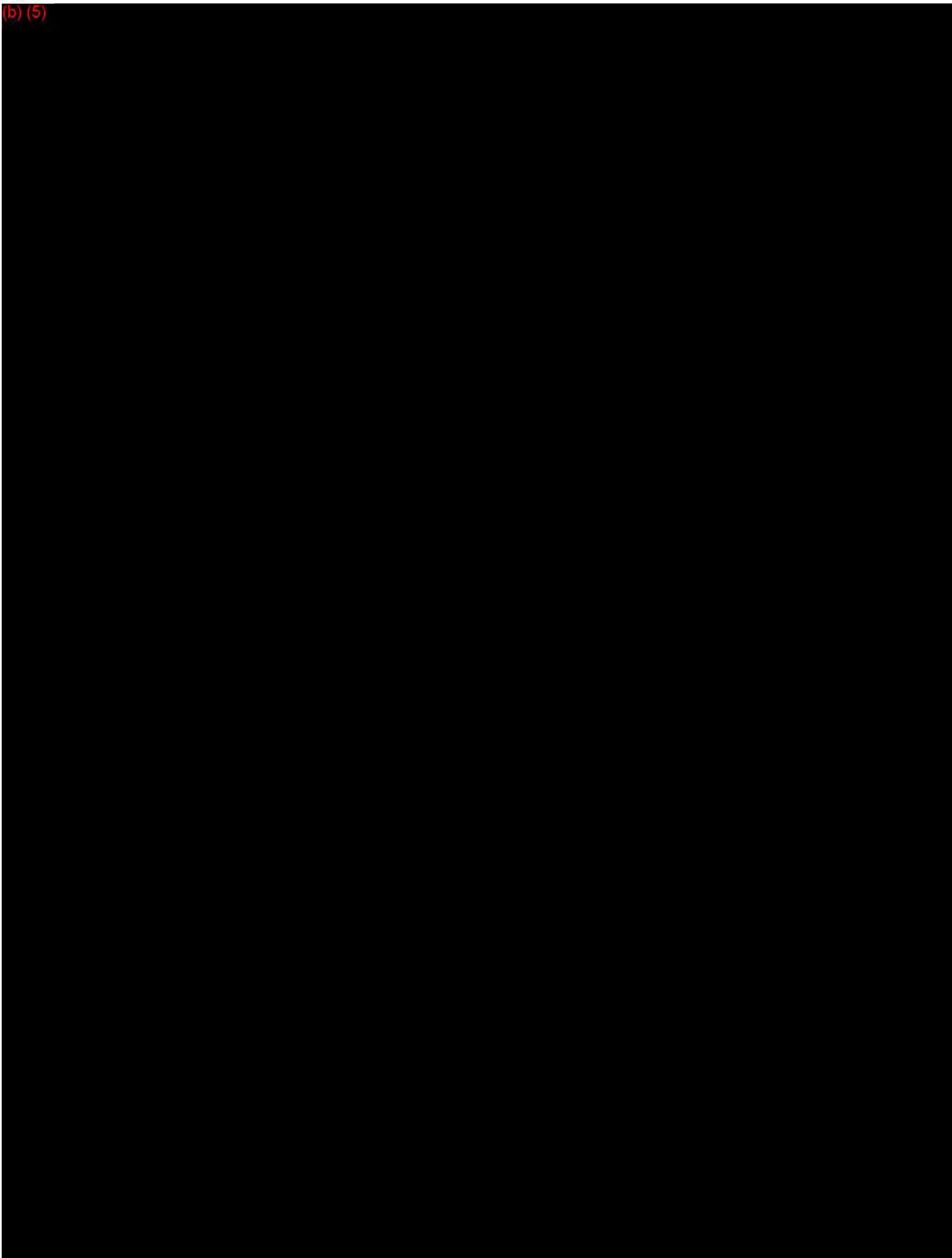
Thank you,

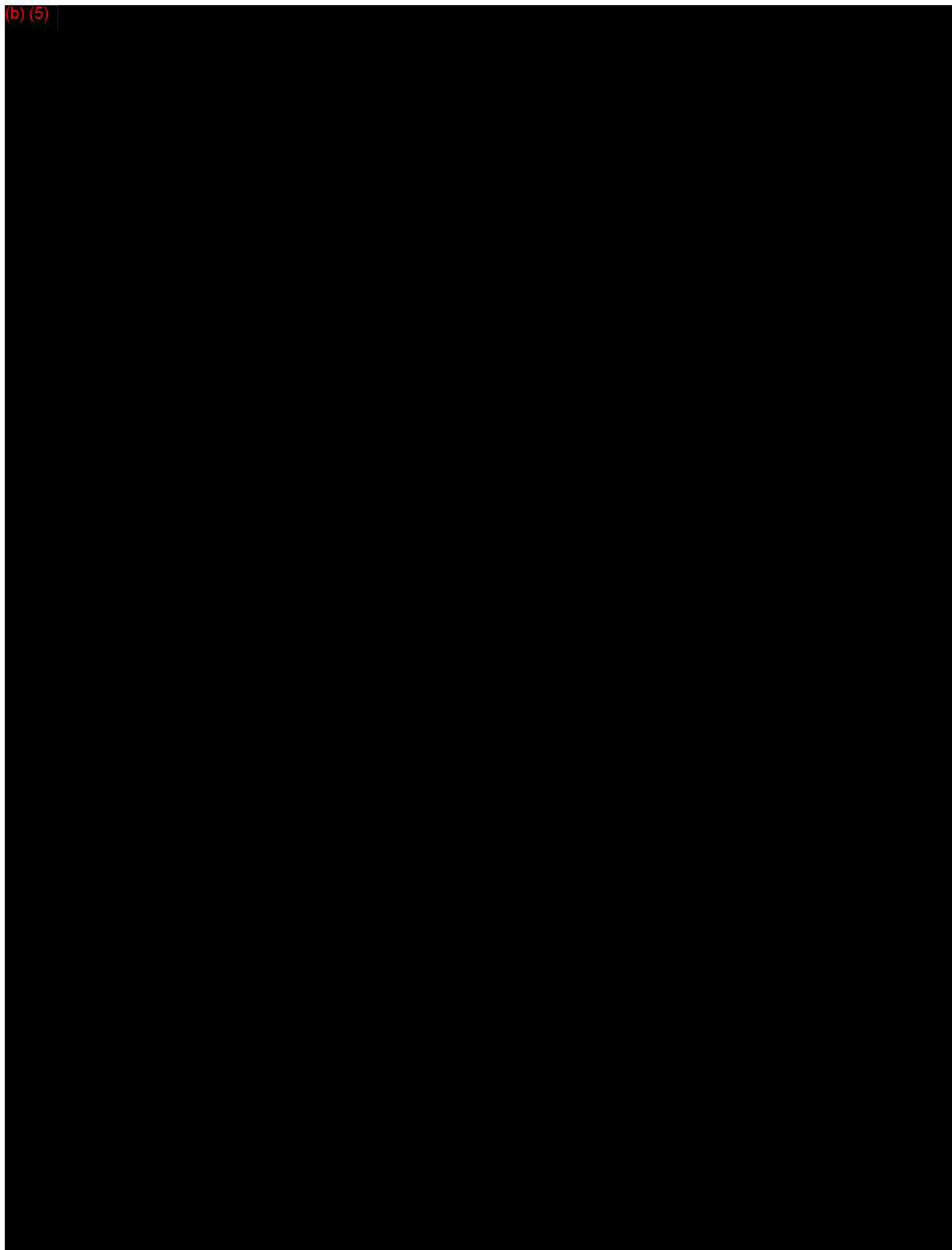
Viktoria

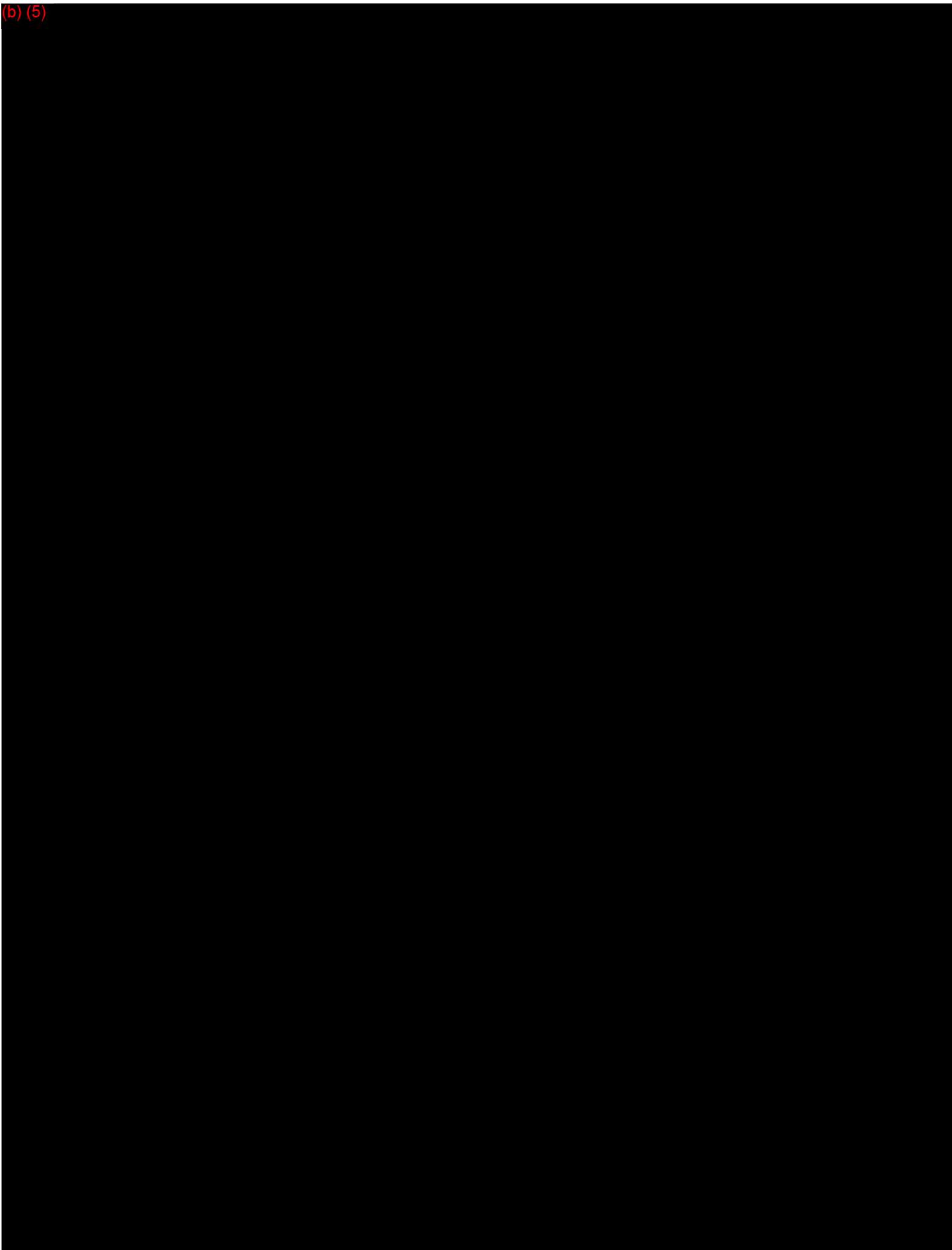


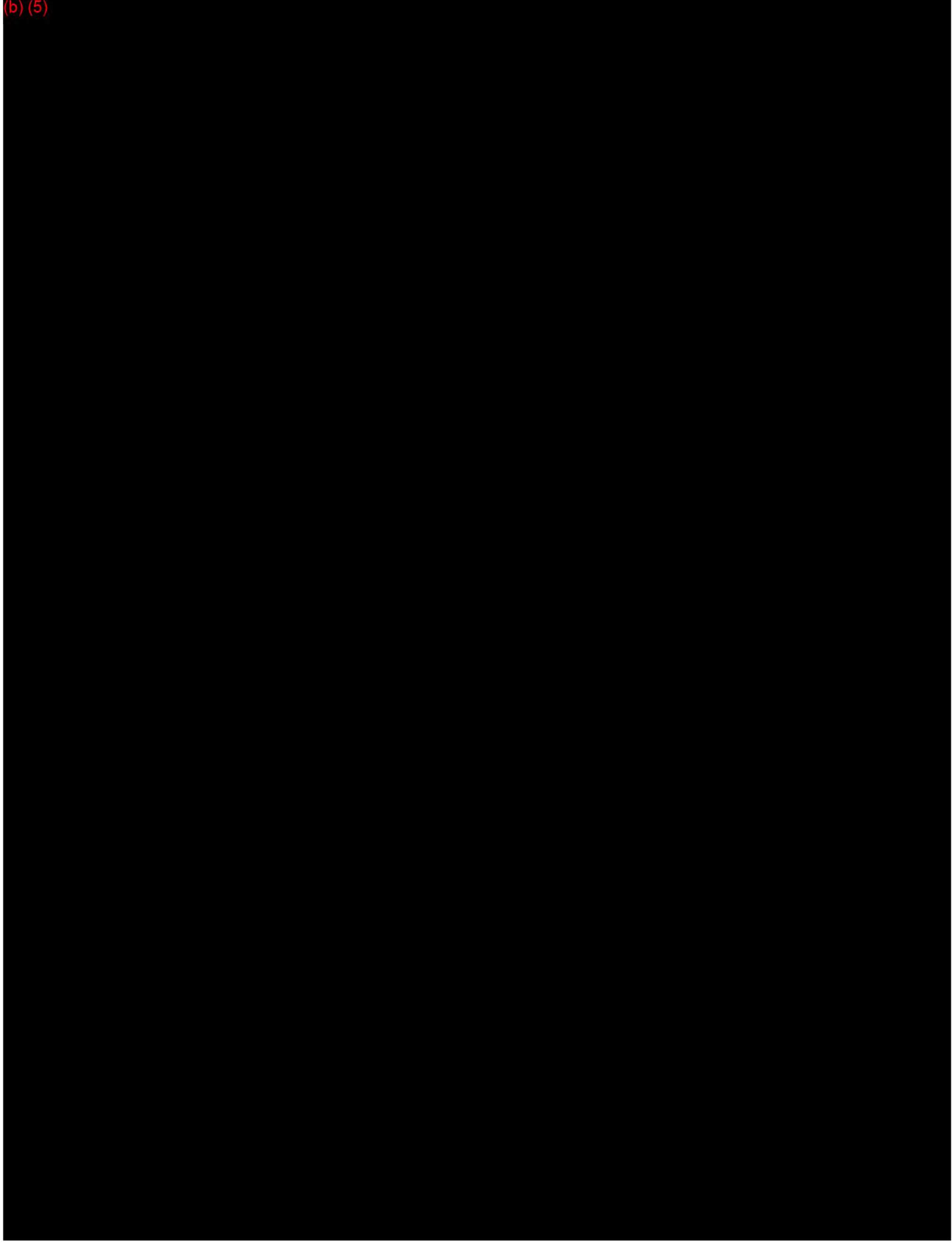


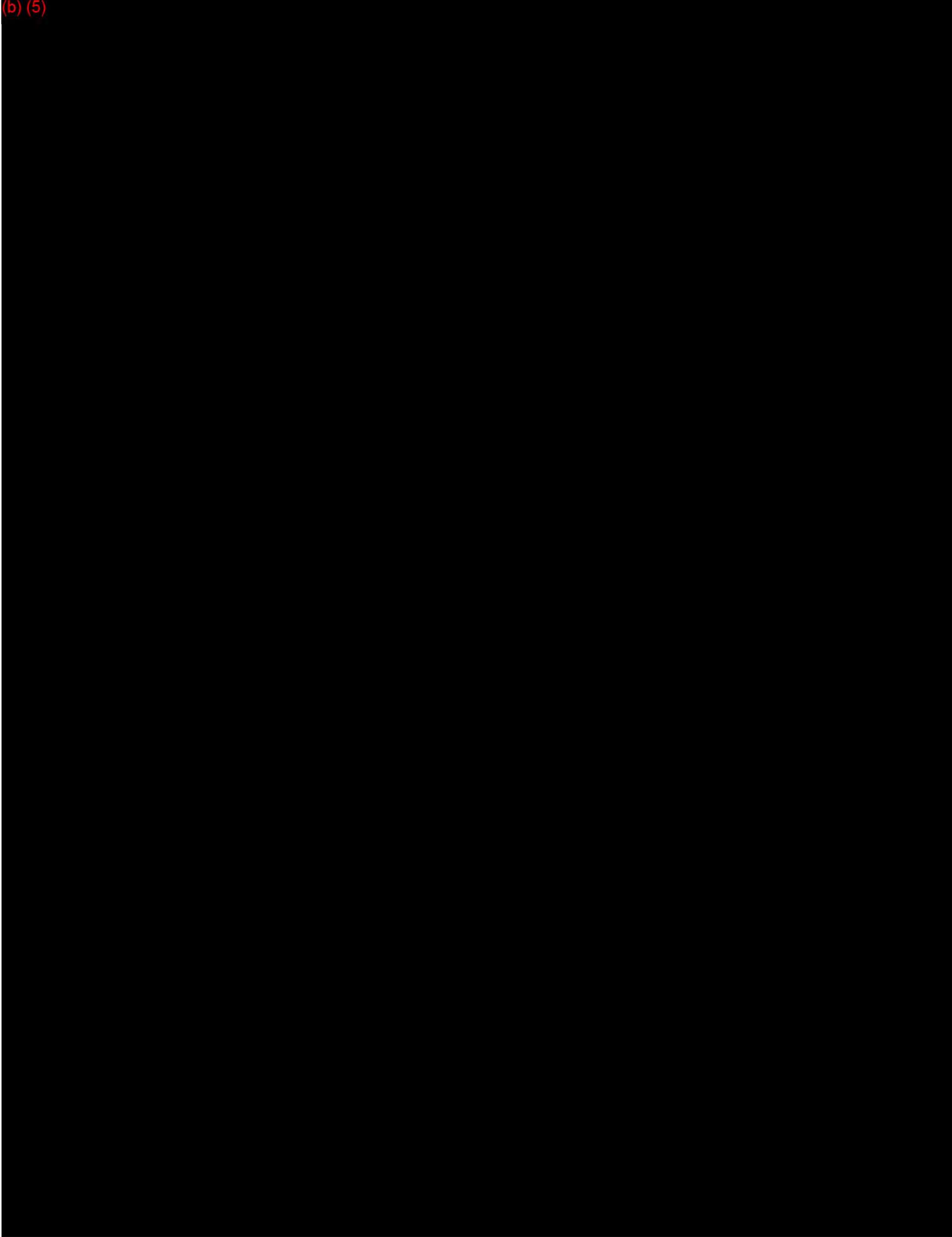












## RE: Updates to NEPA.gov

---

**From:** "Carter, Marian (CONTR)" <marian.carter@hq.doe.gov>  
:  
**To:** "Mansoor, Yarden M. EOP/CEQ" <(b) (6)>  
"Alexander, Lillian" <lillian.alexander@hq.doe.gov>, "Boling, Ted A. EOP/CEQ"  
**Cc:** <(b) (6)> "Drummond, Michael R. EOP/CEQ"  
<(b) (6)> "Adams, John (AU) (CONTR)"  
<john.adams@hq.doe.gov>  
**Date:** Mon, 18 Jun 2018 13:56:27 -0400

Thank you, Yarden:

As always, we will not post until you provide confirmation by email that the FR is available. John will await your confirmation. I think we can address these changes by tomorrow as indicated.

Have a good afternoon,  
Marian

*Thank you,  
Marian*

*Marian A. Carter  
AU Web Support Team Manager  
Highland Technology Services, Inc., Contractor  
Office of Environment, Health, Safety and Security  
(301) 903-3494 - Office  
marian.carter@hq.doe.gov*

*The business of life is the acquisition of memories...*

---

**From:** Mansoor, Yarden M. EOP/CEQ [mailto:(b) (6)]  
**Sent:** Monday, June 18, 2018 1:53 PM  
**To:** Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>  
**Cc:** Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ  
<(b) (6)> Drummond, Michael R. EOP/CEQ

<(b) (6)> Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>

**Subject:** RE: Updates to NEPA.gov

**This information is not for public release before Wednesday, until after I confirm the highlighted dates and that the notice is accessible in regulations.gov. Thanks!**

1. If the banner is to be an image, we need the image to enable us having time to manipulate it;

Not an image.

2. If the banner is to link to content, we need the content or URL identified;

See 4 below.

3. If the banner is not going to contain an image, it will be a simple blue background. Please confirm;

Blue would be fine.

4. The content or 2 sentences to be used in the banner.

CEQ is considering updating its NEPA implementing regulations and solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process. See the Advance Notice of Proposed Rulemaking and related materials [here](https://ceq.doe.gov/laws-regulations/regulations.html). [Link to <https://ceq.doe.gov/laws-regulations/regulations.html>.]

5. For the Regulations web page, we need the Heading you want to use, the 3 sentences of text to be entered and the 2 hyperlinks referenced on the web page.

On the CEQ NEPA Implementing Procedures page: <https://ceq.doe.gov/laws-regulations/regulations.html>, after the **Current Regulations:** heading, create new heading "**Proposed Rulemaking:**" and insert:

**Advance Notice of Proposed Rulemaking (20 June 2018).** CEQ is considering updating its NEPA implementing regulations and solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process. Submit comments, identified by docket ID number CEQ-2018-0001, through the Federal eRulemaking portal, <https://www.regulations.gov>. Comments should be submitted on or before **July 20, 2018**.

---

**From:** Carter, Marian (CONTR) <[Marian.Carter@hq.doe.gov](mailto:Marian.Carter@hq.doe.gov)>

**Sent:** Monday, June 18, 2018 1:23 PM

**To:** Mansoor, Yardena M. EOP/CEQ <(b) (6)>

**Cc:** Alexander, Lillian <[Lillian.Alexander@hq.doe.gov](mailto:Lillian.Alexander@hq.doe.gov)>; Boling, Ted A. EOP/CEQ

<(b) (6)> Drummond, Michael R. EOP/CEQ

<(b) (6)> Adams, John (AU) (CONTR) <[John.Adams@Hq.Doe.Gov](mailto:John.Adams@Hq.Doe.Gov)>

**Subject:** RE: Updates to NEPA.gov

Good Afternoon, Yardena:

I checked with John, and if you provide us with the following by COB today, Tuesday, June 18th, he anticipates that he can have these changes completed by tomorrow, COB, Tuesday, June 19, 2018:

1. If the banner is to be an image, we need the image to enable us having time to manipulate it;
2. If the banner is to link to content, we need the content or URL identified;
3. If the banner is not going to contain an image, it will be a simple blue background. Please confirm;
4. The content or 2 sentences to be used in the banner.
5. For the Regulations web page, we need the Heading you want to use, the 3 sentences of text to be entered and the 2 hyperlinks referenced on the web page.

*Thank you,  
Marian*

*Marian A. Carter  
AU Web Support Team Manager  
Highland Technology Services, Inc., Contractor  
Office of Environment, Health, Safety and Security  
(301) 903-3494 - Office  
[marian.carter@hq.doe.gov](mailto:marian.carter@hq.doe.gov)*

*The business of life is the acquisition of memories...*

---

**From:** Mansoor, Yardena M. EOP/CEQ [mailto:(b) (6)]  
**Sent:** Monday, June 18, 2018 12:31 PM  
**To:** Adams, John (AU) (CONTR) <[John.Adams@Hq.Doe.Gov](mailto:John.Adams@Hq.Doe.Gov)>  
**Cc:** Carter, Marian (CONTR) <[Marian.Carter@hq.doe.gov](mailto:Marian.Carter@hq.doe.gov)>; Alexander, Lillian <[Lillian.Alexander@hq.doe.gov](mailto:Lillian.Alexander@hq.doe.gov)>; Boling, Ted A. EOP/CEQ <(b) (6)>  
Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** Updates to NEPA.gov

**Later this week:** The time-sensitive updates I mentioned last week will be requested early Wednesday morning, when a CEQ Federal Register notice is expected to be published. The Wednesday changes will include:

- Adding a banner (two sentences) on the [nepa.gov](http://nepa.gov) home page.
- Adding a heading, three sentences of text, and two links on the **CEQ NEPA Implementing Procedures** page: >><https://ceq.doe.gov/laws-regulations/regulations.html><<.

**Follow-up:** Please let me know if you have any questions on the request I sent Friday at 1:37, on the NEPA Practice page (revising and alphabetizing the tab entries, new land page and file for "Agency Jurisdiction and Expertise."

**New requests:**

At >>[https://ceq.doe.gov/laws-regulations/nepa\\_legislative\\_history.html](https://ceq.doe.gov/laws-regulations/nepa_legislative_history.html)<<; please replace the following links with the corresponding attachments (filenames in parenthesis):

[Congressional White Paper on a National Policy for the Environment](#) (CongressWhitePaper.pdf)

[House of Representatives Report on NEPA](#) (House of Representatives Report on NEPA.pdf)

[Senate Report on NEPA](#) (Senate Report on NEPA.pdf)

[Conference Report](#) (Conference Report on NEPA.pdf)

At >>[https://ceq.doe.gov/laws-regulations/agency\\_implementing\\_procedures.html](https://ceq.doe.gov/laws-regulations/agency_implementing_procedures.html)<<; please replace the linked file the corrected file attached.

Thanks, in advance, for your help.

Yardena Mansoor  
Deputy Associate Director for NEPA  
Council on Environmental Quality

(b) (6) / (b) (6)

## Fwd: Draft Herrgott Testimony

---

**From:** "Herrgott, Alex H. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=45656107f8dc4dc18bb681d14e44c8e9-he">  
**To:** "Pettigrew, Theresa L. EOP/CEQ" <(b) (6)>  
**Date:** Mon, 18 Jun 2018 20:37:58 -0400  
**Attachments** Herrgott Testimony.6.27 Roundtable Senate SWBDRAFT.6.18.18.docx (37.41 kB);  
: Herrgott Testimony CLEAN COPY.6.18.18.docx (32.48 kB)

---

Take a look at this one

Sent from my iPhone

Begin forwarded message:

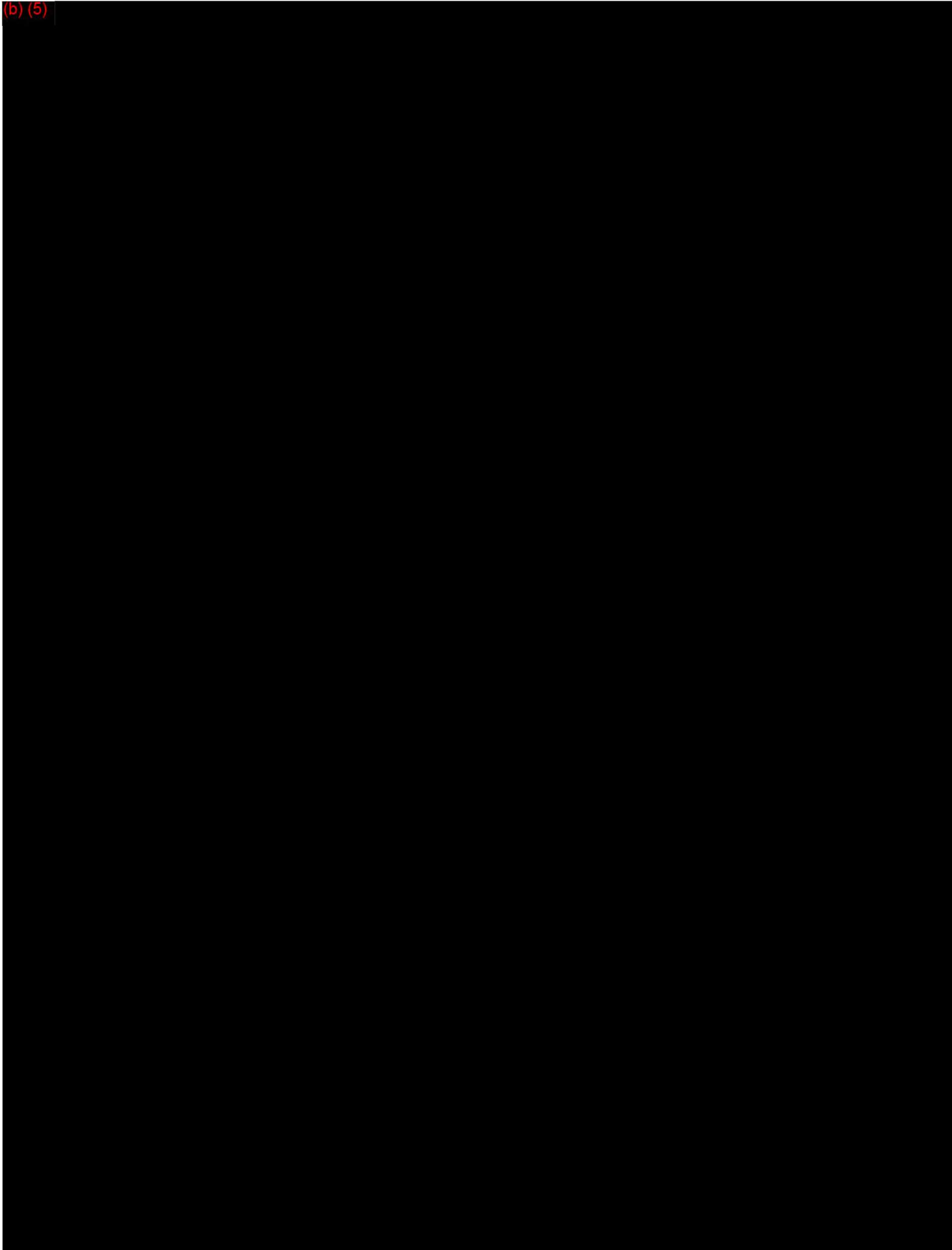
---

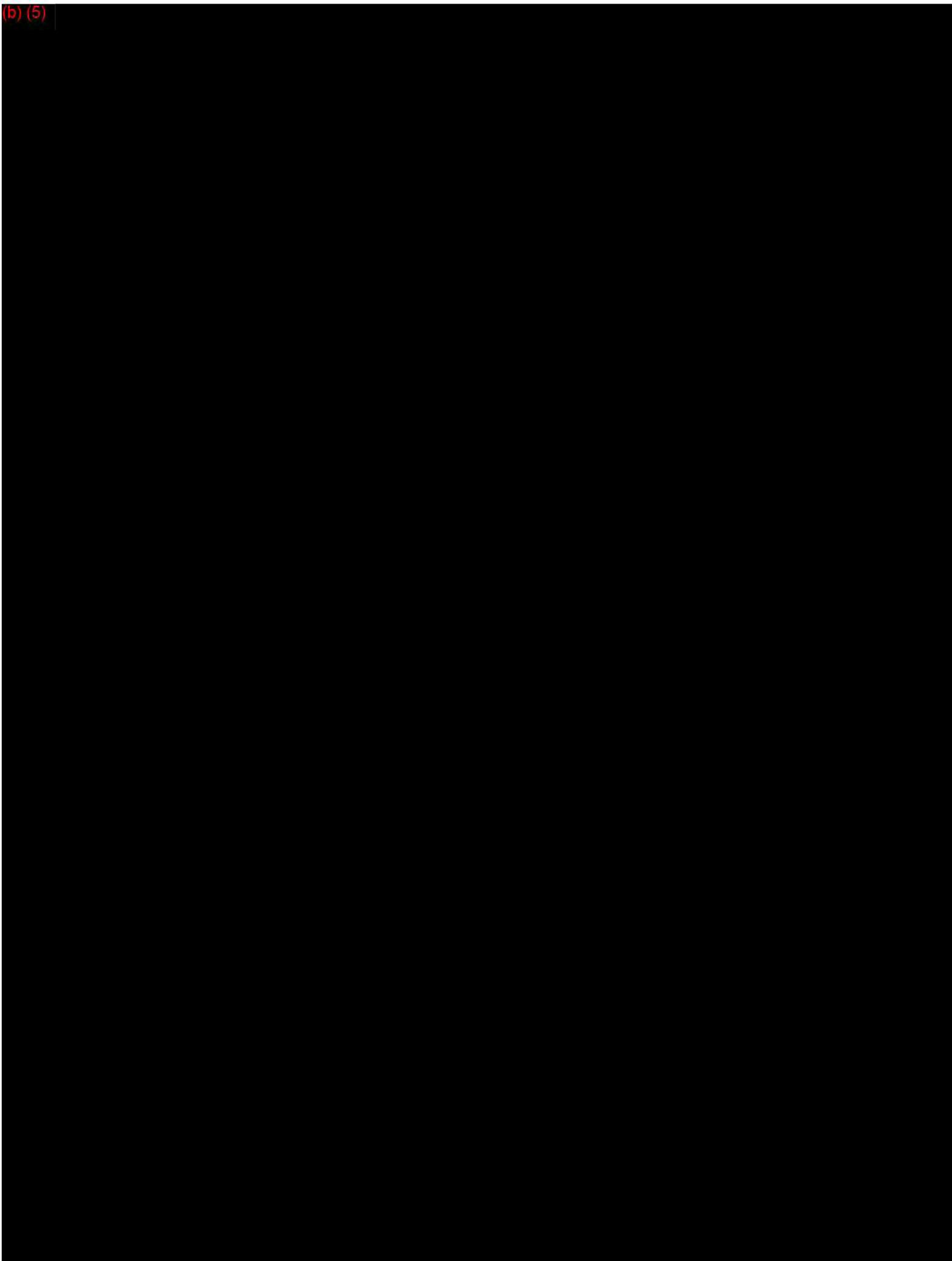
**From:** "Barnett, Steven W. EOP/CEQ" <(b) (6)>  
**Date:** June 18, 2018 at 5:44:49 PM EDT  
**To:** "Herrgott, Alex H. EOP/CEQ" <(b) (6)>  
**Cc:** "Drummond, Michael R. EOP/CEQ" <(b) (6)> "Vandegriff, Scott F. EOP/CEQ" <(b) (6)> "Osterhues, Marlys A. EOP/CEQ" <(b) (6)>  
**Subject:** Draft Herrgott Testimony

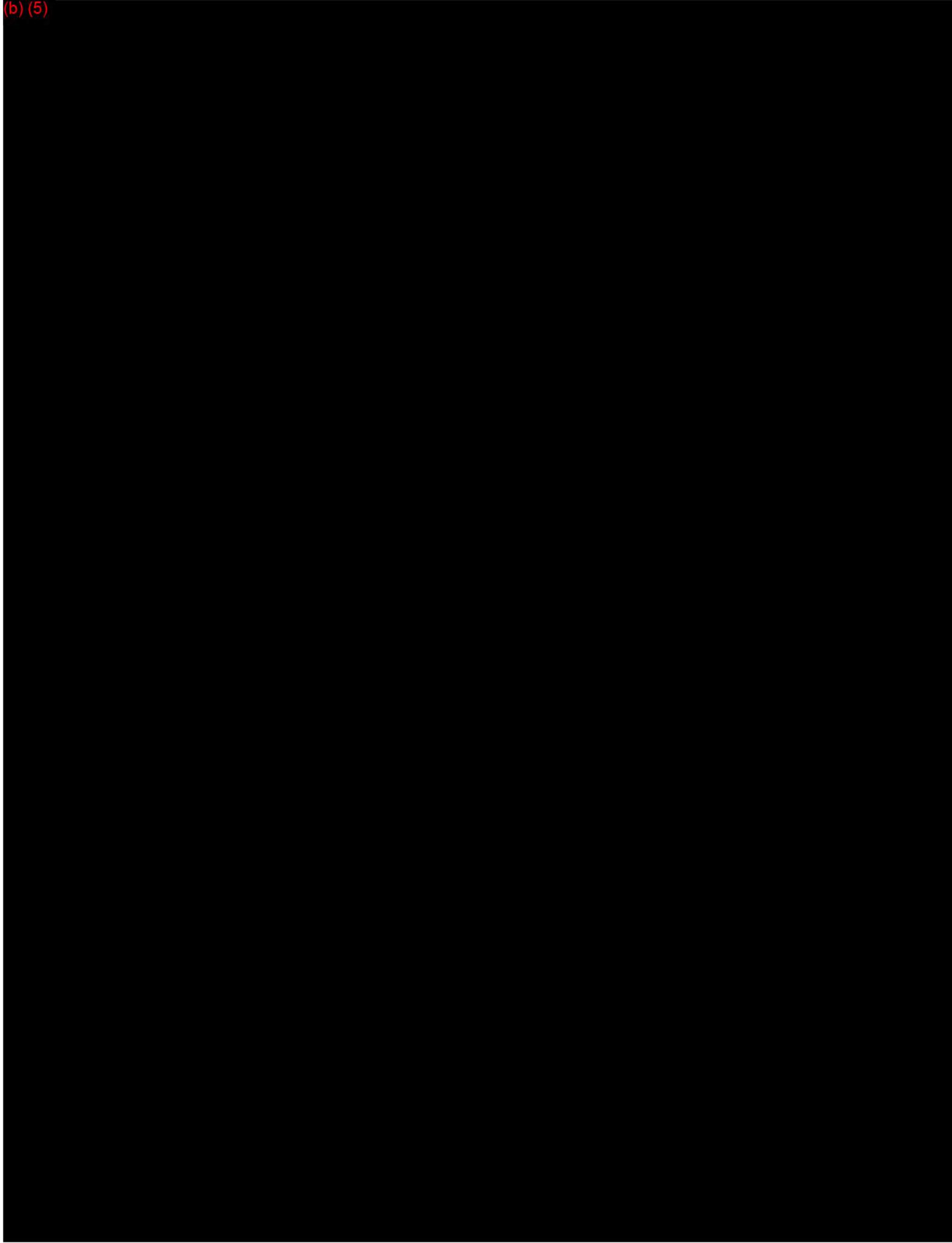
Alex,

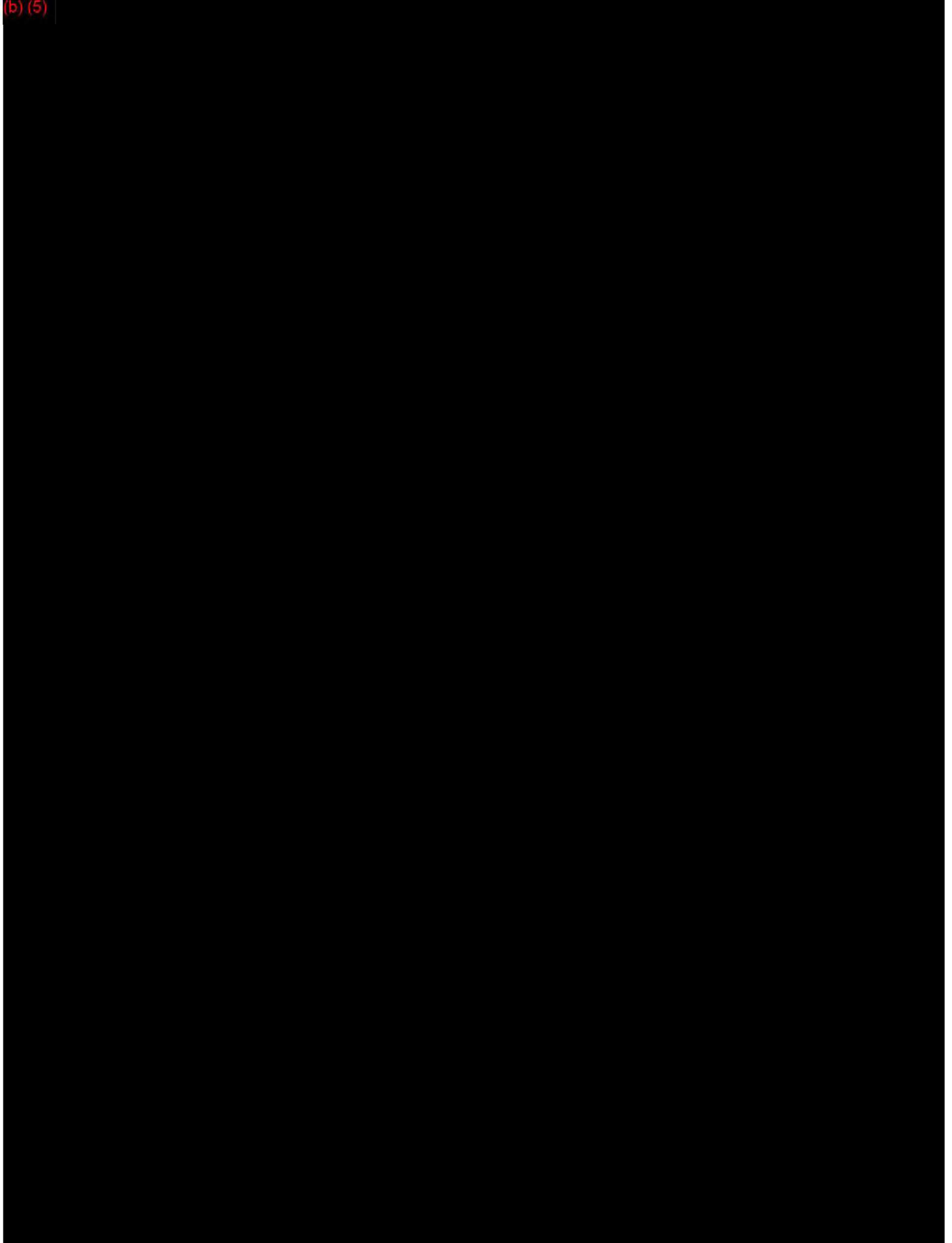
Please find attached a red line and clean copy of your draft testimony.

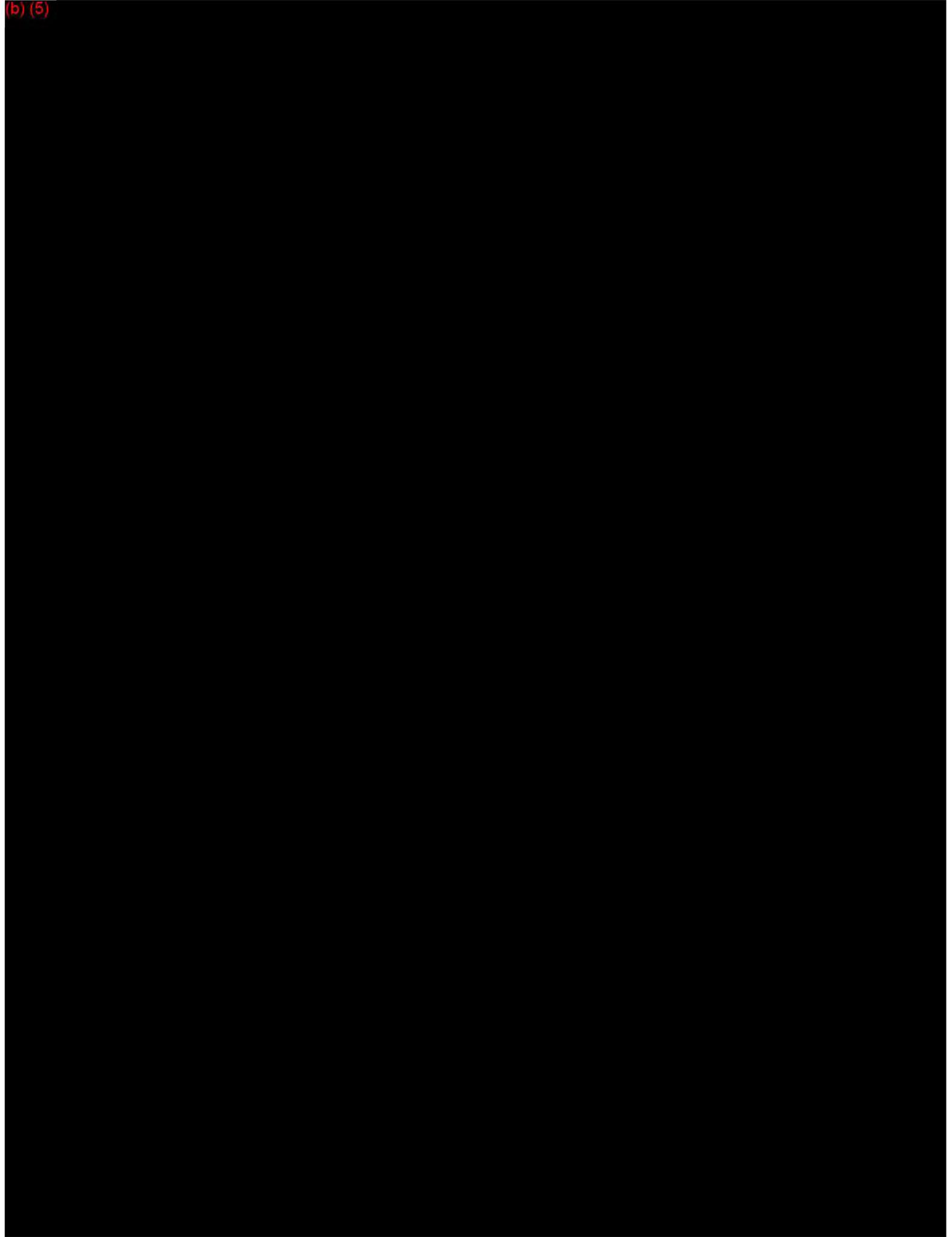
Steven

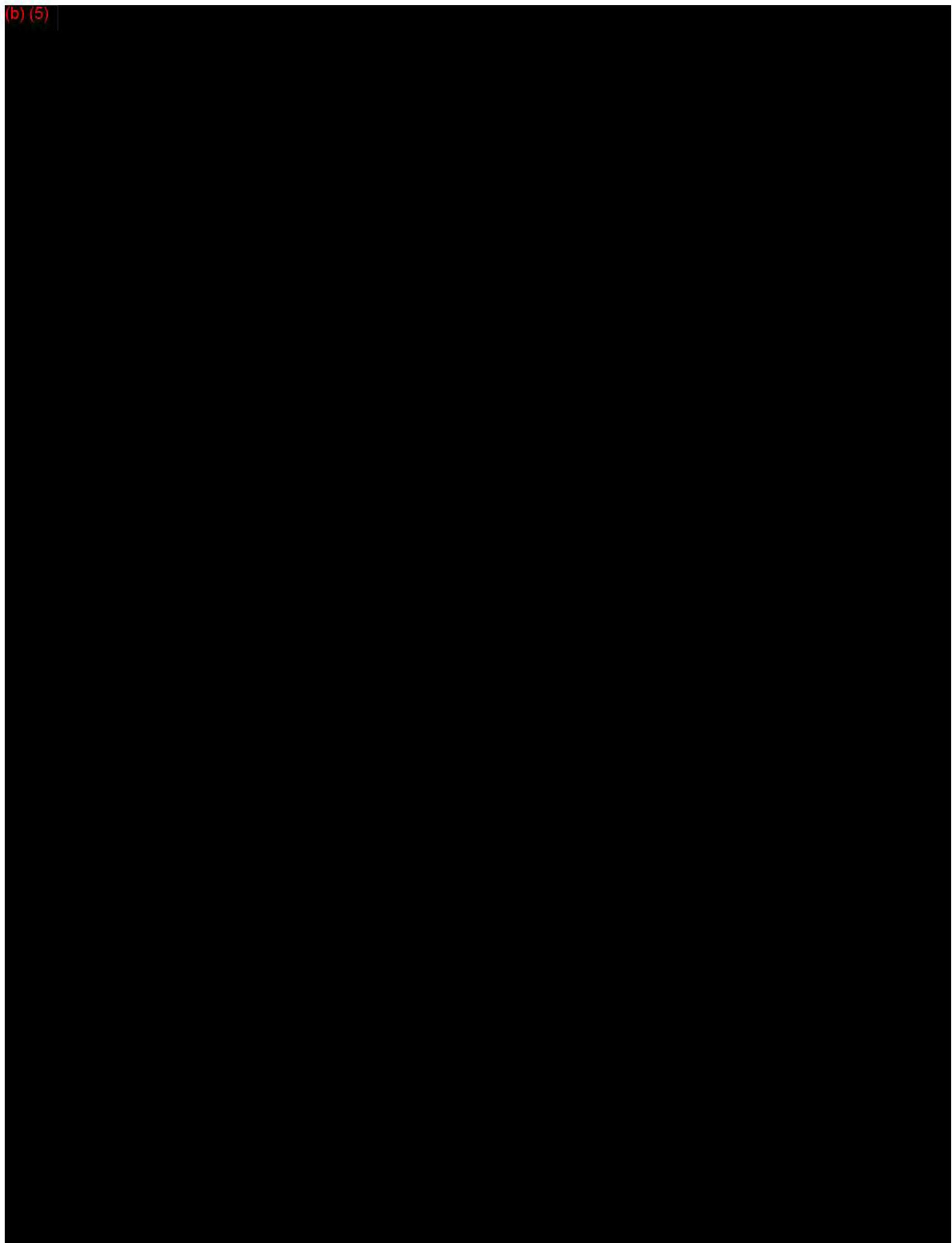


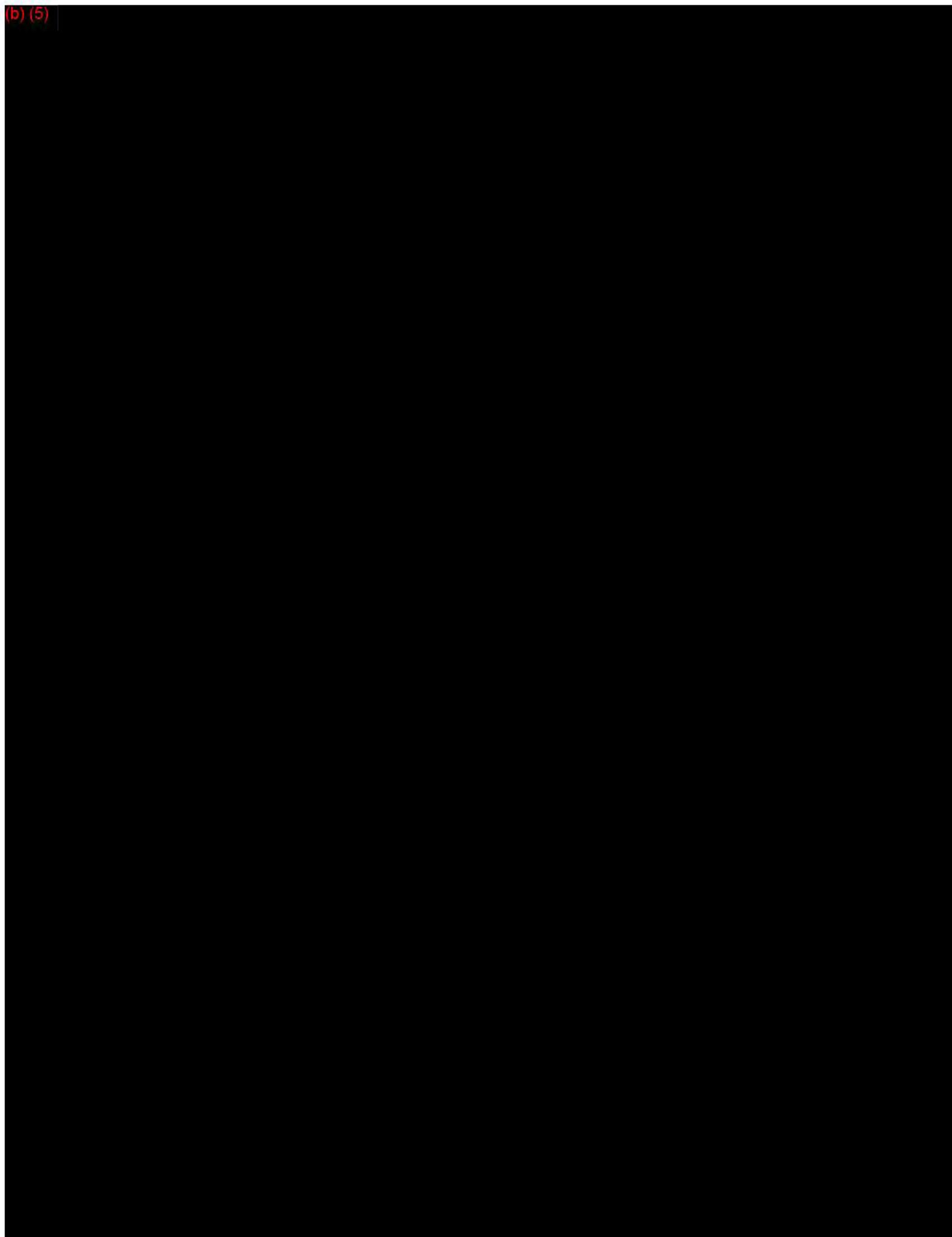


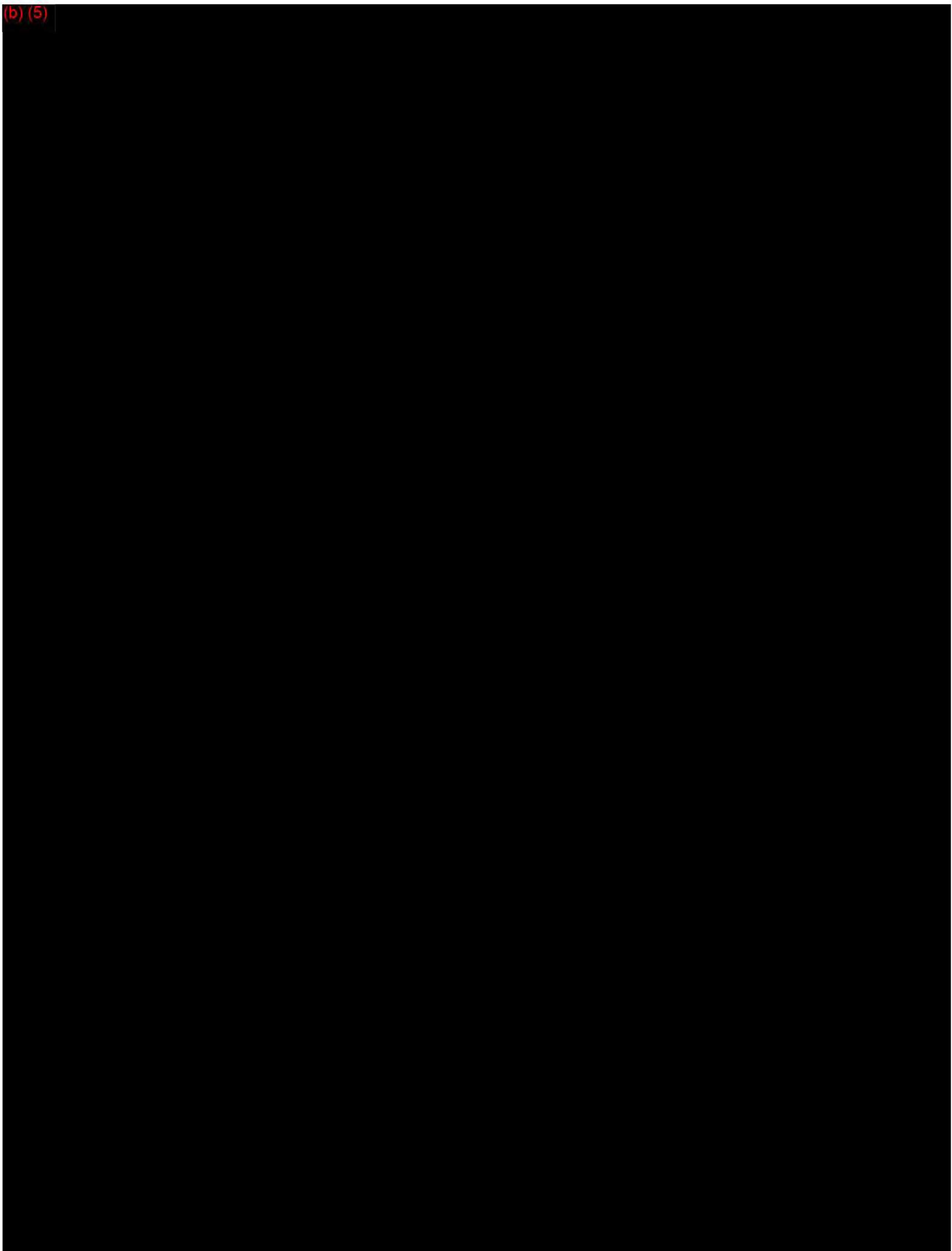












## FW: Draft Herrgott Testimony re 6.27 Senate Roundtable

---

**From:** "Barnett, Steven W. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=2e9fa21939394821b946485a90c4cb4e-ba">

**To:** "Sharp, Thomas L. EOP/CEQ" <(b) (6)>

**Date:** Tue, 19 Jun 2018 10:44:21 -0400

**Attachments**  
: Herrgott Testimony 6.27 Roundtable Senate FINAL.DOCX (28.39 kB)

**From:** Barnett, Steven W. EOP/CEQ  
**Sent:** Tuesday, June 19, 2018 10:19 AM  
**To:** Smith, Katherine R. EOP/CEQ <(b) (6)>  
**Cc:** Drummond, Michael R. EOP/CEQ <(b) (6)> Schneider, Daniel J. EOP/CEQ <(b) (6)> Pettigrew, Theresa L. EOP/CEQ <(b) (6)> Vandegrift, Scott F. EOP/CEQ <(b) (6)> Herrgott, Alex H. EOP/CEQ <(b) (6)> Osterhues, Marlys A. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)> Patella, Michael A. EOP/CEQ <(b) (6)>  
**Subject:** Draft Herrgott Testimony re 6.27 Senate Roundtable

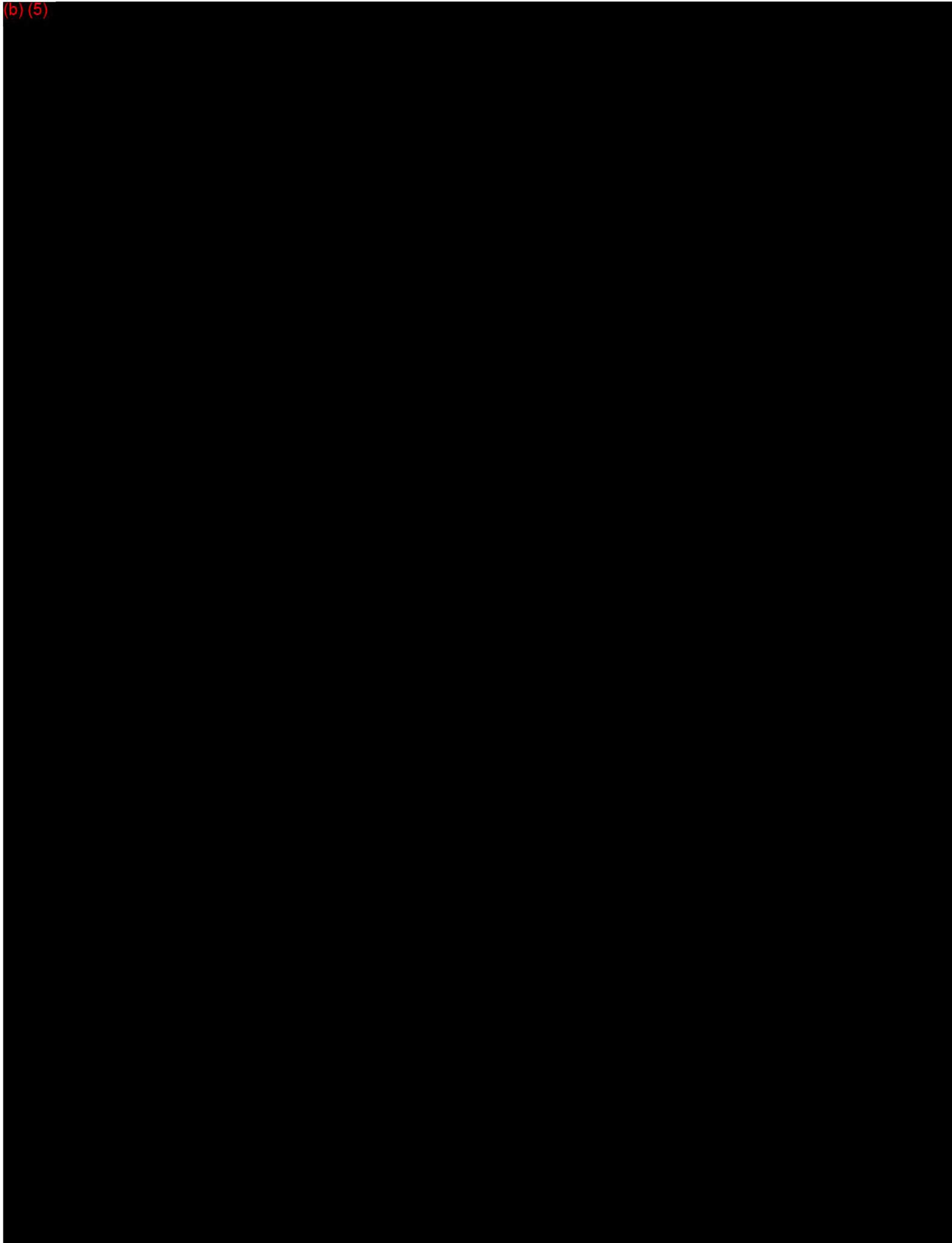
All:

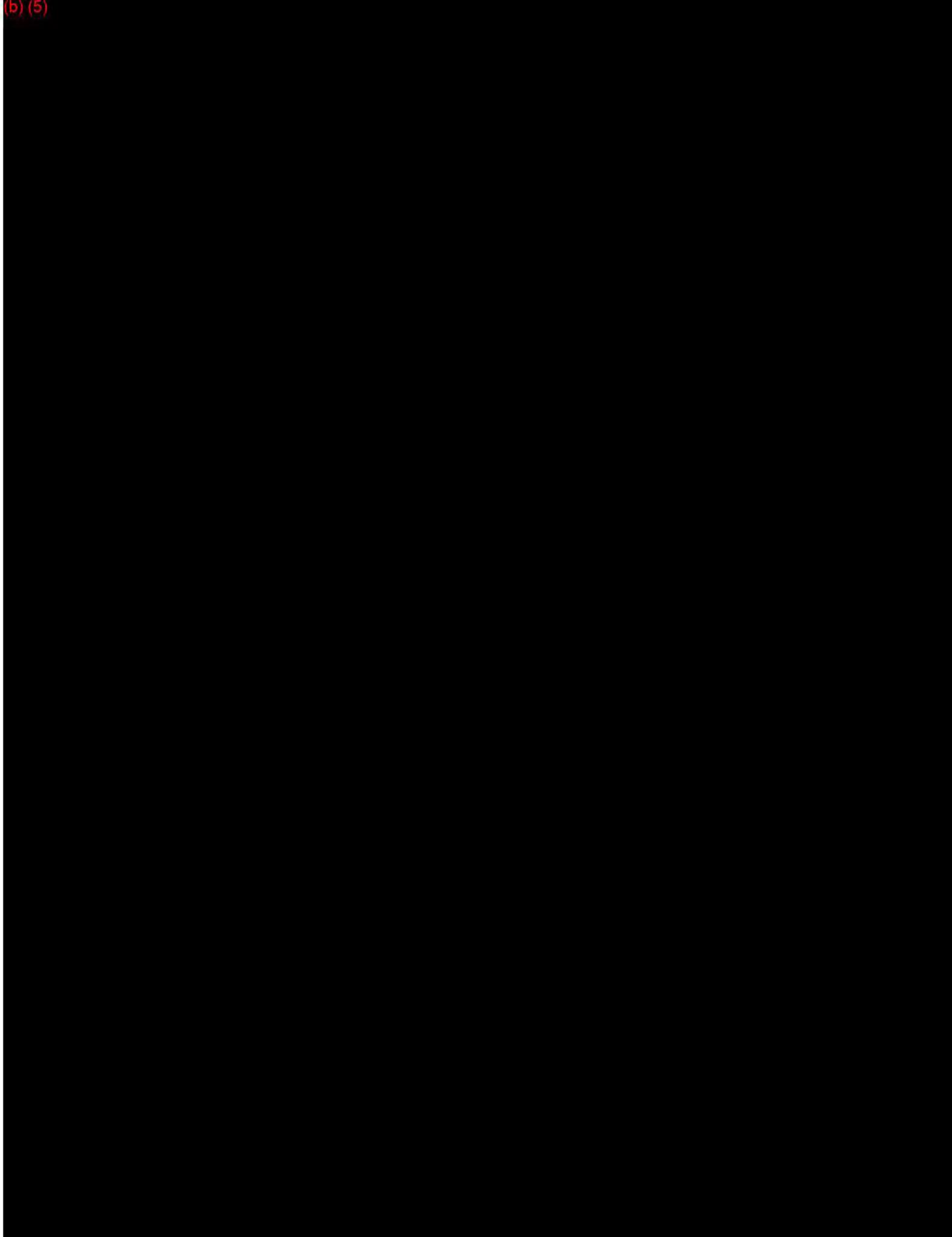
Please find attached a clean copy of Alex's draft testimony for the Senate roundtable.

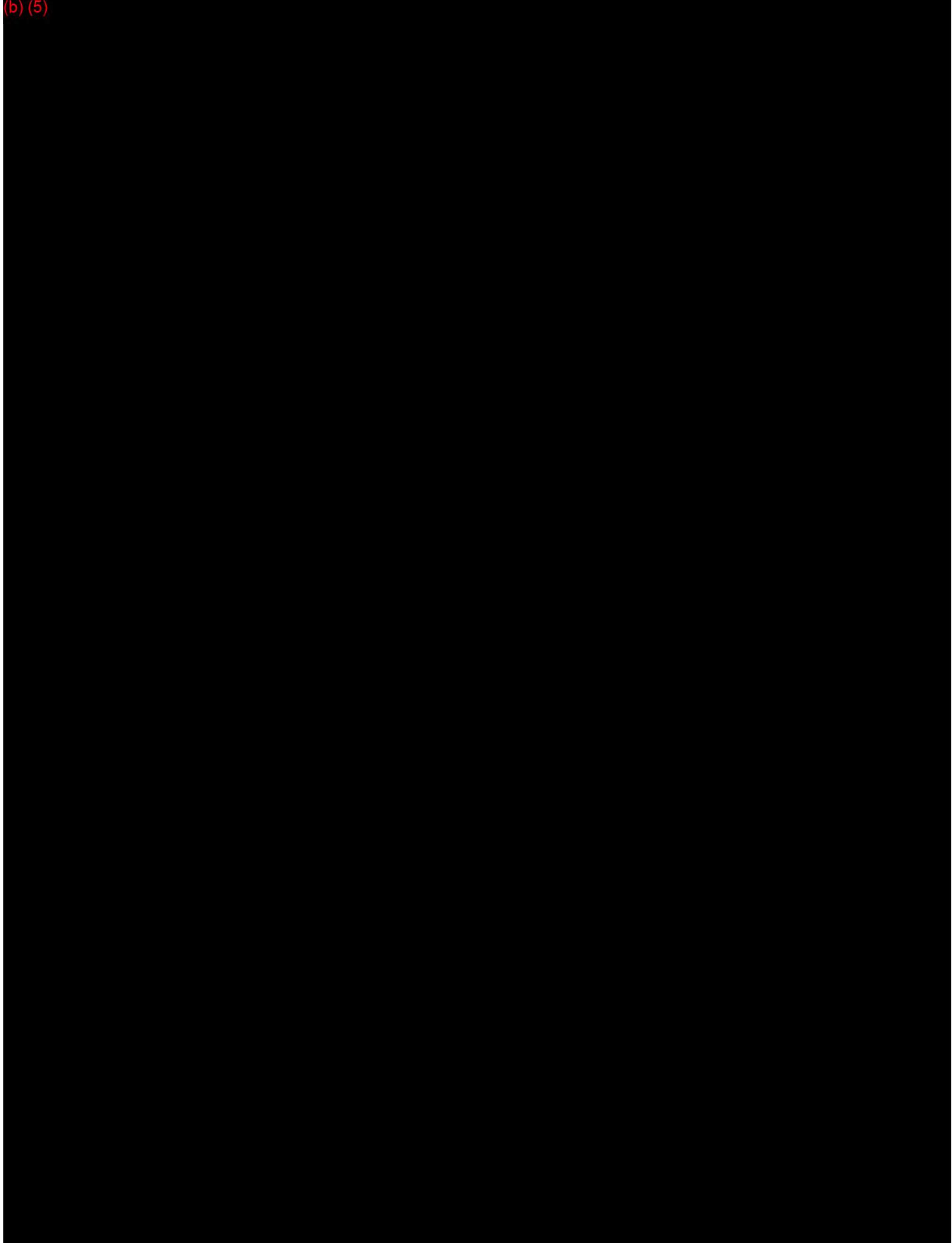
Dan and Theresa: please take a quick look before we finalize this for Mary in the next 30 minutes or so (sorry!). Let me know if you have any other edits.

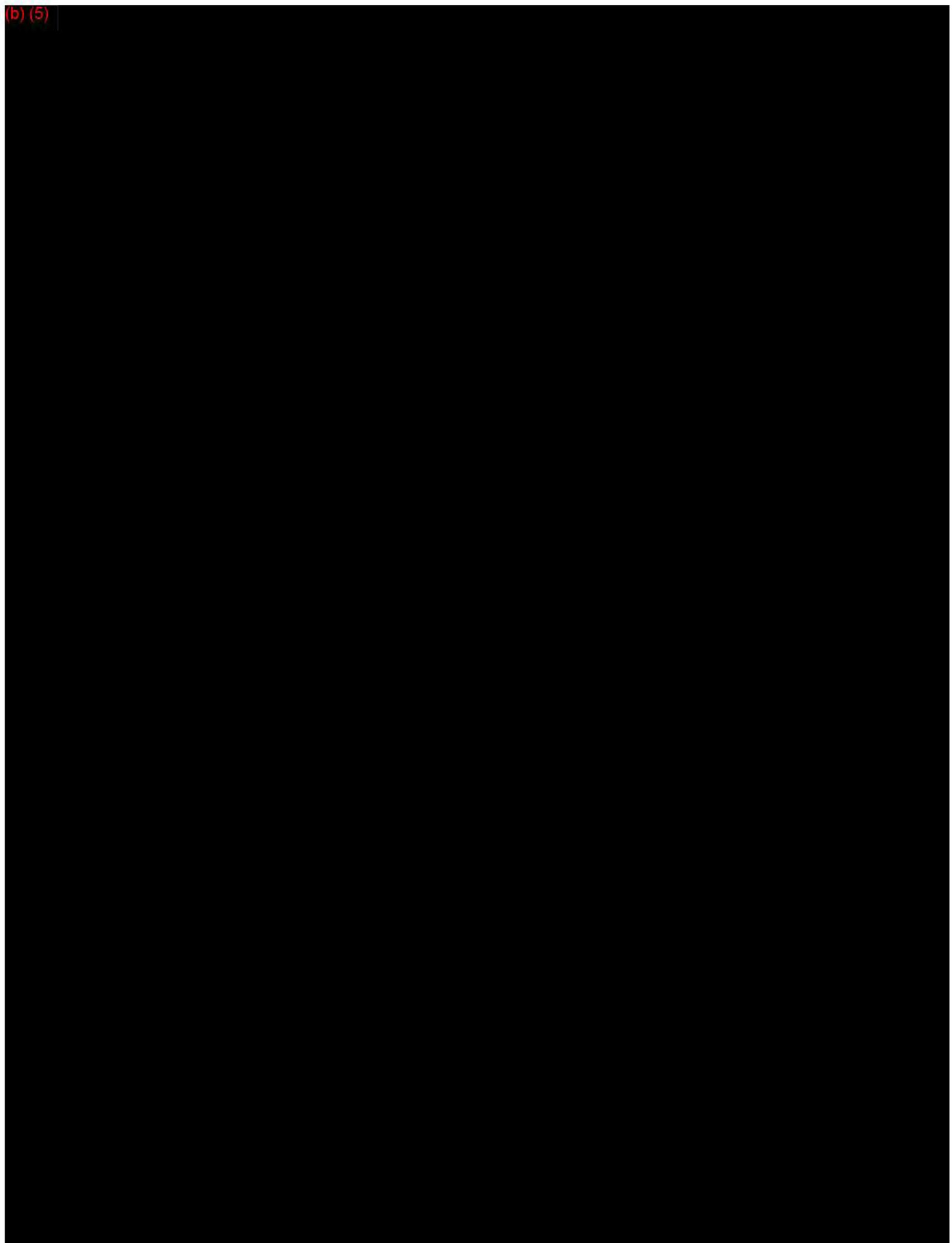
Best,

Steven









## Draft Herrgott Testimony

---

**From:** "Schneider, Daniel J. EOP/CEQ" <(b) (6)>

**To:** "Osterhues, Marlys A. EOP/CEQ" <(b) (6)>

"Barnett, Steven W. EOP/CEQ" <(b) (6)> "Neumayr, Mary B. EOP/CEQ" <(b) (6)> "Pettigrew, Theresa L. EOP/CEQ"

**Cc:** <(b) (6)> "Herrgott, Alex H. EOP/CEQ"

<(b) (6)> "Smith, Katherine R. EOP/CEQ"

<(b) (6)>

**Date:** Tue, 19 Jun 2018 17:10:07 -0400

**Attachments** Herrgott Testimony 6.27 Roundtable Senate FINAL DS V2 CLEAN.DOCX (29.55 kB);  
: Herrgott Testimony 6.27 Roundtable Senate FINAL DS V2.DOCX (33.64 kB)

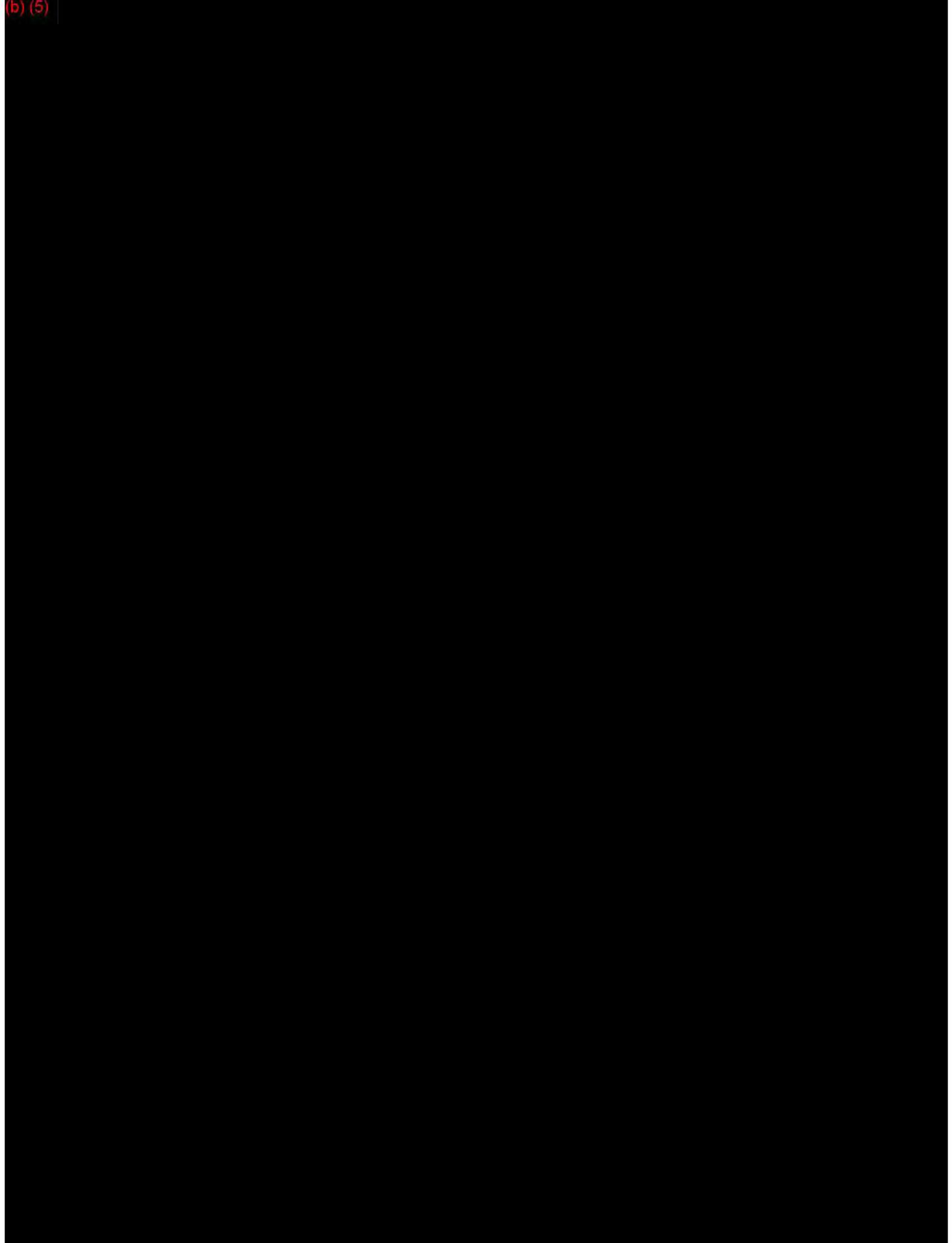
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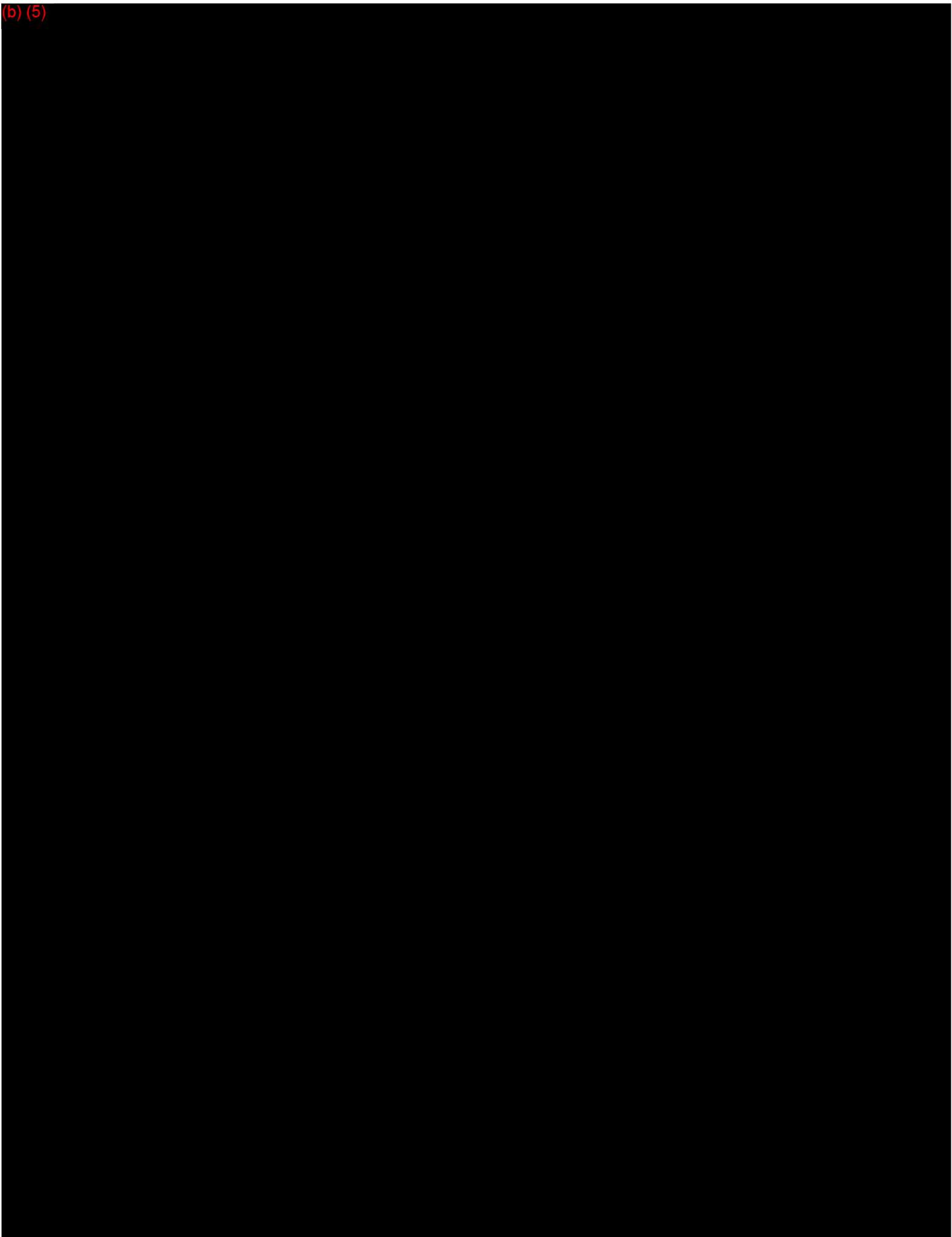
All – attached are both clean and marked up versions of Alex’s statement that reflects Mary, Theresa, and I’s edits. Please coordinate with FPISC in sending over the statements simultaneously.

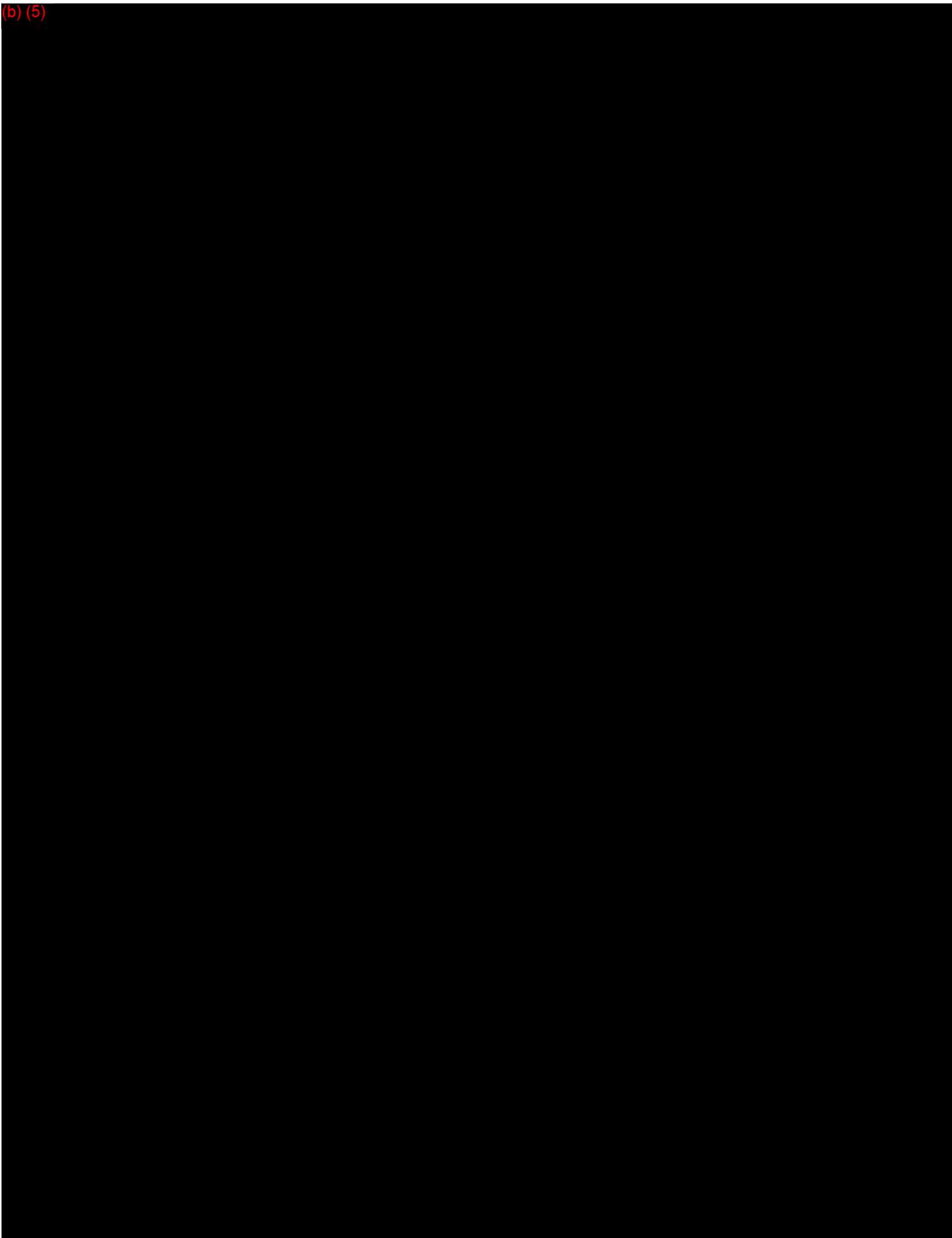
Let me know if you have any questions,

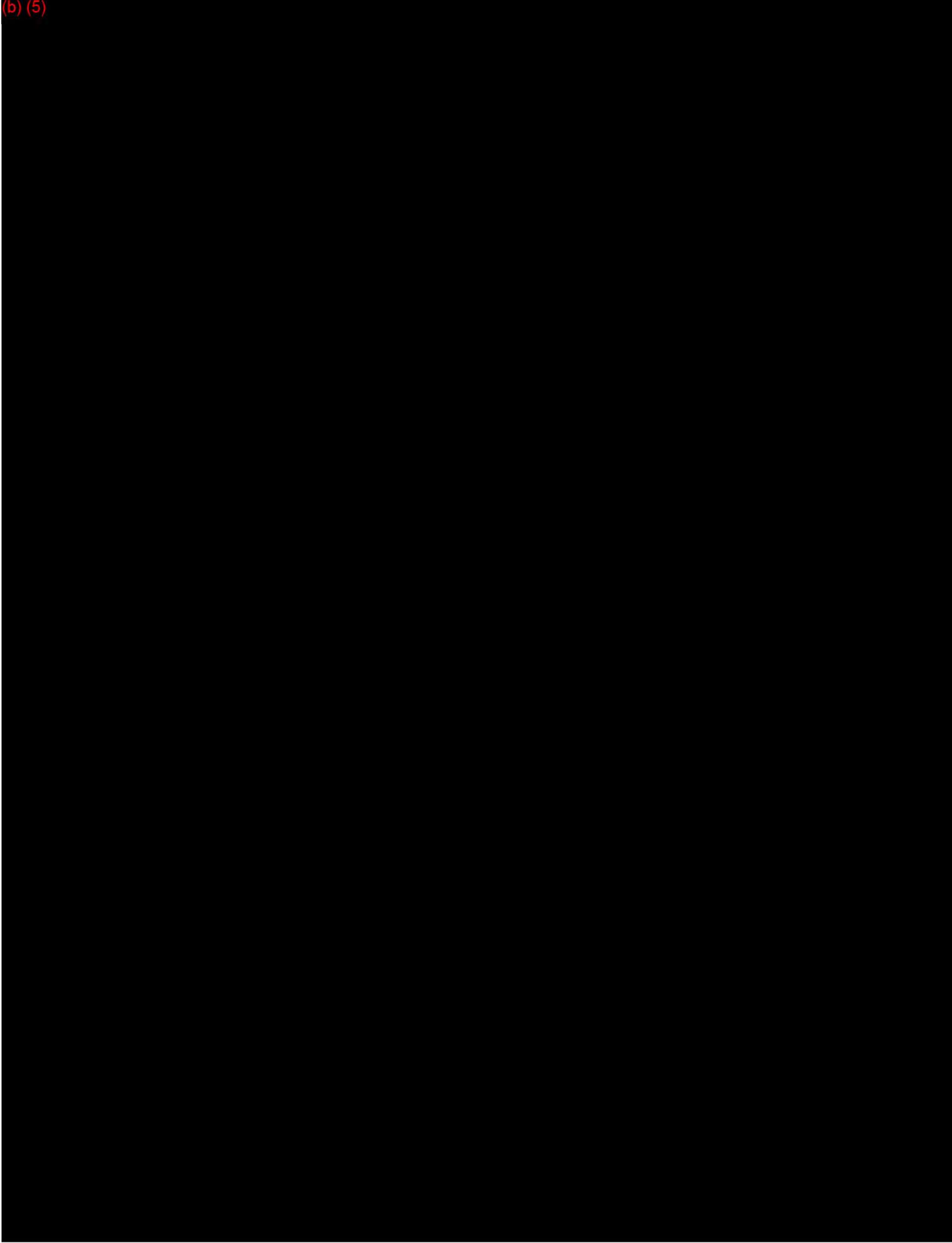
Dan

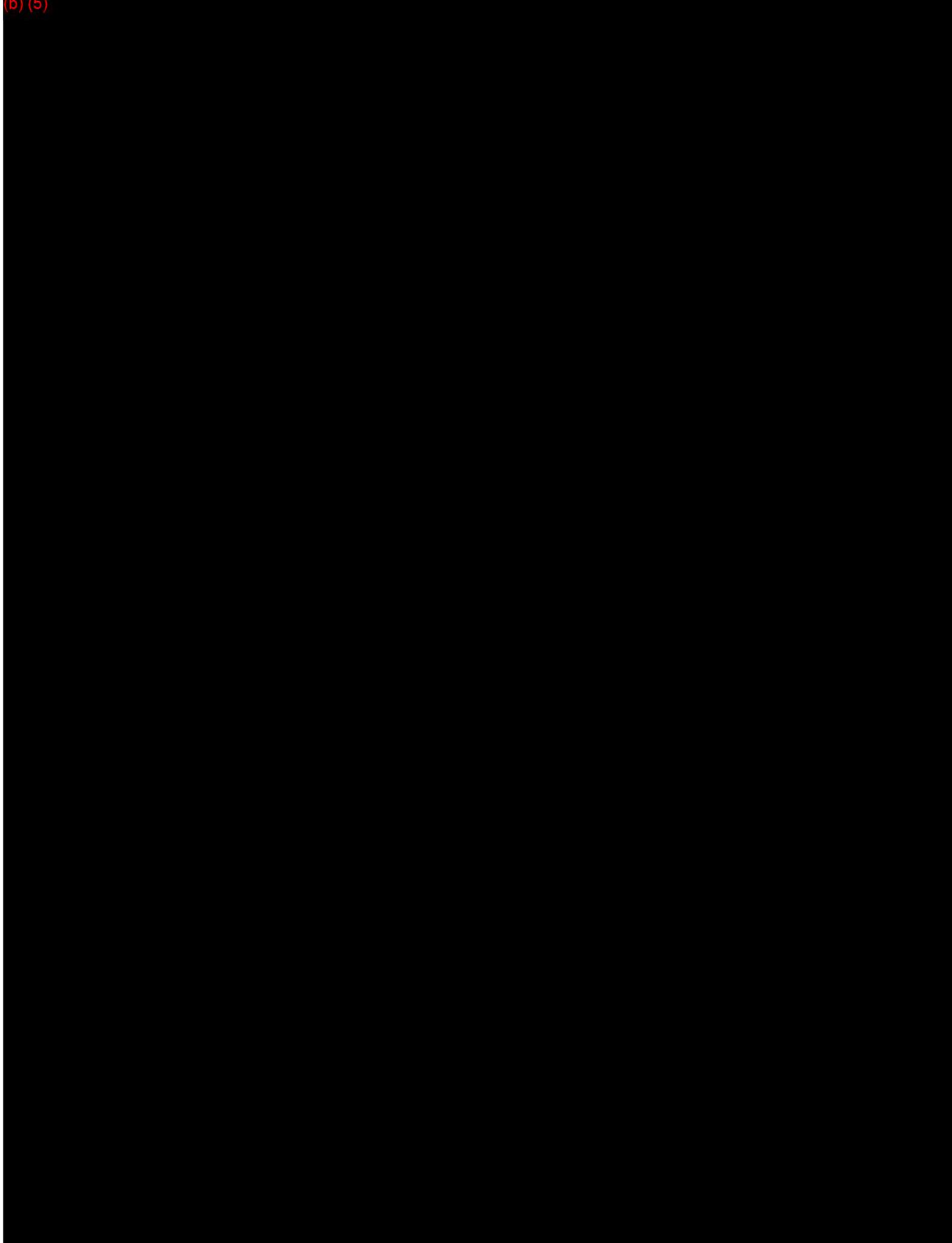
Dan Schneider  
Associate Director for Communications  
Council on Environmental Quality  
Executive Office of the President  
(b) (6) (desk)  
(b) (6)  
[www.whitehouse.gov/ceq](http://www.whitehouse.gov/ceq)

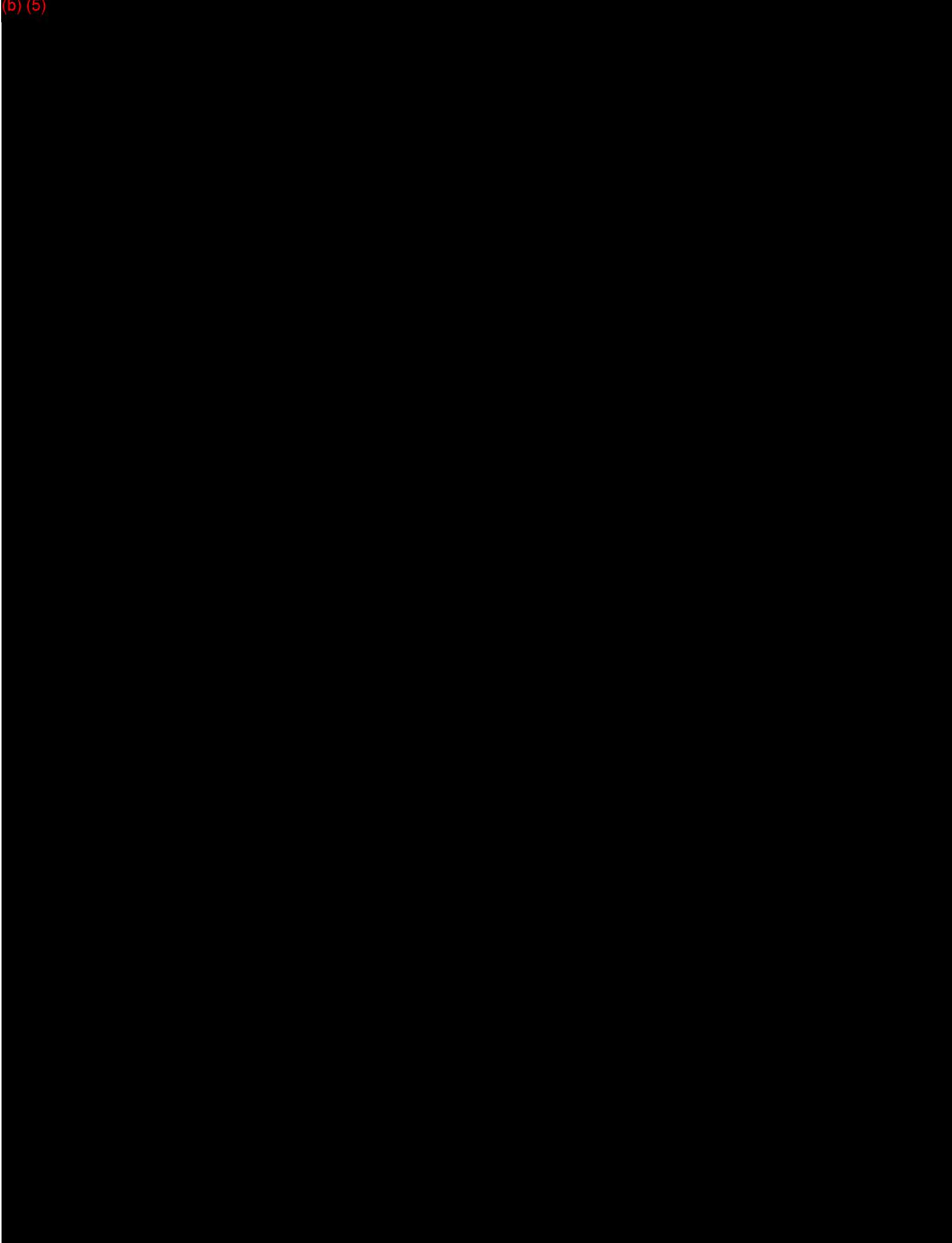




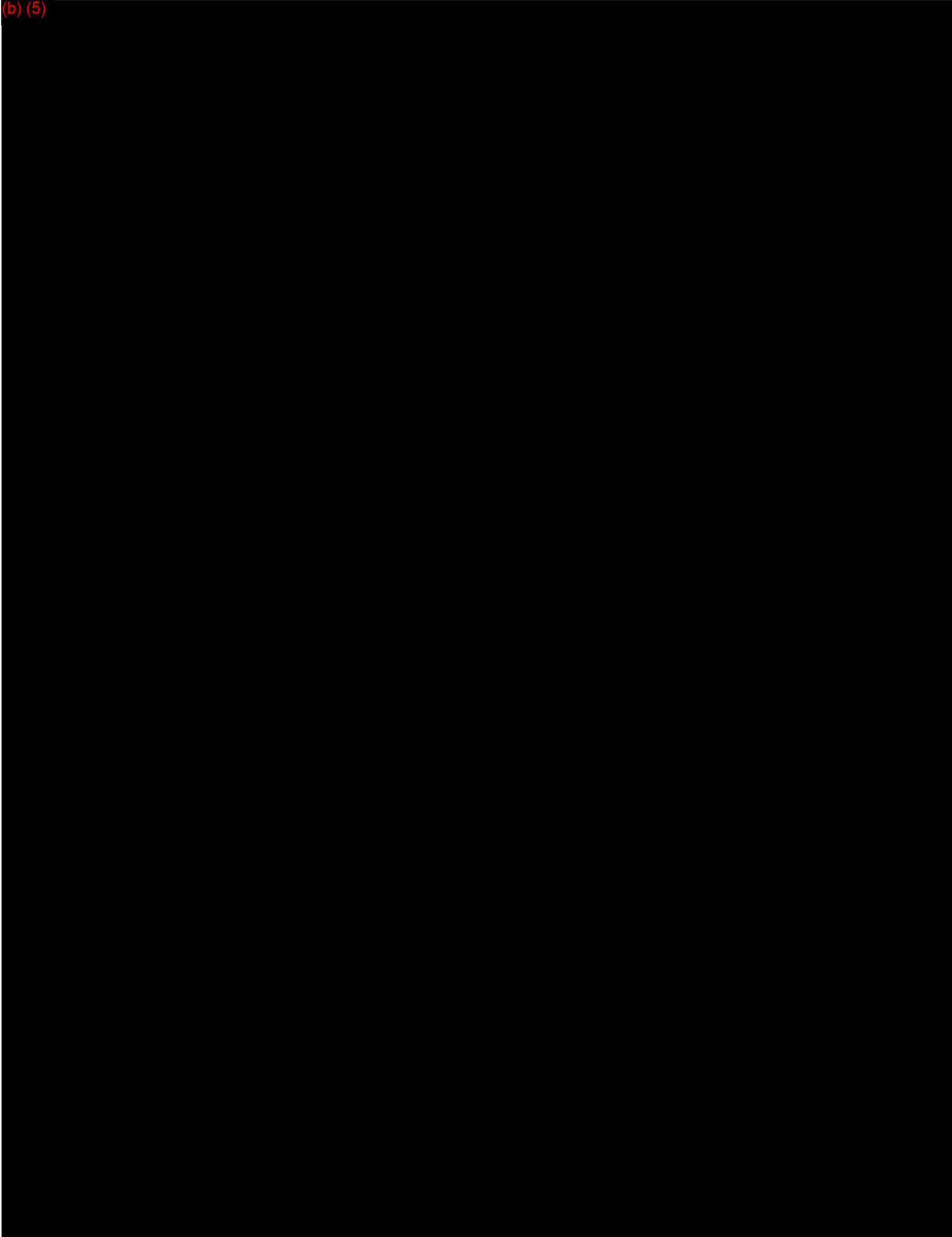












## Herrgott- 6/27 Roundtable

---

**From:** "Smith, Katherine R. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=e45de0bbb5ca4e87a4c4528ec12a7b03-sm">  
**To:** "Neumayr, Mary B. EOP/CEQ" <(b) (6)>  
**Date:** Tue, 19 Jun 2018 12:09:58 -0400  
**Attachments** Alexander Herrgott--Bio.docx (14.06 kB); Herrgott Testimony 6.27 Roundtable : Senate FINAL.DOCX (28.67 kB)

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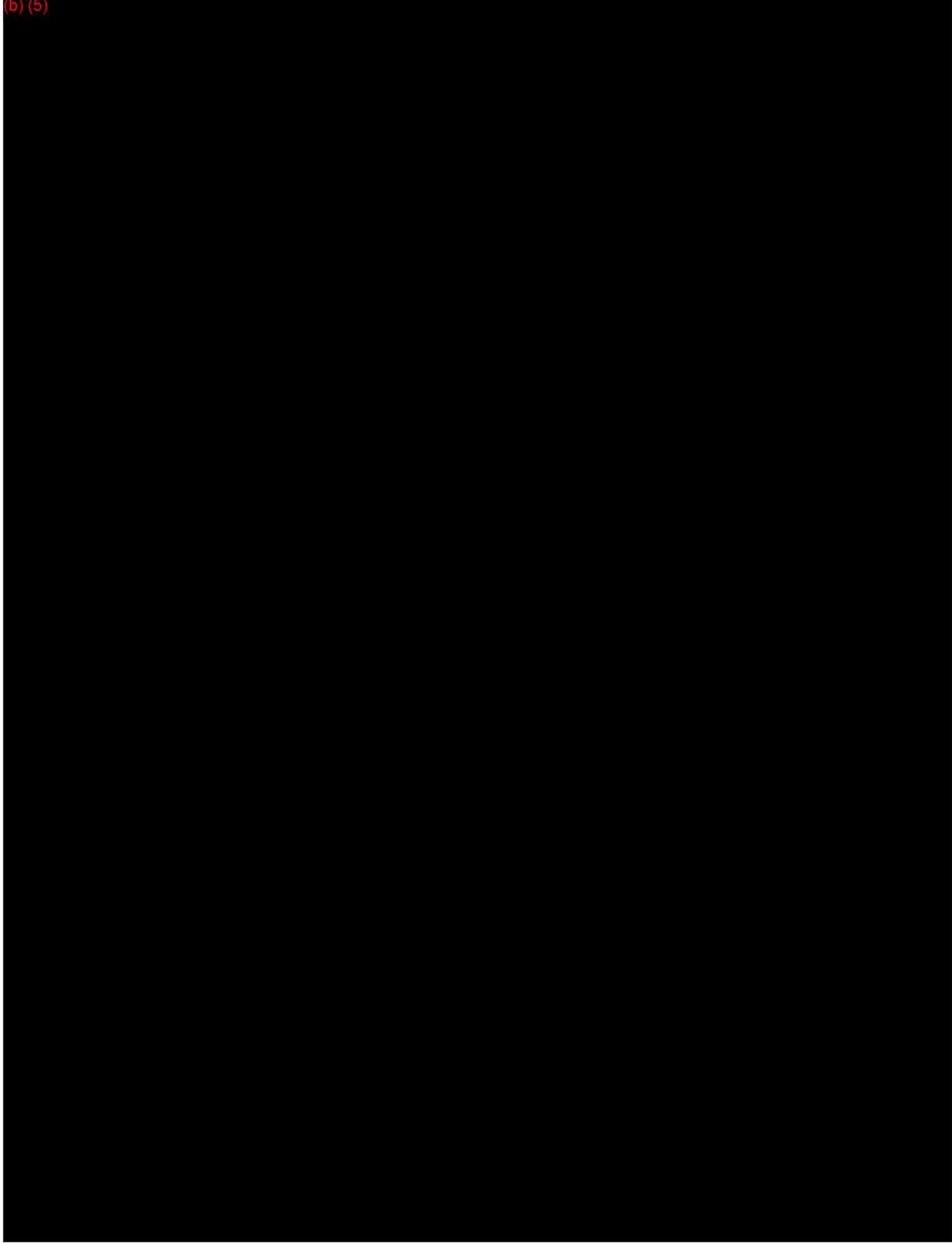
Mary,

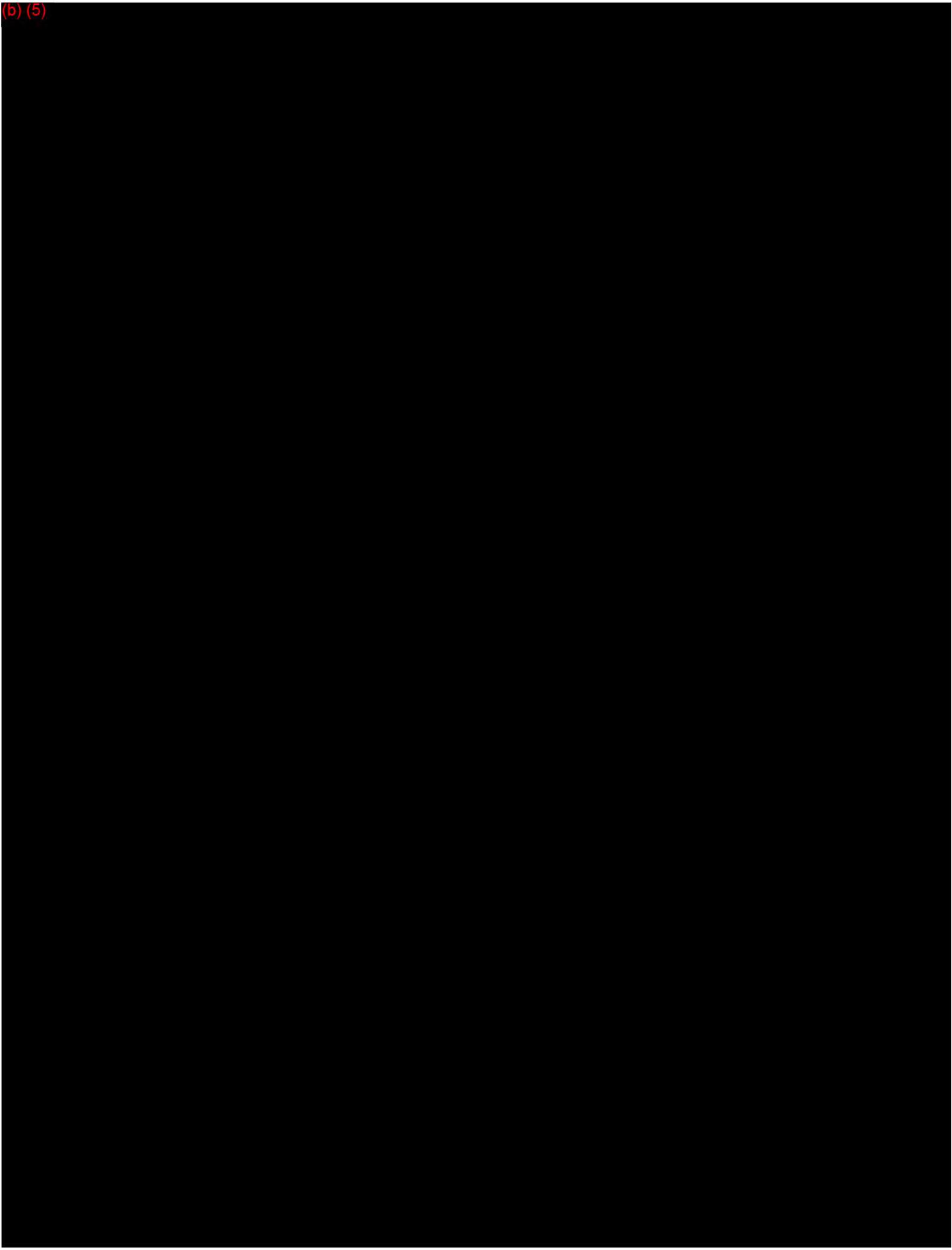
Drafts of Alex's bio and testimony for the June 27<sup>th</sup> Roundtable are attached for your review.

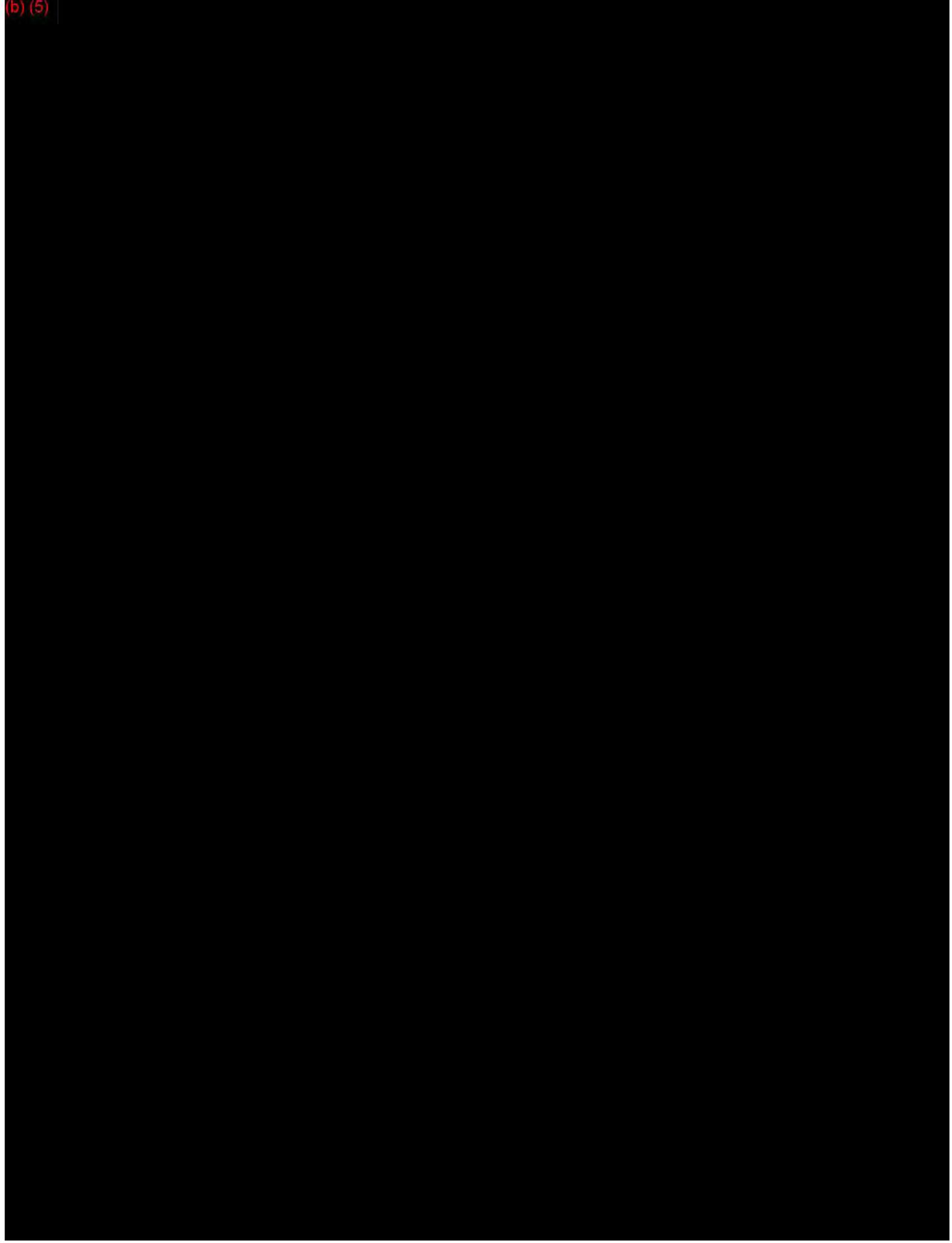
Thanks,  
Katherine

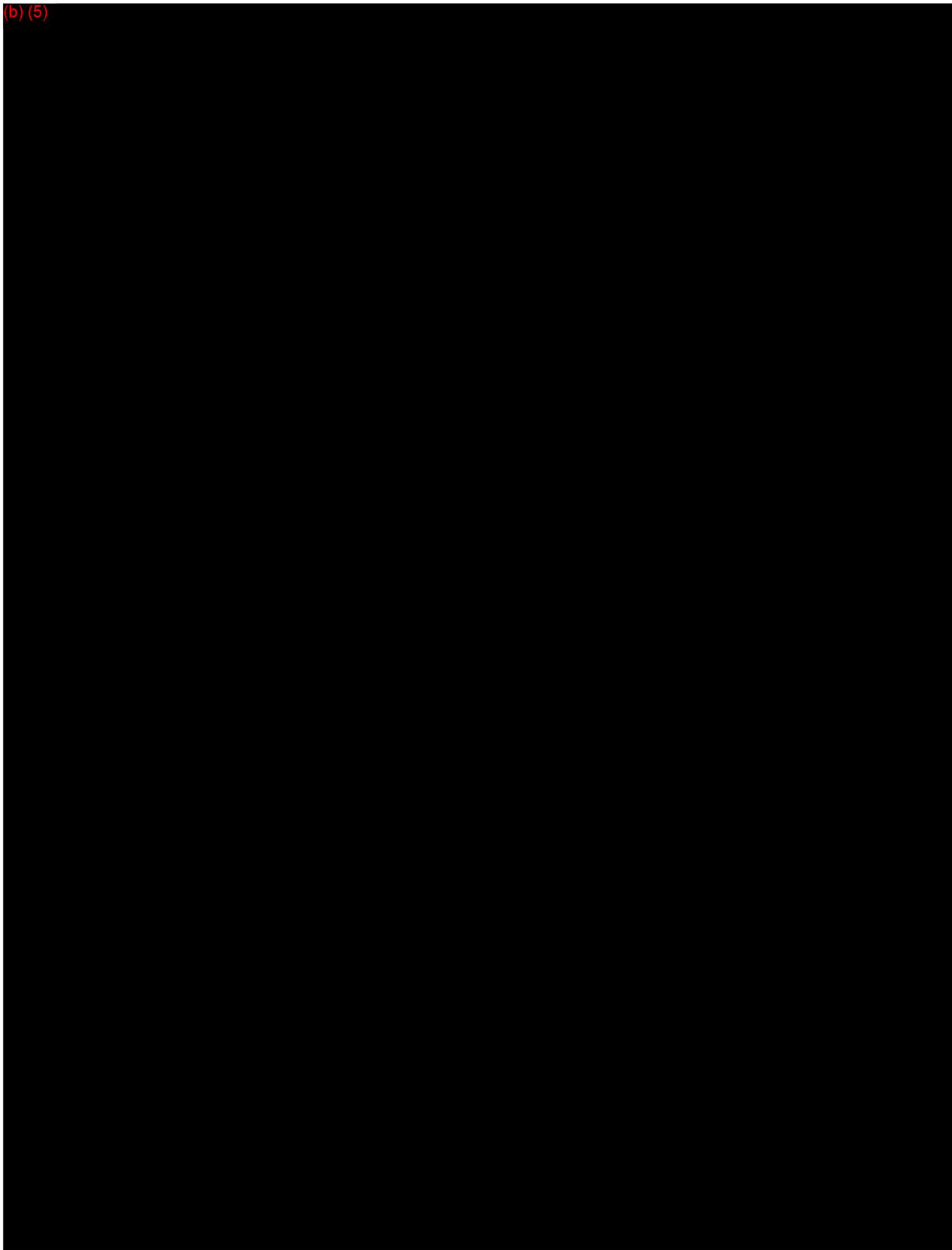
Katherine Smith  
Special Assistant  
Council on Environmental Quality

(b) (6)









## RE: Updates to NEPA.gov

---

**From:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
:  
**To:** "Adams, John (AU) (CONTR)" <john.adams@hq.doe.gov>, "Carter, Marian (CONTR)" <marian.carter@hq.doe.gov>  
**Cc:** "Alexander, Lillian" <lillian.alexander@hq.doe.gov>, "Boling, Ted A. EOP/CEQ" <(b) (6)>, "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**Date:** Tue, 19 Jun 2018 16:12:06 -0400

Thanks, John.

Please also bold "implementing regulations" and end the sentence after "potential revisions" (and delete the remaining words).

**From:** Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>  
**Sent:** Tuesday, June 19, 2018 4:07 PM  
**To:** Mansoor, Yardena M. EOP/CEQ <(b) (6)> Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>  
**Cc:** Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ <(b) (6)> Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** RE: Updates to NEPA.gov

Good afternoon Yardena,

This request is ready to go once we receive the link for [Advance Notice of Proposed Rulemaking](#) (20 June 2018). Please note below the banner below. Due to banner size, below is the amount of text that could be fitted.

**CEQ IS CONSIDERING UPDATING ITS NEPA IMPLEMENTING REGULATIONS AND SOLICITS PUBLIC COMMENT ON POTENTIAL REVISIONS TO UPDATE THE REGULATIONS AND ENSURE A MORE, TIMELY, AND EFFECTIVE NEPA PROCESS.**

READ MORE

Regards,

John Adams  
AU Web Support Team  
Highland Technology Services, Inc. Contractor to the Office of Environment, Health, Safety and Security |  
Germantown Building  
1000 Independence Avenue, SW  
Washington, D.C. 20585-1290  
Phone: 301.903.8162 | Email: [john.adams@hq.doe.gov](mailto:john.adams@hq.doe.gov)

---

**From:** Mansoor, Yardena M. EOP/CEQ [mailto:(b) (6)]  
**Sent:** Monday, June 18, 2018 1:53 PM  
**To:** Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>  
**Cc:** Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ <(b) (6)> Drummond, Michael R. EOP/CEQ <(b) (6)> Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>  
**Subject:** RE: Updates to NEPA.gov

**This information is not for public release before Wednesday, until after I confirm the highlighted dates and that the notice is accessible in regulations.gov. Thanks!**

1. If the banner is to be an image, we need the image to enable us having time to manipulate it;  
Not an image.
2. If the banner is to link to content, we need the content or URL identified;  
See 4 below.
3. If the banner is not going to contain an image, it will be a simple blue background. Please confirm;  
Blue would be fine.

4. The content or 2 sentences to be used in the banner.

CEQ is considering updating its NEPA implementing regulations and solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process. See the Advance Notice of Proposed Rulemaking and related materials [here](#). [Link to <https://ceq.doe.gov/laws-regulations/regulations.html>.]

5. For the Regulations web page, we need the Heading you want to use, the 3 sentences of text to be entered and the 2 hyperlinks referenced on the web page.

On the CEQ NEPA Implementing Procedures page: <https://ceq.doe.gov/laws-regulations/regulations.html>, after the **Current Regulations:** heading, create new heading "**Proposed Rulemaking:**" and insert:

Advance Notice of Proposed Rulemaking (20 June 2018). CEQ is considering updating its NEPA implementing regulations and solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process. Submit comments, identified by docket ID number CEQ-2018-0001, through the Federal eRulemaking portal, <https://www.regulations.gov>. Comments should be submitted on or before July 20, 2018.

---

**From:** Carter, Marian (CONTR) <[Marian.Carter@hq.doe.gov](mailto:Marian.Carter@hq.doe.gov)>

**Sent:** Monday, June 18, 2018 1:23 PM

**To:** Mansoor, Yarden M. EOP/CEQ <(b) (6)>

**Cc:** Alexander, Lillian <[Lillian.Alexander@hq.doe.gov](mailto:Lillian.Alexander@hq.doe.gov)>; Boling, Ted A. EOP/CEQ

<(b) (6)> Drummond, Michael R. EOP/CEQ

<(b) (6)> Adams, John (AU) (CONTR) <[John.Adams@Hq.Doe.Gov](mailto:John.Adams@Hq.Doe.Gov)>

**Subject:** RE: Updates to NEPA.gov

Good Afternoon, Yarden:

I checked with John, and if you provide us with the following by COB today, Tuesday, June 18th, he anticipates that he can have these changes completed by tomorrow, COB, Tuesday, June 19, 2018:

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2. If the banner is to link to content, we need the content or URL identified;
3. If the banner is not going to contain an image, it will be a simple blue background. Please confirm;
4. The content or 2 sentences to be used in the banner.
5. For the Regulations web page, we need the Heading you want to use, the 3 sentences of text to be entered and the 2 hyperlinks referenced on the web page.

*Thank you,  
Marian*

*Marian A. Carter*

AU Web Support Team Manager  
Highland Technology Services, Inc., Contractor  
Office of Environment, Health, Safety and Security  
(301) 903-3494 - Office  
[marian.carter@hq.doe.gov](mailto:marian.carter@hq.doe.gov)

*The business of life is the acquisition of memories...*

**From:** Mansoor, Yardena M. EOP/CEQ [mailto:(b) (6)]  
**Sent:** Monday, June 18, 2018 12:31 PM  
**To:** Adams, John (AU) (CONTR) <[John.Adams@Hq.Doe.Gov](mailto:John.Adams@Hq.Doe.Gov)>  
**Cc:** Carter, Marian (CONTR) <[Marian.Carter@hq.doe.gov](mailto:Marian.Carter@hq.doe.gov)>; Alexander, Lillian <[Lillian.Alexander@hq.doe.gov](mailto:Lillian.Alexander@hq.doe.gov)>; Boling, Ted A. EOP/CEQ <(b) (6)>  
Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** Updates to NEPA.gov

**Later this week:** The time-sensitive updates I mentioned last week will be requested early Wednesday morning, when a CEQ Federal Register notice is expected to be published. The Wednesday changes will include:

- Adding a banner (two sentences) on the [nepa.gov](http://nepa.gov) home page.
- Adding a heading, three sentences of text, and two links on the **CEQ NEPA Implementing Procedures** page: >><https://ceq.doe.gov/laws-regulations/regulations.html><<.

**Follow-up:** Please let me know if you have any questions on the request I sent Friday at 1:37, on the NEPA Practice page (revising and alphabetizing the tab entries, new land page and file for "Agency Jurisdiction and Expertise.")

**New requests:**

At >>[https://ceq.doe.gov/laws-regulations/nepa\\_legislative\\_history.html](https://ceq.doe.gov/laws-regulations/nepa_legislative_history.html)<<, please replace the following links with the corresponding attachments (filenames in parenthesis):

[Congressional White Paper on a National Policy for the Environment](#) (CongressWhitePaper.pdf)

[House of Representatives Report on NEPA](#) (House of Representatives Report on NEPA.pdf)

[Senate Report on NEPA](#) (Senate Report on NEPA.pdf)

[Conference Report](#) (Conference Report on NEPA.pdf)

At >>[https://ceq.doe.gov/laws-regulations/agency\\_implementing\\_procedures.html](https://ceq.doe.gov/laws-regulations/agency_implementing_procedures.html)<<, please replace the linked file the corrected file attached.

Thanks, in advance, for your help.

Yardena Mansoor  
Deputy Associate Director for NEPA

Council on Environmental Quality

(b) (6) / (b) (6)

## RE: Draft Herrgott Testimony

---

**From:** "Osterhues, Marlys A. EOP/CEQ" <(b) (6)>  
**To:** Angela Colamaria - Y-D <angela.colamaria@fpisc.gov>  
Karen Hanley - Y <karen.hanley@gsa.gov>, "Herrgott, Alex H. EOP/CEQ"  
<(b) (6)> "Pettigrew, Theresa L. EOP/CEQ"  
<(b) (6)> "Barnett, Steven W. EOP/CEQ"  
<(b) (6)> "Drummond, Michael R. EOP/CEQ"  
**Cc:** <(b) (6)> Amber Levofsky - Y  
<amber.levofsky@gsa.gov>, Janet Pfleeger - Y <janet.pfleeger@fpisc.gov>, "Smith,  
Katherine R. EOP/CEQ" <(b) (6)> Kavita Vaidyanathan -  
AY-DETAILEE <kavita.vaidyanathan@gsa.gov>, "Schneider, Daniel J. EOP/CEQ"  
<(b) (6)>  
**Date:** Wed, 20 Jun 2018 17:46:35 -0400

**Attachments**  
: Herrgott Testimony 6.27 Roundtable Senate FINAL\_6.20.DOCX (28.14 kB)

Angie -

Here is the final version of Alex's statement.

Thanks - Marlys

**From:** Schneider, Daniel J. EOP/CEQ  
**Sent:** Wednesday, June 20, 2018 4:47 PM  
**To:** Angela Colamaria - Y-D <angela.colamaria@fpisc.gov>; Osterhues, Marlys A. EOP/CEQ  
<(b) (6)>  
**Cc:** Karen Hanley - Y <karen.hanley@gsa.gov>; Herrgott, Alex H. EOP/CEQ  
<(b) (6)> Pettigrew, Theresa L. EOP/CEQ  
<(b) (6)> Barnett, Steven W. EOP/CEQ <(b) (6)>  
Drummond, Michael R. EOP/CEQ <(b) (6)> Amber Levofsky - Y  
<amber.levofsky@gsa.gov>; Janet Pfleeger - Y <janet.pfleeger@fpisc.gov>; Smith, Katherine R. EOP/CEQ  
<(b) (6)> Kavita Vaidyanathan - AY-DETAILEE <kavita.vaidyanathan@gsa.gov>  
**Subject:** RE: Draft Herrgott Testimony

Minor edits from Mary to Angie's statement attached.

**From:** Angela Colamaria - Y-D <angela.colamaria@fpisc.gov>  
**Sent:** Wednesday, June 20, 2018 4:39 PM

To: Osterhues, Mariys A. EOP/CEQ <(b) (6)>  
Cc: Karen Hanley - Y <karen.hanley@gsa.gov>; Herrgott, Alex H. EOP/CEQ <(b) (6)> Pettigrew, Theresa L. EOP/CEQ <(b) (6)> Barnett, Steven W. EOP/CEQ <(b) (6)>  
Drummond, Michael R. EOP/CEQ <(b) (6)> Amber Levofsky - Y <amber.levofsky@gsa.gov>; Janet Pfleeger - Y <janet.pfleeger@fpisc.gov>; Schneider, Daniel J. EOP/CEQ <(b) (6)> Smith, Katherine R. EOP/CEQ <(b) (6)>  
Kavita Vaidyanathan - AY-DETAILEE <kavita.vaidyanathan@gsa.gov>  
**Subject:** Re: Draft Herrgott Testimony

Adding Katherine, Kavita, and Dan to this chain as they were on the other email chain re my written statement. Feel free to ignore if not relevant to you!

On Wed, Jun 20, 2018 at 4:32 PM, Angela Colamaria - Y-D <[angela.colamaria@fpisc.gov](mailto:angela.colamaria@fpisc.gov)> wrote:

All here are my quick comments on Alex's testimony. In the interest of time, I didn't review the "agency action" section.

I will be offline for the next hour or so, but can send out both written statements once we are ready.

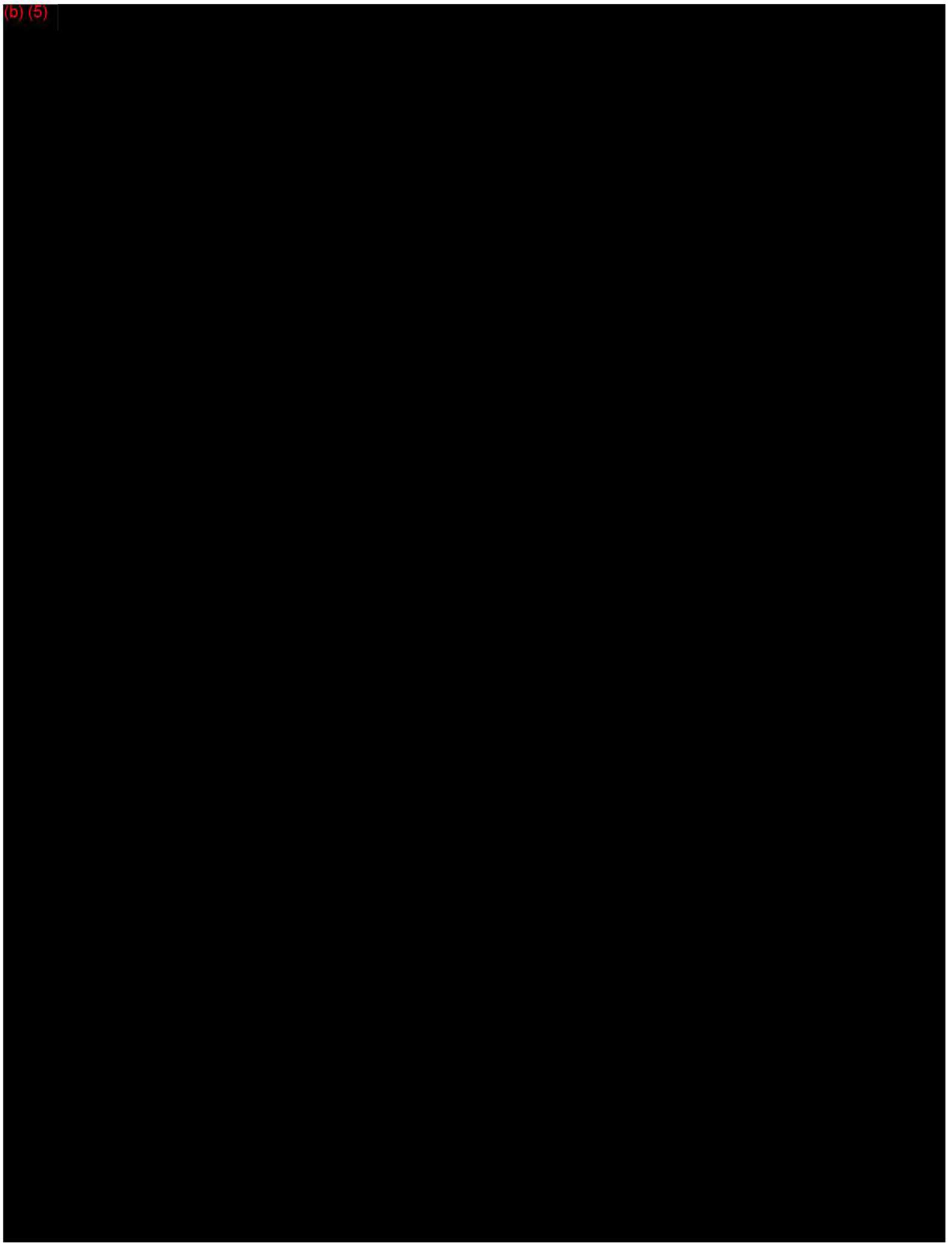
**Angela F. Colamaria**  
Acting Executive Director  
Office of the Executive Director (FPISC-OED)  
Federal Permitting Improvement Steering Council  
[angela.colamaria@fpisc.gov](mailto:angela.colamaria@fpisc.gov)  
202.705.1639  
1800 F St. NW  
Washington, DC 20405

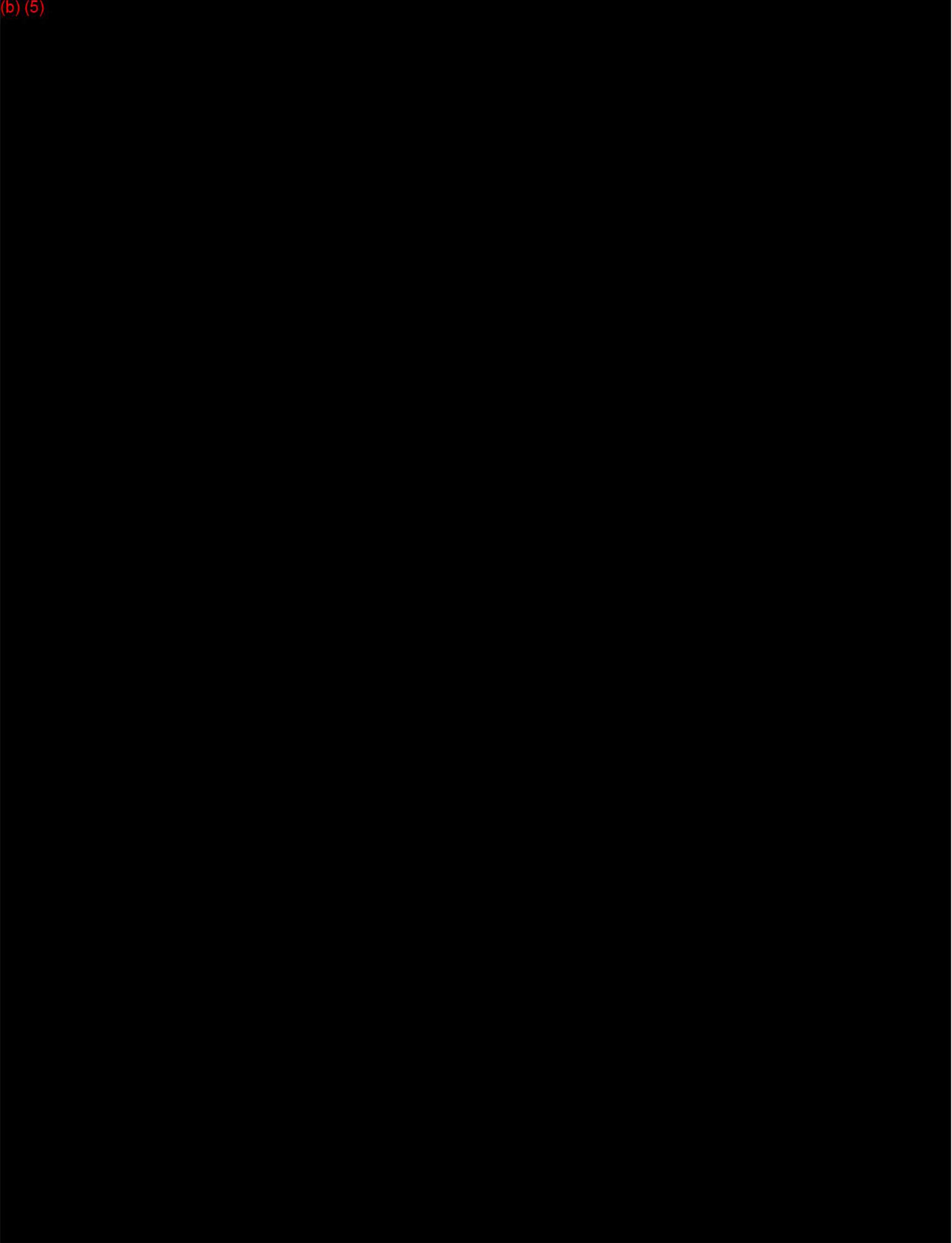
On Tue, Jun 19, 2018 at 5:32 PM, Osterhues, Mariys A. EOP/CEQ <(b) (6)> wrote:

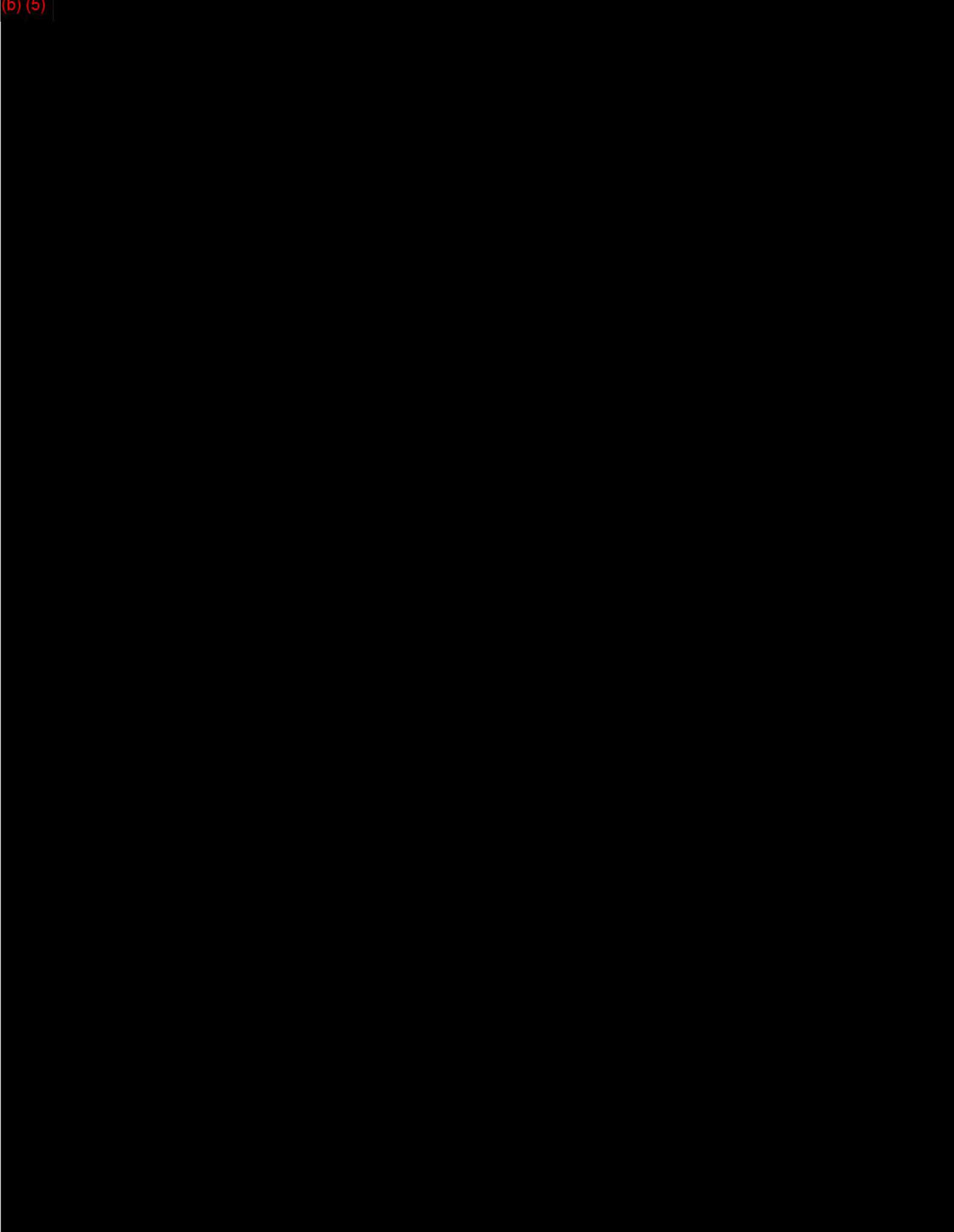
Angie and Karen –

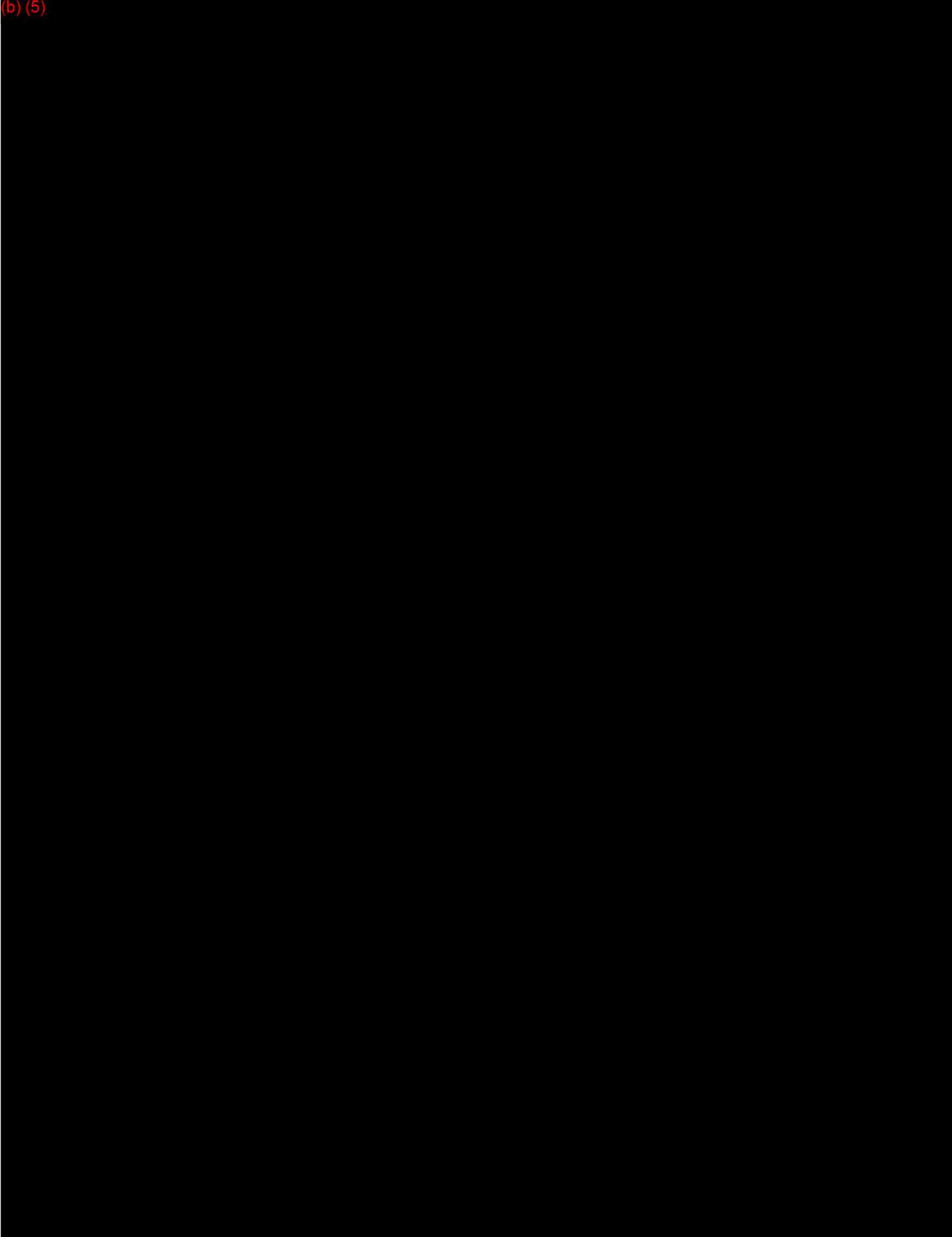
Attached is Alex's statement for next week's Roundtable. Please confirm that you will submit your and Alex's statements together for review/coordination with OMB. Let's touch base tomorrow morning.

Thanks - Mariys









## Re: Draft Herrgott Testimony

---

**From:** Angela Colamaria - Y-D <angela.colamaria@fpisc.gov>

**To:** "Osterhues, Marlys A. EOP/CEQ" <(b) (6)>  
Karen Hanley - Y <karen.hanley@gsa.gov>, "Herrgott, Alex H. EOP/CEQ"  
<(b) (6)> "Pettigrew, Theresa L. EOP/CEQ"  
<(b) (6)> "Barnett, Steven W. EOP/CEQ"  
<(b) (6)> "Drummond, Michael R. EOP/CEQ"

**Cc:** <(b) (6)> Amber Levofsky - Y  
<amber.levofsky@gsa.gov>, Janet Pfleeger - Y <janet.pfleeger@fpisc.gov>,  
"Schneider, Daniel J. EOP/CEQ" <(b) (6)> "Smith,  
Katherine R. EOP/CEQ" <(b) (6)> Kavita Vaidyanathan -  
AY-DETAILEE <kavita.vaidyanathan@gsa.gov>

**Date:** Wed, 20 Jun 2018 16:38:30 -0400

**Attachments** Herrgott Testimony 6.27 Roundtable Senate FINAL DS V2 CLEAN (3) AFC EDITS 6-  
: 20-18.DOCX (35.89 kB)

Adding Katherine, Kavita, and Dan to this chain as they were on the other email chain re my written statement. Feel free to ignore if not relevant to you!

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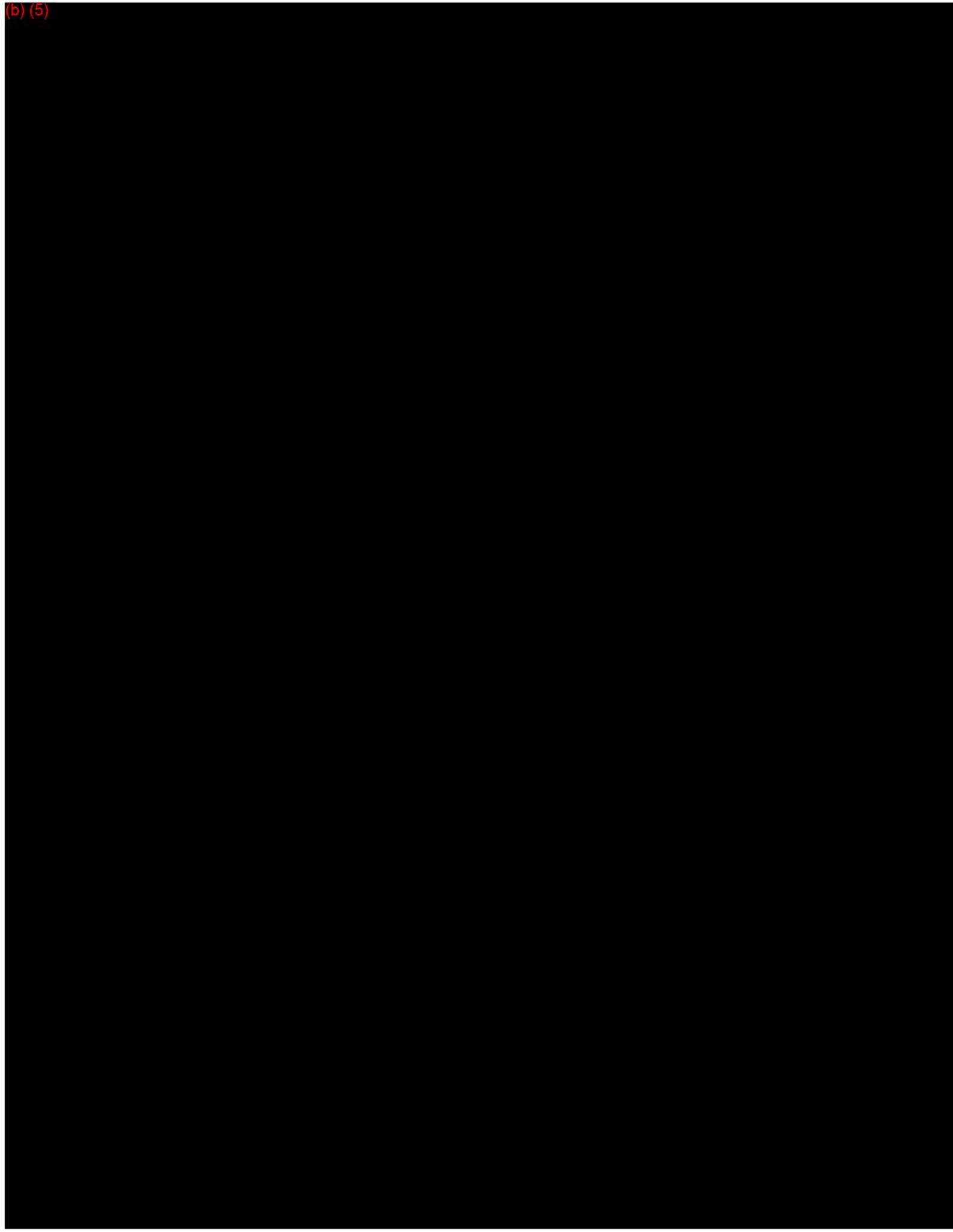
I will be offline for the next hour or so, but can send out both written statements once we are ready.

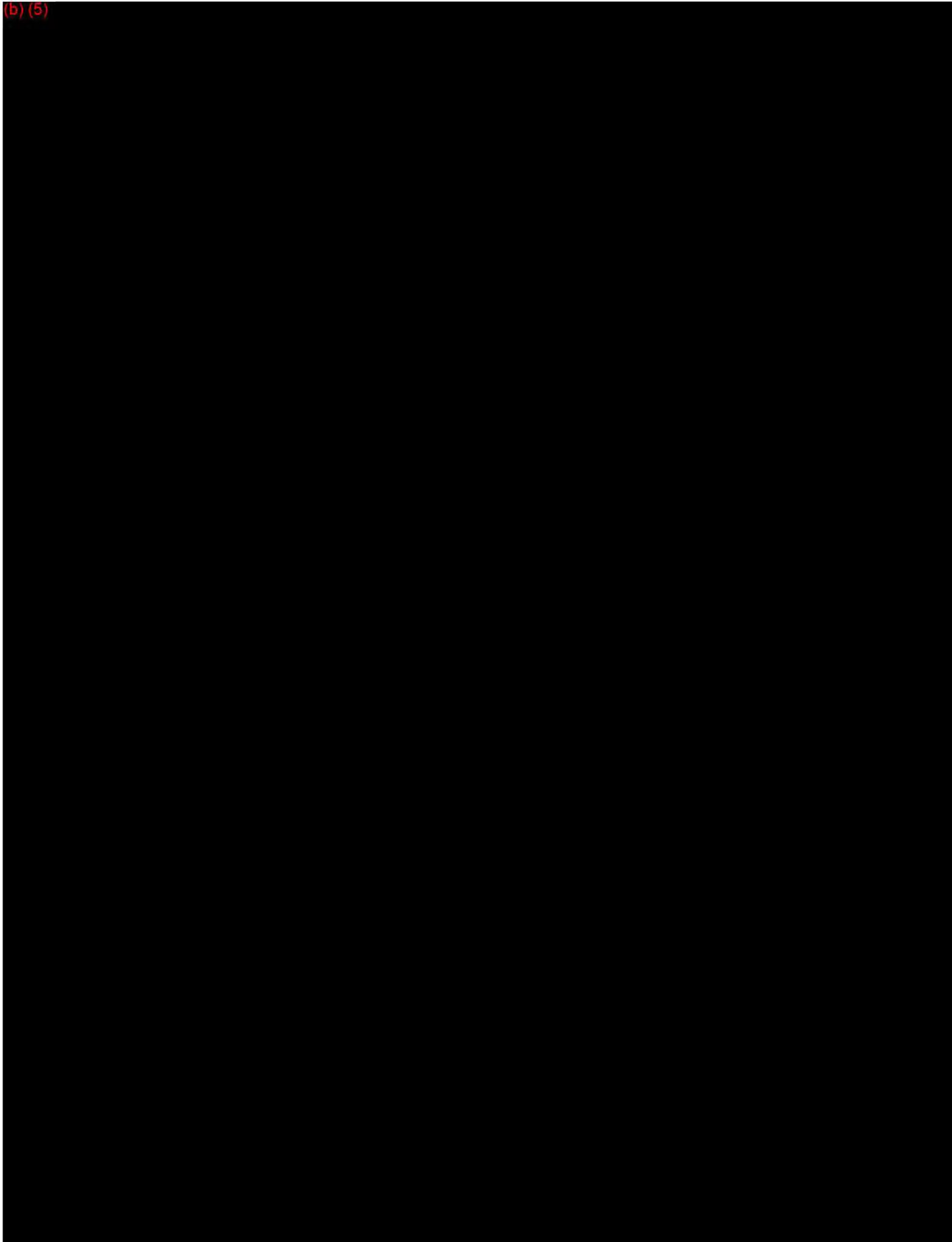
**Angela F. Colamaria**  
Acting Executive Director  
Office of the Executive Director (FPISC-OED)  
Federal Permitting Improvement Steering Council  
[angela.colamaria@fpisc.gov](mailto:angela.colamaria@fpisc.gov)  
202.705.1639  
1800 F St. NW  
Washington, DC 20405

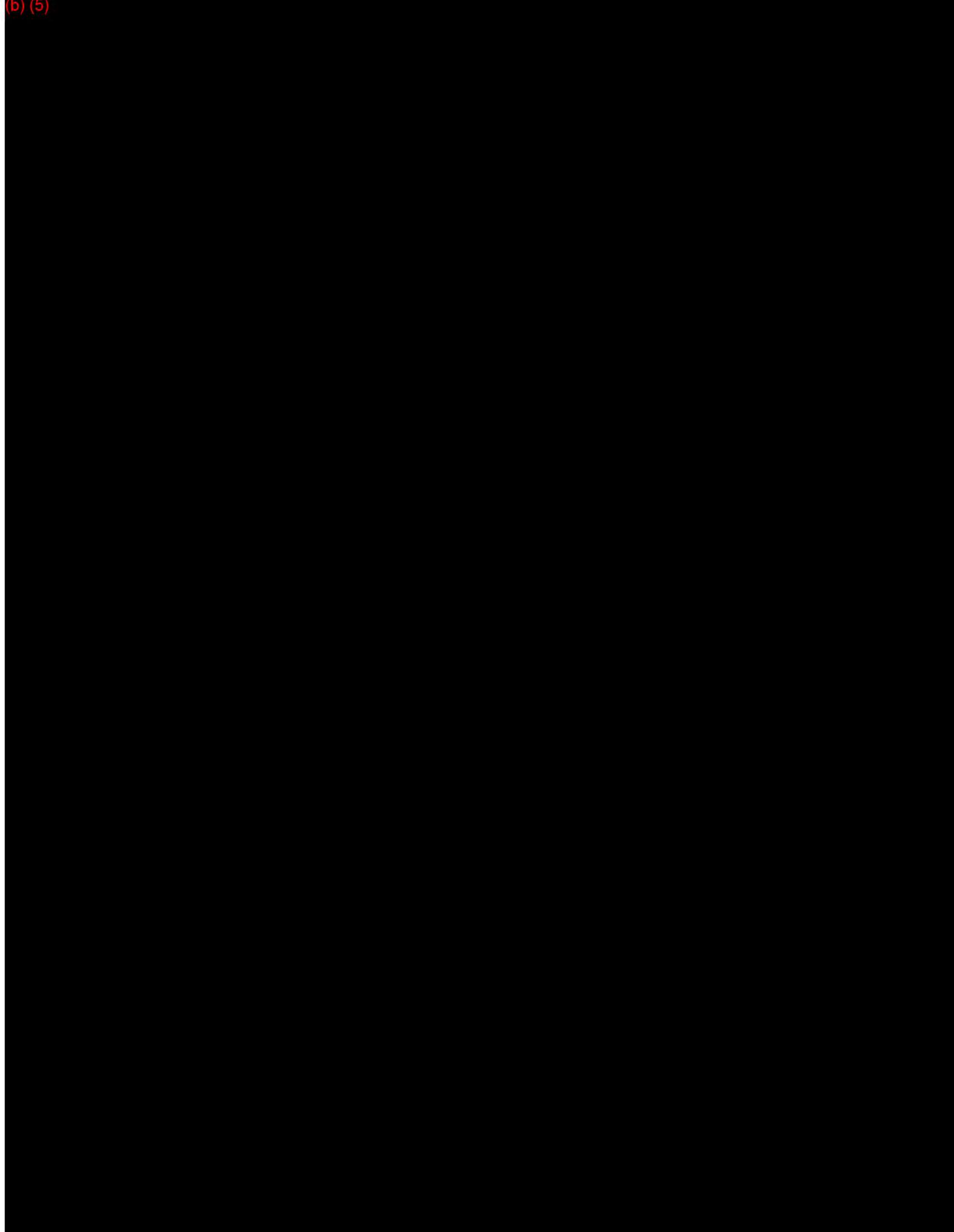
On Tue, Jun 19, 2018 at 5:32 PM, Osterhues, Marlys A. EOP/CEQ <(b) (6)> wrote:  
Angie and Karen –

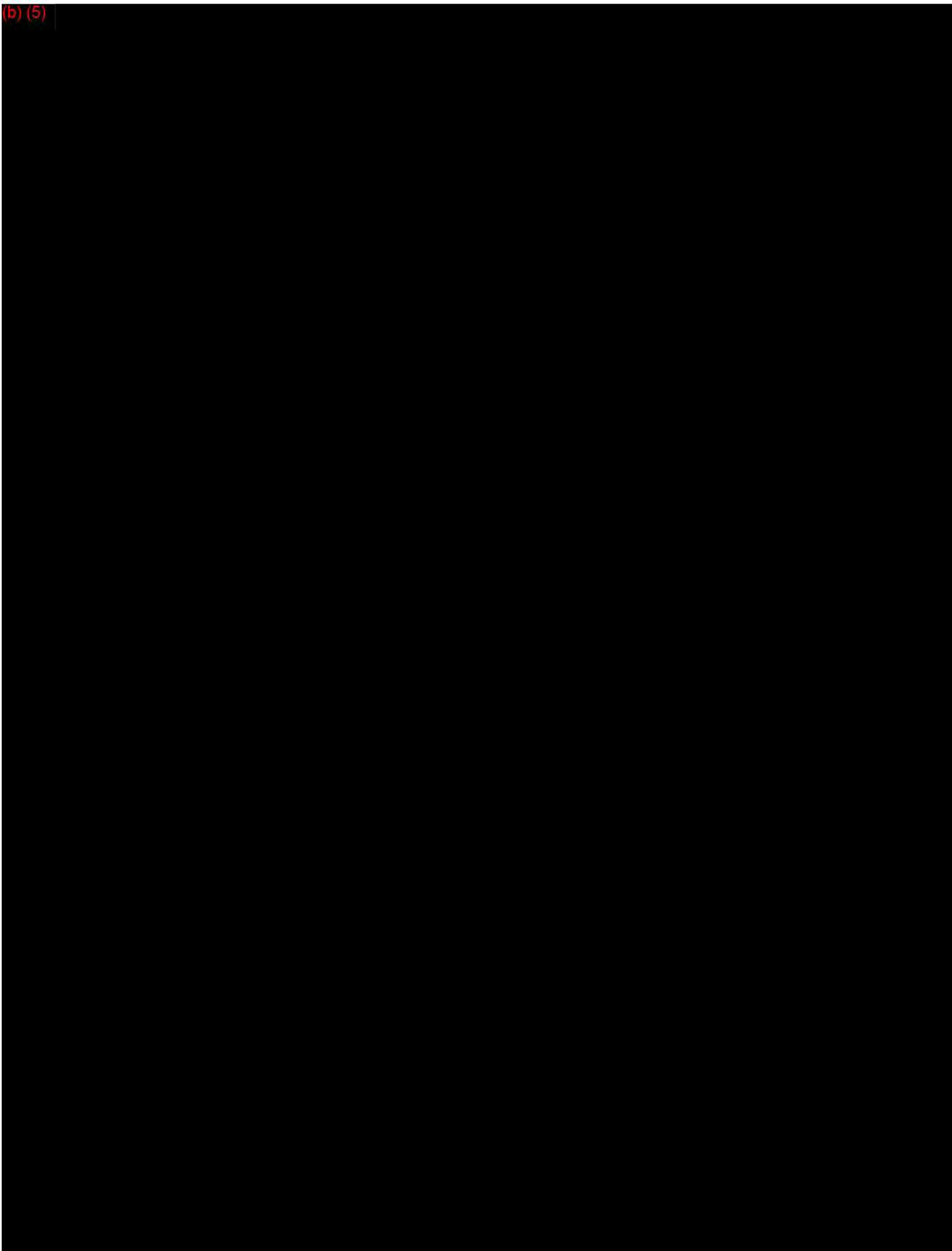
Attached is Alex's statement for next week's Roundtable. Please confirm that you will submit your and Alex's statements together for review/coordination with OMB. Let's touch base tomorrow morning.

Thanks - Marlys









## RE: Advance Notice of Proposed Rulemaking

---

**From:** "Szabo, Aaron L. EOP/CEQ" <(b) (6)>  
:  
"Schneider, Daniel J. EOP/CEQ" <(b) (6)> "Seale, Viktoria Z. EOP/CEQ" <(b) (6)> "Neumayr, Mary B. EOP/CEQ" <(b) (6)> "Boling, Ted A. EOP/CEQ" <(b) (6)>  
**To:** <(b) (6)> "Drummond, Michael R. EOP/CEQ" <(b) (6)> "Smith, Katherine R. EOP/CEQ" <(b) (6)> "Pettigrew, Theresa L. EOP/CEQ" <(b) (6)>  
**Cc:** "Sun, Howard C. EOP/CEQ" <(b) (6)>  
**Date:** Wed, 20 Jun 2018 10:07:50 -0400

It is also available on regulations.gov at <https://www.regulations.gov/docket?D=CEQ-2018-0001>

**From:** Schneider, Daniel J. EOP/CEQ  
**Sent:** Wednesday, June 20, 2018 9:30 AM  
**To:** Seale, Viktoria Z. EOP/CEQ <(b) (6)> Neumayr, Mary B. EOP/CEQ <(b) (6)> Szabo, Aaron L. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)> Drummond, Michael R. EOP/CEQ <(b) (6)> Smith, Katherine R. EOP/CEQ <(b) (6)> Pettigrew, Theresa L. EOP/CEQ <(b) (6)>  
**Cc:** Sun, Howard C. EOP/CEQ <(b) (6)>  
**Subject:** RE: Advance Notice of Proposed Rulemaking

It has been published.

<https://www.federalregister.gov/documents/2018/06/20/2018-13246/update-to-the-regulations-for-implementing-the-procedural-provisions-of-the-national-environmental#addresses>

**From:** Seale, Viktoria Z. EOP/CEQ  
**Sent:** Tuesday, June 19, 2018 9:11 AM  
**To:** Neumayr, Mary B. EOP/CEQ <(b) (6)> Szabo, Aaron L. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)> Drummond, Michael R. EOP/CEQ <(b) (6)> Smith, Katherine R. EOP/CEQ <(b) (6)> Pettigrew, Theresa L. EOP/CEQ <(b) (6)> Schneider, Daniel J. EOP/CEQ <(b) (6)>

Cc: Sun, Howard C. EOP/CEQ <(b) (6)>

**Subject:** Advance Notice of Proposed Rulemaking

The Advance Notice of Proposed Rulemaking is available on the public inspection desk at <https://www.federalregister.gov/documents/2018/06/20/2018-13246/implementation-of-the-procedural-provisions-of-the-national-environmental-policy-act>. It will be published in tomorrow's Federal Register, June 20.

**Viktoria Z. Seale**  
**General Counsel**  
**Executive Office of the President**  
**Council on Environmental Quality**

(b) (6) (direct)

(b) (6) (cell)

## RE: Advance Notice of Proposed Rulemaking

---

**From:** "Schneider, Daniel J. EOP/CEQ" <(b) (6)>  
:  
"Seale, Viktoria Z. EOP/CEQ" <(b) (6)> "Neumayr, Mary B. EOP/CEQ" <(b) (6)> "Szabo, Aaron L. EOP/CEQ" <(b) (6)> "Boling, Ted A. EOP/CEQ" <(b) (6)>  
**To:** <(b) (6)> "Drummond, Michael R. EOP/CEQ" <(b) (6)> "Smith, Katherine R. EOP/CEQ" <(b) (6)> "Pettigrew, Theresa L. EOP/CEQ" <(b) (6)>  
**Cc:** "Sun, Howard C. EOP/CEQ" <(b) (6)>  
**Date:** Wed, 20 Jun 2018 09:30:24 -0400

It has been published.

<https://www.federalregister.gov/documents/2018/06/20/2018-13246/update-to-the-regulations-for-implementing-the-procedural-provisions-of-the-national-environmental#addresses>

**From:** Seale, Viktoria Z. EOP/CEQ  
**Sent:** Tuesday, June 19, 2018 9:11 AM  
**To:** Neumayr, Mary B. EOP/CEQ <(b) (6)> Szabo, Aaron L. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)> Drummond, Michael R. EOP/CEQ <(b) (6)> Smith, Katherine R. EOP/CEQ <(b) (6)> Pettigrew, Theresa L. EOP/CEQ <(b) (6)> Schneider, Daniel J. EOP/CEQ <(b) (6)>  
**Cc:** Sun, Howard C. EOP/CEQ <(b) (6)>  
**Subject:** Advance Notice of Proposed Rulemaking

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**Viktoria Z. Seale**  
**General Counsel**  
**Executive Office of the President**  
**Council on Environmental Quality**  
(b) (6) (direct)  
(b) (6) (cell)



## RE: Updates to NEPA.gov

---

**From:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>

**To:** "Szabo, Aaron L. EOP/CEQ" <(b) (6)>

**Cc:** "Boling, Ted A. EOP/CEQ" <(b) (6)>

**Date:** Wed, 20 Jun 2018 08:25:10 -0400

Aaron,

We are ready to update the CEQ website (proposed text below) once the regulations.gov page goes live. Please let me know when I can proceed.

Thanks,

Yardena

On the CEQ NEPA Implementing Procedures page: <https://ceq.doe.gov/laws-regulations/regulations.html>, after the **Current Regulations:** heading, create new heading "**Proposed Rulemaking:**" and insert:

**Proposed Rulemaking:**

Advance Notice of Proposed Rulemaking [link to <https://www.gpo.gov/fdsys/pkg/FR-2018-06-20/pdf/2018-13246.pdf>] (20 June 2018). CEQ is considering updating its NEPA implementing regulations and solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process. Submit comments, identified by docket ID number CEQ-2018-0001, through the Federal eRulemaking portal, <https://www.regulations.gov>. Comments should be submitted on or before July 20, 2018.

**From:** Mansoor, Yardena M. EOP/CEQ

**Sent:** Monday, June 18, 2018 1:53 PM

**To:** 'Carter, Marian (CONTR)' <Marian.Carter@hq.doe.gov>

**Cc:** Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ

<(b) (6)> Drummond, Michael R. EOP/CEQ

<(b) (6)> Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>

**Subject:** RE: Updates to NEPA.gov

This information is not for public release before Wednesday, until after I confirm the highlighted dates and that the notice is accessible in regulations.gov. Thanks!

1. If the banner is to be an image, we need the image to enable us having time to manipulate it;

Not an image.

2. If the banner is to link to content, we need the content or URL identified;

See 4 below.

3. If the banner is not going to contain an image, it will be a simple blue background. Please confirm;

Blue would be fine.

4. The content or 2 sentences to be used in the banner.

CEQ is considering updating its NEPA implementing regulations and solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process. See the Advance Notice of Proposed Rulemaking and related materials [here](#). [Link to <https://ceq.doe.gov/laws-regulations/regulations.html>.]

5. For the Regulations web page, we need the Heading you want to use, the 3 sentences of text to be entered and the 2 hyperlinks referenced on the web page.

On the CEQ NEPA Implementing Procedures page: <https://ceq.doe.gov/laws-regulations/regulations.html>, after the **Current Regulations:** heading, create new heading "**Proposed Rulemaking:**" and insert:

Advance Notice of Proposed Rulemaking (20 June 2018). CEQ is considering updating its NEPA implementing regulations and solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process. Submit comments, identified by docket ID number CEQ-2018-0001, through the Federal eRulemaking portal, <https://www.regulations.gov>. Comments should be submitted on or before **July 20, 2018**.

---

**From:** Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>

**Sent:** Monday, June 18, 2018 1:23 PM

**To:** Mansoor, Yardena M. EOP/CEQ <(b) (6)>

**Cc:** Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ

<(b) (6)> Drummond, Michael R. EOP/CEQ

<(b) (6)> Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>

**Subject:** RE: Updates to NEPA.gov

Good Afternoon, Yardena:

I checked with John, and if you provide us with the following by COB today, Tuesday, June 18th, he anticipates that he can have these changes completed by tomorrow, COB, Tuesday, June 19, 2018:

1. If the banner is to be an image, we need the image to enable us having time to manipulate it;
2. If the banner is to link to content, we need the content or URL identified;
3. If the banner is not going to contain an image, it will be a simple blue background. Please confirm;

4. The content or 2 sentences to be used in the banner.
5. For the Regulations web page, we need the Heading you want to use, the 3 sentences of text to be entered and the 2 hyperlinks referenced on the web page.

*Thank you,  
Marian*

*Marian A. Carter  
AU Web Support Team Manager  
Highland Technology Services, Inc., Contractor  
Office of Environment, Health, Safety and Security  
(301) 903-3494 - Office  
marian.carter@hq.doe.gov*

*The business of life is the acquisition of memories...*

**From:** Mansoor, Yardena M. EOP/CEQ [mailto:(b) (6)]  
**Sent:** Monday, June 18, 2018 12:31 PM  
**To:** Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>  
**Cc:** Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>; Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ <(b) (6)>  
Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** Updates to NEPA.gov

**Later this week:** The time-sensitive updates I mentioned last week will be requested early Wednesday morning, when a CEQ Federal Register notice is expected to be published. The Wednesday changes will include:

- Adding a banner (two sentences) on the nepa.gov home page.
- Adding a heading, three sentences of text, and two links on the **CEQ NEPA Implementing Procedures** page: ><https://ceq.doe.gov/laws-regulations/regulations.html><.

**Follow-up:** Please let me know if you have any questions on the request I sent Friday at 1:37, on the NEPA Practice page (revising and alphabetizing the tab entries, new land page and file for "Agency Jurisdiction and Expertise.")

**New requests:**

At >[https://ceq.doe.gov/laws-regulations/nepa\\_legislative\\_history.html](https://ceq.doe.gov/laws-regulations/nepa_legislative_history.html)<, please replace the following links with the corresponding attachments (filenames in parenthesis):

- [Congressional White Paper on a National Policy for the Environment](#) (CongressWhitePaper.pdf)
- [House of Representatives Report on NEPA](#) (House of Representatives Report on NEPA.pdf)
- [Senate Report on NEPA](#) (Senate Report on NEPA.pdf)

[Conference Report](#) (Conference Report on NEPA.pdf)

At [https://ceq.doe.gov/laws-regulations/agency\\_implementing\\_procedures.html](https://ceq.doe.gov/laws-regulations/agency_implementing_procedures.html), please replace the linked file the corrected file attached.

Thanks, in advance, for your help.

Yardena Mansoor  
Deputy Associate Director for NEPA  
Council on Environmental Quality

(b) (6) / (b) (6)

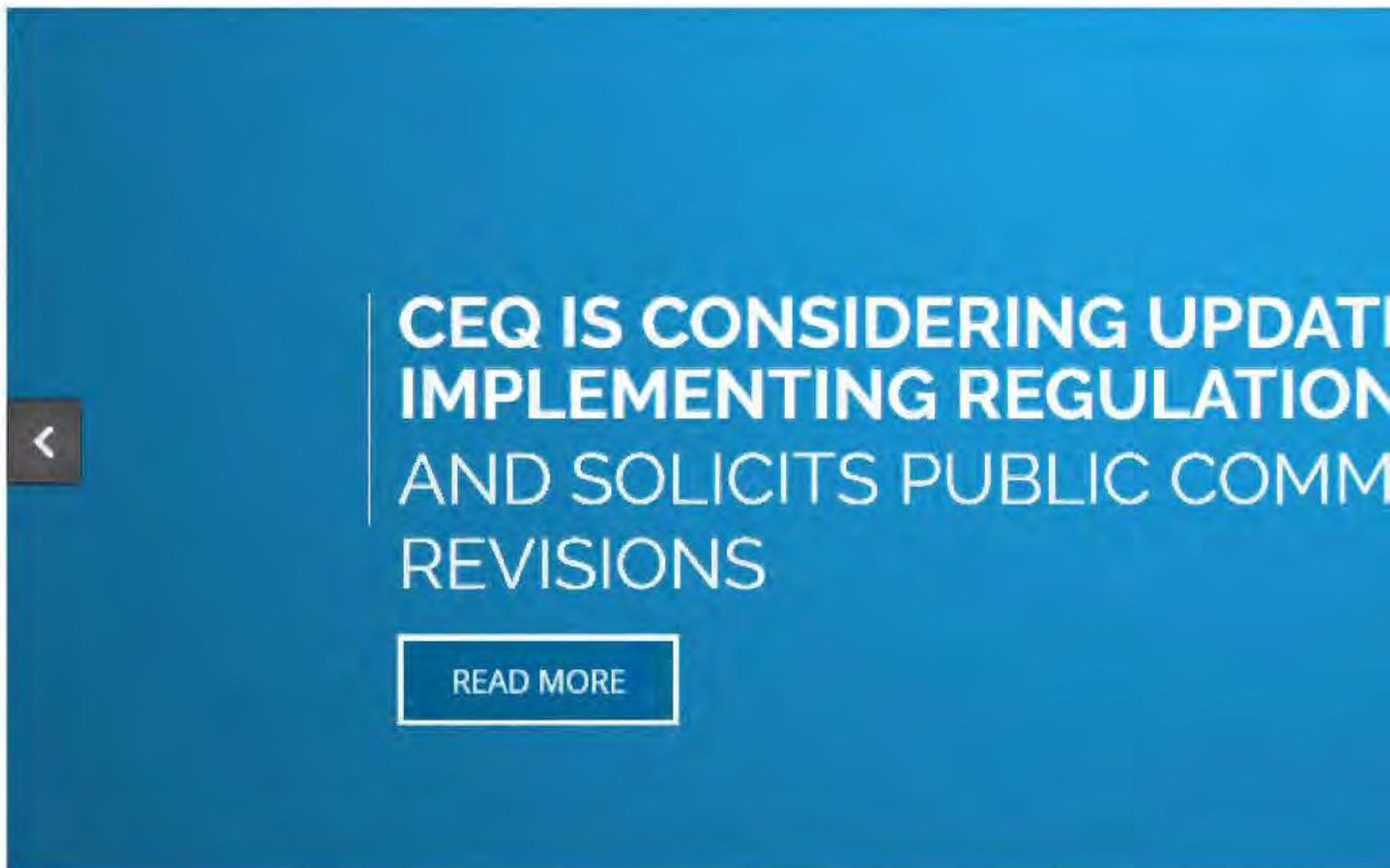
## RE: Updates to NEPA.gov - APPROVAL NEEDED FOR BANNER

---

**From:** "Carter, Marian (CONTR)" <marian.carter@hq.doe.gov>  
:  
**To:** "Boling, Ted A. EOP/CEQ" <(b) (6)>  
"Alexander, Lillian" <lillian.alexander@hq.doe.gov>, "Drummond, Michael R. EOP/CEQ"  
**Cc:** <(b) (6)> "Mansoor, Yarden M. EOP/CEQ"  
<(b) (6)> "Adams, John (AU) (CONTR)"  
<john.adams@hq.doe.gov>  
**Date:** Wed, 20 Jun 2018 10:11:35 -0400

Good Morning, Ted:

John was able to manipulate the image to the following display. If you like it, he will proceed with including it in the web site update.



---

**From:** Boling, Ted A. EOP/CEQ [mailto:(b) (6)]  
**Sent:** Wednesday, June 20, 2018 8:57 AM  
**To:** Mansoor, Yardena M. EOP/CEQ <(b) (6)> Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>  
**Cc:** Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>; Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** RE: Updates to NEPA.gov

If we can add a photo to the banner, here's one of Denali from NPS.gov

---

**From:** Mansoor, Yardena M. EOP/CEQ  
**Sent:** Wednesday, June 20, 2018 8:48 AM  
**To:** Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>  
**Cc:** Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>; Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ <(b) (6)>  
Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** RE: Updates to NEPA.gov

On the CEQ NEPA Implementing Procedures page: ><https://ceq.doe.gov/laws-regulations/regulations.html><, after the **Current Regulations:** heading, create new heading "**Proposed Rulemaking:**" and insert:

**Proposed Rulemaking:**

Advance Notice of Proposed Rulemaking [link to ><https://www.gpo.gov/fdsys/pkg/FR-2018-06-20/pdf/2018-13246.pdf><] (20 June 2018). CEQ is considering updating its NEPA implementing regulations and solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process. Submit comments, identified by docket ID number CEQ-2018-0001, through the Federal eRulemaking portal, ><https://www.regulations.gov><. Comments should be submitted on or before July 20, 2018.

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**Cc:** Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ <(b) (6)>  
Drummond, Michael R. EOP/CEQ <(b) (6)> Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>  
**Subject:** RE: Updates to NEPA.gov

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5. For the Regulations web page, we need the Heading you want to use, the 3 sentences of text to be entered and the 2 hyperlinks referenced on the web page.

On the CEQ NEPA Implementing Procedures page: <https://ceq.doe.gov/laws-regulations/regulations.html>, after the **Current Regulations:** heading, create new heading "**Proposed Rulemaking:**" and insert:

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**From:** Carter, Marian (CONTR) <[Marian.Carter@hq.doe.gov](mailto:Marian.Carter@hq.doe.gov)>

**Sent:** Monday, June 18, 2018 1:23 PM

**To:** Mansoor, Yardena M. EOP/CEQ <(b) (6)>

**Cc:** Alexander, Lillian <[Lillian.Alexander@hq.doe.gov](mailto:Lillian.Alexander@hq.doe.gov)>; Boling, Ted A. EOP/CEQ

<(b) (6)> Drummond, Michael R. EOP/CEQ

<(b) (6)> Adams, John (AU) (CONTR) <[John.Adams@Hq.Doe.Gov](mailto:John.Adams@Hq.Doe.Gov)>

**Subject:** RE: Updates to NEPA.gov

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*Thank you,  
Marian*

*Marian A. Carter  
AU Web Support Team Manager  
Highland Technology Services, Inc., Contractor  
Office of Environment, Health, Safety and Security  
(301) 903-3494 - Office  
[marian.carter@hq.doe.gov](mailto:marian.carter@hq.doe.gov)*

*The business of life is the acquisition of memories...*

**From:** Mansoor, Yardena M. EOP/CEQ [[\(b\) \(6\)](mailto:(b) (6))]  
**Sent:** Monday, June 18, 2018 12:31 PM  
**To:** Adams, John (AU) (CONTR) <[John.Adams@Hq.Doe.Gov](mailto:John.Adams@Hq.Doe.Gov)>  
**Cc:** Carter, Marian (CONTR) <[Marian.Carter@hq.doe.gov](mailto:Marian.Carter@hq.doe.gov)>; Alexander, Lillian <[Lillian.Alexander@hq.doe.gov](mailto:Lillian.Alexander@hq.doe.gov)>; Boling, Ted A. EOP/CEQ <[\(b\) \(6\)](mailto:(b) (6))>  
Drummond, Michael R. EOP/CEQ <[\(b\) \(6\)](mailto:(b) (6))>  
**Subject:** Updates to NEPA.gov

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- Adding a banner (two sentences) on the [nepa.gov](http://nepa.gov) home page.
- Adding a heading, three sentences of text, and two links on the **CEQ NEPA Implementing Procedures** page: >><https://ceq.doe.gov/laws-regulations/regulations.html><<.

**Follow-up:** Please let me know if you have any questions on the request I sent Friday at 1:37, on the NEPA Practice page (revising and alphabetizing the tab entries, new land page and file for "Agency Jurisdiction and Expertise.")

**New requests:**

At >>[https://ceq.doe.gov/laws-regulations/nepa\\_legislative\\_history.html](https://ceq.doe.gov/laws-regulations/nepa_legislative_history.html)<<, please replace the following links with the corresponding attachments (filenames in parenthesis):

- [Congressional White Paper on a National Policy for the Environment](#) (CongressWhitePaper.pdf)
- [House of Representatives Report on NEPA](#) (House of Representatives Report on NEPA.pdf)
- [Senate Report on NEPA](#) (Senate Report on NEPA.pdf)

[Conference Report](#) (Conference Report on NEPA.pdf)

At [https://ceq.doe.gov/laws-regulations/agency\\_implementing\\_procedures.html](https://ceq.doe.gov/laws-regulations/agency_implementing_procedures.html), please replace the linked file the corrected file attached.

Thanks, in advance, for your help.

Yardena Mansoor  
Deputy Associate Director for NEPA  
Council on Environmental Quality

(b) (6) / (b) (6)

## RE: Updates to NEPA.gov

---

**From:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
**To:** "Adams, John (AU) (CONTR)" <john.adams@hq.doe.gov>  
"Carter, Marian (CONTR)" <marian.carter@hq.doe.gov>, "Alexander, Lillian"  
<lillian.alexander@hq.doe.gov>, "Boling, Ted A. EOP/CEQ"  
**Cc:** <(b) (6)> "Drummond, Michael R. EOP/CEQ"  
<(b) (6)>  
**Date:** Wed, 20 Jun 2018 09:30:40 -0400

Thanks again! Looks great!

**From:** Mansoor, Yardena M. EOP/CEQ  
**Sent:** Wednesday, June 20, 2018 9:12 AM  
**To:** 'Adams, John (AU) (CONTR)' <John.Adams@Hq.Doe.Gov>  
**Cc:** Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>; Alexander, Lillian  
<Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ <(b) (6)>  
Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** RE: Updates to NEPA.gov

*Thanks for the updates. At <https://ceq.doe.gov/laws-regulations/regulations.html>, given the low color contrast between text and links, please make one more adjustment. Use this:*

CEQ is considering updating its NEPA implementing regulations and solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process. Submit comments, identified by docket ID number CEQ-2018-0001, through the Federal eRulemaking portal, <https://www.regulations.gov>. Comments should be submitted on or before July 20, 2018.

June 20, 2018: [Advance Notice of Proposed Rulemaking](#) (Although the historical links just list their month and year, please include the day on this one.)

*Instead of the current layout:*

[Advance Notice of Proposed Rulemaking](#) (20 June 2018). CEQ is considering updating its NEPA implementing regulations and solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process. Submit comments, identified by docket ID number CEQ-2018-0001, through the Federal

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Yardena Mansoor  
Deputy Associate Director for NEPA  
Council on Environmental Quality  
(b) (6) / (b) (6)

---

**From:** Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>  
**Sent:** Wednesday, June 20, 2018 8:54 AM  
**To:** Mansoor, Yardena M. EOP/CEQ <(b) (6)>  
**Cc:** Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>; Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ <(b) (6)>  
Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** RE: Updates to NEPA.gov

Good morning Yardena,

I just want to confirm we can go ahead and publish the update now correct?

---

**From:** Mansoor, Yardena M. EOP/CEQ [mailto:(b) (6)]  
**Sent:** Wednesday, June 20, 2018 8:48 AM  
**To:** Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>  
**Cc:** Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>; Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ <(b) (6)>  
Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** RE: Updates to NEPA.gov

On the CEQ NEPA Implementing Procedures page: <https://ceq.doe.gov/laws-regulations/regulations.html>, after the **Current Regulations:** heading, create new heading "**Proposed Rulemaking:**" and insert:

**Proposed Rulemaking:**

Advance Notice of Proposed Rulemaking [link to <https://www.gpo.gov/fdsys/pkg/FR-2018-06-20/pdf/2018-13246.pdf>] (20 June 2018). CEQ is considering updating its NEPA implementing regulations and solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process. Submit comments, identified by docket ID number CEQ-2018-0001, through the Federal eRulemaking portal, <https://www.regulations.gov>. Comments should be submitted on or before July 20, 2018.

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**From:** Mansoor, Yardena M. EOP/CEQ  
**Sent:** Monday, June 18, 2018 1:53 PM  
**To:** 'Carter, Marian (CONTR)' <[Marian.Carter@hq.doe.gov](mailto:Marian.Carter@hq.doe.gov)>  
**Cc:** Alexander, Lillian <[Lillian.Alexander@hq.doe.gov](mailto:Lillian.Alexander@hq.doe.gov)>; Boling, Ted A. EOP/CEQ  
<(b) (6)> Drummond, Michael R. EOP/CEQ  
<(b) (6)> Adams, John (AU) (CONTR) <[John.Adams@Hq.Doe.Gov](mailto:John.Adams@Hq.Doe.Gov)>  
**Subject:** RE: Updates to NEPA.gov

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See 4 below.

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Blue would be fine.

4. The content or 2 sentences to be used in the banner.

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**Sent:** Monday, June 18, 2018 1:23 PM  
**To:** Mansoor, Yardena M. EOP/CEQ <(b) (6)>  
**Cc:** Alexander, Lillian <[Lillian.Alexander@hq.doe.gov](mailto:Lillian.Alexander@hq.doe.gov)>; Boling, Ted A. EOP/CEQ  
<(b) (6)> Drummond, Michael R. EOP/CEQ

<(b) (6)> Adams, John (AU) (CONTR) <[John.Adams@Hq.Doe.Gov](mailto:John.Adams@Hq.Doe.Gov)>

**Subject:** RE: Updates to NEPA.gov

Good Afternoon, Yardena:

I checked with John, and if you provide us with the following by COB today, Tuesday, June 18th, he anticipates that he can have these changes completed by tomorrow, COB, Tuesday, June 19, 2018:

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5. For the Regulations web page, we need the Heading you want to use, the 3 sentences of text to be entered and the 2 hyperlinks referenced on the web page.

*Thank you,  
Marian*

*Marian A. Carter  
AU Web Support Team Manager  
Highland Technology Services, Inc., Contractor  
Office of Environment, Health, Safety and Security  
(301) 903-3494 - Office  
[marian.carter@hq.doe.gov](mailto:marian.carter@hq.doe.gov)*

*The business of life is the acquisition of memories...*

**From:** Mansoor, Yardena M. EOP/CEQ [[\(b\) \(6\)](mailto:(b) (6))]  
**Sent:** Monday, June 18, 2018 12:31 PM  
**To:** Adams, John (AU) (CONTR) <[John.Adams@Hq.Doe.Gov](mailto:John.Adams@Hq.Doe.Gov)>  
**Cc:** Carter, Marian (CONTR) <[Marian.Carter@hq.doe.gov](mailto:Marian.Carter@hq.doe.gov)>; Alexander, Lillian <[Lillian.Alexander@hq.doe.gov](mailto:Lillian.Alexander@hq.doe.gov)>; Boling, Ted A. EOP/CEQ <(b) (6)>  
Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** Updates to NEPA.gov

**Later this week:** The time-sensitive updates I mentioned last week will be requested early Wednesday morning, when a CEQ Federal Register notice is expected to be published. The Wednesday changes will include:

- Adding a banner (two sentences) on the nepa.gov home page.

- Adding a heading, three sentences of text, and two links on the **CEQ NEPA Implementing Procedures** page: >><https://ceq.doe.gov/laws-regulations/regulations.html><<.

**Follow-up:** Please let me know if you have any questions on the request I sent Friday at 1:37, on the NEPA Practice page (revising and alphabetizing the tab entries, new land page and file for “Agency Jurisdiction and Expertise.”

**New requests:**

At >>[https://ceq.doe.gov/laws-regulations/nepa\\_legislative\\_history.html](https://ceq.doe.gov/laws-regulations/nepa_legislative_history.html)<<, please replace the following links with the corresponding attachments (filenames in parenthesis):

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Thanks, in advance, for your help.

Yardena Mansoor  
Deputy Associate Director for NEPA  
Council on Environmental Quality

(b) (6) / (b) (6)

## RE: Updates to NEPA.gov

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**To:** "Adams, John (AU) (CONTR)" <john.adams@hq.doe.gov>  
"Carter, Marian (CONTR)" <marian.carter@hq.doe.gov>, "Alexander, Lillian"  
<lillian.alexander@hq.doe.gov>, "Boling, Ted A. EOP/CEQ"  
**Cc:** <(b) (6)> "Drummond, Michael R. EOP/CEQ"  
<(b) (6)>  
**Date:** Wed, 20 Jun 2018 08:47:34 -0400

On the CEQ NEPA Implementing Procedures page: <https://ceq.doe.gov/laws-regulations/regulations.html>, after the **Current Regulations:** heading, create new heading "**Proposed Rulemaking:**" and insert:

### **Proposed Rulemaking:**

Advance Notice of Proposed Rulemaking [link to <https://www.gpo.gov/fdsys/pkg/FR-2018-06-20/pdf/2018-13246.pdf>] (20 June 2018). CEQ is considering updating its NEPA implementing regulations and solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process. Submit comments, identified by docket ID number CEQ-2018-0001, through the Federal eRulemaking portal, <https://www.regulations.gov>. Comments should be submitted on or before July 20, 2018.

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**Sent:** Monday, June 18, 2018 1:53 PM  
**To:** 'Carter, Marian (CONTR)' <Marian.Carter@hq.doe.gov>  
**Cc:** Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ  
<(b) (6)> Drummond, Michael R. EOP/CEQ  
<(b) (6)> Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>  
**Subject:** RE: Updates to NEPA.gov

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**Not an image.**
2. If the banner is to link to content, we need the content or URL identified;

See 4 below.

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Blue would be fine.

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**From:** Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>

**Sent:** Monday, June 18, 2018 1:23 PM

**To:** Mansoor, Yardena M. EOP/CEQ <(b) (6)>

**Cc:** Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ

<(b) (6)> Drummond, Michael R. EOP/CEQ

<(b) (6)> Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>

**Subject:** RE: Updates to NEPA.gov

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*Thank you,  
Marian*

*Marian A. Carter  
AU Web Support Team Manager  
Highland Technology Services, Inc., Contractor  
Office of Environment, Health, Safety and Security  
(301) 903-3494 - Office  
marian.carter@hq.doe.gov*

*The business of life is the acquisition of memories...*

**From:** Mansoor, Yarden M. EOP/CEQ [mailto:(b) (6)]  
**Sent:** Monday, June 18, 2018 12:31 PM  
**To:** Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>  
**Cc:** Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>; Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ <(b) (6)>  
Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** Updates to NEPA.gov

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**Follow-up:** Please let me know if you have any questions on the request I sent Friday at 1:37, on the NEPA Practice page (revising and alphabetizing the tab entries, new land page and file for "Agency Jurisdiction and Expertise."

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At >[https://ceq.doe.gov/laws-regulations/nepa\\_legislative\\_history.html](https://ceq.doe.gov/laws-regulations/nepa_legislative_history.html)<, please replace the following links with the corresponding attachments (filenames in parenthesis):

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Thanks, in advance, for your help.

Yardena Mansoor  
Deputy Associate Director for NEPA  
Council on Environmental Quality  
(b) (6) / (b) (6)

## RE: Updates to NEPA.gov

---

**From:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
**To:** "Szabo, Aaron L. EOP/CEQ" <(b) (6)> "Boling, Ted A. EOP/CEQ" <(b) (6)>  
**Date:** Wed, 20 Jun 2018 08:46:47 -0400

I see the regulations.gov page is now populated and open for business. Looks good.

**From:** Mansoor, Yardena M. EOP/CEQ  
**Sent:** Wednesday, June 20, 2018 8:25 AM  
**To:** Szabo, Aaron L. EOP/CEQ <(b) (6)>  
**Cc:** Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** RE: Updates to NEPA.gov

Aaron,

We are ready to update the CEQ website (proposed text below) once the regulations.gov page goes live. Please let me know when I can proceed.

Thanks,  
Yardena

On the CEQ NEPA Implementing Procedures page: <https://ceq.doe.gov/laws-regulations/regulations.html>, after the **Current Regulations:** heading, create new heading "**Proposed Rulemaking:**" and insert:

**Proposed Rulemaking:**

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<(b) (6)> Drummond, Michael R. EOP/CEQ  
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Thanks, in advance, for your help.

Yardena Mansoor  
Deputy Associate Director for NEPA  
Council on Environmental Quality

(b) (6) / (b) (6)

## [EXTERNAL] RE: CEQ is considering amending its NEPA Regulations

---

**From:** "Mandelker, Daniel" <mandelker@wustl.edu>

**To:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>

**Date:** Thu, 21 Jun 2018 17:44:18 -0400

Good to hear from you, Yardena, and I am glad you have new responsibilities at CEQ. I hope you understand that I am not going to cooperate with the goons who wrecked EPA and your NEPA program at DOE. The CEQ review is just a front for hardliners who are going to use it to wreck NEPA. We'll take it back in two years. Please give my regards to Michael.

**From:** Mansoor, Yardena M. EOP/CEQ <(b) (6)>  
**Sent:** Thursday, June 21, 2018 12:00 PM  
**To:** Mandelker, Daniel <mandelker@wustl.edu>  
**Subject:** CEQ is considering amending its NEPA Regulations

Professor Mandelker,

I hope this finds you well – thought I'd take a minute to say hello and alert you to NEPA news, in case you hadn't heard. . . .

Michael and I are still both working, respectively at FDIC and Department of Energy. DOE's NEPA Program has been less vibrant at headquarters since Carol Borgstrom's retirement in early 2017 and a subsequent reassignment of NEPA responsibilities from headquarters to the field offices. You have probably noticed that we have not published *Lessons Learned Quarterly Report* since last September. Since January, I have been on detail to the Council on Environmental Quality, which has been an interesting and gratifying opportunity for me to contribute in a different way.

Yesterday CEQ published an advance notice of proposed rulemaking (attached) inviting comments on potential revisions to update and clarify the CEQ NEPA regulations. Twenty questions are provided as means of structuring the conversation. Comments should be submitted on or before July 20, 2018, and should be submitted through ><https://www.regulations.gov>< by following the online instructions for submitting comments to Docket ID No. CEQ-2018-0001. We would especially value any recommendations you may make that reflect your unique depth of experience with NEPA.

Fond regards,

Yardena Mansoor

Deputy Associate Director for NEPA  
Council on Environmental Quality

(b) (6) / (b) (6)

## [EXTERNAL] RE: CEQ is considering amending its NEPA Regulations

---

**From:** "Mandelker, Daniel" <mandelker@wustl.edu>

**To:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>

**Date:** Thu, 21 Jun 2018 14:39:52 -0400

Glad you have the assignment, Yardena. Say hello to my former student, Ted Boling. I will reply later concerning the notice.

---

**From:** Mansoor, Yardena M. EOP/CEQ <(b) (6)>  
**Sent:** Thursday, June 21, 2018 12:00 PM  
**To:** Mandelker, Daniel <mandelker@wustl.edu>  
**Subject:** CEQ is considering amending its NEPA Regulations

Professor Mandelker,

I hope this finds you well – thought I'd take a minute to say hello and alert you to NEPA news, in case you hadn't heard. . . .

Michael and I are still both working, respectively at FDIC and Department of Energy. DOE's NEPA Program has been less vibrant at headquarters since Carol Borgstrom's retirement in early 2017 and a subsequent reassignment of NEPA responsibilities from headquarters to the field offices. You have probably noticed that we have not published *Lessons Learned Quarterly Report* since last September. Since January, I have been on detail to the Council on Environmental Quality, which has been an interesting and gratifying opportunity for me to contribute in a different way.

Yesterday CEQ published an advance notice of proposed rulemaking (attached) inviting comments on potential revisions to update and clarify the CEQ NEPA regulations. Twenty questions are provided as means of structuring the conversation. Comments should be submitted on or before July 20, 2018, and should be submitted through <https://www.regulations.gov> by following the online instructions for submitting comments to Docket ID No. CEQ-2018-0001. We would especially value any recommendations you may make that reflect your unique depth of experience with NEPA.

Fond regards,

Yardena Mansoor

Deputy Associate Director for NEPA  
Council on Environmental Quality

(b) (6) / (b) (6)

## FW: CEQ is considering amending its NEPA Regulations

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**From:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>

**To:** "Boling, Ted A. EOP/CEQ" <(b) (6)>

**Date:** Thu, 21 Jun 2018 14:52:43 -0400

---

**From:** Mandelker, Daniel <mandelker@wustl.edu>

**Sent:** Thursday, June 21, 2018 2:40 PM

**To:** Mansoor, Yardena M. EOP/CEQ <(b) (6)>

**Subject:** [EXTERNAL] RE: CEQ is considering amending its NEPA Regulations

Glad you have the assignment, Yardena. Say hello to my former student, Ted Boling. I will reply later concerning the notice.

---

**From:** Mansoor, Yardena M. EOP/CEQ <(b) (6)>

**Sent:** Thursday, June 21, 2018 12:00 PM

**To:** Mandelker, Daniel <mandelker@wustl.edu>

**Subject:** CEQ is considering amending its NEPA Regulations

Professor Mandelker,

I hope this finds you well -- thought I'd take a minute to say hello and alert you to NEPA news, in case you hadn't heard. . . .

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Fond regards,

Yardena Mansoor

Deputy Associate Director for NEPA  
Council on Environmental Quality

(b) (6) [REDACTED] / (b) (6) [REDACTED]

## Heads Up - Circulating GSA and CEQ Statements for 6/27 Roundtable

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**From:** "Bronack, Candice M. EOP/OMB" <(b) (6)>  
**To:** GSA <ca.legislation@gsa.gov>, DL-CEQ-LRM <(b) (6)>  
**Cc:** "Ventura, Alexandra EOP/OMB" <(b) (6)>  
**Date:** Thu, 21 Jun 2018 13:40:13 -0400

**Attachments** Colamaria Statement 6.27 Roundtable Senate FINAL DRAFT\_6.20.docx (31.47 kB);  
: Herrgott Statement 6.27 Roundtable Senate FINAL DRAFT\_6.20.docx (33.25 kB)

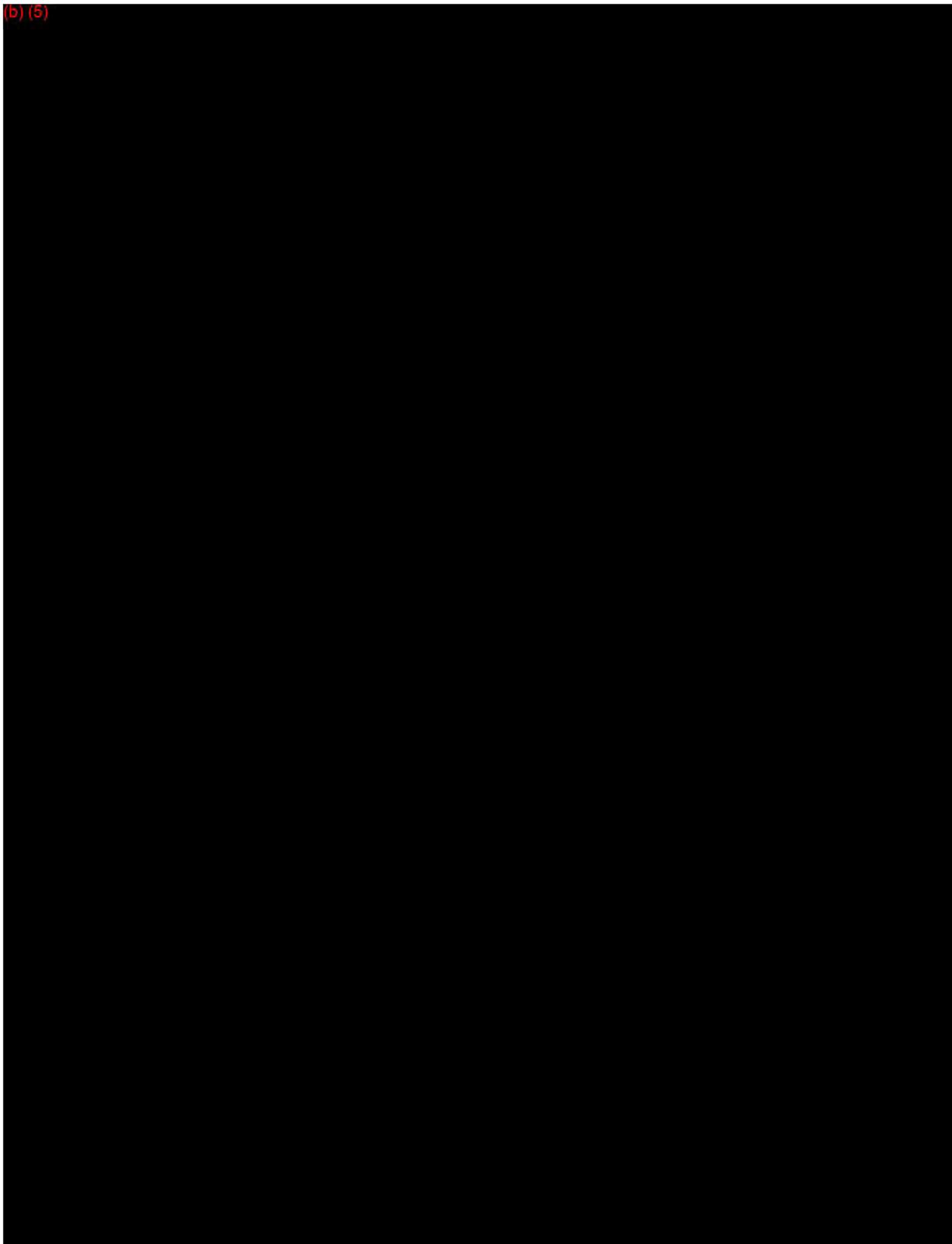
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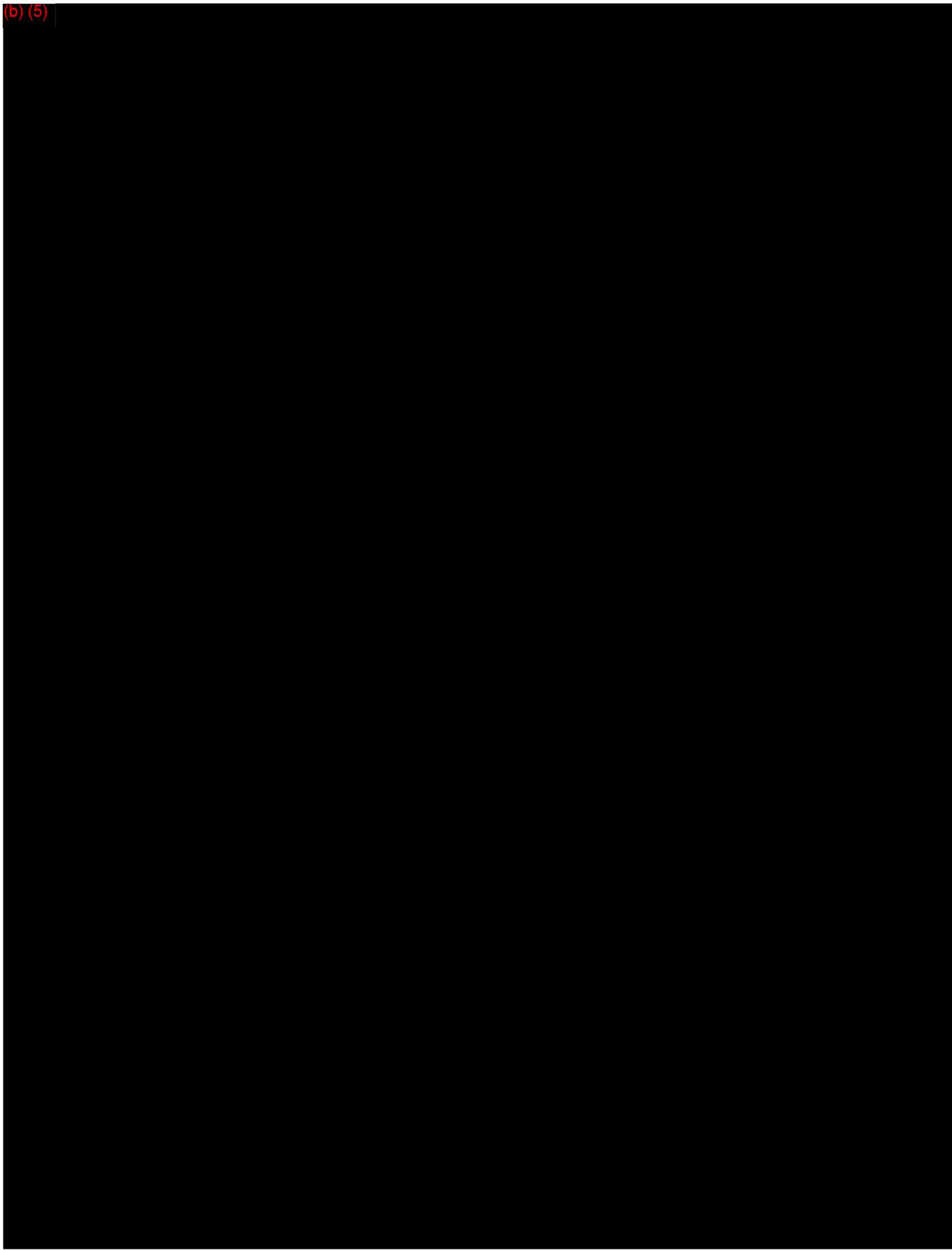
HEADS UP - GSA/CEQ, we received the attached statements for the 6/27 Senate HSAGC roundtable through back channels and plan to circulate them through our LRM process momentarily. I plan to send any comments I receive to Angela Colamaria and include GSA and CEQ. Please let me know if you have any questions. Thanks.

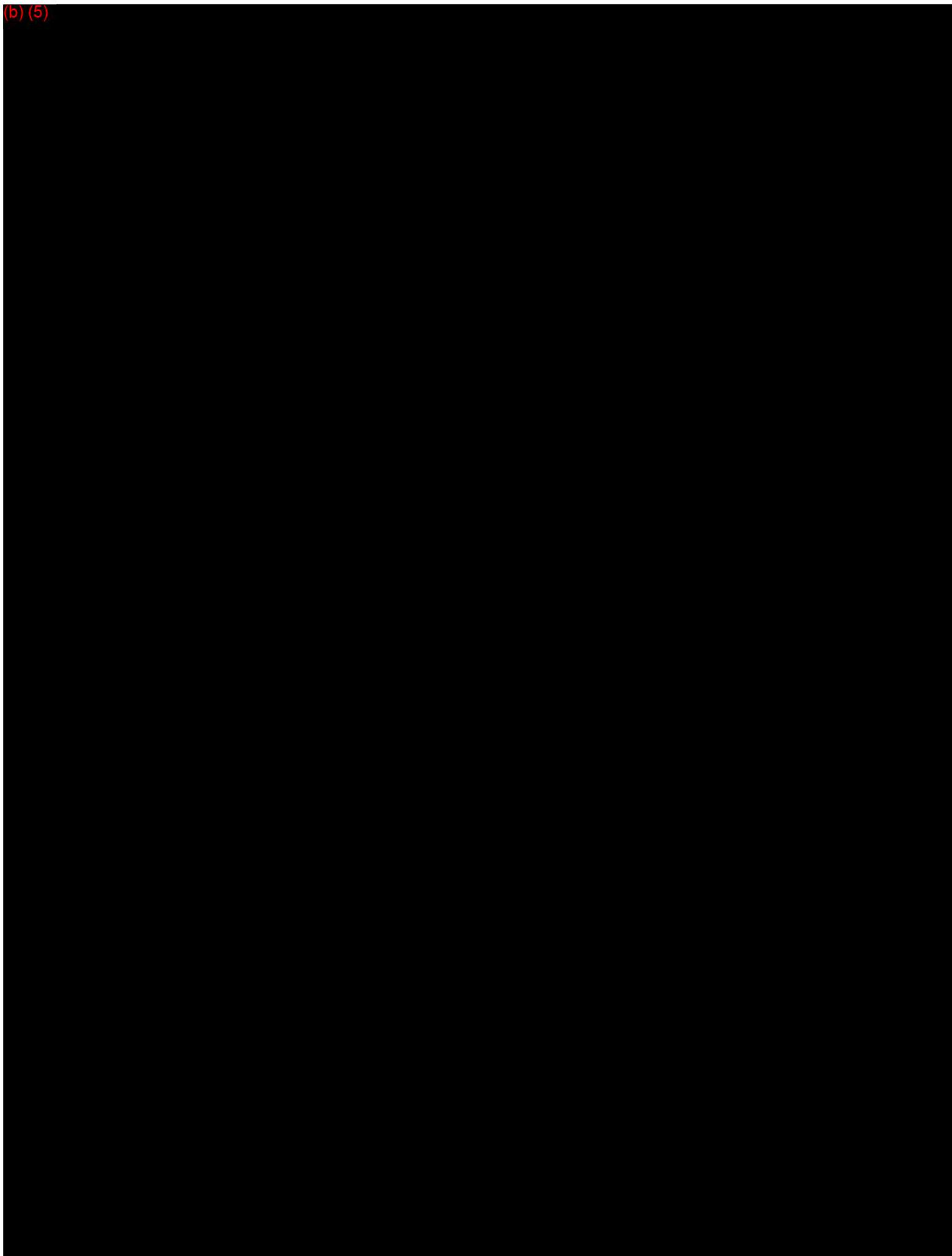
Candice M. Bronack  
Legislative Analyst – Legislative Reference Division  
Office of Management & Budget

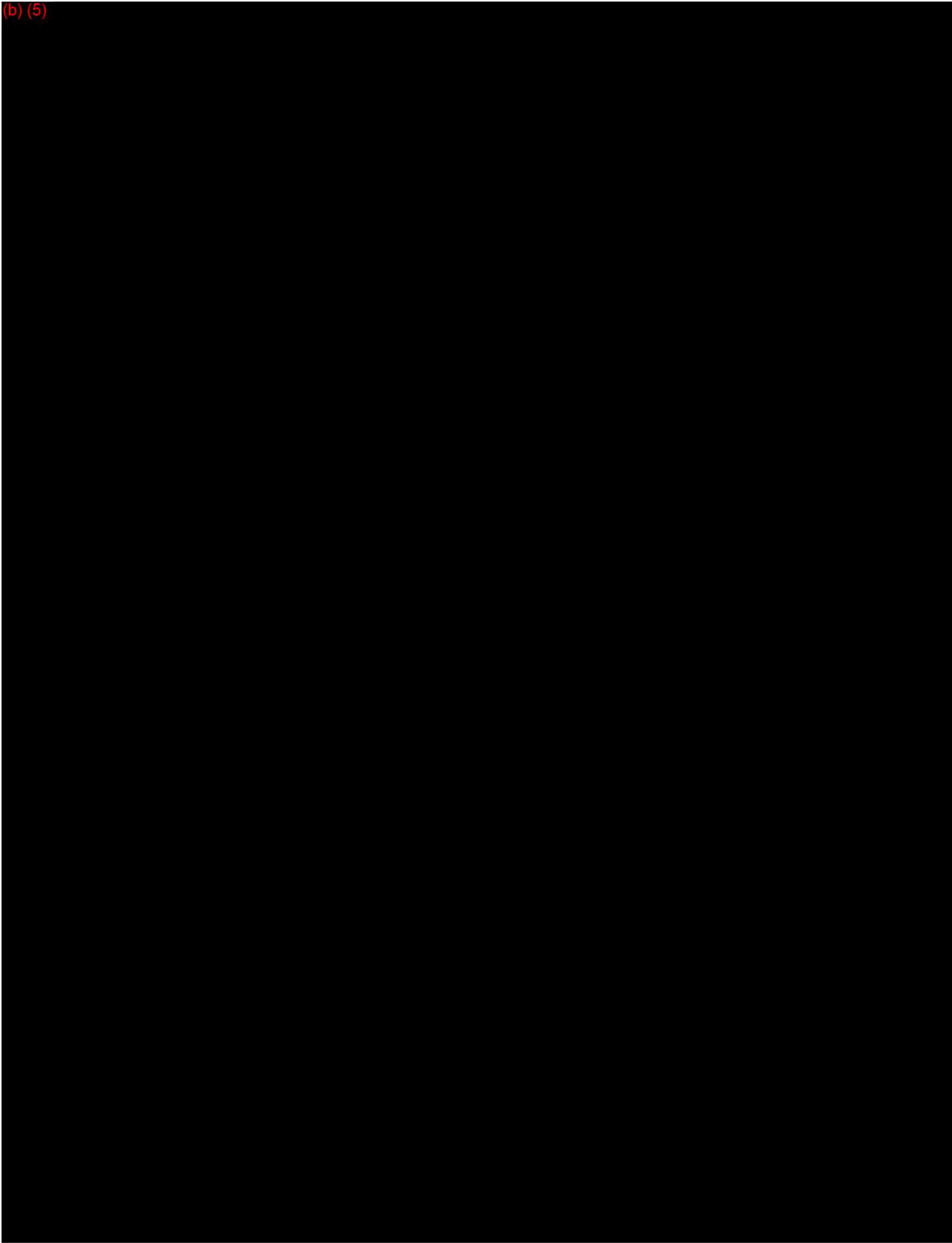
(b) (6)

(b) (6)









# FYI: CEQ Remarks for Portman/McCaskill Roundtable on Federal Permitting Process for Major Infrastructure Projects (June 27, 2018)

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**From:** Staff Secretary <(b) (6)>  
"Donaldson, Annie M. EOP/WHO" <(b) (6)> "Knight, Shahira E. EOP/WHO" <(b) (6)> "Chalkey, Richard J. EOP/WHO" <(b) (6)> "Greenwood, Daniel Q. EOP/WHO" <(b) (6)> DL WHO LEG AFFAIRS Staff Sec <(b) (6)>

**To:**

**Cc:** Staff Secretary <(b) (6)> "Pettigrew, Theresa L. EOP/CEQ" <(b) (6)>

**Date:** Fri, 22 Jun 2018 17:05:04 -0400

**Attachments** 2018-06-27 Portman and McCaskill Roundtable Invitation to Herrgott.pdf (1.75 MB);  
: Herrgott Statement 6.27 Roundtable Senate FINAL\_CLEAN.DOCX (27.19 kB)

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WHCO, NEC, and OLA –

CEQ's Associate Director for Infrastructure, Alex Herrgott, has been invited to speak at an upcoming roundtable scheduled for Wednesday, June 27 at 2:30 PM. Alex's written statement, which has been reviewed and cleared through the LRM process, is attached. The invitation is also attached and details for the events are below:

Event: Roundtable with Members of the Senate Committee on Homeland Security and Governmental Affairs

Sponsors: Senators Portman and McCaskill

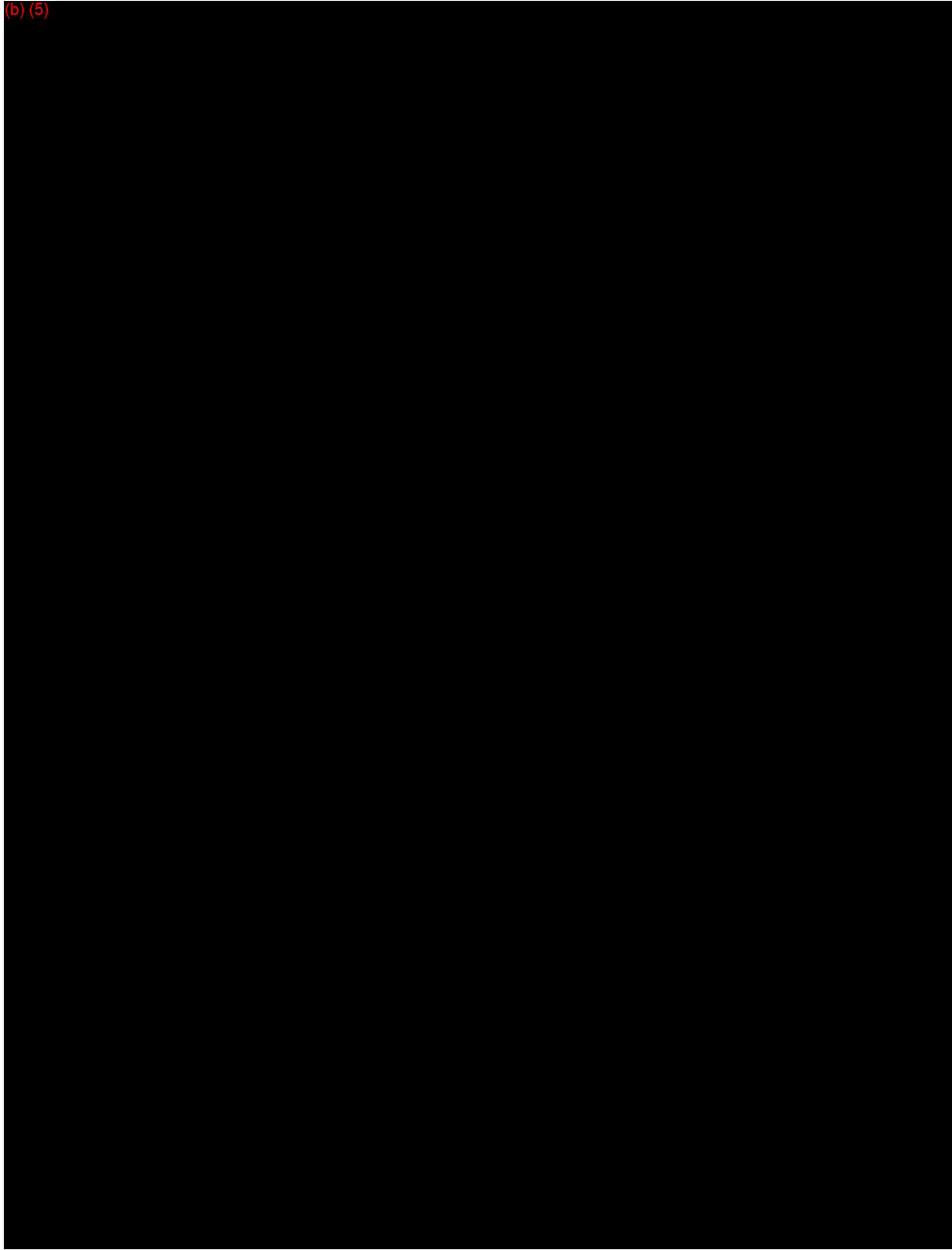
Topic: Federal Permitting Process for Major Infrastructure Projects

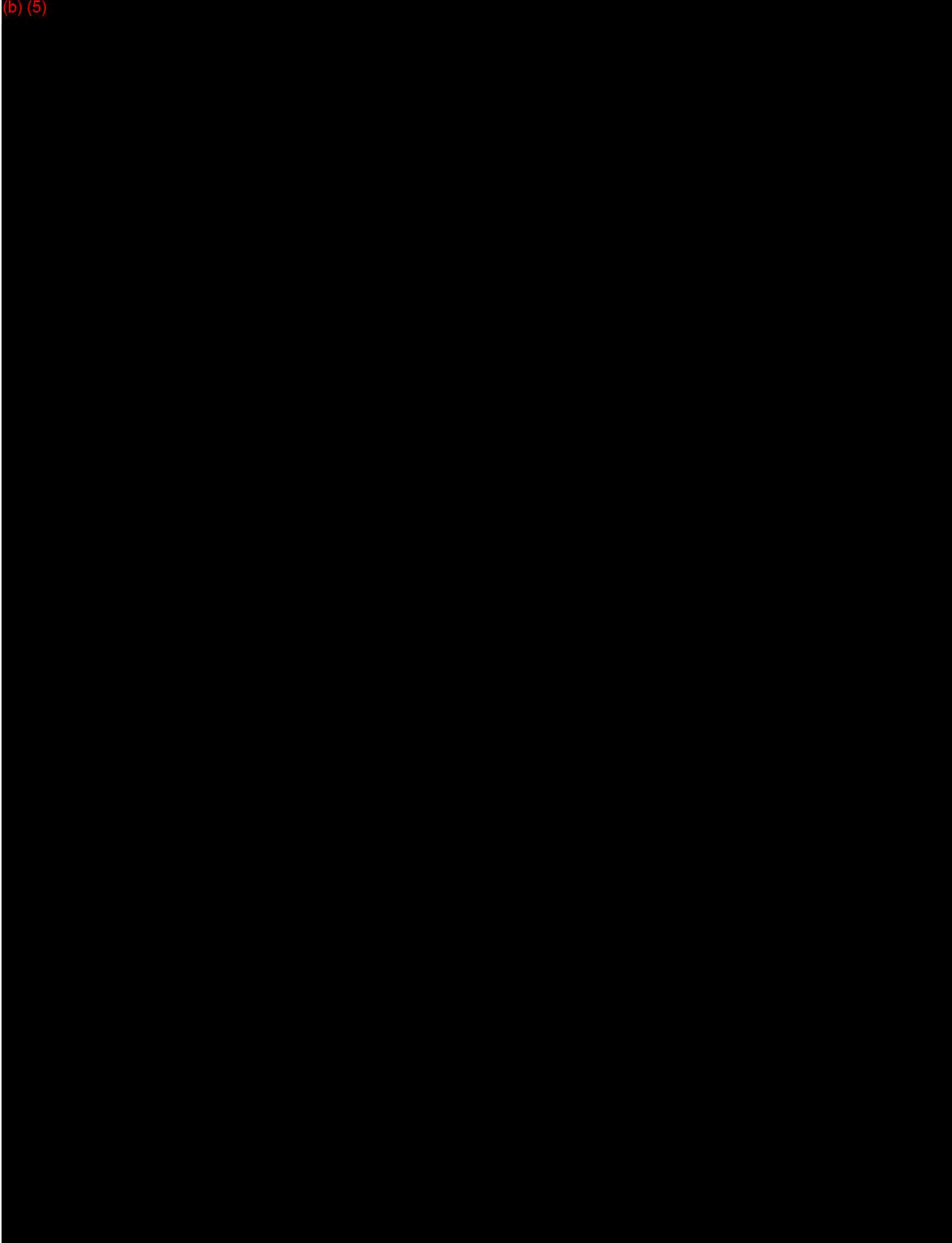
Date/Location: Wednesday, June 27, 2018; SD-106, Dirksen Senate Office Building, Washington DC

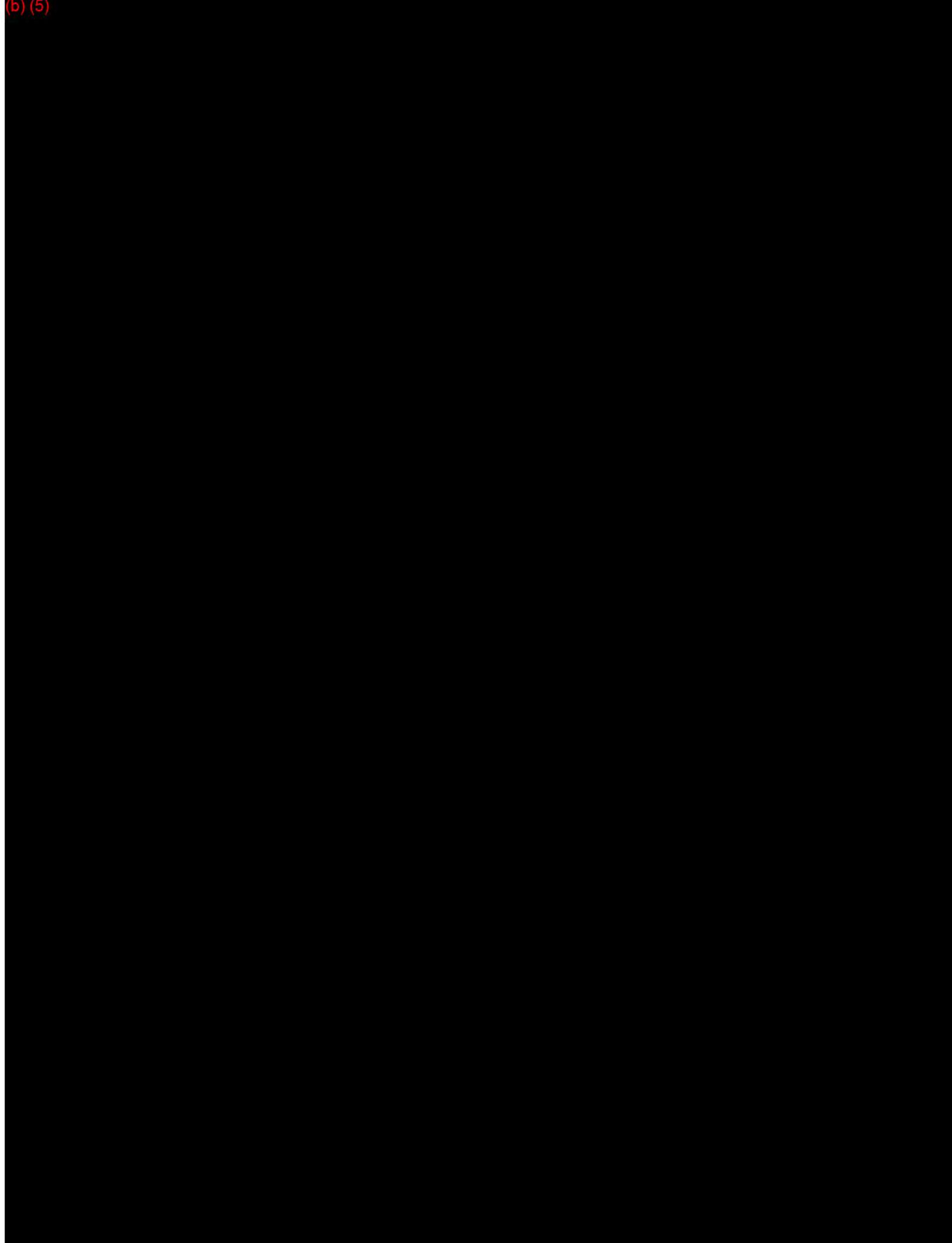
Press: Yes

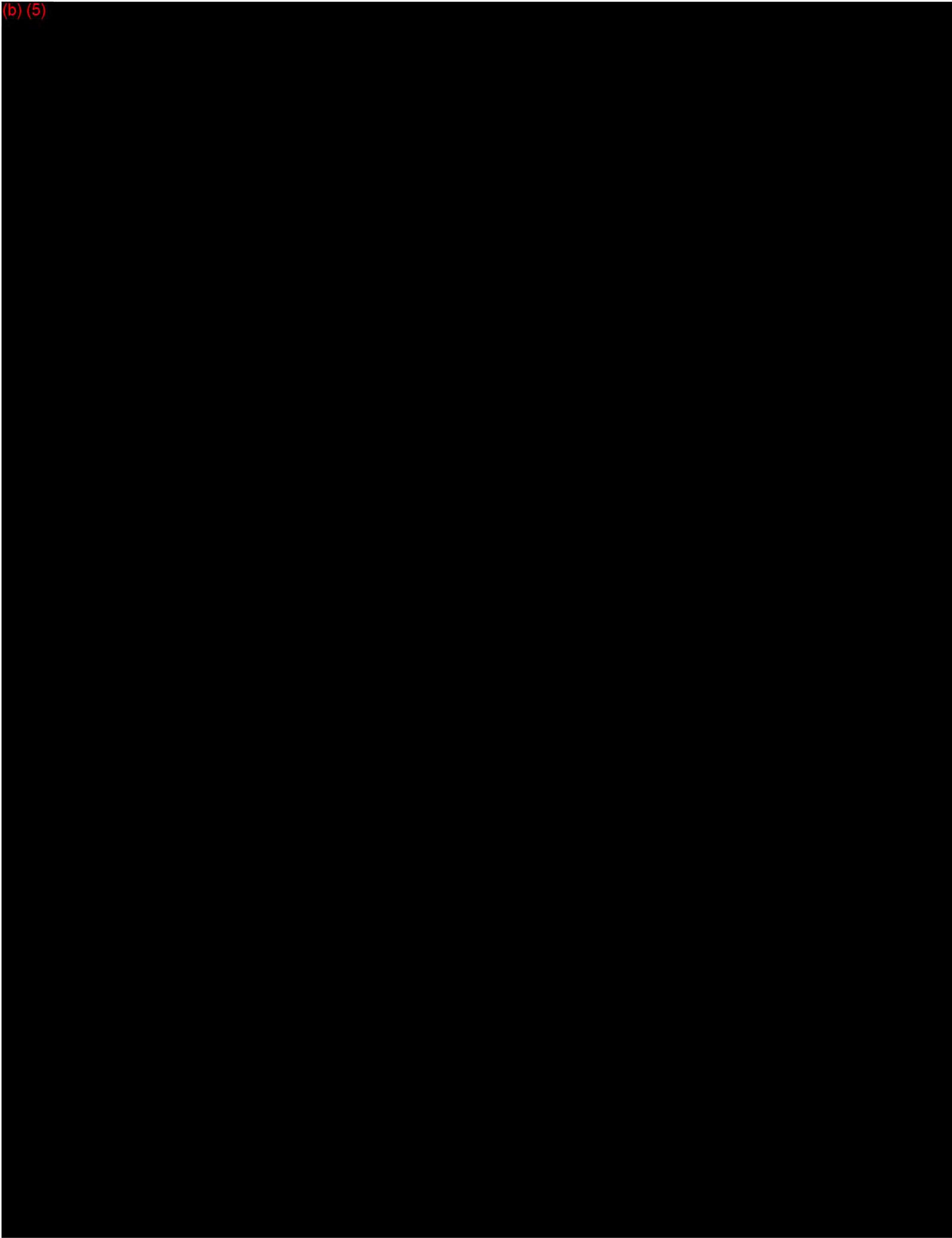
Written statements are requested by Monday, June 25 at 2:30 PM – please flag any concern by this time.

STAFF SEC









## RE: 6/27 meeting request - CEO of EDF Renewables

---

**From:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**To:** "Green, Mary A. EOP/CEQ" (b) (6) "Boling, Ted A. EOP/CEQ" <(b) (6)>  
**Date:** Fri, 22 Jun 2018 10:35:04 -0400

Thank you Mary, I will inquire with Mary and others on how to proceed and will respond to Elizabeth.

---

**From:** Green, Mary A. EOP/CEQ  
**Sent:** Friday, June 22, 2018 10:11 AM  
**To:** Boling, Ted A. EOP/CEQ <(b) (6)>  
**Cc:** Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** FW: 6/27 meeting request - CEO of EDF Renewables

Wasn't sure who to route-out this request; therefore, I am starting with you (NEPA). Please advise.  
Mary

---

**From:** Moeller, Elizabeth V. <elizabeth.moeller@pillsburylaw.com>  
**Sent:** Thursday, June 21, 2018 4:33 PM  
**To:** Green, Mary A. EOP/CEQ <(b) (6)>  
**Subject:** [EXTERNAL] 6/27 meeting request - CEO of EDF Renewables

Dear Ms. Green,

Thank you for your time yesterday – just before we saw the release of the Advance Notice of Proposed Rulemaking on NEPA!

I am following up on behalf of EDF Renewables which is a market leading independent power producer and service provider in the U.S. with projects throughout the United States and headquarters in San Diego.

EDF Renewables' President and CEO, Tristan Grimbert, will be in DC on Wednesday, June 26<sup>th</sup> and is hoping that leaders at CEQ will have time for a short visit to discuss NEPA and national energy and environmental policy.

Would a short visit on Wednesday, June 27<sup>th</sup> at, perhaps at 11:30 be convenient for schedules?

EDF Renewables delivers grid-scale power: wind (onshore and offshore), solar photovoltaic, and storage projects; distributed solutions: solar, solar+storage, EV charging and energy management; and asset optimization: technical, operational, and commercial skills to maximize performance of generating projects. EDF Renewables' North American portfolio consists of 10 GW of developed projects and 10 GW under service contracts.

Please let me know if you need any additional information. Many thanks in advance.

Kind regards,  
Elizabeth

**Elizabeth Vella Moeller** | Partner | Public Policy Group Leader

Pillsbury Winthrop Shaw Pittman LLP

1200 Seventeenth Street NW | Washington, DC 20036-3006

t 202.663.9159 | f 202.663.8007 | m (b) (6)

[elizabeth.moeller@pillsburylaw.com](mailto:elizabeth.moeller@pillsburylaw.com) | [website bio](#)

ABU DHABI AUSTIN BEIJING DUBAI HONG KONG HOUSTON LONDON  
LOS ANGELES MIAMI NASHVILLE NEW YORK NORTHERN VIRGINIA  
PALM BEACH SACRAMENTO SAN DIEGO SAN DIEGO NORTH COUNTY  
SAN FRANCISCO SHANGHAI SILICON VALLEY TOKYO WASHINGTON, DC



The contents of this message, together with any attachments, are intended only for the use of the individual or entity to which they are addressed and may contain information that is legally privileged, confidential and exempt from disclosure. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this message, or any attachment, is strictly prohibited. If you have received this message in error, please notify the original sender or the Pillsbury Winthrop Shaw Pittman Help Desk at Tel: 800-477-0770, Option 1, immediately by telephone or by return E-mail and delete this message, along with any attachments, from your computer. Thank you.

## FW: FYI: CEQ Remarks for Portman/McCaskill Roundtable on Federal Permitting Process for Major Infrastructure Projects (June 27, 2018)

---

**From:** "Pettigrew, Theresa L. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=579eb754b4c34f0e8e46d1fb4cd708d7-pe">  
**To:** "Kaldahl, Ryan M. EOP/WHO" <(b) (6)>  
**Date:** Mon, 25 Jun 2018 12:27:42 -0400  
**Attachments** 2018-06-27 Portman and McCaskill Roundtable Invitation to Herrgott.pdf (1.75 MB);  
: Herrgott Statement 6.27 Roundtable Senate FINAL\_CLEAN.DOCX (27.19 kB)

**From:** Staff Secretary  
**Sent:** Friday, June 22, 2018 5:05 PM  
**To:** Donaldson, Annie M. EOP/WHO <(b) (6)> Knight, Shahira E. EOP/WHO <(b) (6)> Chalkey, Richard J. EOP/WHO <(b) (6)> Greenwood, Daniel Q. EOP/WHO <(b) (6)> DL WHO LEG AFFAIRS Staff Sec <(b) (6)>  
**Cc:** Staff Secretary <(b) (6)> Pettigrew, Theresa L. EOP/CEQ <(b) (6)>  
**Subject:** FYI: CEQ Remarks for Portman/McCaskill Roundtable on Federal Permitting Process for Major Infrastructure Projects (June 27, 2018)

WHCO, NEC, and OLA –

CEQ's Associate Director for Infrastructure, Alex Herrgott, has been invited to speak at an upcoming roundtable scheduled for Wednesday, June 27 at 2:30 PM. Alex's written statement, which has been reviewed and cleared through the LRM process, is attached. The invitation is also attached and details for the events are below:

Event: Roundtable with Members of the Senate Committee on Homeland Security and Governmental Affairs

Sponsors: Senators Portman and McCaskill

Topic: Federal Permitting Process for Major Infrastructure Projects

Date/Location: Wednesday, June 27, 2018; SD-106, Dirksen Senate Office Building, Washington DC

Press: Yes

Written statements are requested by Monday, June 25 at 2:30 PM – please flag any concern by this time.

STAFF SEC

**STATEMENT OF**  
**ALEXANDER HERRGOTT**  
**ASSOCIATE DIRECTOR FOR INFRASTRUCTURE**  
**COUNCIL ON ENVIRONMENTAL QUALITY**  
**BEFORE THE**  
**COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS**  
**UNITED STATES SENATE**

**June 27, 2018**

Senator Portman, Ranking Member McCaskill, and Members of the Committee, thank you for the invitation to this roundtable discussion on the federal permitting process for major infrastructure projects. We appreciate this Committee's willingness to have a meaningful dialogue on this topic as we work toward a shared goal of reducing permitting delays and providing the American people the modernized infrastructure they undoubtedly need.

As many of you know, a major cause of delay has been too many decision makers without effective cross agency communication and coordination. Multiple federal agencies oversee potentially dozens of federal statutes that project sponsors must navigate before beginning construction on a major infrastructure project. Over time, this has created a redundant and often inconsistent federal permitting process. Too often, these processes do not share a single framework or time frame. For example, a highway project could have as many as 10 different federal agencies involved in 16 different permitting decisions, in addition to the state, local, and tribal agencies with separate permitting and approval processes.

The result is a federal permitting process that often takes too long, increases costs, and creates uncertainty. We are actively working to address these challenges while ensuring environmental protection. With process enhancements and a common-sense, harmonized approach among federal agencies, infrastructure projects will move through the environmental review permitting process more efficiently. Federal agency coordination is imperative to long-term process reforms throughout these agencies.

**Executive Order 13807**

On August 15, 2017, President Trump signed Executive Order 13807 implementing a policy of "One Federal Decision." Under One Federal Decision, federal agencies will administer the National Environmental Policy Act (NEPA) so that a single Environmental Impact Statement (EIS) and a single Record of Decision (ROD) are prepared for all reviewing agencies, and all applicable permitting decision processes will be conducted concurrently with the NEPA process to ensure that the necessary permitting decisions can be made within 90 days of the ROD. One Federal Decision also provides that federal agencies will seek to complete the environmental

[APG]

review process within an average of 2 years of the publication of a Notice of Intent to prepare an EIS. As a result of One Federal Decision, the federal environmental review and permitting process will be streamlined, more transparent, and predictable.

One Federal Decision builds on the statutory authorities provided in the Fixing America's Surface Transportation Act (FAST Act) to streamline permitting and provides a framework to further improve efficient coordination between federal agencies. The FAST-41 process, established in Title 41 of the FAST Act, provides a range of tools for large and complex infrastructure projects to navigate the federal environmental review and authorization process. In brief, FAST-41 established project-specific procedures that may be applicable or available to agencies and project sponsors in meeting permitting and review obligations. One Federal Decision broadly impacts how agencies conduct and coordinate environmental reviews while preserving each agency's statutory authority, independence, and ability to comply with NEPA and related statutes, like FAST-41.

### **Memorandum of Understanding**

On April 9, 2018, President Trump announced that the following 12 federal agencies signed a One Federal Decision Memorandum of Understanding (MOU): Department of the Interior (Interior), Department of Agriculture (USDA), Department of Housing and Urban Development, Department of Commerce, Department of Transportation, Department of Energy (DOE), United States Army Corps of Engineers, Department of Homeland Security, Environmental Protection Agency (EPA), Federal Energy Regulatory Commission (FERC), Advisory Council on Historic Preservation, and the Federal Permitting Improvement Steering Council (FPISC). Under the MOU, these agencies committed to following the President's One Federal Decision framework. In doing so, the agencies agreed to implement an unprecedented level of coordination and collaboration in conducting their environmental reviews of major infrastructure projects.

The Council on Environmental Quality (CEQ), in coordination with other components of the White House, has convened a federal interagency working group to develop the framework under which agencies will implement One Federal Decision. This framework establishes the standard operating procedures for how agencies process environmental reviews from beginning to end. The agencies will work together to identify the appropriate level of analysis needed to conduct the necessary environmental reviews, synchronize the public engagement, and complete other procedural steps to ensure that all necessary decisions can be made within the timelines established by Executive Order 13807.

### **Agency Action**

To date, agencies have been taking steps to advance One Federal Decision principles, starting first with normalizing regular interagency working group meetings and collaboration between agencies and CEQ to improve interagency coordination and the quality of environmental analysis. Since the agencies signed the MOU, CEQ and agency leadership have engaged in numerous meetings on agency streamlining efforts to identify and implement policy, process, and regulatory changes that include:

[APG]

- The Federal Highway Administration signed an agreement with the United States Fish and Wildlife Service, the Army Corps of Engineers, EPA, United States Coast Guard, and National Oceanic and Atmospheric Administration (NOAA), committing to working together to achieve the goals of Executive Order 13807. These agencies collaboratively developed a chart coordinating each agency's processes;
- Interior issued Secretarial Order 3355 and additional guidance that advance the department's NEPA-streamlining efforts within Executive Order 13807;
- The Army Corps of Engineers issued Section 408 policy changes adopting other agencies' NEPA documents and issued a policy memorandum operationalizing "risk-informed decision making" to improve coordination and risk management across disciplines;
- USDA, FERC, DOE, and EPA are improving internal clearance processes along with increasing agency capacity for projects with dedicated staff assignments;
- USDA, the Army Corps of Engineers, NOAA Fisheries and the United States Fish and Wildlife Service are expanding the use of time-saving programmatic consultation processes; and
- Agencies will be issuing directives and conducting training at all levels of their organizations, from headquarters to field offices, on timetables and plans to implement the One Federal Decision policy nationwide.

### **Agency Accountability**

The Office of Management and Budget is developing a performance accountability system and appropriate performance metrics to ensure that agencies are implementing One Federal Decision, including the adherence to lead federal agency permitting timetables. The Administration plans to consider agency performance during budget formulation, and agency delays from the permitting timetable may be quantified. Key agency personnel also will have accountability and performance criteria added to their performance plans to measure their effectiveness in processing project permits.

### **Regulatory Reforms**

Following the direction laid out in Executive Order 13807, CEQ published an initial list of actions in the *Federal Register* on September 14, 2017, outlining its plans to enhance and modernize the federal environmental review and authorization process. Last fall, CEQ announced its intent to review its 1978 regulations implementing the procedural requirements of NEPA to identify potential updates and clarifications to those regulations. Just last week, CEQ published in the *Federal Register* for public comment an Advance Notice of Proposed Rulemaking titled, "Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act."

\*\*\*\*

Through improved agency coordination, increased transparency and accountability and timely decision making, we can improve our infrastructure permitting process and get projects completed and to the market faster for the benefit of the American people.

[APG]

While CEQ is focused on the development of a better process for all infrastructure project permitting, the Federal Permitting Improvement Steering Council is focused on overcoming obstacles on a project-by-project basis. My colleague, Angela Colamaria, the acting Executive Director of the Permitting Council, will expand further on the implementation of FAST-41 and FPISC's role in streamlining the federal permitting process.

Thank you again for the opportunity to participate in today's discussion.

[APG]

## Fwd: Comment - CEQ-2018-001

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**From:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**To:** "Boling, Ted A. EOP/CEQ" <(b) (6)>  
**Date:** Fri, 06 Jul 2018 18:10:58 -0400  
**Attachments:** Final State AG Letter Requesting Extension of Time to Comment on Advance...pdf  
(1.24 MB)

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Just putting this on the top of your inbox.

Michael Drummond  
Deputy Associate Director for NEPA  
Council on Environmental Quality  
(b) (6)

Begin forwarded message:

**From:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**Date:** July 3, 2018 at 3:10:34 PM EDT  
**To:** "Szabo, Aaron L. EOP/CEQ" <(b) (6)> "Seale, Viktoria Z. EOP/CEQ" <(b) (6)> "Neumayr, Mary B. EOP/CEQ" <(b) (6)>  
**Cc:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)> "Smith, Katherine R. EOP/CEQ" <(b) (6)>  
**Subject:** FW: Comment - CEQ-2018-001

FYI -- We received the attached this afternoon from the AGs offices of WA, MD, MA, NJ, NY, and OR requesting a 60-day extension of the comment period.

**From:** Kealy, Tricia (ATG) <[TriciaK@ATG.WA.GOV](mailto:TriciaK@ATG.WA.GOV)>  
**Sent:** Tuesday, July 3, 2018 2:44 PM  
**To:** FN-CEQ-NEPA <(b) (6)> [ksmith@ceq.eop.gov](mailto:ksmith@ceq.eop.gov)  
**Cc:** Janke, Aurora (ATG) <[Auroraj@ATG.WA.GOV](mailto:Auroraj@ATG.WA.GOV)>  
**Subject:** Comment - CEQ-2018-001

Greetings,

Attached please find a letter Re: Advance Notice of Proposed Rulemaking – Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 83 Fed. Reg. 28591 (June 20, 2018) Docket ID No. CEQ-2018-001 from Attorneys General of Washington, Maryland, Massachusetts, New Jersey, New York, and Oregon. This was submitted today on [regulations.gov](http://regulations.gov).

Thank you,

**Tricia Kealy**

Legal Assistant 3/Lead

Counsel for Environmental Protection

Office of the Attorney General

800 5th Ave, Suite 2000

Seattle, WA 98104

Phone 206-326-5494

[TriciaK@atg.wa.gov](mailto:TriciaK@atg.wa.gov)

**ATTORNEYS GENERAL OF WASHINGTON, MARYLAND, MASSACHUSETTS,  
NEW JERSEY, NEW YORK, AND OREGON**

July 3, 2018

BY EMAIL AND REGULATIONS.GOV

Mary B. Neumayr, Chief of Staff  
Council on Environmental Quality  
730 Jackson Place NW  
Washington, DC 20503  
NEPA@ceq.eop.gov  
ksmith@ceq.eop.gov

Re: Advance Notice of Proposed Rulemaking – Update to the Regulations for  
Implementing the Procedural Provisions of the National Environmental Policy  
Act, 83 Fed. Reg. 28591 (June 20, 2018)  
Docket ID No. CEQ-2018-0001

Dear Chief of Staff Neumayr:

The undersigned State Attorneys General write to express our concern about the Council on Environmental Quality's (CEQ) advance notice of proposed rulemaking regarding updates to the regulations implementing the National Environmental Policy Act (NEPA). For the following reasons, we ask that you extend the public comment period from 30 days to 90 days to provide a sufficient opportunity for states, the public, and other stakeholders to comment on this significant proposal to revise regulations that have long served to protect the environment and public health.

NEPA is one of our nation's bedrock environmental laws. The CEQ's implementing regulations provide the guiding principles for administering NEPA across the entire federal government. Nearly every major federal action from the approval of significant energy and infrastructure projects to key decisions concerning the administration of federal public lands requires compliance with the NEPA process. We are concerned that amendments to CEQ's regulations may result in profound changes on the depth and quality of federal agencies' consideration of the environmental and public health impacts of major federal actions—many of which are of significant interest to our states' residents and have lasting impacts on our states' natural resources and economies. In addition, many states, including Maryland, Massachusetts, New York, and Washington, have adopted their own environmental review laws that often must be administered in conjunction with the NEPA process. Our states thus have a strong interest in ensuring that any revisions to CEQ's NEPA regulations continue to require, consistent with NEPA, that federal agencies always take a "hard look" at the environmental and public health consequences of major federal actions.

As stated in the advance notice, CEQ's NEPA regulations have been revised extremely infrequently, and therefore a compressed timeline for consideration of such revisions is unwarranted and unwise. CEQ's NEPA regulations are fundamental to the daily functioning of numerous agencies and any revisions to these regulations must be carefully and deliberately calibrated. A wealth of scholarship and practical experience can be brought to bear on the need for and prudence of any revisions, and we believe that only a truly deliberative and public process will produce revised regulations that are consistent with NEPA's structure and purpose.

Given the significant impacts that revisions to CEQ's NEPA regulations could have on states and the public, the broad scope of the advance notice, and the long history of the federal government's use of the regulations under review, we ask that you extend the comment period by 60 days to provide a meaningful amount of time for states, the public, and other stakeholders to adequately respond to the advance notice. The current 30-day comment period does not provide the affected public adequate opportunity to participate in the rulemaking and comment on the proposal as required by the Administrative Procedure Act, 5 U.S.C. § 553(c). Under section 2(b) of Executive Order 13,563, a standard comment period should be at least 60 days, but the significance of this proposal to change longstanding and far-reaching NEPA regulations demands additional time to ensure an opportunity for meaningful public involvement in the review process.

We therefore request that CEQ extend the comment period by 60 days, to September 18, 2018. We also request that CEQ hold several public hearings on the proposal in different regions of the country during the comment period.

We appreciate your consideration of this important matter.

Respectfully submitted,

FOR THE STATE OF WASHINGTON

ROBERT W. FERGUSON  
Attorney General

By:



WILLIAM R. SHERMAN  
Assistant Attorney General  
AURORA R. JANKE  
Special Assistant Attorney General  
Counsel for Environmental Protection  
800 5th Ave Suite 2000, TB-14  
Seattle, WA 98104-3188  
(206) 442-4485  
bill.sherman@atg.wa.gov  
auroraj@atg.wa.gov

FOR THE STATE OF MARYLAND

BRIAN E. FROSH  
Attorney General

By:



LEAH J. TULIN  
Assistant Attorney General  
200 Saint Paul Place  
Baltimore, MD 21202  
(410) 576-6962  
ltulin@oag.state.md.us

FOR THE COMMONWEALTH OF  
MASSACHUSETTS

MAURA HEALEY  
Attorney General of Massachusetts

By:

CHRISTOPHE COURCHESNE  
Assistant Attorney General and Chief  
Environmental Protection Division  
Office of the Attorney General  
One Ashburton Place, 18th Floor  
Boston, Massachusetts 02108  
(617) 727-2200  
christophe.courchesne@state.ma.us

FOR THE STATE OF NEW JERSEY

GURBIR S. GREWAL  
Attorney General

By:

DAVID C. APY  
Assistant Attorney General  
KRISTINA MILES  
Deputy Attorney General  
R.J. Hughes Justice Complex  
25 Market Street  
Trenton, NJ 08625-0093  
(609) 376-2804  
david.apy@law.njoag.gov  
kristina.miles@law.njoag.gov

FOR THE STATE OF NEW YORK

BARBARA D. UNDERWOOD  
Attorney General

By:

MICHAEL MYERS  
Senior Counsel  
CLAIBORNE E. WALTHALL  
Assistant Attorney General  
Environmental Protection Bureau  
New York State Attorney General  
The Capitol  
Albany, NY 12224  
(518) 776-2380  
Claiborne.Walthall@ag.ny.gov

FOR THE STATE OF MARYLAND

BRIAN E. FROSH  
Attorney General

By: \_\_\_\_\_

LEAH J. TULIN  
Assistant Attorney General  
200 Saint Paul Place  
Baltimore, MD 21202  
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FOR THE COMMONWEALTH OF  
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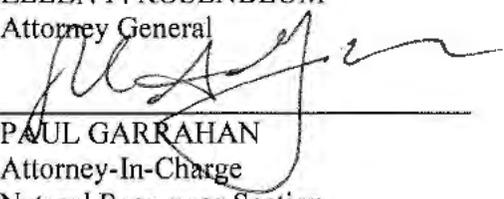
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FOR THE STATE OF OREGON

ELLEN F. ROSENBLUM  
Attorney General

By:



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Attorney-In-Charge  
Natural Resources Section  
STEVE NOVICK  
Special Assistant Attorney General  
1162 Court St. NE  
Salem, OR 97301-4096  
(503) 947-4520  
paul.garrahan@doj.state.or.us  
steve.novick@doj.state.or.us

## RE: CEQ Website update request

---

**From:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**To:** "Adams, John (AU) (CONTR)" <john.adams@hq.doe.gov>, "Carter, Marian (CONTR)" <marian.carter@hq.doe.gov>, "Alexander, Lillian" <lillian.alexander@hq.doe.gov>  
**Cc:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)> "Boling, Ted A. EOP/CEQ" <(b) (6)>  
**Date:** Wed, 11 Jul 2018 16:14:11 -0400

Thanks John, we appreciate the prompt assistance.

---

**From:** Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>  
**Sent:** Wednesday, July 11, 2018 3:14 PM  
**To:** Drummond, Michael R. EOP/CEQ <(b) (6)> Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>; Alexander, Lillian <Lillian.Alexander@hq.doe.gov>  
**Cc:** Mansoor, Yardena M. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** RE: CEQ Website update request

Good afternoon Michael,

This request has been completed.

---

**From:** Drummond, Michael R. EOP/CEQ [mailto:(b) (6)]  
**Sent:** Wednesday, July 11, 2018 2:56 PM  
**To:** Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>; Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>; Alexander, Lillian <Lillian.Alexander@hq.doe.gov>  
**Cc:** Mansoor, Yardena M. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** CEQ Website update request

John,

At ><https://ceq.doe.gov/laws-regulations/regulations.html><, please make the indicated change and post the attached document:

### Proposed Rulemaking:

CEQ is considering updating its NEPA implementing regulations and solicits public comment on potential revisions to update the regulations and ensure a more efficient,

timely, and effective NEPA process. Submit comments, identified by docket ID number CEQ-2018-0001, through the Federal eRulemaking portal, <https://www.regulations.gov>. Comments should be submitted on or before **July August** 20, 2018.

[June 20, 2018: Advance Notice of Proposed Rulemaking](#)

[July 11, 2018: Extension of Comment Period](#)

As always, thank you for your help.

Michael Drummond  
Deputy Associate Director for NEPA  
Council on Environmental Quality

(b) (6)

# RE: Milestones report -- agency review and input needed by July 13

---

**From:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**To:** "Schneider, Daniel J. EOP/CEQ" <(b) (6)> "Seale, Viktoria Z. EOP/CEQ" <(b) (6)> "Neumayr, Mary B. EOP/CEQ" <(b) (6)> "Herrgott, Alex H. EOP/CEQ" <(b) (6)>  
**Cc:** "Pettigrew, Theresa L. EOP/CEQ" <(b) (6)> "Boling, Ted A. EOP/CEQ" <(b) (6)> "Smith, Katherine R. EOP/CEQ" <(b) (6)>  
**Date:** Thu, 12 Jul 2018 12:31:23 -0400

Thanks all, adding Katherine to this thread. I'll make the suggested changes.

---

**From:** Schneider, Daniel J. EOP/CEQ  
**Sent:** Thursday, July 12, 2018 10:38 AM  
**To:** Seale, Viktoria Z. EOP/CEQ <(b) (6)> Drummond, Michael R. EOP/CEQ <(b) (6)> Neumayr, Mary B. EOP/CEQ <(b) (6)> Herrgott, Alex H. EOP/CEQ <(b) (6)>  
**Cc:** Pettigrew, Theresa L. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** RE: Milestones report -- agency review and input needed by July 13

Minor suggestions from me as well.

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**From:** Seale, Viktoria Z. EOP/CEQ  
**Sent:** Thursday, July 12, 2018 10:33 AM  
**To:** Drummond, Michael R. EOP/CEQ <(b) (6)> Neumayr, Mary B. EOP/CEQ <(b) (6)> Schneider, Daniel J. EOP/CEQ <(b) (6)> Herrgott, Alex H. EOP/CEQ <(b) (6)>  
**Cc:** Pettigrew, Theresa L. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** RE: Milestones report -- agency review and input needed by July 13

Michael,

Below are a few minor suggested edits in red.

Thanks

Viktorija

**From:** Drummond, Michael R. EOP/CEQ  
**Sent:** Thursday, July 12, 2018 9:58 AM  
**To:** Neumayr, Mary B. EOP/CEQ <(b) (6)> Schneider, Daniel J. EOP/CEQ <(b) (6)> Seale, Viktoria Z. EOP/CEQ <(b) (6)> Herrgott, Alex H. EOP/CEQ <(b) (6)>  
**Cc:** Pettigrew, Theresa L. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** FW: Milestones report -- agency review and input needed by July 13

Good morning,

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Best,

Michael

- Council on Environmental Quality (CEQ) In Progress

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Ongoing	Work with Federal Agencies to review regulations and policies to identify impediments to the efficient and effective processing of environmental reviews and permitting decisions.

**From:** Guyselman, Kelsey J. EOP/OSTP

**Sent:** Monday, July 9, 2018 5:50 PM

**To:** rnelson@achp.gov; mdefalco@arc.gov; timthomas@arc.gov; Drummond, Michael R. EOP/CEQ  
 <(b) (6)> bhenson@dra.gov; jperry@fs.fed.us; edenson@fs.fed.us;  
 mmazel@fs.fed.us; chad.parker@wdc.usda.gov; Kubena, Kellie - RD, Washington, DC  
 <Kellie.Kubena@wdc.usda.gov>; laurel.leverrier@wdc.usda.gov; Duane, Jennifer A.  
 <JDuane@ntia.doc.gov>; Spurgeon, Andrew <ASpurgeon@ntia.doc.gov>; Moyer, Timothy  
 <TMoyer@ntia.doc.gov>; brian.s.teeple2.civ@mail.mil; peter.j.potochney.civ@mail.mil;  
 fredrick.d.moorefield.civ@mail.mil; james.p.campion2.civ@mail.mil; robert.a.coffman10.civ@mail.mil;  
 Jason.Botel@ed.gov; Sara.Trettin@ed.gov; David.Cantrell@ed.gov; herbert.mcconnell@hq.doe.gov;  
 pam.peckham@hq.doe.gov; max.everett@hq.doe.gov; Ronald.Hewitt@hq.dhs.gov;  
 Darrell.Smith@hq.dhs.gov; Brandon.wales@hq.dhs.gov; Marcus.Ward@hq.dhs.gov;  
 Sonja.Rodriguez@hq.dhs.gov; Melanie.Bakaysa@associates.hq.dhs.gov; Ralph.H.Gaines@hud.gov;  
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 ralcorn@usbr.gov; lee\_dickinson@nps.gov; truda\_stella@nps.gov; ken\_fowler@fws.gov;  
 noah\_matson@fws.gov; sharlene.roundface@bia.gov; beth.wenstrom@bia.gov;  
 thompson.kevin@dol.gov; ahlstrand.amanda@dol.gov; Zelden.Mark.A@DOL.gov;  
 julie.johnston@dot.gov; finch.fulton@dot.gov; kipp.kranbuhl@treasury.gov; adonovan@cdfi.treas.gov;  
 jodie.harris@treasury.gov; barry.wides@occ.treas.gov; karen.bellesi@occ.treas.gov;  
 thomas.klobucar@va.gov; Deborah.Scher@va.gov; Blake-Coleman.Wendy@epa.gov;  
 Mixon.edward@epa.gov; Erica.Rosenberg@fcc.gov; Kirk.burgee@fcc.gov; Michael.Janson@fcc.gov;  
 Michele.Berlove@fcc.gov; Ryan.Palmer@fcc.gov; Deborah.Salons@fcc.gov;  
 jessica.salmoiraghi@gsa.gov; aluanda.drain@gsa.gov; maryann.hillier@gsa.gov; wengland@hrsa.gov;  
 nmanzanero@hrsa.gov; tmorris@hrsa.gov; MQuinn@hrsa.gov; GSigounas@hrsa.gov;  
 hesseb@mail.nih.gov; jneal@imls.gov; nweiss@imls.gov; rdale@imls.gov; egiancha@nsf.gov;  
 tmandago@nsf.gov; kcalvert@nsf.gov; mehought@nsf.gov  
**Cc:** Redl, David <dredl@ntia.doc.gov>; Hanson, Karen <KHanson@ntia.doc.gov>; Kinkoph, Douglas  
 <DKinkoph@ntia.doc.gov>; kenl.johnson@wdc.usda.gov; Jannine.Miller@wdc.usda.gov; Page, Ben J.  
 EOP/OMB <(b) (6)> Premaza, Victoria S. EOP/OMB

<(b) (6)> Stein, Nora H. EOP/OMB <(b) (6)> Slater,  
Abigail A. EOP/WHO <(b) (6)> Lira, Mathew L. EOP/WHO  
<(b) (6)>  
**Subject:** Milestones report -- agency review and input needed by July 13

Dear Colleagues,

I have attached the current working draft of the Broadband Milestones report. Please review this document and send me your edits using track changes, copying Karen Hanson ([khanson@ntia.doc.gov](mailto:khanson@ntia.doc.gov)). **Please submit your edits by close of business this Friday (July 13).**

In particular, we are looking for the following information: 1) responses to White House / OMB questions noted in yellow highlight or red text; 2) Any corrections or clarifications to agency actions located in the body of the report and in Appendix C; 3) Suggestions for additional content, such as examples of impact or agency success stories.

We need clear, concrete deliverables that meaningfully improve broadband deployment by streamlining processes and fostering additional private sector investment.

We will host a call on **July 12 at 2:00pm** <(b) (6)> to review the process, answer any questions you may have, and discuss top-line goals for agency deliverables.

Thank you for your continued hard work on this effort and we look forward to your feedback.

Sincerely,  
Kelsey

**Kelsey Guyselman**  
Executive Office of the President  
Office of Science and Technology Policy  
202-456-3824

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**From:** "Schneider, Daniel J. EOP/CEQ" <(b) (6)>  
**To:** "Seale, Viktoria Z. EOP/CEQ" <(b) (6)> "Drummond, Michael R. EOP/CEQ" <(b) (6)> "Neumayr, Mary B. EOP/CEQ" <(b) (6)> "Herrgott, Alex H. EOP/CEQ" <(b) (6)>  
**Cc:** "Pettigrew, Theresa L. EOP/CEQ" <(b) (6)> "Boling, Ted A. EOP/CEQ" <(b) (6)>  
**Date:** Thu, 12 Jul 2018 10:37:51 -0400

Minor suggestions from me as well.

---

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**Sent:** Thursday, July 12, 2018 10:33 AM  
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julie.johnston@dot.gov; finch.fulton@dot.gov; kipp.kranbuhl@treasury.gov; adonovan@cdfi.treas.gov;  
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nmanzanero@hrsa.gov; tmorris@hrsa.gov; MQuinn@hrsa.gov; GSigounas@hrsa.gov;  
hesseb@mail.nih.gov; jneal@imls.gov; nweiss@imls.gov; rdale@imls.gov; egiancha@nsf.gov;  
tnandago@nsf.gov; kcalvert@nsf.gov; mehought@nsf.gov  
**Cc:** Redl, David <dredl@ntia.doc.gov>; Hanson, Karen <KHanson@ntia.doc.gov>; Kinkoph, Douglas  
<DKinkoph@ntia.doc.gov>; kenl.johnson@wdc.usda.gov; Jannine.Miller@wdc.usda.gov; Page, Ben J.  
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Sincerely,  
Kelsey

**Kelsey Guyselman**  
Executive Office of the President  
Office of Science and Technology Policy  
(b) (6)

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**From:** "Seale, Viktoria Z. EOP/CEQ" <(b) (6)>  
**To:** "Drummond, Michael R. EOP/CEQ" (b) (6) "Neumayr, Mary B. EOP/CEQ" <(b) (6)> "Schneider, Daniel J. EOP/CEQ" <(b) (6)> "Herrgott, Alex H. EOP/CEQ" <(b) (6)>  
**Cc:** "Pettigrew, Theresa L. EOP/CEQ" <(b) (6)> "Boling, Ted A. EOP/CEQ" <(b) (6)>  
**Date:** Thu, 12 Jul 2018 10:33:20 -0400

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Below are a few minor suggested edits in red.

Thanks

Viktoria

**From:** Drummond, Michael R. EOP/CEQ  
**Sent:** Thursday, July 12, 2018 9:58 AM  
**To:** Neumayr, Mary B. EOP/CEQ <(b) (6)> Schneider, Daniel J. EOP/CEQ <(b) (6)> Seale, Viktoria Z. EOP/CEQ <(b) (6)> Herrgott, Alex H. EOP/CEQ <(b) (6)>  
**Cc:** Pettigrew, Theresa L. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** FW: Milestones report -- agency review and input needed by July 13

Good morning,

The Broadband Interagency Working Group has circulated their draft report with a comments requested by COB Friday. CEQ's update is located on page 16 of the attached and pasted into this email below. Please let me know if you have any edits.

Best,

Michael

- Council on Environmental Quality (CEQ) In Progress

CEQ, working with the Office of Management and Budget (OMB), and in consultation with the Federal Permitting Improvement Steering Council (Permitting Council) and other Federal agencies, is implementing a One Federal Decision process to coordinate the environmental review of major infrastructure projects. CEQ's past and planned actions to improve the environmental review process include:

Completed (September 2017)	CEQ published a <a href="#">notice</a> in the Federal Register announcing an initial list of actions it will take to enhance and modernize the Federal environmental review and authorization process for infrastructure projects.
Completed (March 2018)	CEQ and OMB the Office of Management and Budget, in consultation with the Federal Permitting Improvement Steering Council, issued a <a href="#">One Federal Decision Framework document</a> to provide Federal agencies with guidance on implementing Executive Order 13807. Section 5 of E.O. 13807 directs all Federal agencies with environmental review, authorization, or consultation responsibilities for major infrastructure projects to develop a single Environmental Impact Statement (EIS) for such projects, sign a single Record of Decision (ROD) and issue all necessary authorizations within 90 days thereafter, subject to limited exceptions.
June – August 2018	CEQ published an Advance Notice of Proposed Rulemaking requesting comment on potential revisions to update and clarify CEQ's National Environmental Policy Act (NEPA) regulations. Through a series of 20 questions, CEQ requested comments on provisions of the regulations related to the NEPA process and the scope of NEPA review.
Ongoing	Work with Federal Agencies to review regulations and policies to identify impediments to the efficient and effective processing of environmental reviews and permitting decisions.

**From:** Guyselman, Kelsey J. EOP/OSTP

**Sent:** Monday, July 9, 2018 5:50 PM

**To:** rnelson@achp.gov; mdefalco@arc.gov; timthomas@arc.gov; Drummond, Michael R. EOP/CEQ  
<(b) (6)> bhenson@dra.gov; jperry@fs.fed.us; edenson@fs.fed.us;  
mmazel@fs.fed.us; chad.parker@wdc.usda.gov; Kubena, Kellie - RD, Washington, DC  
<Kellie.Kubena@wdc.usda.gov>; laurel.leverrier@wdc.usda.gov; Duane, Jennifer A.  
<JDuane@ntia.doc.gov>; Spurgeon, Andrew <ASpurgeon@ntia.doc.gov>; Moyer, Timothy  
<TMoyer@ntia.doc.gov>; brian.s.teeple2.civ@mail.mil; peter.j.potochney.civ@mail.mil;  
fredrick.d.moorefield.civ@mail.mil; james.p.campion2.civ@mail.mil; robert.a.coffman10.civ@mail.mil;  
Jason.Botel@ed.gov; Sara.Trettin@ed.gov; David.Cantrell@ed.gov; herbert.mcconnell@hq.doe.gov;  
pam.peckham@hq.doe.gov; max.everett@hq.doe.gov; Ronald.Hewitt@hq.dhs.gov;  
Darrell.Smith@hq.dhs.gov; Brandon.wales@hq.dhs.gov; Marcus.Ward@hq.dhs.gov;  
Sonja.Rodriguez@hq.dhs.gov; Melanie.Bakaysa@associates.hq.dhs.gov; Ralph.H.Gaines@hud.gov;  
John.Gibbs@hud.gov; Dina.Lehmann-Kim@hud.gov; Lisa.S.Abell@hud.gov; Stanley.Gimont@hud.gov;  
katharine\_macgregor@ios.doi.gov; sfusilie@blm.gov; k15montg@blm.gov; jjirby@usbr.gov;  
ralcorn@usbr.gov; lee\_dickinson@nps.gov; truda\_stella@nps.gov; ken\_fowler@fws.gov;  
noah\_matson@fws.gov; sharlene.roundface@bia.gov; beth.wenstrom@bia.gov;  
thompson.kevin@dol.gov; ahlstrand.amanda@dol.gov; Zelden.Mark.A@DOL.gov;  
julie.johnston@dot.gov; finch.fulton@dot.gov; kipp.kranbuhl@treasury.gov; adonovan@cdfi.treas.gov;  
jodie.harris@treasury.gov; barry.wides@occ.treas.gov; karen.bellesi@occ.treas.gov;  
thomas.klobucar@va.gov; Deborah.Scher@va.gov; Blake-Coleman.Wendy@epa.gov;  
Mixon.edward@epa.gov; Erica.Rosenberg@fcc.gov; Kirk.burgee@fcc.gov; Michael.Janson@fcc.gov;  
Michele.Berlove@fcc.gov; Ryan.Palmer@fcc.gov; Deborah.Salons@fcc.gov;  
jessica.salmoiraghi@gsa.gov; aluanda.drain@gsa.gov; maryann.hillier@gsa.gov; wengland@hrsa.gov;  
nmanzanero@hrsa.gov; tmorris@hrsa.gov; MQuinn@hrsa.gov; GSigounas@hrsa.gov;  
hesseb@mail.nih.gov; jneal@imls.gov; nweiss@imls.gov; rdale@imls.gov; egiancha@nsf.gov;  
tnandago@nsf.gov; kcalvert@nsf.gov; mehought@nsf.gov  
**Cc:** Redl, David <dredl@ntia.doc.gov>; Hanson, Karen <KHanson@ntia.doc.gov>; Kinkoph, Douglas  
<DKinkoph@ntia.doc.gov>; kenl.johnson@wdc.usda.gov; Jannine.Miller@wdc.usda.gov; Page, Ben J.  
EOP/OMB <(b) (6)> Premaza, Victoria S. EOP/OMB  
<(b) (6)> Stein, Nora H. EOP/OMB <(b) (6)> Slater,  
Abigail A. EOP/WHO <(b) (6)> Lira, Mathew L. EOP/WHO  
<(b) (6)>

**Subject:** Milestones report -- agency review and input needed by July 13

Dear Colleagues,

I have attached the current working draft of the Broadband Milestones report. Please review this document and send me your edits using track changes, copying Karen Hanson ([khanson@ntia.doc.gov](mailto:khanson@ntia.doc.gov)). **Please submit your edits by close of business this Friday (July 13).**

In particular, we are looking for the following information: 1) responses to White House / OMB questions noted in yellow highlight or red text; 2) Any corrections or clarifications to agency actions

located in the body of the report and in Appendix C; 3) Suggestions for additional content, such as examples of impact or agency success stories.

We need clear, concrete deliverables that meaningfully improve broadband deployment by streamlining processes and fostering additional private sector investment.

We will host a call on **July 12 at 2:00pm** [(b) (6)], code [(b) (6)] to review the process, answer any questions you may have, and discuss top-line goals for agency deliverables.

Thank you for your continued hard work on this effort and we look forward to your feedback.

Sincerely,  
Kelsey

**Kelsey Guyselman**  
Executive Office of the President  
Office of Science and Technology Policy  
202-456-3824

## [No Subject]

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**From:** "Schneider, Daniel J. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlit)/cn=recipients/cn=70576341fcb44ab780c5f4d1ca218647-sc">

**To:** "Pettigrew, Theresa L. EOP/CEQ" <(b) (6)>

**Date:** Fri, 13 Jul 2018 15:22:01 -0400

**Attachments**  
: Draft Mary Backgrounder 07-09-18.docx (107.32 kB)

---

Dan Schneider  
Associate Director for Communications  
Council on Environmental Quality  
Executive Office of the President  
(b) (6) (desk)  
(b) (6)  
[www.whitehouse.gov/ceq](http://www.whitehouse.gov/ceq)



Draft – Deliberative – 07/09/18

Date: July 9, 2018

Re: Backgrounder for Mary Neumayr Nomination

---

**Background:** On June 18, 2018, President Trump nominated Mary Bridget Neumayr, of Virginia, to be the Chair of the White House Council on Environmental Quality (CEQ). The following document provides a brief overview of the ongoing news surrounding Ms. Neumayr's nomination.

**Overview:**

Ms. Neumayr has been serving as CEQ's Chief of Staff since March 2017. Prior to joining CEQ, she served in a variety of positions with the Committee on Energy and Commerce in the U.S. House of Representatives; including as Deputy Chief Counsel, Energy and Environment (2017); Senior Counsel (2011-2017); and Counsel (2009-2010). Ms. Neumayr also served as Deputy General Counsel for Environment and Nuclear Programs at the U.S. Department of Energy (2006-2009), and as Counsel to the Assistant Attorney General for the Environment and Natural Resources Divisions at the U.S. Department of Justice (2003-2006). Prior to her government service, Ms. Neumayr was in private legal practice from 1989 through 2003. She received her B.A. from Thomas Aquinas College and her J.D. from the University of California, Hastings College of Law.

White House press release on intent to nominate: <https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-intent-nominate-personnel-key-administration-posts-46/>

White House press release on formal nomination: <https://www.whitehouse.gov/presidential-actions/seventeen-nominations-one-withdrawal-sent-senate-today/>

**Post-Nomination News:**

06/12/2018: E&E News, *Trump nominates Mary Neumayr as CEQ head:*  
<https://www.eenews.net/stories/1060084231>

- "I am pleased that the President has nominated Mary Neumayr to lead the Council on Environmental Quality," Sen. Jim Inhofe (R-Okla.) said in a statement. "We've worked well together and I appreciate her commitment to protecting the environment while also cutting duplicative and unnecessary regulations. She will play a key role in working with Congress to promote good government reforms as we work towards an infrastructure bill. I congratulate her on her nomination, and look forward to her confirmation."

06/13/2018: The Hill, *Trump taps Hill veteran for White House environment job:*  
<http://thehill.com/policy/energy-environment/392038-trump-taps-hill-veteran-for-white-house-environment-job>

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- Neumayr took her post at CEQ in March 2017. Before that, she held various senior roles working for Republicans on the House Energy and Commerce Committee for eight years, including most recently as deputy chief counsel for energy and environment

06/13/2018: Inside EPA, *Trump taps acting CEQ chair for permanent role*:

<https://insideepa.com/daily-feed/trump-taps-acting-ceq-chair-permanent-role>

- Neumayr oversaw the withdrawal of the Obama administration's guidance for how to consider greenhouse gases in National Environmental Policy Act (NEPA) reviews, and is also conducting a broader rewrite of NEPA implementing rules. That effort is awaiting first-time public release as an advance notice of proposed rulemaking currently [under review](#) by the White House Office of Information & Regulatory Affairs.
- One industry lawyer who works on NEPA issues called Neumayr's nomination “very good news. She will definitely be confirmed, and she brings a great deal of background knowledge and experience in issues CEQ is dealing with now on NEPA and permit reform.” The lawyer adds that she is “a careful and reasonable voice on these issues, and I think having someone like her at the helm will advance the cause of putting some of the reforms that the administration supports both into practice and codifying them with potential amendments to the regulations that are [soon to be] proposed.” The lawyer stresses the difference between Neumayr and White as “night and day,” with Neumayr being an “apolitical pro.”
- A former CEQ official also offers praise for Neumayr's work ethic. “In her time as acting chair, Mary has built a track record of solid management of decisions and process and of treating staff well and empowering them to be effective.”

06/13/2018: Politico Morning Energy: <https://www.politico.com/newsletters/morning-energy/2018/06/13/pruitt-hits-the-road-again-249986>

- **TRUMP TAPS NEUMAYR:** The White House announced that Trump plans to nominate Mary Neumayr to run his Council on Environmental Quality. Neumayr's appointment would make official her role at CEQ, where she has been the acting head since March 2017. One of her most important acts thus far at CEQ was the withdrawal of Obama-era CEQ guidance on incorporating greenhouse gas emissions into environmental reviews, Pro's Alex Guillén [reports](#).
- **Prior to her time at CEQ,** Neumayr spent eight years at the House Energy and Commerce Committee as deputy chief counsel, and during the George W. Bush administration worked as deputy general counsel for environment and nuclear programs at the Energy Department and as a counsel to the assistant attorney general for the Justice Department's Energy and Natural Resources Division. She helped author a Supreme Court [brief](#) in 2011 for Republican lawmakers arguing that the courts should leave climate change policy to the legislative and executive branches. In that case, *AEP v. Connecticut*, the high court unanimously [backed up EPA's authority](#) under the Clean Air Act to regulate greenhouse gases.

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06/13/2018: New York Times, *Trump tires again to fill a top environmental job:*  
<https://www.nytimes.com/2018/06/13/climate/could-earths-ice-sheets-collapse.html>

- Brett Hartl, director of government affairs at the Center for Biological Diversity, an environmental group, criticized Ms. Neumayr as “instrumental” in Republican efforts to roll back clean air protections during her time on Capitol Hill. He called her appointment “very bad news for human health and the health of the environment.”
- Representative Rob Bishop of Utah, the Republican chairman of the House Committee on Natural Resources, noted Ms. Neumayr’s experience. He said it would be key in handling looming issues like overhauling the National Environmental Policy Act, which spells out the review process for major federal projects. He called Ms. Neumayr a “superb choice.”

06/14/2018: The Washington Post, *Trump tries more middle-of-the-road pick for top White House environment post:* [https://www.washingtonpost.com/news/energy-environment/wp/2018/06/13/trump-tries-a-more-middle-of-the-road-pick-for-top-white-house-environment-post/?utm\\_term=.5443f5d1d879](https://www.washingtonpost.com/news/energy-environment/wp/2018/06/13/trump-tries-a-more-middle-of-the-road-pick-for-top-white-house-environment-post/?utm_term=.5443f5d1d879)

- Sen. John Barrasso (R-Wyo.) said in a statement Wednesday that Neumayr will “make a strong leader at the Council on Environmental Quality,” given her experience at the White House and on Capitol Hill.
- Michael Catanzaro, who served as special assistant to the president for domestic energy and environmental policy before rejoining the D.C.-based consulting group CGCN this spring, said in an email Wednesday that “Neumayr is a consummate professional, who possesses outstanding legal skills and exceptional knowledge of environmental policy. She has been and will continue to be a tremendous asset to CEQ, the President, and the country.”
- “The thing about Mary is that you can work with her and talk with her and have a cordial professional conversation,” said one of the staffers.

06/14/2018: E&E News, *Even some greens like Trump’s pick for CEQ:*  
<https://www.eenews.net/climatewire/2018/06/14/stories/1060084471>

- “She is a good selection for the administration to oversee CEQ and certainly a stark contrast with the conscious outlier and extreme figure that they initially selected,” said John Walke, clean air director with the Natural Resources Defense Council. “She always made a point of coming down to the witness table after the hearing to thank me for my testimony, which doesn’t always happen — especially for those whose bosses don’t always take the same position of NRDC,” Walke said. “I think she will do her job well. She is not a bomb thrower, and she is not someone who governs through sound bites and shrill press releases.”
- “I think she combines the best of being a true believer — a good, solid pro-business Republican — with just being very, very knowledgeable about how the executive and

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legislative branches implement the laws and deal with the laws," said Jim Barnette, a partner at Steptoe & Johnson LLP who worked with Neumayr when he was Energy and Commerce Committee general counsel until 2012.

- "She's one of the most conscientious, hardworking and thoughtful energy policy staffers in D.C. with deep experience in a wide range of law and policy," said Maryam Brown, vice president of federal affairs with Sempra Energy. Brown and Neumayr worked together on the Energy and Commerce Committee before Brown moved onto then-House Speaker John Boehner's (R-Ohio) staff, where they kept in contact on energy and environment legislation.

06/14/2018: E&E News, *No 'alarm sirens' over second CEQ pick – Carper*:  
<https://www.eenews.net/eedaily/2018/06/14/stories/1060084439>

- Sen. Tom Carper (D-Del.), who urged the White House to abandon efforts to confirm Trump's first pick to lead CEQ, Kathleen Hartnett White, said yesterday he did not personally know Mary Neumayr but had been told by staff members who have worked with her that "alarm sirens don't go off". I look forward to meeting with her to learn her views on a range of issues," Carper told E&E News of Neumayr, who has been leading CEQ as its chief of staff since joining in March of 2017.
- Rep. John Shimkus (R-Ill.), a senior member of the Energy and Commerce panel, praised Neumayr yesterday. "In my dealings with her she was respectful, hardworking, diligent and I think would be a good choice," he told E&E News.
- Neumayr was also praised by Stephen Brown, a lobbyist with energy giant Andeavor, who called her "one of the most principled, hard-working and intelligent people I know in the energy/environmental space. Her work in particular on the Clear Air Act issues at the House E&C Committee was unparalleled and I have no doubt that her efforts to bring some sanity to [the National Environmental Policy Act] and related permitting topics will be top notch," Brown wrote in an email.

06/14/2018: Chemical and Engineering News, *White House picks environmental advisor*:  
<https://cen.acs.org/environment/White-House-picks-environmental-adviser/96/i25>

- Neumayr is a much less controversial pick to lead CEQ and likely to win Senate confirmation.

06/19/2018: E&E News, *Greens gird for fight as White House starts NEPA overhaul*:  
<https://www.eenews.net/greenwire/stories/1060085087/search?keyword=Mary+neumayr>

- There is also a wild card in the process that could help both the agency and industry groups hoping to get the rewrite done quickly: President Trump's nomination of veteran Capitol Hill staffer Mary Neumayr to lead CEQ. She appears to be a more popular nominee than Kathleen Hartnett White, Trump's last pick to lead the agency.

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- "I thought it was a very positive step for people who are interested in seeing this rulemaking come to fruition," Wagner said. "She is very well versed in these rules, very well versed in her background and knowledge of process."

06/25/2018: E&E News, Panel sets first permitting hearing since CEQ nomination:

<https://www.eenews.net/eedaily/stories/1060086257/search?keyword=Mary+neumayr>

- First, President Trump last week nominated Mary Neumayr as chairwoman of the White House Council on Environmental Quality. The council, which oversees permitting regulations under the National Environmental Policy Act, has lacked a permanent director. Trump's original pick, Kathleen Hartnett White, withdrew her name from consideration after it became clear she would not pass the Senate.

07/03/2018: E&E News, *Trove of emails reveals constellation of climate aides*:

<https://www.eenews.net/climatewire/stories/1060087535/search?keyword=Mary+neumayr>

- Two others at the meeting have been elevated to new roles, leaving their old slots empty. They are Francis Brooke, who left Pence's office to take Catanzaro's position, and Mary Neumayr, who has been nominated to lead the Council on Environmental Quality after serving as its de facto head.

#### Pre-Nomination News:

02/01/2018: E&E News, *Who's who in Trump's infrastructure initiative*:

<https://www.eenews.net/stories/1060072527>

- CEQ chief of staff Neumayr is also being eyed as a pivotal player in Trump's bid to speed NEPA reviews.
- "If they're going to spend money on infrastructure, the only way they're going to be able to do it is if they streamline the NEPA permitting process," said Myron Ebell, director of the Center for Energy and Environment at the Competitive Enterprise Institute, who led the Trump transition at U.S. EPA. "Since CEQ is in charge of NEPA, that means Mary and her team will be important."
- Neumayr also brings deep Capitol Hill experience, having served as deputy chief counsel on energy and environment for the House Energy and Commerce Committee.
- Before that, Neumayr served in the George W. Bush administration as deputy general counsel for environment and nuclear programs at the Energy Department from 2006 to 2009, and as counsel to the assistant attorney general for the Justice Department's Environment and Natural Resources Division from 2003 to 2006.

02/05/2018: E&E News, *Skeptic's retreat sparks questions about alternative science*:

<https://www.eenews.net/stories/1060072867>

- Another explanation is that CEQ's work has continued apace, even if its relatively slim staff is taxed. Many inside the administration believe the acting chief, Mary Neumayr, is capable of steering the council in the interim.

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02/21/2018: New York Times, *New Candidates Emerge for Trump's Top Environmental Advisor*: <https://www.nytimes.com/2018/02/21/climate/trump-environment-adviser-candidates.html>

- The short list also includes Mary Neumayr, who as the agency's chief of staff since March has been doing the job in an acting capacity for nearly a year, said Jeffrey Holmstead, a partner at the firm Bracewell and a former E.P.A. air chief.
- "She's been a steady hand at C.E.Q. since she got there and everyone thinks she's been doing a great job," Mr. Holmstead said. But, he added, "I'm not sure that she wants the attention that comes with being the chair and having to run the gantlet of the confirmation process."
- Ms. Neumayr's views on topics like climate change are far less well known than Mr. van der Vaart's.

[APG]

# Re: Milestones report -- agency review and input needed by July 13

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**From:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**To:** "Seale, Viktoria Z. EOP/CEQ" <(b) (6)>  
"Schneider, Daniel J. EOP/CEQ" <(b) (6)> "Neumayr, Mary B. EOP/CEQ" <(b) (6)> "Herrgott, Alex H. EOP/CEQ"  
**Cc:** <(b) (6)> "Pettigrew, Theresa L. EOP/CEQ"  
<(b) (6)> "Boling, Ted A. EOP/CEQ"  
<(b) (6)>  
**Date:** Fri, 13 Jul 2018 23:09:10 -0400

---

Yes, thank you Viktoria, good catch. It's the same content, so I'll let them know to make the corresponding changes there too.

Michael Drummond  
Deputy Associate Director for NEPA  
Council on Environmental Quality  
(b) (6)

On Jul 13, 2018, at 4:35 PM, Seale, Viktoria Z. EOP/CEQ <(b) (6)> wrote:

Michael, quick question. Do we also need to make changes to the section on CEQ in Appendix C located on pg. 47?

**From:** Drummond, Michael R. EOP/CEQ  
**Sent:** Friday, July 13, 2018 4:12 PM  
**To:** Schneider, Daniel J. EOP/CEQ <(b) (6)> Seale, Viktoria Z. EOP/CEQ <(b) (6)> Neumayr, Mary B. EOP/CEQ <(b) (6)> Herrgott, Alex H. EOP/CEQ <(b) (6)>  
**Cc:** Pettigrew, Theresa L. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** RE: Milestones report -- agency review and input needed by July 13

Attached is the version I plan to submit to OSTP shortly incorporating Viktoria and Dan's edits.

**From:** Schneider, Daniel J. EOP/CEQ  
**Sent:** Thursday, July 12, 2018 10:38 AM  
**To:** Seale, Viktoria Z. EOP/CEQ <(b) (6)> Drummond, Michael R. EOP/CEQ

<(b) (6)> Neumayr, Mary B. EOP/CEQ  
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<(b) (6)>  
**Subject:** RE: Milestones report -- agency review and input needed by July 13

Minor suggestions from me as well.

**From:** Seale, Viktoria Z. EOP/CEQ  
**Sent:** Thursday, July 12, 2018 10:33 AM  
**To:** Drummond, Michael R. EOP/CEQ <(b) (6)> Neumayr, Mary B.  
EOP/CEQ <(b) (6)> Schneider, Daniel J. EOP/CEQ  
<(b) (6)> Herrgott, Alex H. EOP/CEQ <(b) (6)>  
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<(b) (6)>  
**Subject:** RE: Milestones report -- agency review and input needed by July 13

Michael,

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Viktoria

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Best,

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Ongoing	Work with Federal Agencies to review regulations and policies to identify impediments to the efficient and effective processing of environmental reviews and

**From:** Guyselman, Kelsey J. EOP/OSTP

**Sent:** Monday, July 9, 2018 5:50 PM

**To:** [rnelson@achp.gov](mailto:rnelson@achp.gov); [mdefalco@arc.gov](mailto:mdefalco@arc.gov); [timthomas@arc.gov](mailto:timthomas@arc.gov); Drummond, Michael R. EOP/CEQ  
<(b) (6)> [bhenson@dra.gov](mailto:bhenson@dra.gov); [jperry@fs.fed.us](mailto:jperry@fs.fed.us); [edenson@fs.fed.us](mailto:edenson@fs.fed.us);  
[mmazel@fs.fed.us](mailto:mmazel@fs.fed.us); [chad.parker@wdc.usda.gov](mailto:chad.parker@wdc.usda.gov); Kubena, Kellie - RD, Washington, DC  
<[Kellie.Kubena@wdc.usda.gov](mailto:Kellie.Kubena@wdc.usda.gov)>; [laurel.leverrier@wdc.usda.gov](mailto:laurel.leverrier@wdc.usda.gov); Duane, Jennifer A.  
<[JDuane@ntia.doc.gov](mailto:JDuane@ntia.doc.gov)>; Spurgeon, Andrew <[ASpurgeon@ntia.doc.gov](mailto:ASpurgeon@ntia.doc.gov)>; Moyer, Timothy  
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[fredrick.d.moorefield.civ@mail.mil](mailto:fredrick.d.moorefield.civ@mail.mil); [james.p.campion2.civ@mail.mil](mailto:james.p.campion2.civ@mail.mil);  
[robert.a.coffman10.civ@mail.mil](mailto:robert.a.coffman10.civ@mail.mil); [Jason.Botel@ed.gov](mailto:Jason.Botel@ed.gov); [Sara.Trettin@ed.gov](mailto:Sara.Trettin@ed.gov); [David.Cantrell@ed.gov](mailto:David.Cantrell@ed.gov);  
[herbert.mcconnell@hq.doe.gov](mailto:herbert.mcconnell@hq.doe.gov); [pam.peckham@hq.doe.gov](mailto:pam.peckham@hq.doe.gov); [max.everett@hq.doe.gov](mailto:max.everett@hq.doe.gov);  
[Ronald.Hewitt@hq.dhs.gov](mailto:Ronald.Hewitt@hq.dhs.gov); [Darrell.Smith@hq.dhs.gov](mailto:Darrell.Smith@hq.dhs.gov); [Brandon.wales@hq.dhs.gov](mailto:Brandon.wales@hq.dhs.gov);  
[Marcus.Ward@hq.dhs.gov](mailto:Marcus.Ward@hq.dhs.gov); [Sonja.Rodriguez@hq.dhs.gov](mailto:Sonja.Rodriguez@hq.dhs.gov); [Melanie.Bakaysa@associates.hq.dhs.gov](mailto:Melanie.Bakaysa@associates.hq.dhs.gov);  
[Ralph.H.Gaines@hud.gov](mailto:Ralph.H.Gaines@hud.gov); [John.Gibbs@hud.gov](mailto:John.Gibbs@hud.gov); [Dina.Lehmann-Kim@hud.gov](mailto:Dina.Lehmann-Kim@hud.gov); [Lisa.S.Abell@hud.gov](mailto:Lisa.S.Abell@hud.gov);  
[Stanley.Gimont@hud.gov](mailto:Stanley.Gimont@hud.gov); [katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov); [sfusilie@blm.gov](mailto:sfusilie@blm.gov); [k15montg@blm.gov](mailto:k15montg@blm.gov);  
[jjirby@usbr.gov](mailto:jjirby@usbr.gov); [ralcorn@usbr.gov](mailto:ralcorn@usbr.gov); [lee\\_dickinson@nps.gov](mailto:lee_dickinson@nps.gov); [truda\\_stella@nps.gov](mailto:truda_stella@nps.gov);  
[ken\\_fowler@fws.gov](mailto:ken_fowler@fws.gov); [noah\\_matson@fws.gov](mailto:noah_matson@fws.gov); [sharlene.roundface@bia.gov](mailto:sharlene.roundface@bia.gov);  
[beth.wenstrom@bia.gov](mailto:beth.wenstrom@bia.gov); [thompson.kevin@dol.gov](mailto:thompson.kevin@dol.gov); [ahlstrand.amanda@dol.gov](mailto:ahlstrand.amanda@dol.gov);  
[Zelden.Mark.A@DOL.gov](mailto:Zelden.Mark.A@DOL.gov); [julie.johnston@dot.gov](mailto:julie.johnston@dot.gov); [finch.fulton@dot.gov](mailto:finch.fulton@dot.gov);  
[kipp.kranbuhl@treasury.gov](mailto:kipp.kranbuhl@treasury.gov); [adonovan@cfdi.treas.gov](mailto:adonovan@cfdi.treas.gov); [jodie.harris@treasury.gov](mailto:jodie.harris@treasury.gov);  
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[Deborah.Scher@va.gov](mailto:Deborah.Scher@va.gov); [Blake-Coleman.Wendy@epa.gov](mailto:Blake-Coleman.Wendy@epa.gov); [Mixon.edward@epa.gov](mailto:Mixon.edward@epa.gov);  
[Erica.Rosenberg@fcc.gov](mailto:Erica.Rosenberg@fcc.gov); [Kirk.burgee@fcc.gov](mailto:Kirk.burgee@fcc.gov); [Michael.Janson@fcc.gov](mailto:Michael.Janson@fcc.gov); [Michele.Berlove@fcc.gov](mailto:Michele.Berlove@fcc.gov);  
[Ryan.Palmer@fcc.gov](mailto:Ryan.Palmer@fcc.gov); [Deborah.Salons@fcc.gov](mailto:Deborah.Salons@fcc.gov); [jessica.salmoiraghi@gsa.gov](mailto:jessica.salmoiraghi@gsa.gov);  
[aluanda.drain@gsa.gov](mailto:aluanda.drain@gsa.gov); [maryann.hillier@gsa.gov](mailto:maryann.hillier@gsa.gov); [wengland@hrsa.gov](mailto:wengland@hrsa.gov); [nmanzanero@hrsa.gov](mailto:nmanzanero@hrsa.gov);  
[tmorris@hrsa.gov](mailto:tmorris@hrsa.gov); [MQuinn@hrsa.gov](mailto:MQuinn@hrsa.gov); [GSigounas@hrsa.gov](mailto:GSigounas@hrsa.gov); [hesseb@mail.nih.gov](mailto:hesseb@mail.nih.gov); [jneal@imls.gov](mailto:jneal@imls.gov);  
[nweiss@imls.gov](mailto:nweiss@imls.gov); [rdale@imls.gov](mailto:rdale@imls.gov); [egiancha@nsf.gov](mailto:egiancha@nsf.gov); [tnandago@nsf.gov](mailto:tnandago@nsf.gov); [kcalvert@nsf.gov](mailto:kcalvert@nsf.gov);  
[mehought@nsf.gov](mailto:mehought@nsf.gov)  
**Cc:** Redl, David <[dredl@ntia.doc.gov](mailto:dredl@ntia.doc.gov)>; Hanson, Karen <[KHanson@ntia.doc.gov](mailto:KHanson@ntia.doc.gov)>; Kinkoph, Douglas  
<[DKinkoph@ntia.doc.gov](mailto:DKinkoph@ntia.doc.gov)>; [kenl.johnson@wdc.usda.gov](mailto:kenl.johnson@wdc.usda.gov); [Jannine.Miller@wdc.usda.gov](mailto:Jannine.Miller@wdc.usda.gov); Page, Ben J.  
EOP/OMB <(b) (6)> Premaza, Victoria S. EOP/OMB  
<(b) (6)> Stein, Nora H. EOP/OMB <(b) (6)> Slater,  
Abigail A. EOP/WHO <(b) (6)> Lira, Mathew L. EOP/WHO  
<(b) (6)>

**Subject:** Milestones report -- agency review and input needed by July 13

Dear Colleagues,

I have attached the current working draft of the Broadband Milestones report. Please review this document and send me your edits using track changes, copying Karen Hanson ([khanson@ntia.doc.gov](mailto:khanson@ntia.doc.gov)). **Please submit your edits by close of business this Friday (July 13).**

In particular, we are looking for the following information: 1) responses to White House / OMB questions noted in yellow highlight or red text; 2) Any corrections or clarifications to agency actions located in the body of the report and in Appendix C; 3) Suggestions for additional content, such as examples of impact or agency success stories.

We need clear, concrete deliverables that meaningfully improve broadband deployment by streamlining processes and fostering additional private sector investment.

We will host a call on **July 12 at 2:00pm** **(b) (6)** to review the process, answer any questions you may have, and discuss top-line goals for agency deliverables.

Thank you for your continued hard work on this effort and we look forward to your feedback.

Sincerely,  
Kelsey

**Kelsey Guyselman**  
Executive Office of the President  
Office of Science and Technology Policy  
202-456-3824

# RE: Milestones report -- agency review and input needed by July 13

---

**From:** "Seale, Viktoria Z. EOP/CEQ" <(b) (6)>  
**To:** "Drummond, Michael R. EOP/CEQ" (b) (6) "Schneider, Daniel J. EOP/CEQ" <(b) (6)> "Neumayr, Mary B. EOP/CEQ" <(b) (6)> "Herrgott, Alex H. EOP/CEQ" <(b) (6)>  
**Cc:** "Pettigrew, Theresa L. EOP/CEQ" <(b) (6)> "Boling, Ted A. EOP/CEQ" <(b) (6)>  
**Date:** Fri, 13 Jul 2018 16:35:33 -0400

Michael, quick question. Do we also need to make changes to the section on CEQ in Appendix C located on pg. 47?

**From:** Drummond, Michael R. EOP/CEQ  
**Sent:** Friday, July 13, 2018 4:12 PM  
**To:** Schneider, Daniel J. EOP/CEQ <(b) (6)> Seale, Viktoria Z. EOP/CEQ <(b) (6)> Neumayr, Mary B. EOP/CEQ <(b) (6)> Herrgott, Alex H. EOP/CEQ <(b) (6)>  
**Cc:** Pettigrew, Theresa L. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** RE: Milestones report -- agency review and input needed by July 13

Attached is the version I plan to submit to OSTP shortly incorporating Viktoria and Dan's edits.

**From:** Schneider, Daniel J. EOP/CEQ  
**Sent:** Thursday, July 12, 2018 10:38 AM  
**To:** Seale, Viktoria Z. EOP/CEQ <(b) (6)> Drummond, Michael R. EOP/CEQ <(b) (6)> Neumayr, Mary B. EOP/CEQ <(b) (6)> Herrgott, Alex H. EOP/CEQ <(b) (6)>  
**Cc:** Pettigrew, Theresa L. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** RE: Milestones report -- agency review and input needed by July 13

Minor suggestions from me as well.

**From:** Seale, Viktoria Z. EOP/CEQ  
**Sent:** Thursday, July 12, 2018 10:33 AM

**To:** Drummond, Michael R. EOP/CEQ <(b) (6)> Neumayr, Mary B. EOP/CEQ <(b) (6)> Schneider, Daniel J. EOP/CEQ <(b) (6)> Herrgott, Alex H. EOP/CEQ <(b) (6)>  
**Cc:** Pettigrew, Theresa L. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** RE: Milestones report -- agency review and input needed by July 13

Michael,

Below are a few minor suggested edits in red.

Thanks

Viktoria

**From:** Drummond, Michael R. EOP/CEQ  
**Sent:** Thursday, July 12, 2018 9:58 AM  
**To:** Neumayr, Mary B. EOP/CEQ <(b) (6)> Schneider, Daniel J. EOP/CEQ <(b) (6)> Seale, Viktoria Z. EOP/CEQ <(b) (6)> Herrgott, Alex H. EOP/CEQ <(b) (6)>  
**Cc:** Pettigrew, Theresa L. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** FW: Milestones report -- agency review and input needed by July 13

Good morning,

The Broadband Interagency Working Group has circulated their draft report with a comments requested by COB Friday. CEQ's update is located on page 16 of the attached and pasted into this email below. Please let me know if you have any edits.

Best,

Michael

- Council on Environmental Quality (CEQ) In Progress

CEQ, working with the Office of Management and Budget (OMB), and in consultation with the Federal Permitting Improvement Steering Council (Permitting Council) and other Federal agencies, is implementing a One Federal Decision process to coordinate the environmental review of major infrastructure projects. CEQ's past and planned actions to improve the environmental review process include:

Completed (September 2017)	CEQ published a <a href="#">notice</a> in the Federal Register announcing an initial list of actions it will take to enhance and modernize the
----------------------------	--

	Federal environmental review and authorization process for infrastructure projects.
Completed (March 2018)	CEQ and OMB the Office of Management and Budget, in consultation with the Federal Permitting Improvement Steering Council, issued a One Federal Decision Framework document to provide Federal agencies with guidance on implementing Executive Order (E.O.) 13807. Section 5 of E.O. 13807 directs all Federal agencies with environmental review, authorization, or consultation responsibilities for major infrastructure projects to develop a single Environmental Impact Statement (EIS) for such projects, sign a single Record of Decision (ROD) and issue all necessary authorizations within 90 days thereafter, subject to limited exceptions.
June – August 2018	CEQ published an Advance Notice of Proposed Rulemaking requesting comment on potential revisions to update and clarify CEQ's National Environmental Policy Act (NEPA) regulations. Through a series of 20 questions, CEQ requested comments on provisions of the regulations related to the NEPA process and the scope of NEPA review.
Ongoing	Work with Federal Agencies to review regulations and policies to identify impediments to the efficient and effective processing of environmental reviews and permitting decisions.

**From:** Guyselman, Kelsey J. EOP/OSTP

**Sent:** Monday, July 9, 2018 5:50 PM

**To:** rnelson@achp.gov; mdefalco@arc.gov; timthomas@arc.gov; Drummond, Michael R. EOP/CEQ <(b) (6)> bhenson@dra.gov; jperry@fs.fed.us; edenson@fs.fed.us; mmazel@fs.fed.us; chad.parker@wdc.usda.gov; Kubena, Kellie - RD, Washington, DC <Kellie.Kubena@wdc.usda.gov>; laurel.leverrier@wdc.usda.gov; Duane, Jennifer A. <JDuane@ntia.doc.gov>; Spurgeon, Andrew <ASpurgeon@ntia.doc.gov>; Moyer, Timothy <TMoyer@ntia.doc.gov>; brian.s.teeple2.civ@mail.mil; peter.j.potochney.civ@mail.mil; fredrick.d.moorefield.civ@mail.mil; james.p.campion2.civ@mail.mil; robert.a.coffman10.civ@mail.mil; Jason.Botel@ed.gov; Sara.Trettin@ed.gov; David.Cantrell@ed.gov; herbert.mcconnell@hq.doe.gov; pam.peckham@hq.doe.gov; max.everett@hq.doe.gov; Ronald.Hewitt@hq.dhs.gov; Darrell.Smith@hq.dhs.gov; Brandon.wales@hq.dhs.gov; Marcus.Ward@hq.dhs.gov; Sonja.Rodriguez@hq.dhs.gov; Melanie.Bakaysa@associates.hq.dhs.gov; Ralph.H.Gaines@hud.gov; John.Gibbs@hud.gov; Dina.Lehmann-Kim@hud.gov; Lisa.S.Abell@hud.gov; Stanley.Gimont@hud.gov; katharine\_macgregor@ios.doi.gov; sfusilie@blm.gov; k15montg@blm.gov; jjirby@usbr.gov; ralcorn@usbr.gov; lee\_dickinson@nps.gov; truda\_stella@nps.gov; ken\_fowler@fws.gov; noah\_matson@fws.gov; sharlene.roundface@bia.gov; beth.wenstrom@bia.gov; thompson.kevin@dol.gov; ahlstrand.amanda@dol.gov; Zelden.Mark.A@DOL.gov; julie.johnston@dot.gov; finch.fulton@dot.gov; kipp.kranbuhl@treasury.gov; adonovan@cdfi.treas.gov;

jodie.harris@treasury.gov; barry.wides@occ.treas.gov; karen.bellesi@occ.treas.gov;  
thomas.klobucar@va.gov; Deborah.Scher@va.gov; Blake-Coleman.Wendy@epa.gov;  
Mixon.edward@epa.gov; Erica.Rosenberg@fcc.gov; Kirk.burgee@fcc.gov; Michael.Janson@fcc.gov;  
Michele.Berlove@fcc.gov; Ryan.Palmer@fcc.gov; Deborah.Salons@fcc.gov;  
jessica.salmoiraghi@gsa.gov; aluanda.drain@gsa.gov; maryann.hillier@gsa.gov; wengland@hrsa.gov;  
nmanzanero@hrsa.gov; tmorris@hrsa.gov; MQuinn@hrsa.gov; GSigounas@hrsa.gov;  
hesseb@mail.nih.gov; jneal@imls.gov; nweiss@imls.gov; rdale@imls.gov; egiancha@nsf.gov;  
tnandago@nsf.gov; kcalvert@nsf.gov; mehought@nsf.gov

**Cc:** Redl, David <dredl@ntia.doc.gov>; Hanson, Karen <KHanson@ntia.doc.gov>; Kinkoph, Douglas  
<DKinkoph@ntia.doc.gov>; kenl.johnson@wdc.usda.gov; Jannine.Miller@wdc.usda.gov; Page, Ben J.  
EOP/OMB <(b) (6)> Premaza, Victoria S. EOP/OMB

<(b) (6)> Stein, Nora H. EOP/OMB <(b) (6)> Slater,  
Abigail A. EOP/WHO <(b) (6)> Lira, Mathew L. EOP/WHO

<(b) (6)>

**Subject:** Milestones report -- agency review and input needed by July 13

Dear Colleagues,

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In particular, we are looking for the following information: 1) responses to White House / OMB questions noted in yellow highlight or red text; 2) Any corrections or clarifications to agency actions located in the body of the report and in Appendix C; 3) Suggestions for additional content, such as examples of impact or agency success stories.

We need clear, concrete deliverables that meaningfully improve broadband deployment by streamlining processes and fostering additional private sector investment.

We will host a call on **July 12 at 2:00pm** <(b) (6)> to review the process, answer any questions you may have, and discuss top-line goals for agency deliverables.

Thank you for your continued hard work on this effort and we look forward to your feedback.

Sincerely,  
Kelsey

**Kelsey Guyselman**  
Executive Office of the President  
Office of Science and Technology Policy  
202-456-3824

## RE: Questions, please review

---

**From:** "Smith, Katherine R. EOP/CEQ" <(b) (6)>

**To:** "Pettigrew, Theresa L. EOP/CEQ" <(b) (6)>

**Date:** Mon, 16 Jul 2018 17:30:46 -0400

**Attachments:** Draft Questions.docx (23.17 kB)

**From:** Neumayr, Mary B. EOP/CEQ

**Sent:** Monday, July 16, 2018 5:22 PM

**To:** Seale, Viktoria Z. EOP/CEQ <(b) (6)> Schneider, Daniel J. EOP/CEQ

<(b) (6)> Smith, Katherine R. EOP/CEQ <(b) (6)>

Pettigrew, Theresa L. EOP/CEQ <(b) (6)> Herrgott, Alex H. EOP/CEQ

<(b) (6)>

**Subject:** RE: Questions, please review

Minor additional suggestions added to Dan and Viktoria's suggestions.

**From:** Seale, Viktoria Z. EOP/CEQ

**Sent:** Monday, July 16, 2018 5:16 PM

**To:** Schneider, Daniel J. EOP/CEQ <(b) (6)> Smith, Katherine R. EOP/CEQ

<(b) (6)> Pettigrew, Theresa L. EOP/CEQ

<(b) (6)> Neumayr, Mary B. EOP/CEQ <(b) (6)>

Herrgott, Alex H. EOP/CEQ <(b) (6)>

**Subject:** RE: Questions, please review

Minor suggestions added to Dan's suggestions.

**From:** Schneider, Daniel J. EOP/CEQ

**Sent:** Monday, July 16, 2018 5:02 PM

**To:** Smith, Katherine R. EOP/CEQ <(b) (6)> Pettigrew, Theresa L. EOP/CEQ

<(b) (6)> Neumayr, Mary B. EOP/CEQ <(b) (6)>

Seale, Viktoria Z. EOP/CEQ <(b) (6)> Herrgott, Alex H. EOP/CEQ

<(b) (6)>

**Subject:** RE: Questions, please review

Minor suggestions.

**From:** Smith, Katherine R. EOP/CEQ

**Sent:** Monday, July 16, 2018 4:59 PM

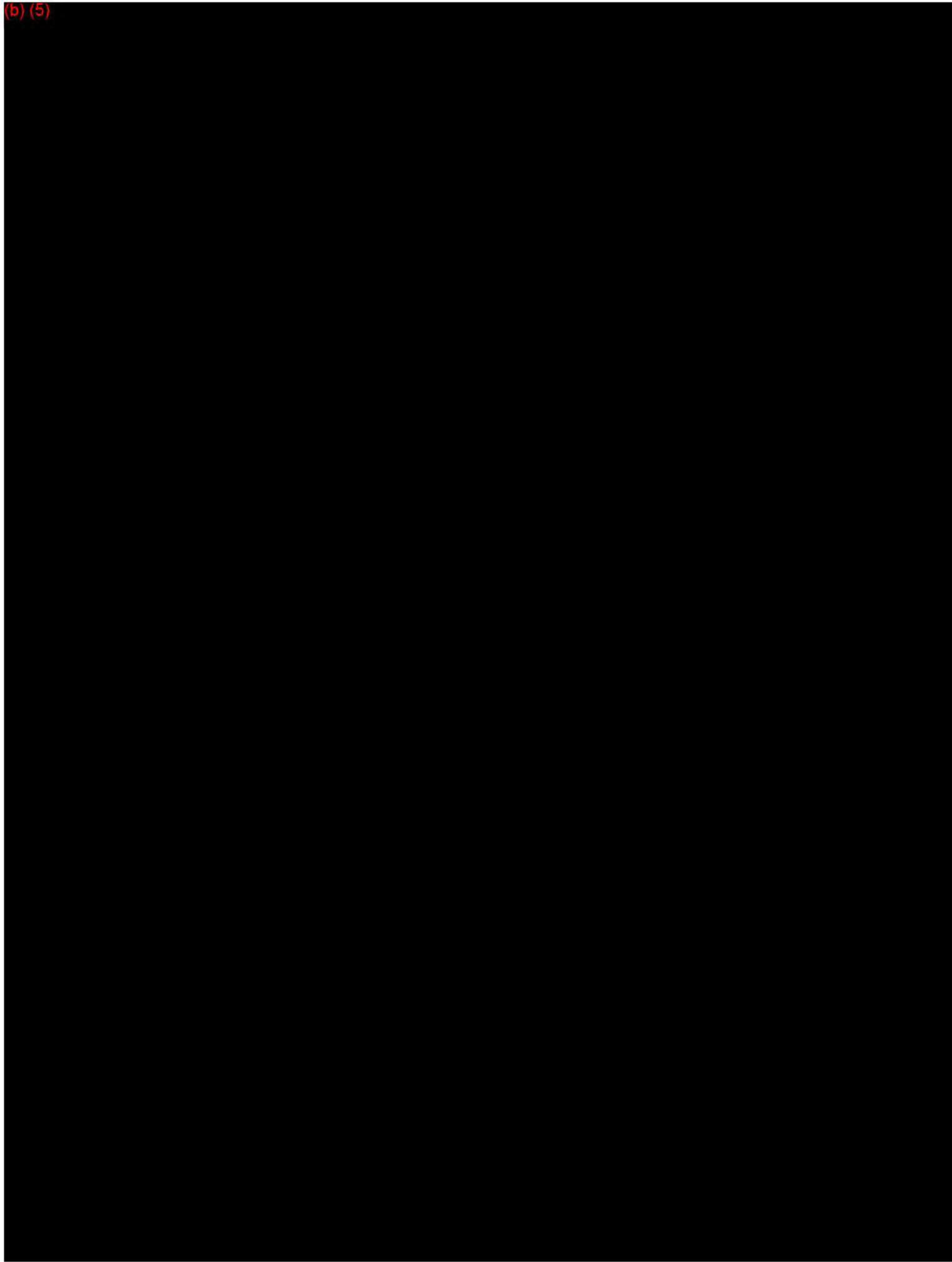
**To:** Pettigrew, Theresa L. EOP/CEQ <(b) (6)> Neumayr, Mary B. EOP/CEQ  
<(b) (6)> Seale, Viktoria Z. EOP/CEQ <(b) (6)>  
Schneider, Daniel J. EOP/CEQ <(b) (6)> Herrgott, Alex H. EOP/CEQ  
<(b) (6)>  
**Subject:** RE: Questions, please review

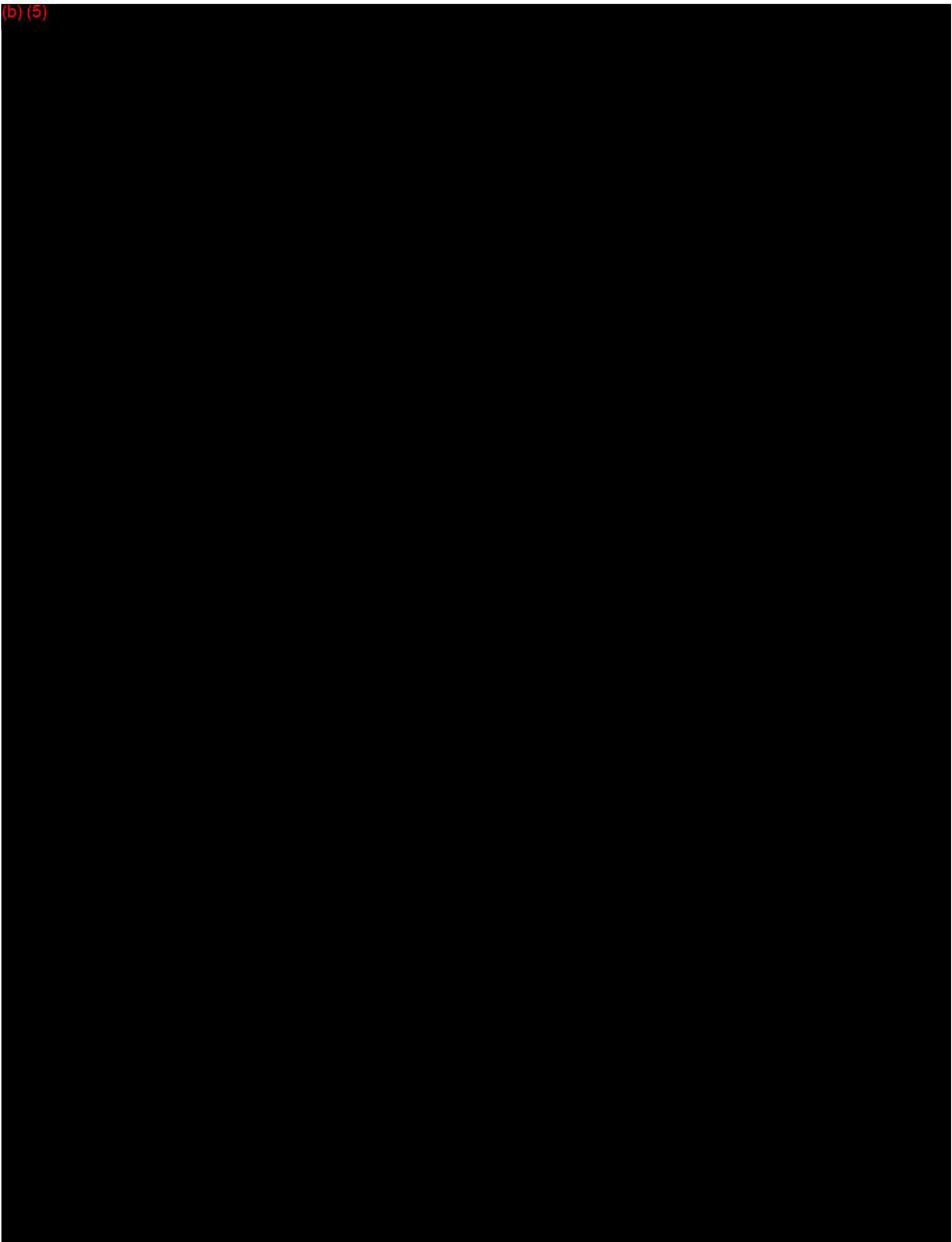
Adjusted spacing

**From:** Pettigrew, Theresa L. EOP/CEQ  
**Sent:** Monday, July 16, 2018 4:52 PM  
**To:** Neumayr, Mary B. EOP/CEQ <(b) (6)> Seale, Viktoria Z. EOP/CEQ  
<(b) (6)> Schneider, Daniel J. EOP/CEQ <(b) (6)>  
Herrgott, Alex H. EOP/CEQ <(b) (6)> Smith, Katherine R. EOP/CEQ  
<(b) (6)>  
**Subject:** Questions, please review

Please review this document now, if possible. We need to get to Committee.  
Thank you!  
Theresa

Theresa L. Pettigrew  
Associate Director for Legislative Affairs  
Council on Environmental Quality  
Executive Office of the President  
(office)  
(fax)  
[www.whitehouse.gov/ceq](http://www.whitehouse.gov/ceq)





## [EXTERNAL] Re: Shipley Group - Podcast

---

**From:** Jeffrey Stewart <jeff.stewart@shipleygroup.com>  
**To:** "Boling, Ted A. EOP/CEQ" <(b) (6)>  
**Cc:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
mrrhey@aol.com, Joe Carbone <jcarbone1993@aol.com>  
**Date:** Tue, 17 Jul 2018 12:48:14 -0400

Ted,

Happy to hear you are interested. We would be interested in recording the episode in August. When would you be available?

Thanks,

Jeff Stewart  
The Shipley Group, Inc.  
Phone: 888-270-2157  
[jeff.stewart@shipleygroup.com](mailto:jeff.stewart@shipleygroup.com)  
Website: >[www.shipleygroup.com](http://www.shipleygroup.com)<  
**SHORTEN ENVIRONMENTAL DOCUMENTS**  
**COMMUNICATE RELEVANT ENVIRONMENTAL INFORMATION**  
**IMPLEMENT YOUR MISSION**

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**From:** "Boling, Ted A. EOP/CEQ" <(b) (6)>  
**Date:** Tuesday, July 17, 2018 at 9:13 AM  
**To:** "jeff.stewart@shipleygroup.com" <jeff.stewart@shipleygroup.com>  
**Cc:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**Subject:** RE: Shipley Group - Podcast

Jeff – Thanks for this offer, which came to me while I was away and CEQ was preparing to extend the comment period.

Given the extension, do you have any interest in doing this podcast in August?

Best,  
Ted

Edward A. Boling  
Associate Director for the  
National Environmental Policy Act

Council on Environmental Quality  
730 Jackson Place  
Washington, DC 20503

**From:** Jeffrey Stewart <jeff.stewart@shingleygroup.com>  
**Sent:** Monday, July 2, 2018 10:51 AM  
**To:** Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** [EXTERNAL] Shingley Group - Podcast

Ted,

The Shingley Group has created a podcast called "The NEPA Project" to educate and assist NEPA Professionals. Our most recent episode was with Joe Carbone and Rhey Solomon discussing President Trump's EO on infrastructure projects. To follow-up on this episode, we are interested in facilitating an episode with you to help CEQ connect with our NEPA learning community on your current efforts to identify potential revisions to update the CEQ regulations to ensure a more efficient, timely, and effective NEPA process that is consistent with NEPA. This would be an opportunity to highlight some of the 20 questions CEQ has posed in the advance notice of proposed rulemaking. With comments due by the 20th of this month, it would be helpful for the NEPA learning community to engage on this topic soon. Hearing from you would likely stimulate comments on the questions CEQ is asking. The podcast episode would be facilitated by one or two of our instructors as a dialogue with you. Our objective is to assist CEQ and the many NEPA practitioners in providing a productive dialogue on changes needed to make the NEPA process more efficient, timely, and effective.

You would have complete editorial rights prior to releasing the episode.

Let us know if you are interested in participating.

Thanks,

Jeff Stewart  
The Shingley Group, Inc.  
Phone: 888-270-2157  
[jeff.stewart@shingleygroup.com](mailto:jeff.stewart@shingleygroup.com)  
Website: >>[www.shingleygroup.com](http://www.shingleygroup.com)<<

## RE: Shipley Group - Podcast

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**From:** "Boling, Ted A. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdft)/cn=recipients/cn=eae5b047f871428b9b46baf8afd1176a-bo">  
**To:** Jeffrey Stewart <jeff.stewart@shipleygroup.com>  
**Cc:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**Date:** Tue, 17 Jul 2018 11:13:58 -0400

Jeff – Thanks for this offer, which came to me while I was away and CEQ was preparing to extend the comment period.  
Given the extension, do you have any interest in doing this podcast in August?

Best,  
Ted

Edward A. Boling  
Associate Director for the  
National Environmental Policy Act  
Council on Environmental Quality  
730 Jackson Place  
Washington, DC 20503

**From:** Jeffrey Stewart <jeff.stewart@shipleygroup.com>  
**Sent:** Monday, July 2, 2018 10:51 AM  
**To:** Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** [EXTERNAL] Shipley Group - Podcast

Ted,

The Shipley Group has created a podcast called “The NEPA Project” to educate and assist NEPA Professionals. Our most recent episode was with Joe Carbone and Rhey Solomon discussing President Trump’s EO on infrastructure projects. To follow-up on this episode, we are interested in facilitating an episode with you to help CEQ connect with our NEPA learning community on your current efforts to identify potential revisions to update the CEQ regulations to ensure a more efficient, timely, and effective NEPA process that is consistent with NEPA. This would be an opportunity to highlight some of the 20 questions CEQ has posed in the advance notice of proposed rulemaking. With comments due by the 20th of this month, it would be helpful for the NEPA learning community to engage on this topic soon. Hearing from you would likely stimulate comments on the questions CEQ is asking. The podcast episode would be facilitated by one or two of our instructors as a dialogue with you. Our objective is to

assist CEQ and the many NEPA practitioners in providing a productive dialogue on changes needed to make the NEPA process more efficient, timely, and effective.

You would have complete editorial rights prior to releasing the episode.

Let us know if you are interested in participating.

Thanks,

Jeff Stewart

The Shipley Group, Inc.

Phone: 888-270-2157

[jeff.stewart@shipleygroup.com](mailto:jeff.stewart@shipleygroup.com)

Website: [www.shipleygroup.com](http://www.shipleygroup.com)

## RE: Comment log updates

---

**From:** "Cook, Kearslyn N. EOP/CEQ (Intern)" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=4473d4560f524c0b8bdb9d591ae56168-co">

**To:** "Carlin, Erin A. EOP/CEQ (Intern)" <[REDACTED]>

**Date:** Thu, 02 Aug 2018 14:40:27 -0400

**Attachments**  
: ANOPR Comment Log 2.xlsx (98.13 kB)

Here's my second section!

**From:** Carlin, Erin A. EOP/CEQ (Intern)  
**Sent:** Thursday, August 2, 2018 10:55 AM  
**To:** Cook, Kearslyn N. EOP/CEQ (Intern) <[REDACTED]>  
**Subject:** Comment log updates





































**NEPA Process:**

- 1 Should CEQ's NEPA regulations be revised to ensure that environmental reviews and authorization **decisions involving multiple agencies** are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?
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- 4 Should the provisions in CEQ's NEPA regulations that relate to the **format and page length** of NEPA documents and time limits for completion be revised, and if so, how?
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- 8 Should any **new definitions** of key NEPA terms, such as those noted below, be added, and if so, which terms?
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**General:**

- 14 Are any provisions of the CEQ's NEPA regulations currently **obsolete**? If so, please provide specific recommendations on whether they should be modified, rescinded, or replaced.
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- 20 Are there additional ways CEQ's NEPA regulations related to **mitigation** should be revised, and if so, how?

## Comment log updates

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**From:** "Carlin, Erin A. EOP/CEQ (Intern)" <[REDACTED]>  
**To:** "Cook, Kearstyn N. EOP/CEQ (Intern)" <[REDACTED]>  
**Date:** Thu, 02 Aug 2018 10:54:34 -0400  
**Attachments:** 02 ANOPR Comment Log 07-23 to Erin (updated 8218).xlsx (94.68 kB)

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Responses to ANOPR

Number of Responses		151		1037		35 38 30 36 25 31 18 13 13 14 8 14 13 8 10 9 11 11 19 13 8 11 8 10 18 22 22 20 15 23 21 19 20 25 15																				173																																	
Log	Organization / Name	In Scope?	Att.	Overview/Notable	1	2	3	4	5	6	7a	7b	7c	7d	7e	7f	8a	8b	8c	8d	8e	9a	9b	9c	9d	9e	9f	9g	10	11	12	13	14	15	16	17	18	19	20	Email (if provided)	Phone (if provided)	Address (if provided)	Zip	Posted/Rcd.															
228	Aaron Miller	Yes		Consider that the resources of agencies that conduct NEPA reviews are low so expediting the process will cost the public.	1																																																						
229	Gregory Esteve	General		Opposed to any change in NEPA.																																																							
230	Craig Wallentine	General		Opposed to any change in NEPA unless it is to strengthen it. Cites examples in Utah of why NEPA is important.																																																							
231	Sara Schultz	Gen./Extension		Campaign: similar to 0047																																																							
232	The Partnership Project, Justin McCarthy	Yes	1	Represents 352 organizations; requests at least 60-day extension public forums and mail commenting; linked to question 6.										1																																													
233	Robert Shippee	General		Opposed to any change in NEPA unless it is to strengthen it.																																																							
234	Mariene Israel	General		Opposed to any change in NEPA.																																																							
235	William Blount	General		Keep NEPA intact.																																																							
236	Christopher Jannusch	General		Keep NEPA intact.																																																							
237	Jerre Stallcup	General		Keep NEPA intact.																																																							
238	Eric Hirst	General		Opposed to weakening NEPA but believes there could be improvements made																																																							
239	Michael Kellett	General		Opposes changes to NEPA. Problems in implementation lie in lack of adherence to laws and regs.																																																							
240	Nicole Quinn	Gen./Extension		Campaign: similar to 0047																																																							
241	Andy Puckett	General		Keep NEPA intact.																																																							
242	Susan Dixon	Gen./Extension		Campaign: similar to 0047																																																							
243	Andrew McGrath	Gen./Extension		Campaign: same as 0047																																																							
244	Barbara Halpern	Gen./Extension		Campaign: same as 0047																																																							
245	Lynn Koster	Gen./Extension		Campaign: same as 0047																																																							
246	David Goebel	Gen./Extension		Cites reforms needed to aviation. Requests extension of comment period.																																																							
247	Ben Luccaro	Gen./Extension		Campaign: same as 0047																																																							
248	Vicki Barg	Gen./Extension		Keep NEPA intact. Requests 90-day extension. Describes BLM issues as examples.																																																							
249	Deborah Kratzer	Gen./Extension		Campaign: same as 0047																																																							
250	Lauren Greenawalt	Gen./Extension		Campaign: same as 0047																																																							
251	Corey White	General		Keep NEPA intact																																																							
252	Illinois Council of Trout Unlimited, Edward Michael	Gen./Extension	1	Requests at least 60-day extension.																																																							
253	Carl Erdmann	General		Keep NEPA intact.																																																							
254	Rush Hardin	General		Opposed to major changes, but minor changes may be necessary.																																																							
255	Ken Gamauf	Gen./Extension		Opposes weakening or revisions of NEPA. Requests 60-day extension.																																																							
256	Susan Meacham	Gen./Extension		Campaign: similar to 0047																																																							
257	Cindy Eby	Gen./Extension		Campaign: similar to 0047																																																							
258	Minnesota Center for Environmental Advocacy, Eric Lindberg	Extension	1	Requests at least 60-day extension.																																																							
259	Amy Harlib	Gen./Extension		Campaign: same as 0047																																																							
260	Maryland Nonprofits, Henry Bogdan	Extension	1	Requests 60-day extension. (Pdf and Word attachments are identical.)																																																							
261	Sarah Gutierrez	Gen./Extension		Campaign: same as 0047																																																							
262	James Quealy	Yes		Responds to several questions.	1																																																						
263	E. O'Halloran	Gen./Extension		Do not lessen environmental review, save NEPA. Requests 60-day extension.																																																							
264	Lorraine Gold	Gen./Extension		Campaign: same as 0047																																																							
265	Great Basin Water Network, Abigail Johnson	Extension		Requests 60-day extension.																																																							
266	Caitlin Caldwell	Gen./Extension		Requests																																																							





























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## RE: Let's talk

---

**From:** "Carlin, Erin A. EOP/CEQ (Intern)" <[REDACTED]>  
**To:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
**Date:** Mon, 06 Aug 2018 12:09:18 -0400  
**Attachments:** 02 ANOPR Comment Log 07-23 to Erin (updated 8618).xlsx (97.48 kB)

**From:** Mansoor, Yardena M. EOP/CEQ  
**Sent:** Monday, August 6, 2018 11:33 AM  
**To:** Carlin, Erin A. EOP/CEQ (Intern) <[REDACTED]>  
**Subject:** RE: Let's talk

sure

**From:** Carlin, Erin A. EOP/CEQ (Intern)  
**Sent:** Monday, August 6, 2018 11:32 AM  
**To:** Mansoor, Yardena M. EOP/CEQ <(b) (6)>  
**Subject:** RE: Let's talk

Hello Yardena,

We are at front desk filling in until a meeting is over for Mary and Juschelle. The meeting should be over in a few minutes. Would we be able to come up when the meeting finishes? Thanks!

Best,

Erin Carlin

**From:** Mansoor, Yardena M. EOP/CEQ  
**Sent:** Monday, August 6, 2018 11:29 AM  
**To:** Carlin, Erin A. EOP/CEQ (Intern) <[REDACTED]>  
**Subject:** RE: Let's talk

Sorry, I didn't see this earlier. Sure, both of you come on over.

---

**From:** Carlin, Erin A. EOP/CEQ (Intern)  
**Sent:** Monday, August 6, 2018 10:37 AM  
**To:** Mansoor, Yardena M. EOP/CEQ <(b) (6)>  
**Subject:** RE: Let's talk

Hello Yardena,

Would 10:45 be a good time to meet? Also, would you like me to invite Kearstyn to meet as well because she has been helping with the comments?

Best,  
Erin Carlin

---

**From:** Mansoor, Yardena M. EOP/CEQ  
**Sent:** Monday, August 6, 2018 10:26 AM  
**To:** Carlin, Erin A. EOP/CEQ (Intern) <>  
**Subject:** Let's talk

Erin,

I was able to resave the comment spreadsheet. Want to stop by and figure out where we are and what can be done before you leave? I'm good with any time between now and noon.

Yardena







































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## RE: Shipley Group - Podcast

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**From:** "Boling, Ted A. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=eae5b047f871428b9b46baf8afd1176a-bo">

**To:** Jeffrey Stewart <jeff.stewart@shipleygroup.com>

**Date:** Wed, 08 Aug 2018 18:50:59 -0400

I can try to fit it in - when were you planning to do it?

---

**From:** Jeffrey Stewart <jeff.stewart@shipleygroup.com>

**Sent:** Wednesday, August 8, 2018 4:10 PM

**To:** Boling, Ted A. EOP/CEQ <(b) (6)>

**Subject:** [EXTERNAL] Re: Shipley Group - Podcast

Ted,

I wanted to follow-up and see if you were still able to participate in this podcast? If so, let me know if you have any dates that work for you.

Thanks,

Jeff Stewart

The Shipley Group, Inc.

Phone: 888-270-2157

[jeff.stewart@shipleygroup.com](mailto:jeff.stewart@shipleygroup.com)

Website: >[www.shipleygroup.com](http://www.shipleygroup.com)<

**SHORTEN ENVIRONMENTAL DOCUMENTS**

**COMMUNICATE RELEVANT ENVIRONMENTAL INFORMATION**

**IMPLEMENT YOUR MISSION**

---

**From:** "Boling, Ted A. EOP/CEQ" <(b) (6)>

**Date:** Tuesday, July 17, 2018 at 9:13 AM

**To:** "jeff.stewart@shipleygroup.com" <jeff.stewart@shipleygroup.com>

**Cc:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>

**Subject:** RE: Shipley Group - Podcast

Jeff - Thanks for this offer, which came to me while I was away and CEQ was preparing to extend the comment period.

Given the extension, do you have any interest in doing this podcast in August?

Best,

Ted

Edward A. Boling  
Associate Director for the  
National Environmental Policy Act  
Council on Environmental Quality  
730 Jackson Place  
Washington, DC 20503

**From:** Jeffrey Stewart <jeff.stewart@shipleypgroup.com>  
**Sent:** Monday, July 2, 2018 10:51 AM  
**To:** Boling, Ted A. EOP/CEQ <(b) (6)>  
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Ted,

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You would have complete editorial rights prior to releasing the episode.

Let us know if you are interested in participating.

Thanks,

Jeff Stewart  
The Shipley Group, Inc.  
Phone: 888-270-2157  
[jeff.stewart@shipleypgroup.com](mailto:jeff.stewart@shipleypgroup.com)  
Website: >>[www.shipleypgroup.com](http://www.shipleypgroup.com)<<

## [EXTERNAL] Re: Shipley Group - Podcast

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**From:** Jeffrey Stewart <jeff.stewart@shipleygroup.com>

**To:** "Boling, Ted A. EOP/CEQ" <(b) (6)>

**Date:** Wed, 08 Aug 2018 16:09:40 -0400

Ted,

I wanted to follow-up and see if you were still able to participate in this podcast? If so, let me know if you have any dates that work for you.

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Phone: 888-270-2157

[jeff.stewart@shingleygroup.com](mailto:jeff.stewart@shingleygroup.com)

Website: >>[www.shingleygroup.com](http://www.shingleygroup.com)<<

## Fwd: Two rough drafts

---

**From:** (b) (6) Edward Boling  
**To:** "Mansoor, Yarden M. EOP/CEQ" <(b) (6)>  
"Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**Date:** Wed, 08 Aug 2018 14:39:35 -0400  
**Attachments:** Preamble Skeleton - Proposed Rule - CEQ Regulation Amendment v3.docx (55.39  
: kB); Big items.docx (13.9 kB)

---

Sent from my iPhone

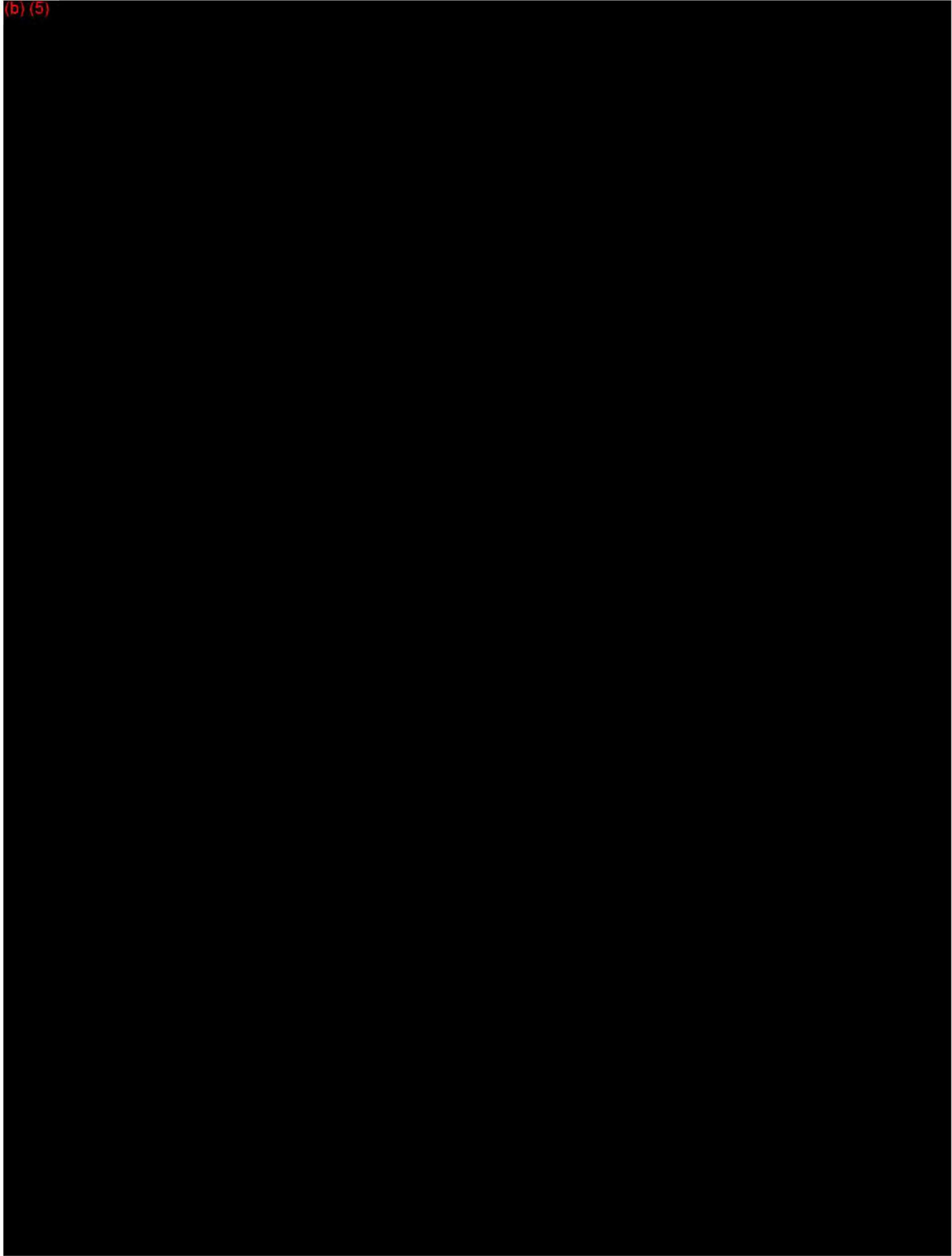
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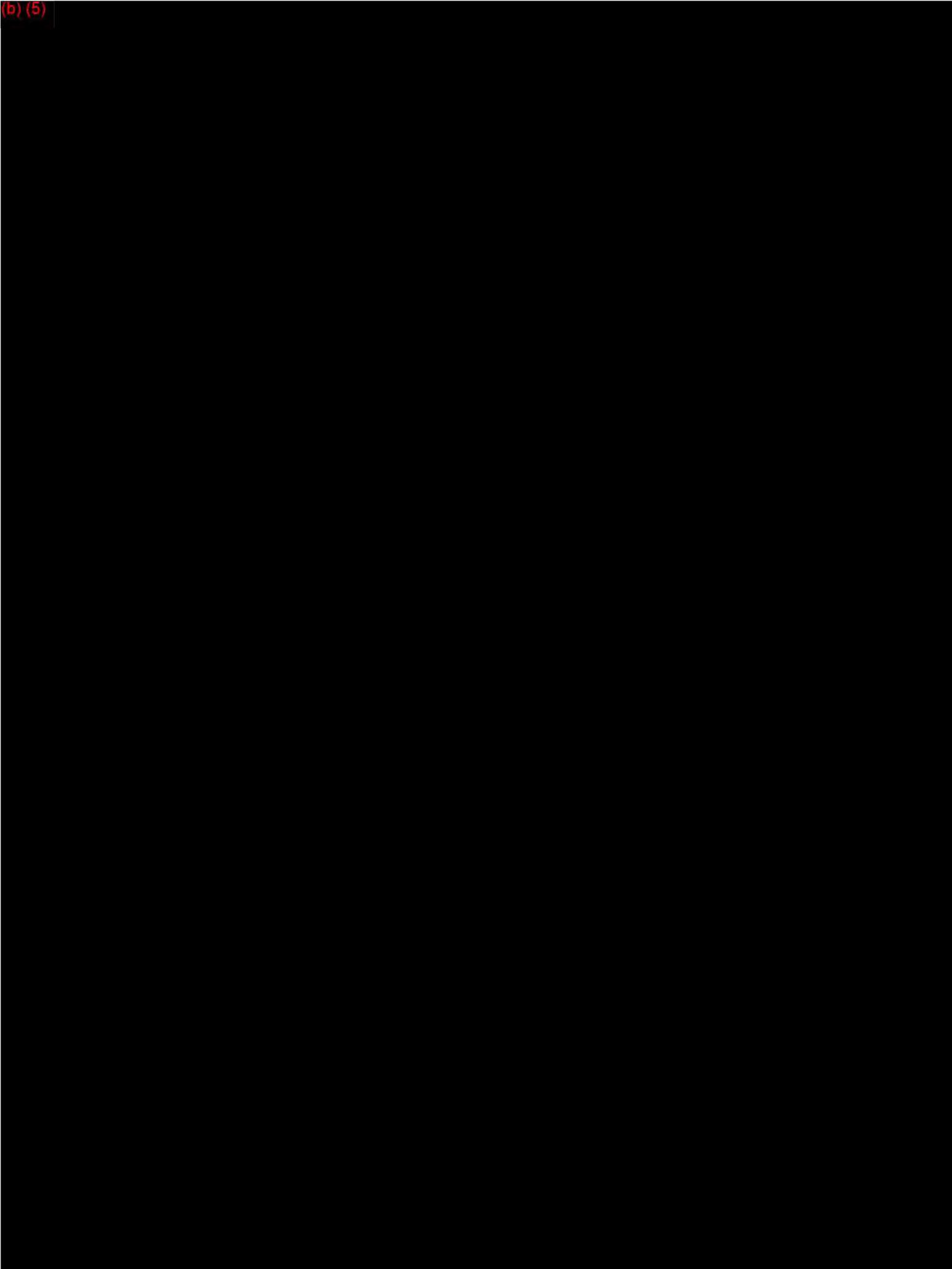
---

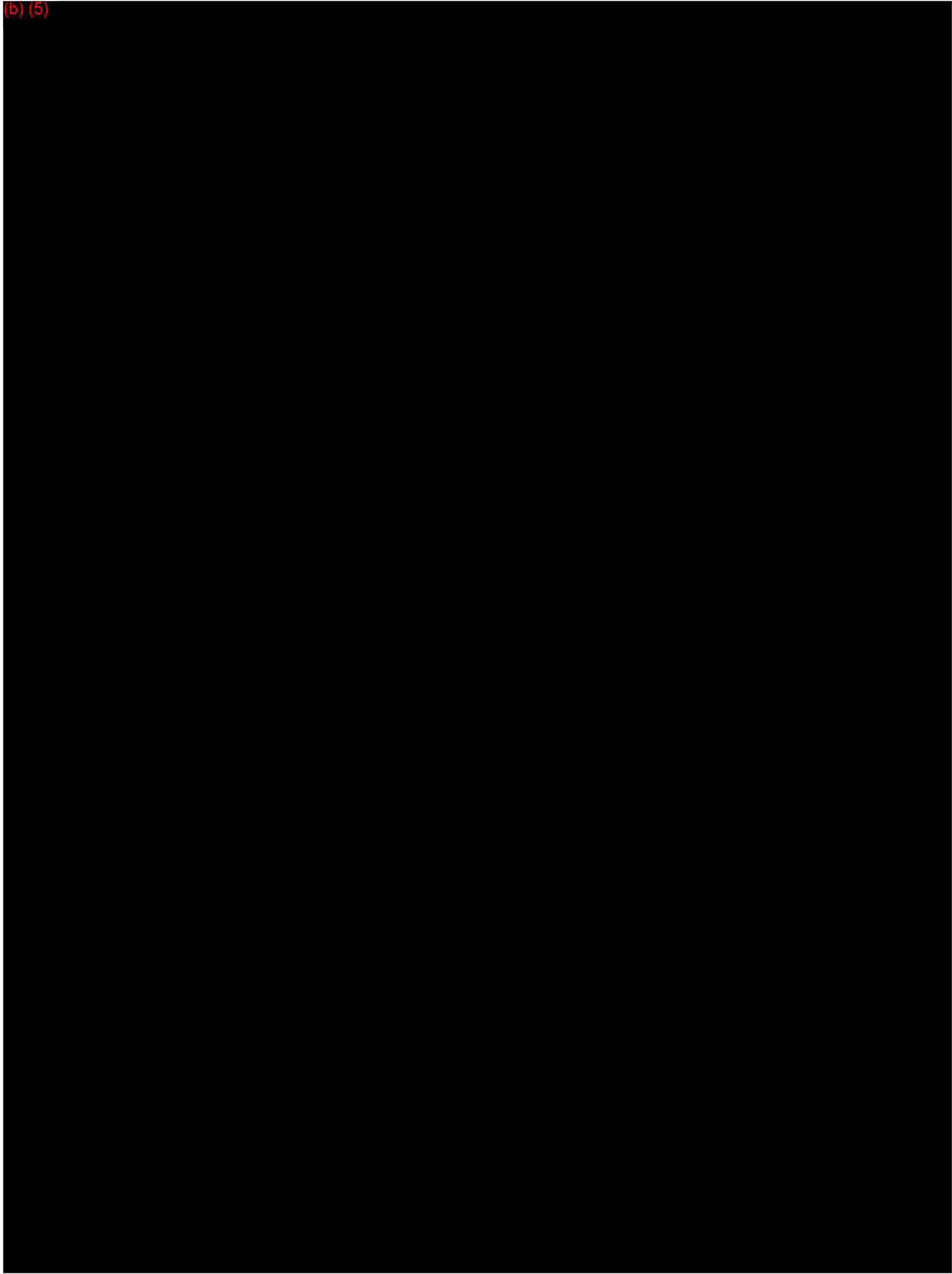
**From:** "Loyola, Mario A. EOP/CEQ" <(b) (6)>  
**Date:** August 8, 2018 at 1:21:00 PM EDT  
**To:** "Boling, Ted A. EOP/CEQ" <(b) (6)>  
**Subject:** Two rough drafts

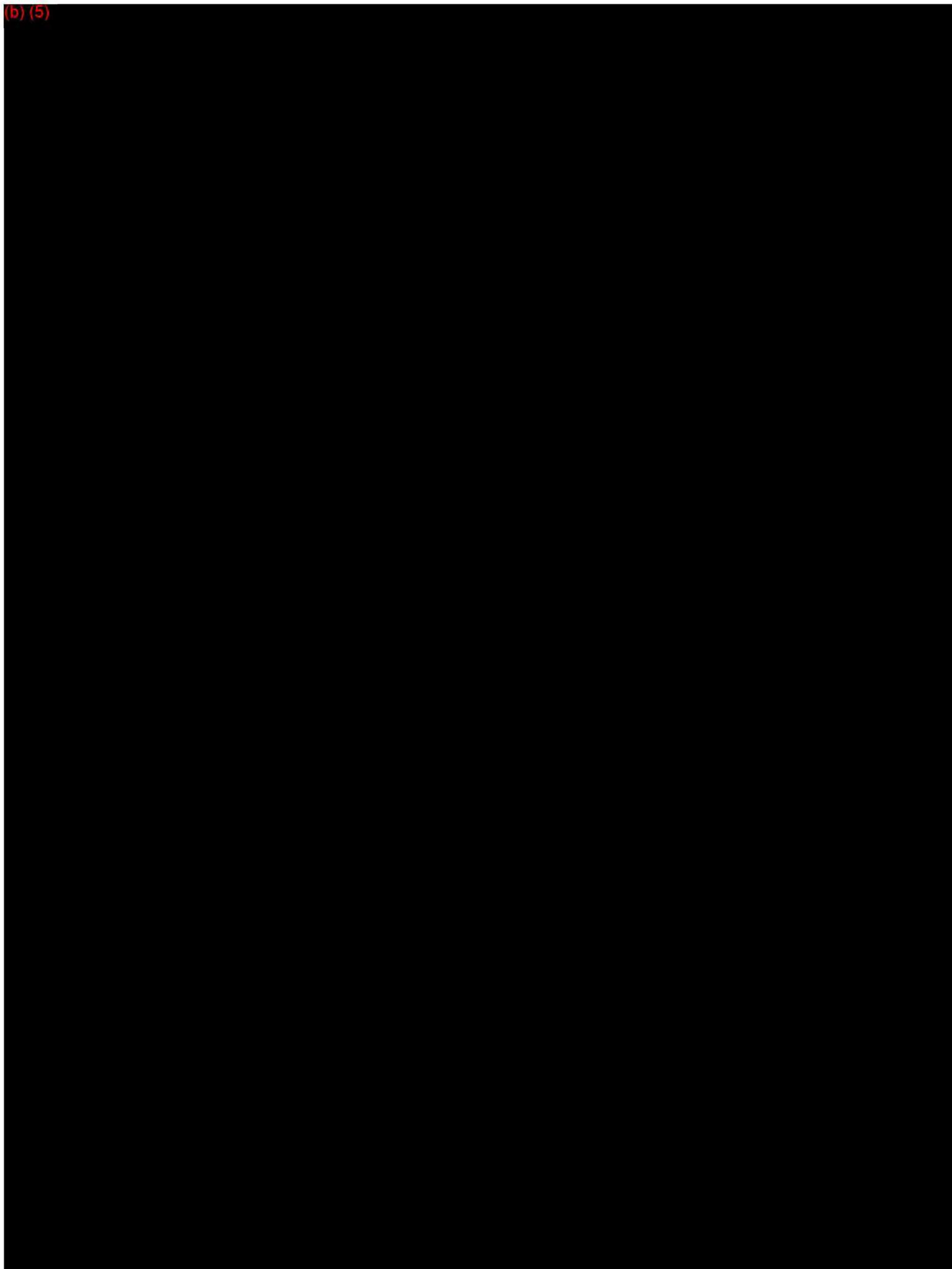
Looking forward to comments!

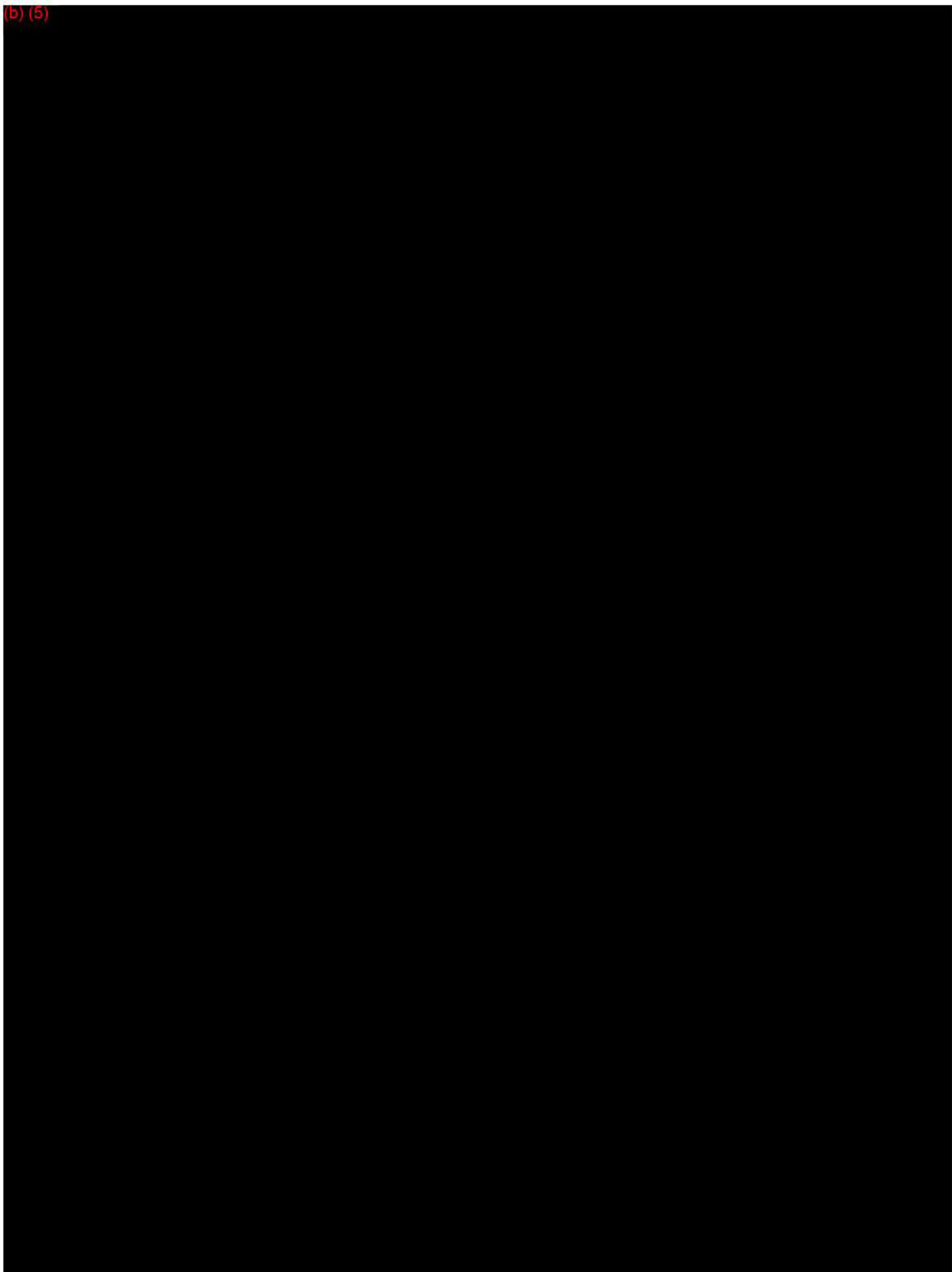
Mario Loyola  
Associate Director, Regulatory Reform  
White House Council on Environmental Quality  
(o) (b) (6) | (c) (b) (6)



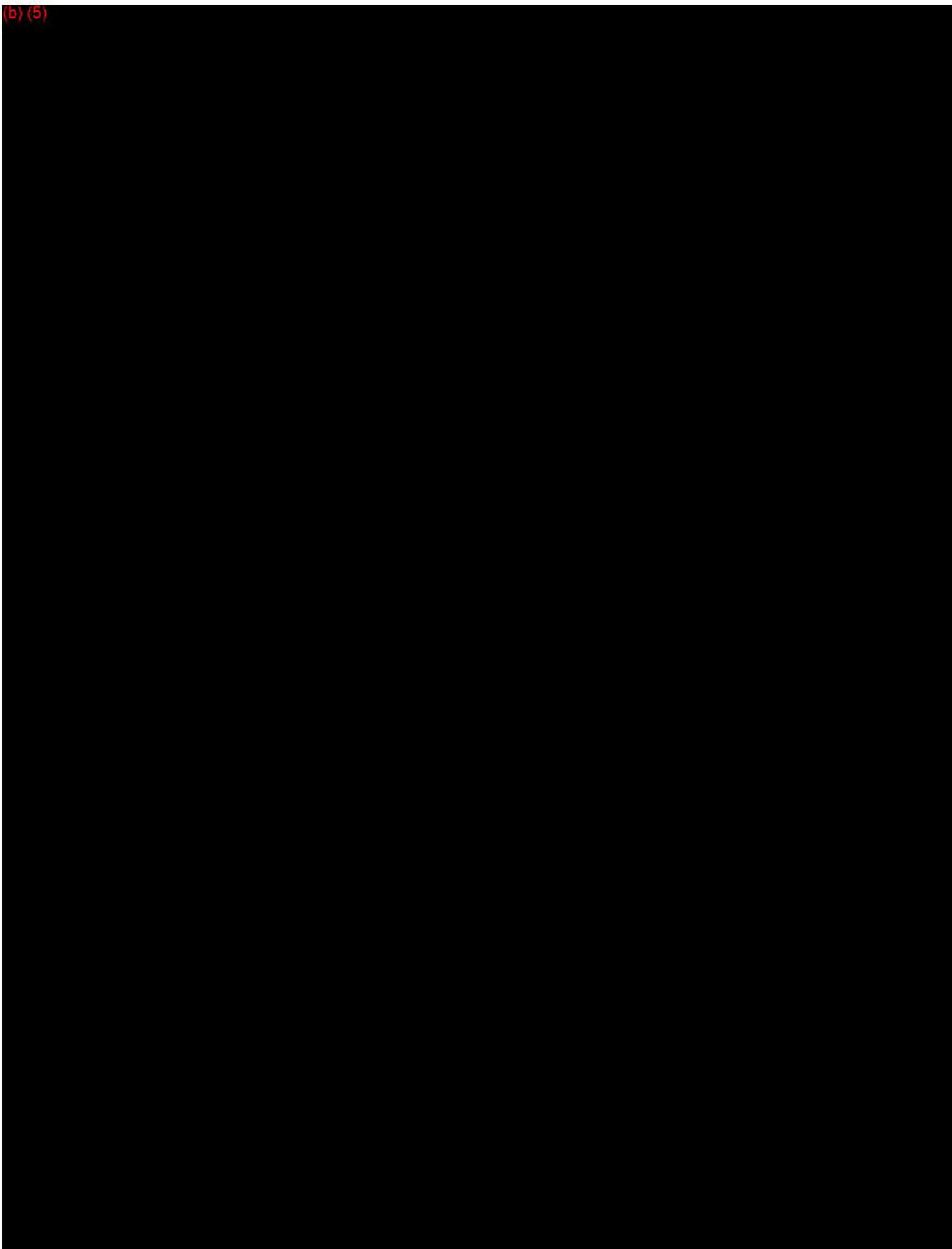


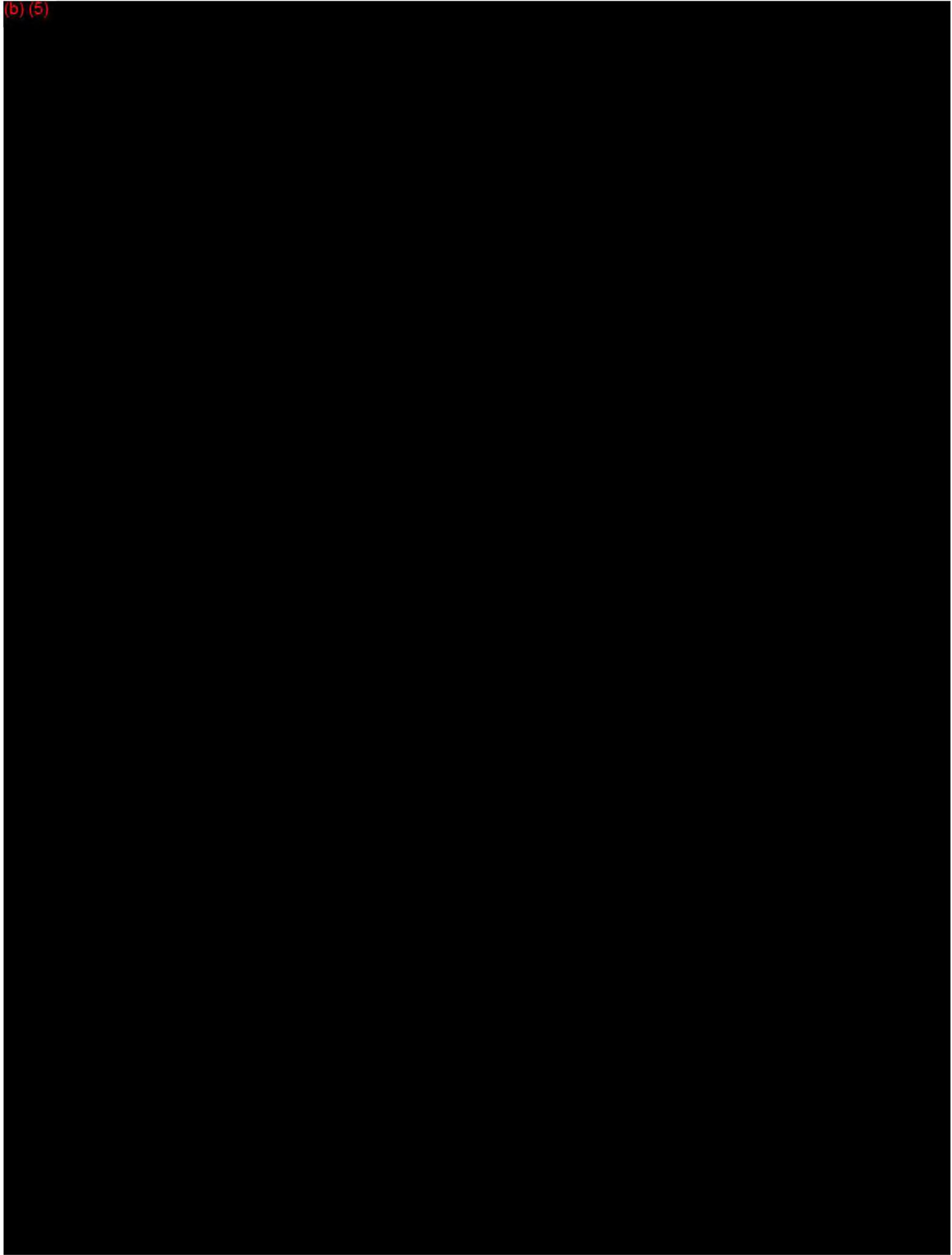


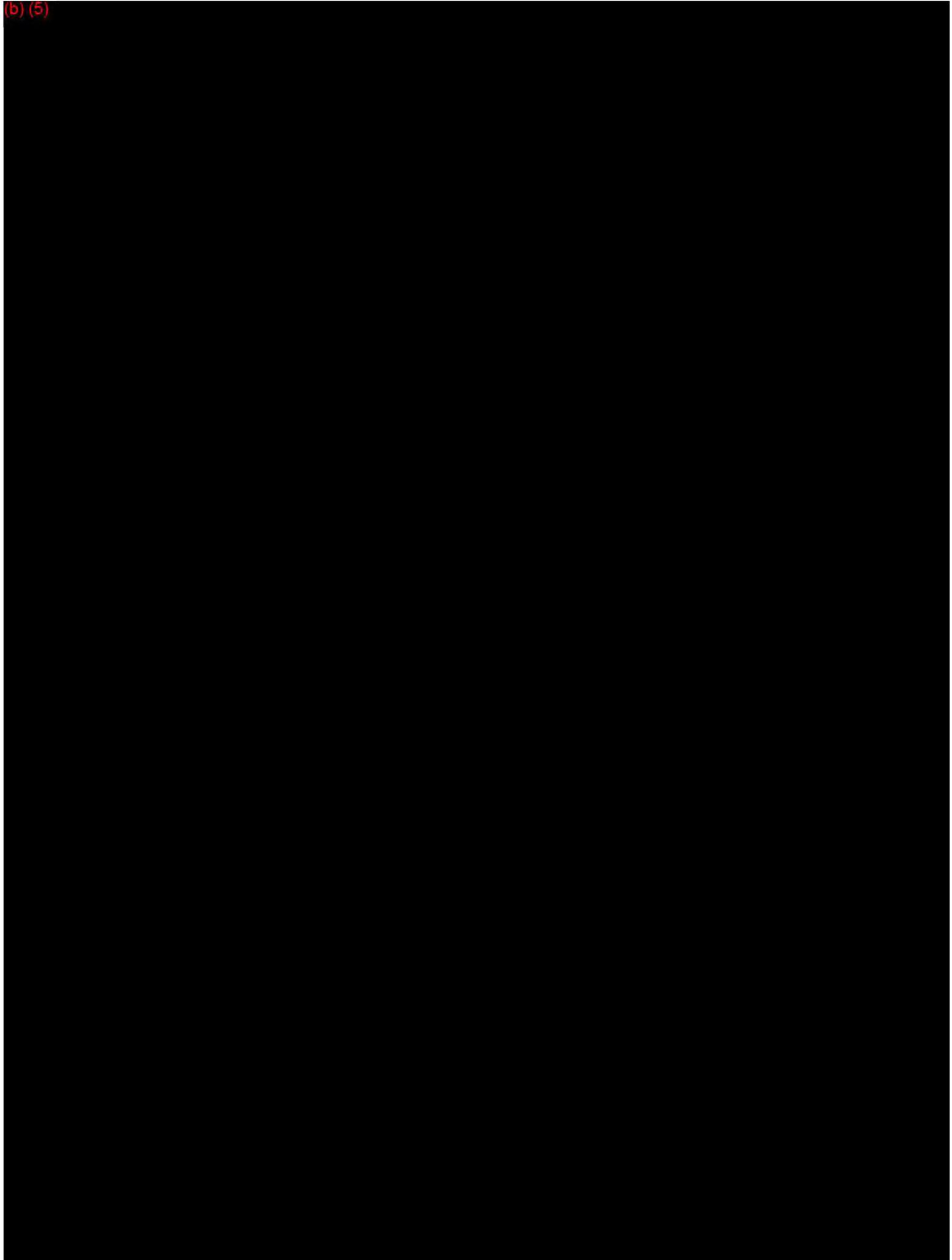


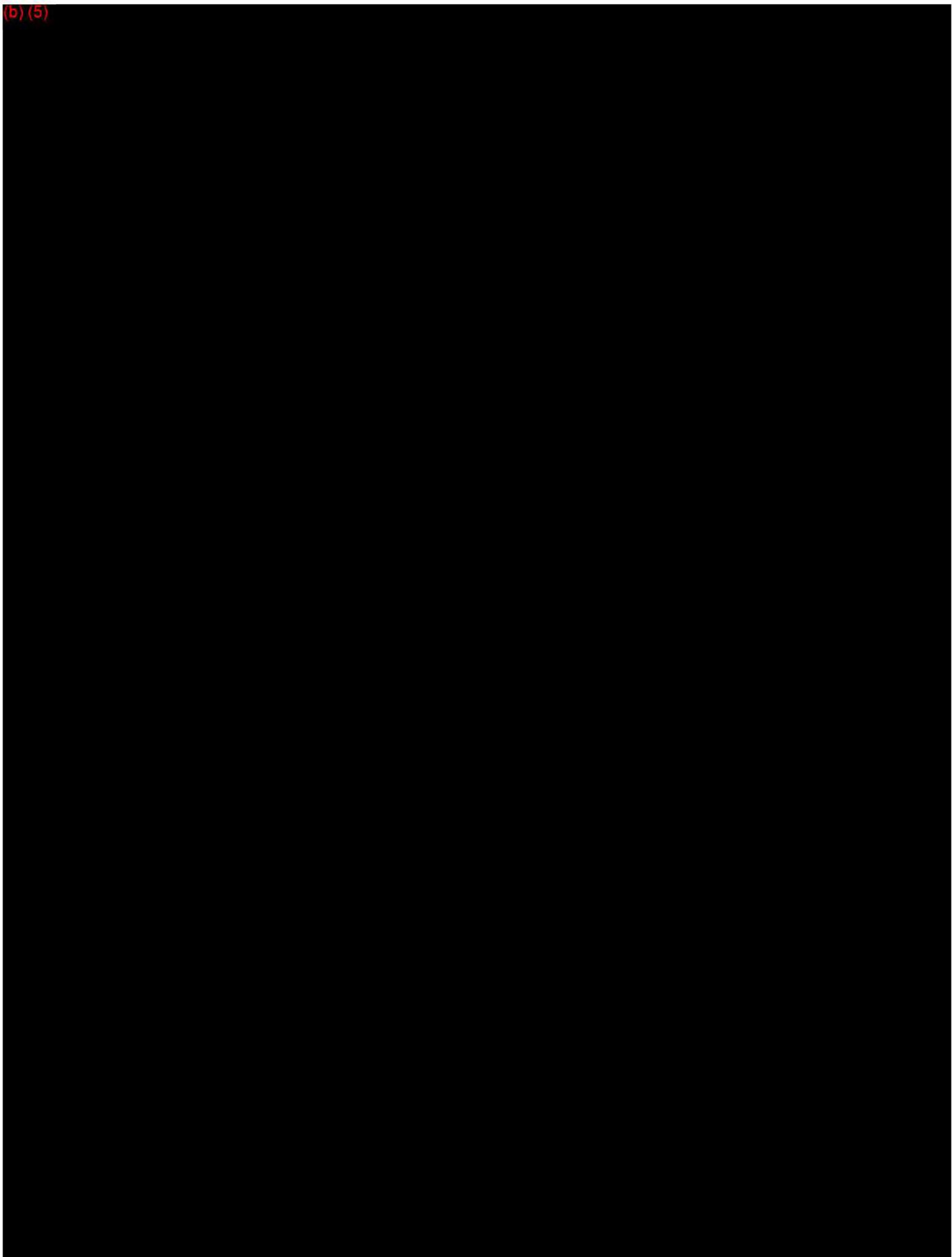


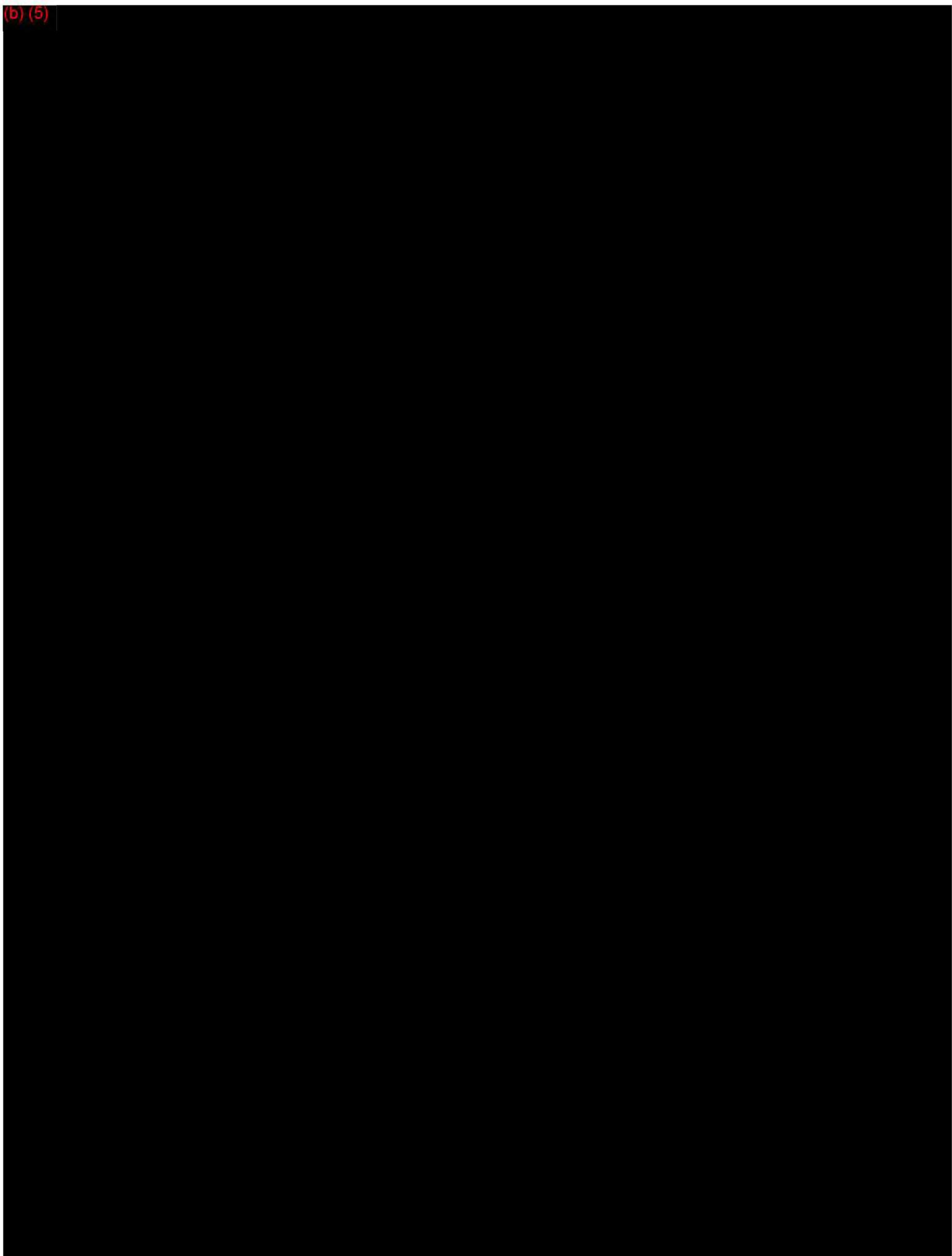


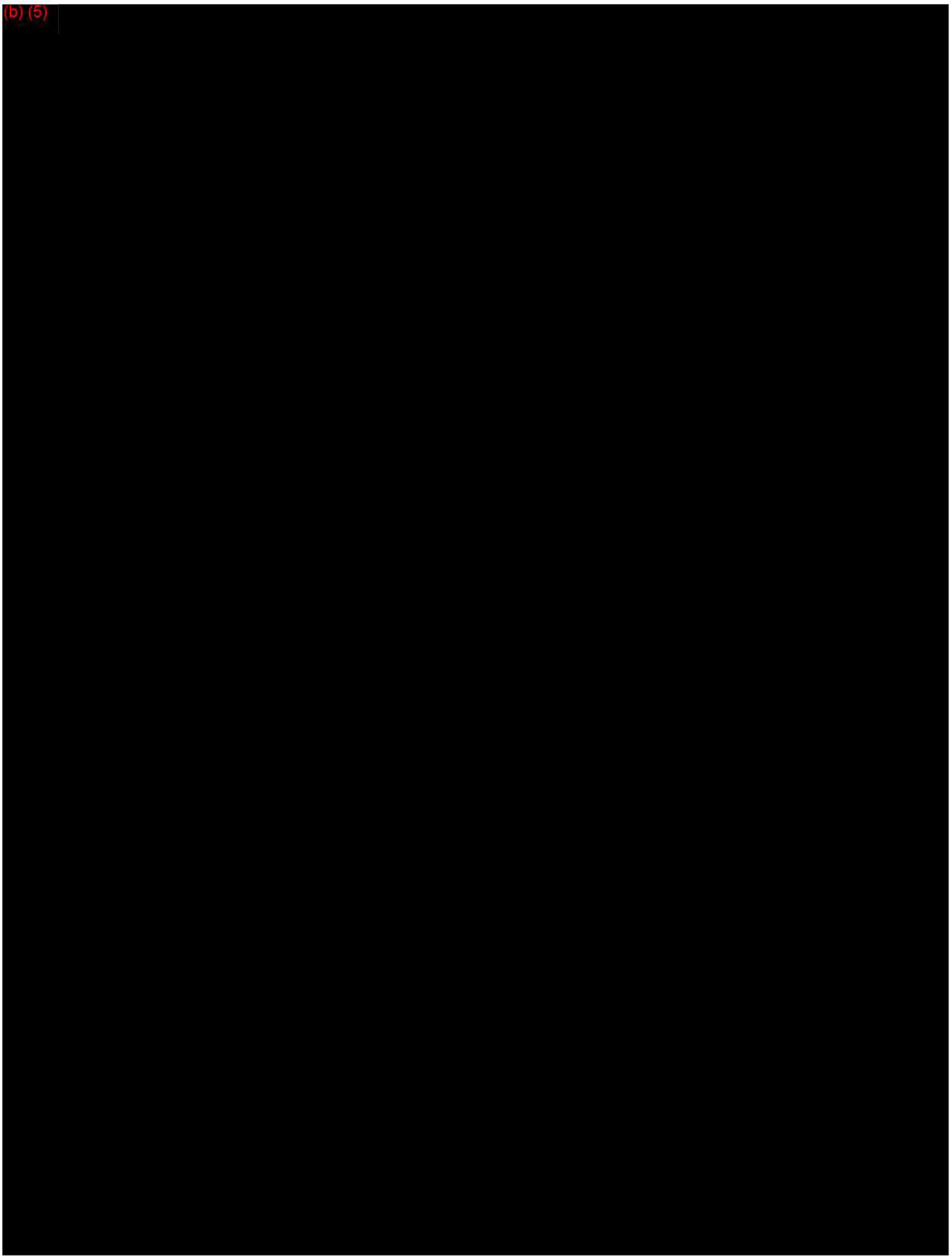


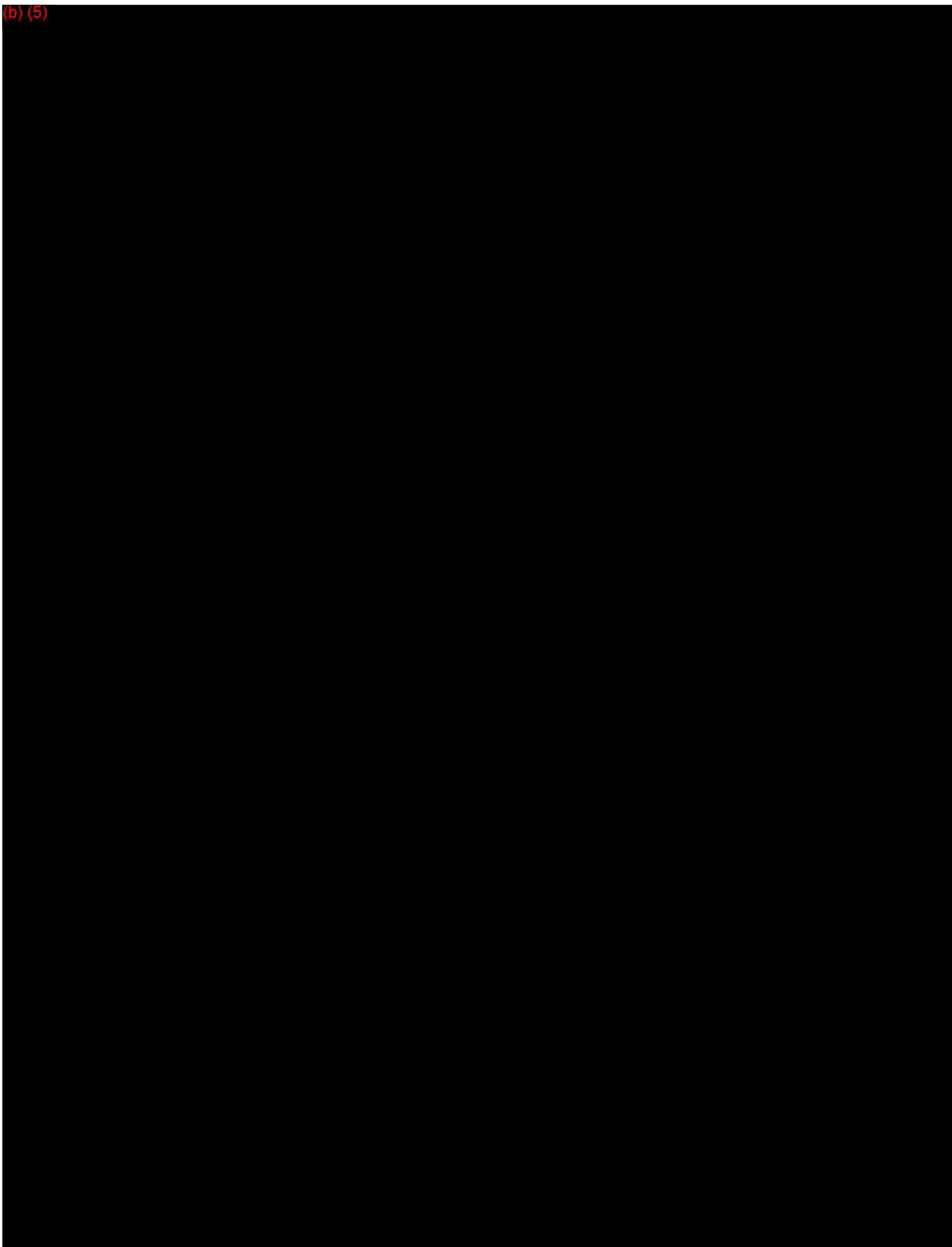












## Final Version of comment log

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**From:** "Carlin, Erin A. EOP/CEQ (Intern)" <[REDACTED]>  
**To:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
**Date:** Thu, 09 Aug 2018 11:30:42 -0400  
**Attachments:** 02 ANOPR Comment Log 07-23 to Erin (updated 8918).xlsx (97.96 kB)

---

Hello Yardena,

Here is the final copy of the comment log! I highlighted some entries in green because I had questions about them. Kearstyn and I were wondering if you were free to meet today before you leave to discuss if we need to archive our draft files or if we should email them to you. Thank you!

Best,

Erin Carlin







































## FW: Shipley Group - Podcast

---

**From:** "Boling, Ted A. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdft)/cn=recipients/cn=ea5b047f871428b9b46baf8afd1176a-bo">

**To:** "Schneider, Daniel J. EOP/CEQ" <(b) (6)>

**Date:** Thu, 09 Aug 2018 13:44:09 -0400

Dan – I have a request to talk on a NEPA podcast for professionals that may contribute comments on the ANPRM.

(b) (5)

**From:** Jeffrey Stewart <jeff.stewart@shipleygroup.com>

**Sent:** Thursday, August 9, 2018 1:31 PM

**To:** Boling, Ted A. EOP/CEQ <(b) (6)>

**Cc:** Joe Carbone <jcarbone1993@aol.com>

**Subject:** [EXTERNAL] Re: Shipley Group - Podcast

Ted,

Are you available August 13<sup>th</sup> or 14<sup>th</sup>?

What kind of format would you prefer? Would you like this to be a conversation with your talking points or would you like us to have a list of questions that we could get to you prior to recording?

Thanks,

Jeff Stewart

The Shipley Group, Inc.

Phone: 888-270-2157

[jeff.stewart@shipleygroup.com](mailto:jeff.stewart@shipleygroup.com)

Website: >[www.shipleygroup.com](http://www.shipleygroup.com)<

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**COMMUNICATE RELEVANT ENVIRONMENTAL INFORMATION**

**IMPLEMENT YOUR MISSION**

---

**From:** "Boling, Ted A. EOP/CEQ" <(b) (6)>

**Date:** Wednesday, August 8, 2018 at 4:51 PM

**To:** "jeff.stewart@shipleygroup.com" <jeff.stewart@shipleygroup.com>

**Subject:** RE: Shipley Group - Podcast

I can try to fit it in ~ when were you planning to do it?

**From:** Jeffrey Stewart <jeff.stewart@shipleysgroup.com>  
**Sent:** Wednesday, August 8, 2018 4:10 PM  
**To:** Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** [EXTERNAL] Re: Shipley Group - Podcast

Ted,

I wanted to follow-up and see if you were still able to participate in this podcast? If so, let me know if you have any dates that work for you.

Thanks,

Jeff Stewart  
The Shipley Group, Inc.  
Phone: 888-270-2157  
[jeff.stewart@shipleysgroup.com](mailto:jeff.stewart@shipleysgroup.com)  
Website: >>[www.shipleysgroup.com](http://www.shipleysgroup.com)<<  
**SHORTEN ENVIRONMENTAL DOCUMENTS**  
**COMMUNICATE RELEVANT ENVIRONMENTAL INFORMATION**  
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---

**From:** "Boling, Ted A. EOP/CEQ" <(b) (6)>  
**Date:** Tuesday, July 17, 2018 at 9:13 AM  
**To:** "jeff.stewart@shipleysgroup.com" <jeff.stewart@shipleysgroup.com>  
**Cc:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**Subject:** RE: Shipley Group - Podcast

Jeff – Thanks for this offer, which came to me while I was away and CEQ was preparing to extend the comment period.

Given the extension, do you have any interest in doing this podcast in August?

Best,  
Ted

Edward A. Boling  
Associate Director for the  
National Environmental Policy Act  
Council on Environmental Quality  
730 Jackson Place  
Washington, DC 20503

**From:** Jeffrey Stewart <jeff.stewart@shingleygroup.com>

**Sent:** Monday, July 2, 2018 10:51 AM

**To:** Boling, Ted A. EOP/CEQ <(b) (6)>

**Subject:** [EXTERNAL] Shingley Group - Podcast

Ted,

The Shingley Group has created a podcast called "The NEPA Project" to educate and assist NEPA Professionals. Our most recent episode was with Joe Carbone and Rhey Solomon discussing President Trump's EO on infrastructure projects. To follow-up on this episode, we are interested in facilitating an episode with you to help CEQ connect with our NEPA learning community on your current efforts to identify potential revisions to update the CEQ regulations to ensure a more efficient, timely, and effective NEPA process that is consistent with NEPA. This would be an opportunity to highlight some of the 20 questions CEQ has posed in the advance notice of proposed rulemaking. With comments due by the 20th of this month, it would be helpful for the NEPA learning community to engage on this topic soon. Hearing from you would likely stimulate comments on the questions CEQ is asking. The podcast episode would be facilitated by one or two of our instructors as a dialogue with you. Our objective is to assist CEQ and the many NEPA practitioners in providing a productive dialogue on changes needed to make the NEPA process more efficient, timely, and effective.

You would have complete editorial rights prior to releasing the episode.

Let us know if you are interested in participating.

Thanks,

Jeff Stewart

The Shingley Group, Inc.

Phone: 888-270-2157

[jeff.stewart@shingleygroup.com](mailto:jeff.stewart@shingleygroup.com)

Website: >>>[www.shingleygroup.com](http://www.shingleygroup.com)<<<

## [EXTERNAL] Re: Shipley Group - Podcast

---

**From:** Jeffrey Stewart <jeff.stewart@shipleygroup.com>

**To:** "Boling, Ted A. EOP/CEQ" <(b) (6)>

**Cc:** Joe Carbone <jcarbone1993@aol.com>

**Date:** Thu, 09 Aug 2018 13:30:37 -0400

Ted,

Are you available August 13<sup>th</sup> or 14<sup>th</sup>?

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Jeff Stewart

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Phone: 888-270-2157

[jeff.stewart@shipleygroup.com](mailto:jeff.stewart@shipleygroup.com)

Website: >[www.shipleygroup.com](http://www.shipleygroup.com)<

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---

**From:** "Boling, Ted A. EQP/CEQ" <(b) (6)>

**Date:** Wednesday, August 8, 2018 at 4:51 PM

**To:** "jeff.stewart@shipleygroup.com" <jeff.stewart@shipleygroup.com>

**Subject:** RE: Shipley Group - Podcast

I can try to fit it in - when were you planning to do it?

---

**From:** Jeffrey Stewart <jeff.stewart@shipleygroup.com>

**Sent:** Wednesday, August 8, 2018 4:10 PM

**To:** Boling, Ted A. EOP/CEQ <(b) (6)>

**Subject:** [EXTERNAL] Re: Shipley Group - Podcast

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I wanted to follow-up and see if you were still able to participate in this podcast? If so, let me know if you have any dates that work for you.

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Jeff Stewart

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Phone: 888-270-2157

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Website: >>[www.shipleygroup.com](http://www.shipleygroup.com)<<

**SHORTEN ENVIRONMENTAL DOCUMENTS**

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**Date:** Tuesday, July 17, 2018 at 9:13 AM  
**To:** "jeff.stewart@shipleygroup.com" <jeff.stewart@shipleygroup.com>  
**Cc:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**Subject:** RE: Shipley Group - Podcast

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Ted

Edward A. Boling  
Associate Director for the  
National Environmental Policy Act  
Council on Environmental Quality  
730 Jackson Place  
Washington, DC 20503

**From:** Jeffrey Stewart <jeff.stewart@shipleygroup.com>  
**Sent:** Monday, July 2, 2018 10:51 AM  
**To:** Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** [EXTERNAL] Shipley Group - Podcast

Ted,

The Shipley Group has created a podcast called "The NEPA Project" to educate and assist NEPA Professionals. Our most recent episode was with Joe Carbone and Rhey Solomon discussing President Trump's EO on infrastructure projects. To follow-up on this episode, we are interested in facilitating an episode with you to help CEQ connect with our NEPA learning community on your current efforts to identify potential revisions to update the CEQ regulations to ensure a more efficient, timely, and

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Thanks,

Jeff Stewart

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[jeff.stewart@shipleygroup.com](mailto:jeff.stewart@shipleygroup.com)

Website: >>>[www.shipleygroup.com](http://www.shipleygroup.com)<<<

## RE: Regulations.gov update: another ~600 comments today

From : "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>

To: "Boling, Ted A. EOP/CEQ" (b) (6) "Drummond, Michael R. EOP/CEQ" <(b) (6)>

Date: Fri, 10 Aug 2018 15:49:16 -0400

Here is the list of mail and email submittals received at CEQ.

I see 4 submittals definitely to be posted to regulations.gov docket. To proceed, I need to resolve questions in the notes column.

- Are two postcards sent before the ANOPR was published to be counted in as comments?
- Should mail/email submittals that duplicate portal submittals be posted?
- Should the Indian Health Service letter be posted? It isn't currently on regulations.gov.

Then the question of whether I can have access to the portal docket should be resolved.

Mail			Notes
M-0001	Katherine Delanoy(?)	General	Do not weaken NEPA. <b>[Is this a cmt?; postcard before ANOPR.]</b>
M-0002	Schemy(?)	General	Save NEPA. <b>[Is this a cmt?; postcard before ANOPR.]</b>
M-0003	Indiana Wildlife Federation	Extension	Requests 60-day extension. <b>Post to portal.</b>
M-0004	Chesapeake Bay Foundation, Alison Prost	Extension	Requests 60-day extension. [Duplicate of Portal 0041.]
M-0005	Maryland Nonprofits, Henry Bogdan	Extension	Requests 60-day extension. [Duplicate of Portal 0260.]
M-0006	Duchesne County, Utah, Michael Hyde	Yes	Comments on all questions. Duplicate of Portal 0269.]
M-0007	Brandt Mannchen	Yes	Responds to all except some definitions. <b>Post to portal.</b>
M-0008	Northwest Indian Fisheries Commission, Justin Parker	Extension	Requests 60-day extension. [Duplicate of Portal 0538.]
M-0009	Indian Health Service, Public Health Service/HHS, Gary Hartz	Yes	Responds to several questions. <b>[Not submitted through portal; don't post, move to Agency Input tab?]</b>
Email			

E-0001	The Partnership Project (353 orgs.)	Extension	Requests 60-day extension, public hearings. [Duplicate of Portal 0232.]
E-0002	The Nature Conservancy, Karen Onley	Extension	Requests 60-day extension. <b>Post to portal.</b>
E-0003	Aurora Janke for Attorneys General of WA, MD, MA, NJ, NY, and OR	Extension	Requests at least 60-day extension, public hearings. [Duplicate of Portal 0200.]
E-0004	36 law professors with NEPA expertise	Extension	Request 90-day extension. [Duplicate of Portal 0199.]
E-0005	Association of Metropolitan Water Agencies, Diane VanDe Hei; American Water Works Association, Tracy Mehan	Extension	Requests 60-day extension. [Duplicate of Portal 0023.]
E-0006	Nicholas Churchill Yost, Former General Counsel, Council on Environmental Quality	Yes	Discusses principles for revising the regulations, responds to several questions, and provides recommended wording for changes. <b>Post to portal.</b>
E-0007	Lucinda Low Swartz, Esq.	Yes	Discusses principles for revising the regulations, responds to several questions. [Duplicate of Portal 3760.]

**From:** Boling, Ted A. EOP/CEQ  
**Sent:** Thursday, August 9, 2018 1:41 PM  
**To:** Mansoor, Yardena M. EOP/CEQ <(b) (6)> Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** RE: Regulations.gov update: comment tally doubled

OK – I think we should post all the comments that have been mailed/emailed into CEQ.  
Yardena – can you do that, or should we ask Aaron to administer it?

**From:** Mansoor, Yardena M. EOP/CEQ  
**Sent:** Thursday, August 9, 2018 12:31 PM  
**To:** Drummond, Michael R. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** RE: Regulations.gov update: comment tally doubled

Correct, Nick Yost’s comments are not posted but an unrelated Yost posted weeks ago.  
Many of the new comments are a campaign, stating:

As an advocate and supporter of our national parks, I am writing in opposition to the proposed updates to implementing regulations for the procedural provisions of the National

Environmental Policy Act (NEPA).

NEPA is vital to ensuring federal actions receive the necessary review and public input before making decisions that impact national parks, the environment and human health.

I am concerned the current effort to "streamline" processes under NEPA will lead to less public participation, uninformed decision-making, and serious environmental consequences. This is not the right path for our national parks or our communities, which depend on thoughtful decisions to protect air, water, and lands now and in the future.

Rather than making unnecessary changes, federal agencies should instead focus on effectively implementing the current regulations. With sufficient staff, training and resources, agencies may better ensure projects move forward in a timely fashion that is good for the environment and our communities.

Thank you for considering my views.

**From:** Drummond, Michael R. EOP/CEQ  
**Sent:** Thursday, August 9, 2018 12:03 PM  
**To:** Boling, Ted A. EOP/CEQ <(b) (6)> Mansoor, Yardena M. EOP/CEQ <(b) (6)>  
**Subject:** RE: Regulations.gov update: comment tally doubled

No, but there are some comments from a Gaylord Yost.

**From:** Boling, Ted A. EOP/CEQ  
**Sent:** Thursday, August 9, 2018 11:59 AM  
**To:** Mansoor, Yardena M. EOP/CEQ <(b) (6)>  
**Cc:** Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** Re: Regulations.gov update: comment tally doubled

Is Nick's up there?

Sent from my iPhone

On Aug 9, 2018, at 11:35 AM, Mansoor, Yardena M. EOP/CEQ <(b) (6)> wrote:

After no update Mon-Wed, today our comment tally on [regulations.gov](https://www.regulations.gov) went from 1481 to 3182. This will be interesting.

Yardena

## FW: Comments on CEQ ANPR

---

**From:** "Boling, Ted A. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=eae5b047f871428b9b46baf8afd1176a-bo">  
**To:** "Drummond, Michael R. EOP/CEQ" (b) (6) [REDACTED]  
"Mansoor, Yarden M. EOP/CEQ" (b) (6) [REDACTED]  
**Date:** Fri, 10 Aug 2018 11:54:25 -0400  
**Attachments**  
: CEQ ANPR LLS Responses 8-10-2018.pdf (321.78 kB)

**From:** Lucinda Swartz <lls@lucindalowschwartz.com>  
**Sent:** Friday, August 10, 2018 11:50 AM  
**To:** Boling, Ted A. EOP/CEQ (b) (6) [REDACTED]  
**Subject:** [EXTERNAL] Comments on CEQ ANPR

Hi Ted,

Attached are my comments on CEQ's Advance Notice of Proposed Rulemaking. I submitted them formally on Regulations.gov, but thought I'd send you your own copy.

Thanks,

Lucy

Lucinda Low Swartz, Esq.  
4112 Franklin Street  
Kensington, MD 20895  
Telephone: 301/933-4668  
Email: [LLS@LucindaLowSwartz.com](mailto:LLS@LucindaLowSwartz.com)  
Website: [www.LucindaLowSwartz.com](http://www.LucindaLowSwartz.com)



**LUCINDA LOW SWARTZ, Esq.**  
ENVIRONMENTAL CONSULTANT

4112 Franklin Street • Kensington, Maryland 20895  
Telephone: 301/933-4668 • Email: LLS@LucindaLowSwartz.com  
www.LucindaLowSwartz.com

August 10, 2018

Mary B. Neumayr, Chief of Staff  
Council on Environmental Quality  
730 Jackson Place, N.W.  
Washington, D.C. 20503

Dear Ms. Neumayr:

*Re: CEQ-2018-0001, Update to Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act*

Based on my experience as a former Deputy General Counsel of the Council on Environmental Quality (CEQ) and a National Environmental Policy Act (NEPA) practitioner for over 35 years, I have prepared the following comments in response to CEQ's Advance Notice of Proposed Rulemaking (83 Fed. Reg. 28591 (June 20, 2018)). I have included the question numbers to which I am responding, although I am not providing comments on all questions.

For 40 years, the CEQ regulations have served to implement NEPA's goals as articulated by Congress, and they continue to do so. The answers to most of the questions posed in the Advance Notice of Proposed Rulemaking depend on better implementation of the existing CEQ regulations by federal agencies rather than on amending those regulations. Better implementation requires substantial increases in funding to federal agencies to allow them to meet their statutory obligations under the Act. Additional funding for NEPA implementation by federal agencies is the best way to increase efficiency and improve the effectiveness of the NEPA process to protect and enhance environmental quality.

On a more practical level, the CEQ regulations and the NEPA requirements they implement have been the subject of myriad court cases, CEQ guidance documents, and individual federal agency regulations and guidance documents for over 40 years. Amending the regulations *will* result in extensive and expensive delays as new regulations are interpreted by federal agencies and the courts. For that reason, the perceived benefits of amending the CEQ regulations to improve efficiency and effectiveness must be carefully weighed against the certain disruptive consequences of amending those regulations.

## **NEPA Process**

The CEQ regulations currently provide many recommendations for reducing delay and increasing efficiency in the NEPA process (see, e.g., 40 CFR 1500.4, 1500.5, 1506.2, and 1506.3). Federal agencies fail to implement these available provisions. The answer is to improve implementation, not to revise the regulations. Many improvements can only be made with additional funding to the federal agencies for this purpose.

### *1. Multiple Agency Reviews*

The CEQ regulations currently provide for a lead agency if more than one federal agency is involved (40 CFR 1501.5). Inefficiency is introduced in situations where no federal agency is willing to take on the responsibility of being the lead agency. Even when a lead agency is named, the other federal agencies involved do not always participate in the NEPA process to the extent required, resulting in delays over which the lead agency has no control.

In addition, federal agencies may not have sufficient resources to serve as a lead agency, federal agency decision points for the same proposal may not be aligned, and some federal agency permitting decisions may need more specific design or project data than is required for other types of federal decisions. A revision to the regulations cannot fix these problems.

### *2. Efficiency of the NEPA Process*

The CEQ regulations currently provide for, and encourage, the use of environmental studies, analyses, and decisions conducted in prior environmental reviews (see, e.g., 40 CFR 1502.21). An agency seeking to use prior documentation must verify that the information is relevant and still accurate. Agencies' failures to use the existing incorporation by reference provision will not be cured by a revision to the regulations.

### *3. Interagency Coordination*

As noted in response to Question 1, the CEQ regulations currently provide for interagency coordination of environmental reviews. Failure of agencies to engage in such coordination is not related to the wording of the CEQ regulations and will not be solved by revising the regulations.

## **Scope of NEPA Review**

### *4. Format, Page Length, and Time Limits*

Imposing a firm format, page length, or time limit for each NEPA proposal is counterproductive. Each federal action is different and thus requires a different approach. Blind obedience to format, page length, or time limit will likely result in litigation arguing that the resulting NEPA document is insufficient and that the process was arbitrary and capricious.

The CEQ regulations currently suggest a useful format for NEPA documents (40 CFR 1502.10) that most agencies do follow. In addition, the regulations suggest establishing appropriate time limits (40 CFR 1500.5(e) and 1501.8) and page limits (40 CFR 1502.7). Agencies rarely take advantage of the opportunity to establish time limits or to reduce the page count. Again, this is a failure of implementation, not a shortcoming of the CEQ regulations.

Another regulatory provision that federal agencies do not take advantage of is the ability to summarize an environmental impact statement (EIS) and circulating the summary instead of the entire document “if the latter is unusually long” (40 CFR 1500.4(h)). In current practice, almost all EISs are “unusually long” – well over 500 pages and up to thousands of pages including appendices. No one benefits from such documents: neither agency staff nor agency decision-makers nor members of the public read them in their entirety. These NEPA process participants rarely read more than the summary, which itself can be over 100 pages for complex documents.

Thus, a thoughtful addition to the CEQ regulations would be a requirement that agencies circulate what is now referred to as a summary as the EIS itself. Supporting material would not accompany the (summary) EIS but must be posted online the same day the EIS is made public and provided electronically or in hard copy upon request. In addition, to accommodate those who do not use or have access to electronic media, the supporting material must also be made immediately available in libraries and federal agency offices. Such supporting material would include background information (e.g., Federal Register notices, scoping summaries) and the environmental impact analyses prepared regarding the proposal and alternatives that are typically included in appendices (see 40 CFR 1502.18). As is currently encouraged, other material can simply be incorporated by reference (40 CFR 1502.21).

With respect to environmental assessments (EA), CEQ guidance advises federal agencies to keep the length of EAs to 10 – 15 pages (Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations (40 Questions), 46 Fed. Reg. 18026 (1981), Question 36a). Moreover, this guidance states that agencies should avoid preparing lengthy EAs and, in most cases, a lengthy EA indicates that an EIS is needed (40 Questions, Question 36b). Thus, for EAs, CEQ could consider imposing a 10 – 15 page limit as a way to enforce the statutory requirement to prepare EISs for “major federal actions significantly affecting the quality of the human environment.”

##### *5. Focus on Significant Issues*

The CEQ regulations currently instruct agencies to “focus on significant environmental issues and alternatives” (40 CFR 1502.1) and to discuss impacts “in proportion to their significance” (40 CFR 1502.2(a)). Agencies are failing to implement this requirement as written; revisions to the regulations are not necessary.

## *6. Public Involvement*

This is an area in which improvements to the CEQ regulations can be made. However, any revisions will only be effective to the extent they are actually and enthusiastically embraced by the federal agencies.

Too often agencies avoid obtaining and responding to public input in a misguided effort to save time. This results in disgruntled stakeholders such as environmental groups who feel they must pursue litigation in order to be heard. Litigation then introduces lengthy time delays and great expense, adversely affecting the federal agencies and private companies that may be seeking permit approvals from the agencies.

However, meaningful public involvement allows the agency to understand stakeholder concerns and to address them in the NEPA process, avoiding the potential for future litigation. Public involvement activities that could be encouraged in the CEQ regulations include:

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Despite the encouragement in the CEQ regulations and guidance, federal agencies have been reluctant to prepare programmatic EISs and EAs for a variety of reasons including perceptions of difficulty, risk to ongoing programs, and lack of funding. For this reason, CEQ should consider incorporating important provisions from the 2014 guidance as mandates in the regulations. These could include when to use a programmatic and tiered review, determining the scope of a programmatic NEPA document, collaboration with other environmental reviews (including new proposals) and the public, and the level of detail and analysis necessary. In addition, the regulations could clarify that programmatic reviews of existing programs can be conducted to inform the agency and the public of potential environmental impacts without putting the program on hold while the analysis is being prepared.

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Technology has changed substantially since the CEQ regulations were promulgated in 1978. Agencies have been reluctant to utilize technological advances, such as posting material online instead of providing it in hard copy, because the CEQ regulations are silent on that subject. Identifying how the use of the online resources should be used to improve public involvement in particular would be an important advancement in improving efficiency and effectiveness of the NEPA process.

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NEPA requires that federal agencies consider “alternatives to the proposed action.” 42 U.S.C. 4332(C)(iii). The CEQ regulations interpret this as a requirement to “[r]igorously explore and objectively evaluation all reasonable alternatives...” (40 CFR 1502.14(a)). In the case of an applicant seeking federal approval, however, the requirement to consider “all reasonable alternatives” can become unwieldy if misapplied.

For example, an applicant may seek approval to construct Widget Plant in State X. An objectively reasonable alternative might be to construct Doodad Plant in State Z. However, if the applicant has no desire, business (or governmental in the case of a local or tribal government applicant) reason, or authority to construct the alternative, then fully analyzing that alternative in a NEPA document may be a waste of resources.

Treating applicant proposals differently from federal agency-sponsored alternatives would violate NEPA Section 102(2)(C), which makes no such distinction. However, CEQ should consider issuing guidance that addresses the appropriate way to analyze alternatives when an applicant is the project proponent. This guidance should include case law that has indicated, among other things, that the applicant’s purpose and need should be taken into account along with that of the federal agency.

Without such guidance, federal agencies are confused regarding the extent they need to consider “all reasonable alternatives” when an applicant is the project sponsor, with some agencies focusing only on the applicant’s proposal and other agencies analyzing a much wider slate of alternatives than may be necessary. Further, CEQ guidance would aid members of the public in understanding that some alternatives may not be reasonable in a particular context involving an applicant-sponsored proposal.

The guidance should also make it clear that federal agencies have the authority to deny an application for federal approval if the environmental impacts of the proposal would be too severe. This clarification would encourage applicants to identify the least environmentally damaging way to meet their business or governmental purposes and needs and to maximize their mitigation efforts. The onus is thus placed on applicants, not federal agencies, to develop environmentally sound proposals. If delays occur because of the need to analyze less environmentally damaging alternatives than that proposed by an applicant, it would be as a result of an applicant's actions, not those of the federal agency.

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The CEQ regulations refer to mitigation in the context of including such measures in alternatives (40 CFR 1502.14(f)) and in decisionmaking (40 CFR 1505.2 and 1505.3). These provisions, however, are somewhat vague. Courts have stated, in keeping with the admonition that NEPA does not require a particular outcome, that mitigation is not required.

To enhance environmental values, the CEQ regulations could be revised to incorporate other court rulings regarding federal agencies' responsibility to mitigate adverse environmental impacts. These include:

- Where an agency does rely on mitigation for its analysis of impacts, the agency must provide an explanation as to why the agency believes the mitigation will be effective.
- Perfunctory descriptions or mere lists of mitigation measures are insufficient.
- Mitigation need not be legally enforceable or funded in order for an agency to rely on it for impact reduction purposes.
- Use of "best management practices" are a component of the proposal, not mitigation to reduce or avoid environmental impacts.

## **Conclusion**

In sum, the current CEQ regulations provide all the tools necessary to improve the efficiency and the effectiveness of the NEPA process. That includes lead agencies and interagency coordination, use of existing information, implementation of time and page limits, and focus on significant issues.

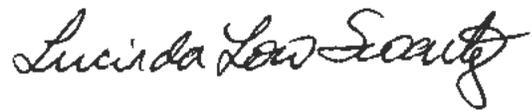
There are some NEPA compliance issues that could be ameliorated with revisions to the CEQ regulations such as public involvement, use of NEPA contractors, programmatic NEPA documents, use of technology, and mitigation. Finally, I recommend developing additional guidance regarding analysis of alternatives when an applicant is seeking a federal permit, approval, or funding.

Finally, the key to improving federal agency implementation of NEPA is a significant increase in funding to allow the agencies to hire, train, and support additional NEPA staff.

Lucinda Low Swartz  
Comments on CEQ ANPR  
August 10, 2018  
Page 8

Thank you for the opportunity to present my views.

Sincerely,

A handwritten signature in black ink that reads "Lucinda Low Swartz". The signature is written in a cursive, flowing style.

Lucinda Low Swartz  
Environmental Consultant

cc: Edward A. Boling, Associate Director for NEPA

## [EXTERNAL] Comments on CEQ ANPR

---

**From:** Lucinda Swartz <lls@lucindalowschwartz.com>

**To:** "Boling, Ted A. EOP/CEQ" <(b) (6)>

**Date:** Fri, 10 Aug 2018 11:50:28 -0400

**Attachments:** CEQ ANPR LLS Responses 8-10-2018.pdf (321.78 kB)

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Hi Ted,

Attached are my comments on CEQ's Advance Notice of Proposed Rulemaking. I submitted them formally on Regulations.gov, but thought I'd send you your own copy.

Thanks,

Lucy

Lucinda Low Swartz, Esq.  
4112 Franklin Street  
Kensington, MD 20895  
Telephone: 301/933-4668  
Email: [LLS@LucindaLowSwartz.com](mailto:LLS@LucindaLowSwartz.com)  
Website: [www.LucindaLowSwartz.com](http://www.LucindaLowSwartz.com)



**LUCINDA LOW SWARTZ, Esq.**  
ENVIRONMENTAL CONSULTANT

4112 Franklin Street • Kensington, Maryland 20895  
Telephone: 301/933-4668 • Email: LLS@LucindaLowSwartz.com  
www.LucindaLowSwartz.com

August 10, 2018

Mary B. Neumayr, Chief of Staff  
Council on Environmental Quality  
730 Jackson Place, N.W.  
Washington, D.C. 20503

Dear Ms. Neumayr:

*Re: CEQ-2018-0001, Update to Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act*

Based on my experience as a former Deputy General Counsel of the Council on Environmental Quality (CEQ) and a National Environmental Policy Act (NEPA) practitioner for over 35 years, I have prepared the following comments in response to CEQ's Advance Notice of Proposed Rulemaking (83 Fed. Reg. 28591 (June 20, 2018)). I have included the question numbers to which I am responding, although I am not providing comments on all questions.

For 40 years, the CEQ regulations have served to implement NEPA's goals as articulated by Congress, and they continue to do so. The answers to most of the questions posed in the Advance Notice of Proposed Rulemaking depend on better implementation of the existing CEQ regulations by federal agencies rather than on amending those regulations. Better implementation requires substantial increases in funding to federal agencies to allow them to meet their statutory obligations under the Act. Additional funding for NEPA implementation by federal agencies is the best way to increase efficiency and improve the effectiveness of the NEPA process to protect and enhance environmental quality.

On a more practical level, the CEQ regulations and the NEPA requirements they implement have been the subject of myriad court cases, CEQ guidance documents, and individual federal agency regulations and guidance documents for over 40 years. Amending the regulations *will* result in extensive and expensive delays as new regulations are interpreted by federal agencies and the courts. For that reason, the perceived benefits of amending the CEQ regulations to improve efficiency and effectiveness must be carefully weighed against the certain disruptive consequences of amending those regulations.

## **NEPA Process**

The CEQ regulations currently provide many recommendations for reducing delay and increasing efficiency in the NEPA process (see, e.g., 40 CFR 1500.4, 1500.5, 1506.2, and 1506.3). Federal agencies fail to implement these available provisions. The answer is to improve implementation, not to revise the regulations. Many improvements can only be made with additional funding to the federal agencies for this purpose.

### *1. Multiple Agency Reviews*

The CEQ regulations currently provide for a lead agency if more than one federal agency is involved (40 CFR 1501.5). Inefficiency is introduced in situations where no federal agency is willing to take on the responsibility of being the lead agency. Even when a lead agency is named, the other federal agencies involved do not always participate in the NEPA process to the extent required, resulting in delays over which the lead agency has no control.

In addition, federal agencies may not have sufficient resources to serve as a lead agency, federal agency decision points for the same proposal may not be aligned, and some federal agency permitting decisions may need more specific design or project data than is required for other types of federal decisions. A revision to the regulations cannot fix these problems.

### *2. Efficiency of the NEPA Process*

The CEQ regulations currently provide for, and encourage, the use of environmental studies, analyses, and decisions conducted in prior environmental reviews (see, e.g., 40 CFR 1502.21). An agency seeking to use prior documentation must verify that the information is relevant and still accurate. Agencies' failures to use the existing incorporation by reference provision will not be cured by a revision to the regulations.

### *3. Interagency Coordination*

As noted in response to Question 1, the CEQ regulations currently provide for interagency coordination of environmental reviews. Failure of agencies to engage in such coordination is not related to the wording of the CEQ regulations and will not be solved by revising the regulations.

## **Scope of NEPA Review**

### *4. Format, Page Length, and Time Limits*

Imposing a firm format, page length, or time limit for each NEPA proposal is counterproductive. Each federal action is different and thus requires a different approach. Blind obedience to format, page length, or time limit will likely result in litigation arguing that the resulting NEPA document is insufficient and that the process was arbitrary and capricious.

The CEQ regulations currently suggest a useful format for NEPA documents (40 CFR 1502.10) that most agencies do follow. In addition, the regulations suggest establishing appropriate time limits (40 CFR 1500.5(e) and 1501.8) and page limits (40 CFR 1502.7). Agencies rarely take advantage of the opportunity to establish time limits or to reduce the page count. Again, this is a failure of implementation, not a shortcoming of the CEQ regulations.

Another regulatory provision that federal agencies do not take advantage of is the ability to summarize an environmental impact statement (EIS) and circulating the summary instead of the entire document “if the latter is unusually long” (40 CFR 1500.4(h)). In current practice, almost all EISs are “unusually long” – well over 500 pages and up to thousands of pages including appendices. No one benefits from such documents: neither agency staff nor agency decision-makers nor members of the public read them in their entirety. These NEPA process participants rarely read more than the summary, which itself can be over 100 pages for complex documents.

Thus, a thoughtful addition to the CEQ regulations would be a requirement that agencies circulate what is now referred to as a summary as the EIS itself. Supporting material would not accompany the (summary) EIS but must be posted online the same day the EIS is made public and provided electronically or in hard copy upon request. In addition, to accommodate those who do not use or have access to electronic media, the supporting material must also be made immediately available in libraries and federal agency offices. Such supporting material would include background information (e.g., Federal Register notices, scoping summaries) and the environmental impact analyses prepared regarding the proposal and alternatives that are typically included in appendices (see 40 CFR 1502.18). As is currently encouraged, other material can simply be incorporated by reference (40 CFR 1502.21).

With respect to environmental assessments (EA), CEQ guidance advises federal agencies to keep the length of EAs to 10 – 15 pages (Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations (40 Questions), 46 Fed. Reg. 18026 (1981), Question 36a). Moreover, this guidance states that agencies should avoid preparing lengthy EAs and, in most cases, a lengthy EA indicates that an EIS is needed (40 Questions, Question 36b). Thus, for EAs, CEQ could consider imposing a 10 – 15 page limit as a way to enforce the statutory requirement to prepare EISs for “major federal actions significantly affecting the quality of the human environment.”

##### *5. Focus on Significant Issues*

The CEQ regulations currently instruct agencies to “focus on significant environmental issues and alternatives” (40 CFR 1502.1) and to discuss impacts “in proportion to their significance” (40 CFR 1502.2(a)). Agencies are failing to implement this requirement as written; revisions to the regulations are not necessary.

## *6. Public Involvement*

This is an area in which improvements to the CEQ regulations can be made. However, any revisions will only be effective to the extent they are actually and enthusiastically embraced by the federal agencies.

Too often agencies avoid obtaining and responding to public input in a misguided effort to save time. This results in disgruntled stakeholders such as environmental groups who feel they must pursue litigation in order to be heard. Litigation then introduces lengthy time delays and great expense, adversely affecting the federal agencies and private companies that may be seeking permit approvals from the agencies.

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Lucinda Low Swartz  
Comments on CEQ ANPR  
August 10, 2018  
Page 8

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Lucinda Low Swartz  
Environmental Consultant

cc: Edward A. Boling, Associate Director for NEPA

## RE: NEPA Comments

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**From:** "Boling, Ted A. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=eae5b047f871428b9b46baf8afd1176a-bo">  
**To:** Jonathan Shuffield <jshuffield@naco.org>  
**Date:** Fri, 10 Aug 2018 11:35:08 -0400  
**Attachments**  
: 2018-14821.pdf (212.33 kB)

Sorry, Jonathan. The deadline was extended to August 20, not September 5. Please see the attached for filing information.

Best,

Edward A. Boling  
Associate Director for the  
National Environmental Policy Act  
Council on Environmental Quality  
730 Jackson Place  
Washington, DC 20503

**From:** Jonathan Shuffield <JShuffield@naco.org>  
**Sent:** Friday, August 10, 2018 11:07 AM  
**To:** Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** [EXTERNAL] NEPA Comments

Hey, Ted. How are you doing?

I wanted to reach out to you regarding comments for CEQ-2018-0001. I heard that the deadline was extended to Sept. 5 for comment submission. Is that the case? I've been on vacation the past 10 days or so am somewhat out of the loop. Thanks!

Sincerely,

**Jonathan Shuffield**  
**Associate Legislative Director for Public Lands and the Western Interstate Region**  
**National Association of Counties**  
Direct: 202.942.4207  
Cell: (b) (6)



[3225-F8-P]

**COUNCIL ON ENVIRONMENTAL QUALITY**

**40 CFR Parts 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, and 1508**

**[Docket No. CEQ-2018-0001]**

**RIN: 0331-AA03**

**Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act**

**AGENCY:** Council on Environmental Quality (CEQ).

**ACTION:** Advance Notice of Proposed Rulemaking; extension of comment period.

**SUMMARY:** On June 20, 2018, the Council on Environmental Quality (CEQ) published an advance notice of proposed rulemaking (ANPRM) titled “Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act.” The CEQ is extending the comment period on the ANPRM, which was scheduled to close on July 20, 2018, for 31 days until August 20, 2018. The CEQ is making this change in response to public requests for an extension of the comment period.

**DATES:** Comments should be submitted on or before August 20, 2018.

**ADDRESSES:** Submit your comments, identified by docket identification number CEQ-2018-0001 through the Federal eRulemaking portal at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments

cannot be edited or removed from <https://www.regulations.gov>. CEQ may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (e.g., audio, video) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make.

Comments may also be submitted by mail. Send your comments to: Council on Environmental Quality, 730 Jackson Place, N.W., Washington, DC 20503, Attn: Docket No. CEQ-2018-0001.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Boling, Associate Director for the National Environmental Policy Act, Council on Environmental Quality, 730 Jackson Place, N.W., Washington, DC 20503. Telephone: (202) 395-5750.

**SUPPLEMENTARY INFORMATION:** On June 20, 2018, CEQ published an ANPRM titled "Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act" in the *Federal Register* (83 FR 28591). The original deadline to submit comments was July 20, 2018. This action extends the comment period for 31 days to ensure the public has sufficient time to review and comment on the ANPRM. Written comments should be submitted on or before August 20, 2018.

Mary B. Neumayr,

*Chief of Staff, Council on Environmental Quality.*

[FR Doc. 2018-14821 Filed: 7/10/2018 8:45 am; Publication Date: 7/11/2018]

## RE: Regulations.gov update: follow-up

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**From:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
**To:** "Boling, Ted A. EOP/CEQ" (b) (6) "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**Date:** Mon, 13 Aug 2018 15:25:36 -0400

This item should be done before Aaron goes on vacation. I've added proposed resolution of my 3 questions below. Please let me know if these approaches are acceptable.

---

**From:** Mansoor, Yardena M. EOP/CEQ  
**Sent:** Friday, August 10, 2018 3:49 PM  
**To:** Boling, Ted A. EOP/CEQ <(b) (6)> Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** RE: Regulations.gov update: another ~600 comments today

Here is the list of mail and email submittals received at CEQ.

I see 4 submittals definitely to be posted to regulations.gov docket. To proceed, I need to resolve questions in the notes column.

- Are two postcards sent before the ANOPR was published to be counted in as comments? **[No, these short messages were submitted in advance and are not responsible to the ANOPR.]**
- Should mail/email submittals that duplicate portal submittals be posted? **[No, that is not necessary.]**
- Should the Indian Health Service letter be posted? It isn't currently on regulations.gov. **[No, it should be handled as an interagency comment.]**

Then the question of whether I can have access to the portal docket should be resolved.

Mail			Notes
M-0001	Katherine Delanoy(?)	General	Do not weaken NEPA. <b>[Is this a cmt?; postcard before ANOPR.]</b>
M-0002	Schemy(?)	General	Save NEPA. <b>[Is this a cmt?; postcard before ANOPR.]</b>
M-0003	Indiana Wildlife Federation	Extension	Requests 60-day extension. <b>Post to portal.</b>
M-0004	Chesapeake Bay Foundation, Alison Prost	Extension	Requests 60-day extension. [Duplicate of Portal 0041.]

M-0005	Maryland Nonprofits, Henry Bogdan	Extension	Requests 60-day extension. [Duplicate of Portal 0260.]
M-0006	Duchesne County, Utah, Michael Hyde	Yes	Comments on all questions. Duplicate of Portal 0269.]
M-0007	Brandt Mannchen	Yes	Responds to all except some definitions. <b>Post to portal.</b>
M-0008	Northwest Indian Fisheries Commission, Justin Parker	Extension	Requests 60-day extension. [Duplicate of Portal 0538.]
M-0009	Indian Health Service, Public Health Service/HHS, Gary Hartz	Yes	Responds to several questions. <b>[Not submitted through portal; don't post, move to Agency Input tab?]</b>
<b>Email</b>			
E-0001	The Partnership Project (353 orgs.)	Extension	Requests 60-day extension, public hearings. [Duplicate of Portal 0232.]
E-0002	The Nature Conservancy, Karen Onley	Extension	Requests 60-day extension. <b>Post to portal.</b>
E-0003	Aurora Janke for Attorneys General of WA, MD, MA, NJ, NY, and OR	Extension	Requests at least 60-day extension, public hearings. [Duplicate of Portal 0200.]
E-0004	36 law professors with NEPA expertise	Extension	Request 90-day extension. [Duplicate of Portal 0199.]
E-0005	Association of Metropolitan Water Agencies, Diane VanDe Hei; American Water Works Association, Tracy Mehan	Extension	Requests 60-day extension. [Duplicate of Portal 0023.]
E-0006	Nicholas Churchill Yost, Former General Counsel, Council on Environmental Quality	Yes	Discusses principles for revising the regulations, responds to several questions, and provides recommended wording for changes. <b>Post to portal.</b>
E-0007	Lucinda Low Swartz, Esq.	Yes	Discusses principles for revising the regulations, responds to several questions. [Duplicate of Portal 3760.]

**From:** Boling, Ted A. EOP/CEQ  
**Sent:** Thursday, August 9, 2018 1:41 PM  
**To:** Mansoor, Yardena M. EOP/CEQ <(b) (6)> Drummond, Michael R. EOP/CEQ <>  
**Subject:** RE: Regulations.gov update: comment tally doubled

OK – I think we should post all the comments that have been mailed/emailed into CEQ.  
 Yardena – can you do that, or should we ask Aaron to administer it?

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**From:** Mansoor, Yardena M. EOP/CEQ  
**Sent:** Thursday, August 9, 2018 12:31 PM  
**To:** Drummond, Michael R. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** RE: Regulations.gov update: comment tally doubled

Correct, Nick Yost's comments are not posted but an unrelated Yost posted weeks ago.

Many of the new comments are a campaign, stating:

As an advocate and supporter of our national parks, I am writing in opposition to the proposed updates to implementing regulations for the procedural provisions of the National Environmental Policy Act (NEPA).

NEPA is vital to ensuring federal actions receive the necessary review and public input before making decisions that impact national parks, the environment and human health.

I am concerned the current effort to "streamline" processes under NEPA will lead to less public participation, uninformed decision-making, and serious environmental consequences. This is not the right path for our national parks or our communities, which depend on thoughtful decisions to protect air, water, and lands now and in the future.

Rather than making unnecessary changes, federal agencies should instead focus on effectively implementing the current regulations. With sufficient staff, training and resources, agencies may better ensure projects move forward in a timely fashion that is good for the environment and our communities.

Thank you for considering my views.

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**From:** Drummond, Michael R. EOP/CEQ  
**Sent:** Thursday, August 9, 2018 12:03 PM  
**To:** Boling, Ted A. EOP/CEQ <(b) (6)> Mansoor, Yardena M. EOP/CEQ <(b) (6)>  
**Subject:** RE: Regulations.gov update: comment tally doubled

No, but there are some comments from a Gaylord Yost.

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**From:** Boling, Ted A. EOP/CEQ  
**Sent:** Thursday, August 9, 2018 11:59 AM  
**To:** Mansoor, Yardena M. EOP/CEQ <(b) (6)>  
**Cc:** Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** Re: Regulations.gov update: comment tally doubled

Is Nick's up there?

Sent from my iPhone

On Aug 9, 2018, at 11:35 AM, Mansoor, Yardena M. EOP/CEQ <(b) (6)> wrote:

After no update Mon-Wed, today our comment tally on [regulations.gov](https://www.regulations.gov) went from 1481 to 3182. This will be interesting.

Yardena

# Additions to the Regulations.gov docket

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**From:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
**To:** "Szabo, Aaron L. EOP/CEQ" <(b) (6)>  
**Cc:** "Boling, Ted A. EOP/CEQ" (b) (6); "Drummond, Michael R. EOP/CEQ" (b) (6)  
**Date:** Tue, 14 Aug 2018 10:10:47 -0400  
**Attachments** E-0002.pdf (82.52 kB); E-0006 Nicholas Yost.pdf (137.08 kB); M-0003.pdf (187.08 kB); M-0007.pdf (2.4 MB)

Aaron,

Attached are 2 mail and 2 email documents that were sent to CEQ in response to the ANOPR but not also submitted through the portal. (We also received 4 by mail and 4 by email that duplicate portal submittals.) Please let me know the resulting docket ID numbers.

Let me know if I can be of further assistance.

Yardena

Mail		(b) (5)
M-0003	Indiana Wildlife Federation	
M-0007	Brandt Mannchen	
Email		
E-0002	The Nature Conservancy, Karen Onley	
E-0006	Nicholas Churchill Yost, Former General Counsel, Council on Environmental Quality	



Kameran Onley  
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The Nature Conservancy  
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konley@tnc.org

nature.org

June 26, 2018

Edward A. Boling  
Associate Director for NEPA  
Council on Environmental Quality  
730 Jackson Place, NW  
Washington, DC 20503

RE: Request for Sixty-day Extension for Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA) (Docket No. CEQ-2018-0001).

Dear Mr. Boling:

I am writing to request a sixty-day extension to the comment period for CEQ's advanced notice of proposed rulemaking (ANPRM) to "Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act" (Docket No. CEQ-2018-0001).

Our mission at The Nature Conservancy is to conserve the lands and waters on which all life depends. Today, we operate in all 50 U.S. states and contribute to conservation outcomes in 72 countries around the world. Environmental laws adopted over the last five decades in the United States have dramatically improved the quality of the nation's air and water, reduced the public's exposure to harmful chemicals, given the public a greater voice in government decisions, and conserved our fish, wildlife, and other natural resources. Generations of Americans have benefitted from this legacy of leadership in environmental protection.

Because of its broad application to federal actions, strong commitment to public engagement, and pathways for scientific input to inform and improve our decision making, the National Environmental Policy Act (NEPA), as implemented by CEQ regulations, is one of the most important bedrock environmental laws in the United States. Given the importance of NEPA and implementing regulations, and the complexity of the issues implicated by the questions posed in the ANPRM, I am requesting an extension of the public comment period.

An extension of the comment period is necessary to provide sufficient time to provide detailed responses to the questions in the ANPRM that will be most useful to the rule-making process, and to ensure that the general public has a sufficient opportunity to be made aware of this process and provide input. Accordingly, I respectfully request no less than a sixty-day extension of the comment period from the originally proposed end date for the ANPRM to Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act.

Sincerely,

A handwritten signature in black ink that reads "Kameran L. Onley".

Kameran L. Onley  
Director, U.S. Government Relations  
The Nature Conservancy

Response to Request for Comments  
Docket ID No. CEQ-2018-0001  
August 6, 2018

Nicholas Churchill Yost  
Former General Counsel  
Council on Environmental Quality

[Nicholasc.yost@icloud.com](mailto:Nicholasc.yost@icloud.com)

Introduction

As the former General Counsel of the Council on Environmental Quality and the principal draftsman of the CEQ NEPA Regulations, 40 CFR Parts 1500-1508, let me start with some overall observations:

- CEQ is to be congratulated on the public nature with which this undertaking has commenced (and for responding affirmatively to the public's request for more time within which to comment). I trust that these congratulations can be repeated at the end of the process.
- Bear in mind that the existing regulations were the product of extensive public involvement and receptivity to the concerns of all involved segments of American society. When finalized (in 1978) they were greeted with praise from the range of stakeholders, from the U.S. Chamber of Commerce to the National Governors Association to the Natural Resources Defense Council and the Sierra Club (See: "Streamlining NEPA—an Environmental Success Story," 9 B.C. Envtl. Aff. L. Rev. 507 (1981-1982)). That inclusive process is in part responsible for the Regulations having existed for four decades and through the administrations of seven Presidents with only one substantive amendment to one section.
- The fact of 40 years experience, including judicial review, militates in favor of keeping changes to the Regulations to necessary minimums. There exists nationwide judicial experience with the law and the Regulations which substantive changes can only undo. New provisions can only lead to new and expanded litigation.
- Any changes should be stylistically consistent with the existing Regulations—taut and clear. (The existing Regulations, 40 CFR Parts 1500-1508, dealing with American's most pervasive environmental law, are a model of succinct direction, taking up only 18 pages of the Federal Register.)

- Any amendments would have to be adopted through the APA notice and comment provisions so as to preserve the “substantial deference” which the Supreme Court has accorded them. Andrus v. Sierra Club, 442 U.S. 347 (1979).
- While, as will be evident from my recommendations set out below, I believe there are measures that can and should be taken to streamline NEPA’s application, there are also measures, fundamental to NEPA’s application, which should not be taken—measures which would not cut the fat but the muscle.

--Actions causing environmental impact should not be exempted from NEPA.

--The requirement fully to examine alternatives should not be eliminated.

--The public’s input into the NEPA process should not be reduced.

--Judicial review, responsible for NEPA’s effectiveness, should not be curtailed.

- That said, I believe there are areas where—with the perspective of four decades—the Regulations could be amended and improved. I discuss those areas in detail in response to the matters on which the Council has invited comment. The two most pervasive recommendations relate to:

--Reducing delay in the NEPA process (which will also result in reducing cost). Despite the Council’s explicit direction with respect to time limits (40 CFR 1501.8, 1500.5) and reducing paperwork (length of an environmental document (40 CFR 1500.4, 1502.7), delay (and needlessly verbose documents) remains a real and legitimate concern.

--Giving greater direction with respect to the preparation of Environmental Assessments (EAs). While the Regulations deal in detail with Environmental Impact Statements (EISs) they slight EAs, despite the fact that on average about 40,000 EAs are prepared each year as compared with 500 EISs.

- At earlier stages I set out in detail my recommendations both with respect to the Regulations and to NEPA itself. Those recommendations remain valid today.

--Memorandum from me to CEQ officials entitled "Suggestions re CEQ NEPA Regulations" dated Jan. 5, 2010.

--Testimony I submitted before the House of Representatives Task Force on Updating the National Environmental Policy Act (chaired by Rep. Cathy McMorris Rodgers), Committee on Resources, Nov. 17, 2005, in which I made proposals for streamlining NEPA while at the same time identifying matters which should not be adopted because they would undercut NEPA's basic mission—to look before you leap environmentally.

### Responses to Requests for Comment

Many of CEQ's requests for comment identify areas meriting thoughtful consideration, but—except as otherwise specified—I do not see the need for the Regulations to be amended. Generally, as stated above, I think the Regulations should be amended only to respond to a specific demonstrated need, both by reason of public familiarity and to deter whole new rounds of litigation revisiting issues judicially settled over the past four decades.

Specific suggestions for regulatory language to address certain of my recommendations appear at the end of these comments. I follow CEQ's numbering system in these responses:

2. Reliance should be conditioned, on a NEPA-like public review, comment, and response process for the document sought to be relied upon.
4. I see no issue with format. The page limits provision is sound, but rarely enforced. CEQ needs to see to that enforcement. I discuss the exceedingly important time limits provision below (#19) in the context of measures to reduce delay.
6. I discuss the desirability of greater guidance with respect to Environmental Assessments under 19c. Along with that general direction, attention is needed to the role of public participation in EAs. CEQ never gave guidance on the extent to which EAs should be part of a public process (in part because of the conflicting tugs of not wanting to hide anything from the public while recognizing that public participation in all 40,000 EAs prepared each year would clutter up the system). The courts have, unsurprisingly, given the lack of direction, gone all over the map on this. Two cases seem to me to have got the balance right, and I urge mention of them in any preamble: Sierra Nevada Forest Protection Campaign v. Weingardt, 376 F. Supp. 984 (E.D. Cal. 2005), which was in turn cited with

approval in Bering Strait Citizens for Responsible Resource Development v. U.S. Army Corps of Engineers, 511 F.3d 1011, 1025-26 (9<sup>th</sup> Cir. 2008). (It is worth noting that the District Court case was decided by Chief Judge Levi, a Republican, son of President Ford's Attorney General, and Dean of Duke Law School until this year, while the 9<sup>th</sup> Circuit opinion was authored by Judge Gould, a Democrat and Clinton appointee. (Both judges were U.S. Supreme Court clerks.)) You will see that I lifted some of Judge Levi's language in 1506.6(a).

7. For the reasons stated above, none of these definitions should be amended.
8. Same as 7.
9. CEQ has provided insufficient guidance with respect to Environmental Assessments (EAs). Each year, according to CEQ's numbers, about 500 Environmental Impact Statements (EISs) are prepared (and since EISs are prepared in both drafts and finals, that represents statements on about 250 actions annually), while during the same year 40,000 EAs are prepared. Thus, the vast majority of actions analyzed under NEPA are the subject of EAs rather than EISs, but while an entire part of the CEQ NEPA Regulations (40 CFR Part 1502) is devoted to EISs, essentially no guidance beyond timing and the definition, is given for EAs (*see*: 40 CFR 1501.3, 1501.4, 1506.5(b), 1508.9, 1508.13). Neither users nor courts have much sense as to how to prepare, circulate, or make public an EA. There is no direction on drafts, final, and supplemental EAs (if such are to exist). Even the page limits which appear in the Regulations for an EISs (40 CFR 1502.7), appear only in CEQ's Forty Questions for EAs. There is no direction as to whether devices like tiering, adoption, incorporation by reference, or incomplete or unavailable information are to be applicable to EAs. I propose that CEQ make these streamlining measures, presently applicable to EISs, also apply to EAs.
- 9d. CEQ's early, informal guidance (CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, 46 Fed. Reg. 18026, 18038 (Mar. 23, 1981) for using Mitigated Findings of No Significant Impact (Mitigated FONSI) was at variance with the unanimous consensus of the Courts of Appeal and was later withdrawn. It would be useful if the Regulations reflected that.

By way of background, despite the skepticism initially expressed in CEQ's Forty Questions, the courts upheld "mitigated FONSI," taking the view that NEPA was intended to lead to environmentally better results, and if paperwork (i.e., an EIS) could be bypassed and the environmental goal attained, that was a good thing. *See, e.g., Cabinet*

Mountains Wilderness v. Peterson, 685 F.2d 678 (D.C. Cir. 1982). I think it due time that CEQ catch up with the courts and the universal agency practice and formally amend the Regulations to recognize the validity of mitigated FONSI. (CEQ has informally done so.) At the same time I suggest—responding to the concerns which underlay CEQ’s original skepticism (that backroom deals between agencies and developers could bypass NEPA’s public involvement)—provisions to ensure that potentially significant and highly controversial mitigated FONSI go through a public process. Also see 9f. below.

- 9f. The Regulations have been insufficiently clear on the enforceability of the Records of Decision and Mitigated Findings of No Significant Impact and therefore I suggest reinforcing 1505.3 to that end. See: Tyler v. Cisneros, 136 R.3d 603 (9<sup>th</sup> Cir. 1998) (enforcing mitigated FONSI provisions). Appropriate language is attached.
10. The provisions relating to the timing of agency action should not be revised. Specifically the timing of the Record of Decision (ROD) to follow the Final Environmental Impact Statement by not less than 30 days (40 CFR 1506.10 (b)(2)) should be retained consistent with the limitations of 42 USC 4332a. Often the public comments on the Final EIS (with its more developed information than the Draft EIS). Elimination of the 30-day comment period before the ROD seriously diminishes the public’s opportunity to comment.
14. When the Regulations were adopted, Climate Change was not perceived as the central environmental issue it is today. The CEQ Regulations therefore makes no specific mention of it. They should, recognizing that climate change is an environmental issue meriting discussion in NEPA documents in the same manner as other environmental impacts.

The courts regularly hold that NEPA encompasses climate change (*see, e.g., Center for Biological Diversity v. NHTSA*, 538 F.3d 1172 (9<sup>th</sup> Cir. 2008)). CEQ should not be lagging behind the courts (but can also take protection from the fact that CEQ would only be reflecting what the courts have said on the law). CEQ would not be “expanding” NEPA but rather following the courts in recognizing that climate change is an environmental impact within the meaning of NEPA.

CEQ earlier issued nonbinding guidance on how most efficiently agencies should analyze climate change in NEPA documents—and then withdrew it. Such guidance (of something similar to it) should be reissued.

Again, CEQ is not making climate change an issue. Rather, as the courts have held, it is an impact encompassed within the environment that Congress directed to be studied. But, how to study such an impact raises legitimate questions. CEQ, by issuing “how to” guidance performs a service to the agencies (that otherwise can take differing and unpredictable approaches) and to the public. The alternative is for diverse agencies to adopt inconsistent approaches or for the courts to make their own interpretations.

18. The Regulations presently provide for Tribal input with respect to impacts on reservation. This should be broadened to include off-reservation impacts which affect Tribal interests.
19. This is the most important provision responsive to the often legitimate complaints about the length of time the NEPA (and other environmental) process takes.

During the adoption of the CEQ NEPA Regulations the single issue of greatest concern to the business community (represented through the U.S. Chamber of Commerce) was that of delay—the time it took to go through the NEPA process. We at CEQ thought we were fully addressing that issue, both by an assembly of measures aimed at reducing delay (40 CFR 1500.5 and sections cross-referenced there) and by a specific section on time limits including a mandatory provision directing that agencies “shall set time limits” for the NEPA process whenever the applicant so requests. (40 CFR 1501.8).

That is as strong a directive as you can make it, but the provision is rarely invoked. Applicants do not request time limits (perhaps for fear of alienating the lead agency in whose hands the future of a project may lie). Clearly more is needed. All will benefit—the applicant because there will be time limits on its projects, but also, those concerned with the environment because successfully addressing the issue of excessive delay will diminish assaults on NEPA and enable a focus on the goal of better, more environmentally sustainable decisions.

There are multiple reasons for delays on the NEPA process, including:

- Lack of deadlines.
- Lack of determination to reduce delays on the part of those implementing the Act. Command direction is needed (and, when provided, can be highly successful).

- Lack of resources. Quite simply, if the agency personnel aren't there, they cannot do the job in a timely fashion.
- Fear of litigation which can lead to overcaution which in turn can lead to delay. This is more a perception than a reality. Only a small proportion of processes result in judicial challenges, and only a small proportion of such challenges results in injunctive relief. In one typical recent year 99.97% of NEPA actions were successfully completed without injunctive relief—hardly enough to cause a high level of concern. (At the same time the prospect of such relief if a project proponent attempts to shortcircuit NEPA and the Regulations encourages compliance—doing a good job in the first place.)
- Lack of cooperation by agencies which are supposed to be “cooperating agencies” under NEPA 40 CFR 1501.6, 1508.5.
- There can be complex substantive issues which legitimately take time to analyze and resolve (e.g., Clean Air Act conformity, wetlands determinations, Transportation Act sec. 4(f), indirect impacts, cumulative impacts, etc.).
- In adopting the Regulations, CEQ steered clear of adopting universal time limits because of the diversity of actions covered. One size does not fit all. The same time limit needed for a TransAlaska pipeline as for an Interstate highway interchange does not make sense.

A potential solution could be for CEQ to adopt presumptive time limits, such that EISs are required to be completed in a discrete period of time absent special circumstances warranting lesser or greater time periods. CEQ could impose by Regulation a set of 3 or 4 presumptive time limits for the NEPA process (for EISs; same could be done for EAs). (Or CEQ could require each agency to prescribe such categories). Category A might involve 10 months for an EIS process (running from the Notice of Intent (NOI) through the Record of Decision (ROD)); Category B 15 months, and so on. At the outset of the process, perhaps as part of scoping, the lead agency would (in consultation with the applicant (if any) and with agencies with jurisdiction by law or special expertise, and in the case of actions with the

potential for controversy, the public), assign the action to one of the time limit categories. Some sort of flexibility for unforeseen circumstances or unusual situations would be needed, but as a general rule those affected by the NEPA process will have a predictable schedule for the completion of the process. The fact of having a time limit will drive the process. This is the single most important measure needed to reduce delay.

For other suggestions on reducing delay see my testimony before the House NEPA Task Force, cited above.

#### Specific Proposals for Regulatory Language to Implement Certain of the Above Recommendations

In drafting specific language, I have not tampered with existing section numbers so as not to cause confusion in the courts and elsewhere.

- New 1501.3.1 is added between 1501.3 and 1501.4:

##### **1501.3.1 How to prepare an environmental assessment [or Preparation of an environmental assessment].**

(a) Agencies shall prepare environmental assessments in compliance with Sec. 1508.9

(b) Mechanisms to reduce paperwork (Sec. 1500.4) and to reduce delay (Sec. 1500.5) may be used with environmental assessments. Specifically, those measures include but are not limited to scoping (Sec. 1501.7), time limits (Sec. 1501.8), incorporation by reference (Sec. 1502.21), adoption (Sec. 1506.3), and combining documents (Sec. 1506.4)

(c) Tiering (Secs. 1502.20, 1508.28) may be employed from an environmental impact statement to an environmental assessment and may be employed from an environmental assessment which has been subject to the provisions of subsection (d) below to another environmental assessment.

(d) Environmental assessments on actions which have a high potential to become the subject of environmental impact statements or are actions which are likely to be highly controversial shall be circulated to agencies and the public in draft and final form and may be supplemented in the same manner as environmental impact statements. (Sec. 1502.9).

- Sec. 1501.4 (e)(1) is amended to read as follows (the added portions being underlined):

#### **1501.4 Whether to prepare an environmental impact statement.**

(e)(1) The agency shall make the finding of no significant impact available to the public as specified in Secs. 1501.3.1 and 1506.6.

- Sec. 1505.3 is amended to read as follows (the added portions being underlined):

#### **1505.3 Implementing and enforcing the decision.**

Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (Sec. 1505.2(c) and other conditions established in the environmental impact statement or during its review and committed as part of the record of decision (Sec. 1502.2) and comparable mitigation and other conditions in findings of no significant impact (Sec. 1508.13) at the conclusion of the environmental assessment process (Secs. 1501.3.1 and 1508.9) shall be implemented by the lead agency or other appropriate consenting agency. Records of decision and findings of no significant impact are intended to be enforceable documents to ensure that what was decided by the agency in its NEPA process is in fact implemented.

The lead agency shall:

- (a) Include appropriate conditions in grants, permits or other approvals.
- (b) Condition funding and approvals of actions on mitigation.
- (c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.
- (d) Upon request, make available to the public the results of relevant monitoring.

- Sec. 1506.6(a) is amended to read as follows (the added portions being underlined):

## 1506.6 Public involvement

Agencies shall:

(a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures. Agencies shall offer significant predecisional opportunities for informed public involvement in their NEPA processes.

- 1506.6 (b)(3)(ii) is amended to read as follows (the added portion being underlined):

(ii) Notice to Indian tribes when effects may occur on reservations or when the interests of the tribe are otherwise affected.

- Sec. 1506.6(f) is amended to read as follows (the added portion being underlined)

(e) Make environmental impact statements, environmental assessments, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other agencies, including the Council.

- 1506.7 is amended to read as follows, adding the added portion being underlined):

## 1506.7 Further Guidance.

(d) Issue guidance to agencies, the courts, and the public on how best to consider the environmental impacts of climate change in NEPA documents.

- 1508.8, last paragraph is amended to read as follows (the added portion being underlined):

## 1508.8 Effects

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources

and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, climate, health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

- 1508.13 is amended to read as follows (the added portions being underlined):

**1508.13 Finding of no significant impact.**

“Finding of No Significant Impact” means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (Sec. 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (Sec. 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussions in the assessment but may incorporate it by reference. Mitigated findings of no significant impact shall be prepared in accord with Sec. 1508.19.1.

- New 1508.19.1 is added between 40 CFR 1508.19 and 1508.20:

**1508.19.1 Mitigated finding of no significant impact.**

A “Mitigated Finding of No Significant Impact” means a finding of no significant impact when the lack of potential significance is achieved by the establishment of enforceable mitigation (Secs. 1505.3, 1508.20) which results in impacts falling below the level of significance (Sec. 1508.27). Such mitigated findings of no significant impact will be made available to the public as provided in Secs. 1501.3.1 and 1506.6.

Conclusion

I trust these recommendations are helpful to CEQ and to the public. If I can be of further assistance please do not hesitate to contact me at [Nicholasc.yost@icloud.com](mailto:Nicholasc.yost@icloud.com)

Nicholas C. Yost  
Santa Rosa, California



**INDIANA  
WILDLIFE  
FEDERATION**

**CONSERVATION.**

**EDUCATION.**

**ADVOCACY.**

Edward Bolling  
Director for the National Environmental Policy Act  
Council on Environmental Quality  
730 Jackson Place, N.W.  
Washington, DC 20503

**Re: Comment period extension request for Advanced Notice of Proposed Rulemaking-** Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act RIN: 0331-AA03

Dear Mr. Bolling,

The GROUP is writing to request an extension of the comment period to at least 90 days for Council on Environmental Quality's Advanced Notice of Proposed Rule Making (ANPRM) to update "Implementation of the Procedural Provisions" of National Environmental Policy Act (NEPA).

NEPA provides the public with an essential right of public participation and that is all the more vital in a process to revise the regulations that have guided public participation for decades. Given that CEQ's process could fundamentally change how every single agency in the federal government considers the health and environmental impacts of federal decisions as well as public input under NEPA, we believe that a minimum of 90 days is necessary to provide our group, and the public, the time to properly understand and meaningfully respond to the many questions outlined in the ANPRM.

Providing a nominal 30 days for comment is inadequate and will leave out important voices in shaping CEQ'S process. Thank you for your consideration of our request for at least 90 days to comment on this important ANPRM and issue.

Sincerely,

Emily Wood  
Executive Director  
Indiana Wildlife Federation  
[wood@indianawildlife.org](mailto:wood@indianawildlife.org)  
317-875-9453

July 10, 2018

Mr. Edward A. Boling  
Associate Director for National Environmental Policy Act  
Council on Environmental Quality  
730 Jackson Place, N.W.,  
Washington, D.C. 20503

Dear Mr. Boling,

Enclosed are my personal comments regarding the Council on Environmental Quality's (CEQ's) Advanced Notice of Proposed Rulemaking, 40 CFR Parts 1500 through 1508, Docket No. CEQ-2018-0001, proposed update to regulations that implement the procedural provisions of the National Environmental Policy Act (NEPA).

I am concerned about this proposal as someone who has been involved with NEPA since 1977, and has reviewed, read, and or commented on 300 or more Environmental Impact Statements (EISs), Environmental Assessments (EAs), Findings of No Significant Impact (FONSI)s, and Categorical Exclusions (CEs). It concerns me that President Trump has publicly stated that environmental regulations and reviews interfere with businesses. It is my experience that environmental regulations and reviews (like NEPA) help businesses save money and interact in the market place better. Companies that look at their environmental bottom line are economically stronger and better prepared to compete. I hope the CEQ will update the President on the reasons why NEPA was approved by the U.S. Congress, and signed into law by President Nixon, reasons which are still valid 48 years later.

I am concerned that this NEPA regulations/rules change proposal which may rewrite the NEPA procedure, is really an excuse to claim that inefficiencies and ineffectiveness of NEPA need to be resolved. I fear the momentum of talk that says we need to streamline (hurry up the process and give citizens less than a fair amount of time to respond), expedite reviews and approvals for high priority infrastructure projects (defined very broadly), tied to FAST-41 infrastructure permitting, involved with the Federal Permitting Improvement Steering Council, Executive Order 13604 – Improving Performance of Federal Permitting and Review of Infrastructure Projects, and Executive Order 13087 – Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects. This entire effort is directed so that NEPA will be emasculated. **I am opposed to any efforts that make NEPA less strict. NEPA must be stricter so the public has opportunities and time to really participate and is protected from agencies that do not want to listen or take cues from the public.**

**The need to discuss, analyze, evaluate, and assess environmental impacts, positive and negative, under NEPA is critical. It is particularly critical since NEPA is the only nationwide, federal, agency-wide, system-wide public participation process that allows the public to participate in decisions on how to spend citizen's tax dollars on projects that could harm the environment, Quality of Life, social well-being, and economic health of the people of the United States.**

It is vital that the NEPA process not be shortened so citizens have less time to read, review, and comment on mammoth projects and proposals that have EISs, including appendices, that often run to 100's or 1,000's of pages. Most citizens are not going to read, review, and comment on such documents. The few citizens that do are the bulwarks of the NEPA process and need adequate time and availability of documents to do the good work they do. This is a public service that should not be reduced in any way. With regard to the questions that are asked, here are my responses:

**1) Should CEQ's NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so how?**

The devil is in the details. There is always room for improvement. My experience in talking to people at the U.S. Forest Service, National Marine Fisheries Service, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Department of Transportation, Texas Parks and Wildlife Department, Texas Department of Transportation, and many others is that **the most important thing that can be done to allow the NEPA process to go as quickly as possible is to provide adequate funding, staffing, and training for those who do NEPA work.** This is not a "sexy" recommendation but is the foundation for making NEPA work and getting good decisions in a timely fashion.

Oftentimes a cooperating agency (**Section 1501.6**) will not have time to do its work because a lead agency has been late in getting the information it needs (if the information comes at all) to do the review and assessment work and get this back to the lead agency.

**Provision of adequate funding, staffing, and training for NEPA is what is required to make the process work well and quickly. Without this the reports, decisions, etc. that the public gets will be inadequate representations of analysis of environmental impacts and mitigation for those impacts.**

**2) Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State tribal or local environmental reviews or authorization decisions, and if so, how?**

The question assumes that there are environmental reviews that are not used. This is not the case. It is important to include a legal perspective for this because oftentimes one agency in one place will implement NEPA one way while the same agency in another place will implement in another way. **A document that states clearly what the courts have decided about what NEPA should be and do would assist all agencies in the decision on how to implement NEPA.**

**3) Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?**

It sounds as if CEQ does not know that different agencies have different missions. For instance, U.S. Fish and Wildlife Service is the expert when it comes to wildlife and ecosystems and must

use this expertise via the Fish and Wildlife Coordination Act. Often their advice and the science they use is overruled, for example, by the U.S. Army Corps of Engineers, which has much less experience and scientific credibility when dealing with wildlife. The problem is often lead agencies are advocates for projects and therefore do not want cooperating or other agencies to honestly tell them about the problems that their projects have. NEPA is often turned into a self-serving (selfish) process to justify what the lead agency wants (**Sections 1502.2(g) and 1502.5**) and not be neutral and state clearly what environmental impacts are and how they can be mitigated, if mitigation is possible.

**Lead agencies must treat all NEPA decisions neutrally, give other agencies with special expertise recognition, listen, and follow what they say, and lead agencies must give other agencies enough time and the appropriate information so that input back (like planning aid reports) actually occurs and the best information needed for public decisions is used.**

**4) Should the provisions in CEQ's NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?**

The problem is "cookie cutter" requirements for page length and format are not applicable for the vast federal agency, bureau, commission, etc. network that exists. Better training is needed on how to meet voluntary page lengths. Remember, the appendices are often the longest part of the document and can be thousands of pages. There must be some way to put this into perspective so that citizens can read something that is not so voluminous and technical that they give up.

**Better training should be required on how to meet the voluntary page lengths. Make the appendices directly related to the EIS or EA and not filler material.**

**5) Should CEQ's NEPA regulations be revised to provide great clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decisionmakers and the public, and if so, how?**

The key word is "significant". It is obvious that agencies often do not include "significant" issues in EISs and EAs. Better training is need about what significant means.

**Conduct better training about what "significant" is and conduct this training not just for agencies but for the public.**

**6) Should the provisions in CEQ's NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?**

I do not know what is meant by "efficient" for public involvement. Public involvement is inherently messy and must be long enough so that the public can find out about the project and get involved. See **Sections 1500.1(b), 1500.2(b), 1500.2(d), 1500.4(f), 1501.4(b), 1501.7(a)(1), 1501.7(b)(4), 1502.1, 1502.8, 1502.12, 1502.19(c), 1502.19(d), 1502.21, 1503.1(a)(4), 1503.4(a), 1504.3(f)(3), 1505.2, 1505.3(d), 1506.7(a), (b), (c), (d), (e), and (f), 1506.8(c), 1506.9, and 1506.10(b)(2)**, which all deal with public involvement. Many times, people do not even know about a project until the last days or weeks of the public comment period. So better public involvement notification,

longer public comment periods, and ensuring the public does not have to pay for EISs and EAs. NEPA is supposed to encourage and facilitate public involvement (Section 1500.2(d))

I have had to pay \$300 or more to get an EIS from the Texas Department of Transportation (U.S. DOT allowed this) because TxDOT required that I not get a xeroxed paper copy, which is what I wanted, but I had to get a printed color copy, just like the one that is distributed to U.S. Congress persons and other officials, and I was required to pay the full cost of printing the EIS. This drives up the cost of getting a paper copy. I like paper copies because I can write on them, high-light them, and I do not spend tens of hours staring at a computer screen which hurts my eyes.

An EIS or EA should cost the public nothing since the NEPA process is all about public participation and input. No matter what format the public wants the EIS or ES in, they should have one. It is the public's law, public regulations/rules, public process, public money, and should be the public's decision. Very few people want a hard copy but those that do should be able to get them without cost.

There are millions of people who do not have a computer at home and have no avenue other than a hard copy. A copy at the library is not sufficient in many cases because you cannot mark it up, you cannot take it home or read wherever you want, you cannot compare its contents with documents you have at home or in your office, and when you want to read it, others may want to read it at the same time that you do at the library.

**Provide, at no cost to a member of the public, one copy of the EIS or EA in the format he/she wants (hard copy, CD, online, etc.). Change 1506.6(f) to require this by removal of "to the extent practicable" and just say make available to the public "without charge".**

**The CEQ should require that agencies keep a list of people who "may be interested" (Sections 1501.7(a)(1) and 1503.1(a)(4)) in each project and then notify them about scoping and draft EIS public participation and input opportunities.** It is my experience that even when I have expressed interest in a project for years, when an agency finally begins the NEPA process I am not listed and must again express my interest.

**7) Should definitions of any key NEPA terms in CEQ's NEPA regulations, such as those listed below, be revised, and if so, how? A. Major Federal Action, b. Effects, c. Cumulative Impact, d. Significantly, e. Scope, and f. Other NEPA terms.**

The definitions that are listed are good definitions. They should not be changed.

**8) Should any new definitions of key NEPA terms, such as those noted below, be added, and if so, which terms? A. Alternatives, b. Purpose and Need, c. Reasonably Foreseeable, d. Trivial Violation, and e. Other NEPA terms.**

There are no "trivial violations". Either an agency is in compliance, or it is not. Definitions for alternatives, purpose and need, and reasonably foreseeable are not needed.

**9) Should the provisions in CEQ's NEPA regulations relating to any of the types of document listed below be revised, and if so, how? A. Notice of Intent, b. Categorical**

**Exclusions Documentation, c. Environmental Assessments, d. Findings of No Significant Impact, e. Environmental Impact Statements, f. Records of Decision, and g. Supplements.**

The only revision is to require that any agency that prepares an Environmental Assessment (**Sections 1501.3(a) and (b), 1506.5(b), and 1508.9**) circulate that document to the public for a 30-day comment period. Some agencies do this. But unfortunately, others, like the Corps of Engineers, do not. Under the Section 10/404 program the Corps prepares EAs that are not shown to the public, the public does not get to provide any input on them, if the public wants to see an EA it must wait until the permit is approved and then make a Freedom of Information Act request. Then the Corps takes a long time to process the information request and charges money for the EA.

This is supposed to be a public process where there is public input and participation. By requiring that all agencies publish and have a 30-day comment period for EAs it allows the public to find out about, read, review, and comment on proposed projects, proposals, and decisions that affect public permits, public dollars, public land use decisions, public air and water resources, etc.

**10) Should the provisions in CEQ's NEPA regulations relating to the timing of agency action be revised, and if so, how?**

The CEQ should require that instead of a 45-day comment period for an EIS (**Section 1506.10(c)**) that the comment period be at least 60 or 90 days so there is enough time for the public to find out about, read, review, analyze, evaluate, assess, and comment on the project.

**11) Should the provisions in CEQ's NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised, and if so, how?**

The CEQ should require that the agency make the EIS its own and not rely upon a contractor or applicant. Relying upon contractors and applicants means that the agency loses its ability to independently prepare, analyze, assess, and evaluate projects and their environmental impacts. The agency must prepare NEPA documents in-house so that the analysis is neutral and independent and is not biased on behalf of the permit, project, proposal, person, permittee, etc.

**12) Should the provisions in CEQ's NEPA regulations relating to programmatic NEPA documents and tiering be revised, and if so, how?**

The one change that might make a difference is to state how long an EIS is sufficient until it needs to be updated or supplemented. Times change and so does technology, research, and understanding of environmental impacts and EISs should not be in effect forever. I recommend that a reasonable time period for an EIS to remain adequate and sufficient is 10 years.

**13) Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised, and if so, how?**

Yes. There must be a requirement for more than one alternative other than no action. No action is almost never chosen or taken seriously, as it should be. Several alternatives are needed to compare different approaches to the implementation of a proposed project.

A minimum of five alternatives would be sufficient, but in some cases more alternatives than this would be appropriate. Allow there to be a minimum number of five alternatives but allow for more than this.

Too often agencies eliminate alternatives that are not in their jurisdiction but are reasonable alternatives. This should stop as required in **Section 1502.14(c)**. Since many agencies attempt to justify an alternative, they eliminate those that compete with it, that they would not want to implement, or require another agency to implement. Sometimes you need to save the taxpayer money and not do a project.

**14) Are any provisions of the CEQ's NEPA regulations currently obsolete? If so, please provide specific recommendations on whether they should be modified, rescinded, or replaced.**

The provision I want changed is the "emergencies" provision (**Section 1506.11**). In 1998 there was a windstorm blowdown on the National Forests and Grasslands in Texas. I attempted to interact with the U.S. Forest Service and CEQ and got what I considered to be a less than helpful responses.

There must be a stringent definition for what an "emergency" is. An "emergency" is where people are in imminent danger of harm (life-threatening). It does not include saving property or the value of property. It is not about making as much money as possible for the U.S. Forest Service by logging trees that have been blown down.

There should be a public comment period for all "emergencies" and a way to publicize the comment period in a broader way than the Federal Register. Right now, the public does not know when an agency files for an "emergency exemption", the agency does not tell you, and there is no formal way the public can provide input.

Conducting environmental analysis after an action has been done is like shutting the barn door after the horse has left. It robs NEPA of its very purpose and does not implement NEPA. NEPA is supposed to allow full environmental consideration **before** an action is done. **The specific conditions and instances that constitute an "emergency", and only those conditions and instances, should qualify an agency for a possible "emergency" exemption from NEPA. A list, like categorical exclusions, with permissible "emergencies" (but not a broad list that allows anything to be an "emergency") could be prepared by CEQ so that some "emergencies" are already known, can be planned for, can be readily announced, and public input requested quickly.** "Emergencies" should not be used as a cloak to get something accomplished that would not have been allowed without NEPA or would have normally required public input.

**15) Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient?**

Efficiency should never trump the broadest, most inclusive, and comprehensive public participation and input. Several technologies should be used for NEPA including the submittal of comments via paper (mail), internet, CD, or similar ways that people feel most comfortable with and are able to express themselves. Agencies should bend to what people want and feel comfortable with and not use the excuse of efficiency to reduce public input and make submission of public comments a task or barrier instead of easy for a person. Many people still do not have computers and internet access or their internet access is limited.

16) Are there additional ways CEQ's NEPA regulations should be revised to promote coordination of environmental review and authorization decisions, such as combining NEPA analysis and other decision documents, and if so, how?

No. The agencies have the ability right now to coordinate environmental review and authorization decisions. They must decide what is right for them.

17) Are there additional ways CEQ's NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA, and if so, how?

Yes, require mitigation plans be implemented and the results reported to the public and CEQ.

18) Are there ways in which the role of tribal governments in the NEPA process should be clarified in the CEQ's NEPA regulations, and if so, how?

Require that tribal governments be full partners in the NEPA process and kept informed with all opportunities for participation and input. Honor tribal sovereignty.

19) Are there additional ways CEQ's NEPA regulations should be revised to ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible, and if so, how?

No. Efficiency should never trump the broadest, most inclusive, and comprehensive public participation and input

20) Are there additional ways CEQ's NEPA regulations related to mitigation should be revised, and if so, how?

CEQ should require agencies to submit reports that document that mitigation plans or measures have been implemented and the results of that implementation. Then we would know, for different kinds of projects, whether mitigation works, what mitigation works, and what the actual environmental impacts are due to mitigation.

Each agency should submit a report to CEQ yearly enumerating how many NEPA actions occurred or were started, what kind kinds of NEPA actions occurred or were started, and the results of the different kinds of NEPA decisions that were authorized and implemented including mitigation.

I appreciate this opportunity to comment. Please please note any comments or changes to the proposal is released to change NEPA regulations unless I permit you.

Sincerely,

Brent M. ...  
20023 Kings Creek Court  
Austin, Texas 78746  
512-407-0515  
brentm@...com

## RE: Follow-up re regulations.gov docket

---

**From:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
**To:** "Seale, Viktoria Z. EOP/CEQ" <(b) (6)>  
**Cc:** "Boling, Ted A. EOP/CEQ" <(b) (6)> "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**Date:** Wed, 15 Aug 2018 12:14:51 -0400

You are correct – there is a lag of at least a day (sometimes more) between submittal and posting.

The note on the number in the top right corner reads:

\*This count refers to the total comment/submissions received on this *docket*, as of 11:59 PM yesterday. Note: Agencies review all submissions, however some agencies may choose to redact, or withhold, certain submissions (or portions thereof) such as those containing private or proprietary information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. This can result in discrepancies between this count and those displayed when conducting searches on the Public Submission document type. For specific information about an agency's public submission policy, refer to its website or the Federal Register document.

**From:** Seale, Viktoria Z. EOP/CEQ  
**Sent:** Wednesday, August 15, 2018 12:11 PM  
**To:** Mansoor, Yardena M. EOP/CEQ <(b) (6)>  
**Cc:** Boling, Ted A. EOP/CEQ <(b) (6)> Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** RE: Follow-up re regulations.gov docket

Yardena,

Actually the discrepancy I was referring to is the number of comments received in the top-right hand corner of the page (currently 8,466) versus the number listed next to "Comments View All (8,341)". I suspect the difference may be that the number on the top-right hand of the page is a running count of the comments and the number below reflects the number actually posted and there is a bit of a lag in posting, but I'll check with Aaron.

Thanks,  
Viktoria

**From:** Mansoor, Yarden M. EOP/CEQ  
**Sent:** Wednesday, August 15, 2018 12:03 PM  
**To:** Seale, Viktoria Z. EOP/CEQ <(b) (6)>  
**Cc:** Boling, Ted A. EOP/CEQ <(b) (6)> Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** Follow-up re regulations.gov docket

Victoria,

I followed up on your concern as to whether the ANOPR docket numbering is anomalous. Thanks for bringing this to our attention.

As of today, 8341 public submittals are posted. Sorting them by docket ID number, they range from 0006 to 8346. There are 2 primary documents (our FR notices) and 3 supporting documents (from the OMB 12866 review), so the numbering appears correct.

That said, there are certainly some odd submittals: one that just says "hello" and one (7209) that contains unintelligible text English and attaches a photo in two formats.



### Filter Results By...

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- Supporting & Related Material (3)
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8,341 results

Results per page:

#### Comment from Audrey SmithRice, N/A

As an advocate and supporter of our national parks, I am writing in opposition to the proposed updates to imp National

Public Submission Posted: 08/14/2018 ID: CEQ-2018-0001-8346

Organization: N/A Submitter Name: Audrey SmithRice

#### Comment from Patricia Burton, N/A

As an advocate and supporter of our national parks, I am writing in opposition to the proposed updates to imp National

Yarden Mansoor  
Deputy Associate Director for NEPA  
Council on Environmental Quality

(b) (6) / (b) (6)



## RE: Follow-up re regulations.gov docket

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**From:** "Seale, Viktoria Z. EOP/CEQ" <(b) (6)>  
**To:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
**Cc:** "Boling, Ted A. EOP/CEQ" <(b) (6)> "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**Date:** Wed, 15 Aug 2018 12:10:56 -0400

Yardena,

Actually the discrepancy I was referring to is the number of comments received in the top-right hand corner of the page (currently 8,466) versus the number listed next to "Comments View All (8,341)". I suspect the difference may be that the number on the top-right hand of the page is a running count of the comments and the number below reflects the number actually posted and there is a bit of a lag in posting, but I'll check with Aaron.

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**From:** Mansoor, Yardena M. EOP/CEQ  
**Sent:** Wednesday, August 15, 2018 12:03 PM  
**To:** Seale, Viktoria Z. EOP/CEQ <(b) (6)>  
**Cc:** Boling, Ted A. EOP/CEQ <(b) (6)> Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** Follow-up re regulations.gov docket

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Filter Results By...

8,341 results

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- Notice (0)
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  - Rule (0)
  - Supporting & Related Material (3)
  - Other (0)
  - Public Submission

Comment from Audrey SmithRice, N/A

As an advocate and supporter of our national parks, I am writing in opposition to the proposed updates to imp National

Public Submission Posted: 08/14/2018 ID: CEQ-2018-0001-8346  
Organization: N/A Submitter Name: Audrey SmithRice

Comment from Patricia Burton, N/A

As an advocate and supporter of our national parks, I am writing in opposition to the proposed updates to imp National

Yardena Mansoor  
Deputy Associate Director for NEPA  
Council on Environmental Quality  
(b) (6) / (b) (6)



## Comment on CEs

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**From:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
**To:** "Boling, Ted A. EOP/CEQ" (b) (6); "Drummond, Michael R. EOP/CEQ" (b) (6)  
**Date:** Thu, 16 Aug 2018 11:43:01 -0400  
**Attachments**  
: 0901 DOTs of ID, MT, ND, SD and WY.pdf (85.18 kB)

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In screening the current set of attachments for "highly responsive" comments, this is the first one to propose (page 2) that the potential revision consider resolving the multiagency CE/EA category differences in the manner CEQ is supporting with Navy and others:

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A similar matter that CEQ should consider in fashioning new NEPA rules is the situation where, for the lead agency, the project or decision is a CE, but it is not of a type classed as a CE by one or more other agencies with a decision making role (such as permit authority). In such cases, under a new CEQ rule, the other agencies should be directed to proceed promptly, or be given authority on a case-by-case basis to agree to the CE status assigned to the project by the lead agency, even if such a project is not on the agency's own list of CE projects and decisions.

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I'm still considering how best to keep track of reasonable suggestions, including from the notes by the 8 readers.

Y

Comments of the Transportation Departments of  
Idaho, Montana, North Dakota, South Dakota, and Wyoming  
to the  
Council on Environmental Quality  
in  
Docket No CEQ-2018-0001  
Advance Notice of Proposed Rulemaking  
Update to the Regulations for Implementing the Procedural Provisions of  
the National Environmental Policy Act  
July 24, 2018

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The transportation departments of Idaho, Montana, North Dakota, South Dakota, and Wyoming (“we” or “our”) respectfully submit these brief joint comments in response to the Advance Notice of Proposed Rulemaking (ANPRM) in this docket published by the Council on Environmental Quality (CEQ) at 83 Federal Register 28591 (June 20, 2018). In that notice CEQ has invited comment on potential revisions that would update CEQ’s regulations implementing procedural provisions of the National Environmental Policy Act (NEPA).

We support the effort to revise the NEPA procedural regulations to achieve more expeditious and better coordinated review of environmental issues pursuant to NEPA. This can be done consistent with environmental protection.

While we do not reply to all of the questions posed in the Federal Register notice in this docket, we offer the following.

To achieve an expedited but thorough review process, more deference must be accorded to the lead agency – e.g., for a transportation project process the transportation agency’s views of the purpose and need for the project and relevant alternatives should be binding, though other agencies can consult and comment before those decisions are final. That will help ensure an organized and logical review process. At least as to projects requiring an EIS, all agencies with decisionmaking authority should be required to participate in a single, concurrent NEPA review process and be bound by the single EIS and ROD or other final NEPA document developed under that process, led by the lead agency. That single document should address the environmental issues relevant to all agencies with authority over the project.

As to projects warranting review at the Environmental Assessment or Categorical Exclusion level, it is possible that mandating a coordinated process involving all the agencies with authority could be more complex than having some separate reviews, but concurrently and within deadlines. So, we would be open to variations to the one decision process for EA and CE projects if the lead agency considers that the complexity of coordinating the process outweighs the benefits. But again, the EA and CE reviews by all relevant agencies should be subject to deadlines.

Similarly, as has been the case for highway projects, planning products developed by the lead agency should have a reasonable way to be adopted for purposes of NEPA review, so that the

substance of the planning process product(s) does not have to be revisited in the NEPA process. See Appendix A to 23 CFR 450.

Prompt deadlines are very important. We support prompt but reasonable deadlines for processing of EAs and categorical exclusions as well as for EISs. Rules could provide for extensions in certain circumstances or with the concurrence of the lead agency, but deadlines will help achieve prompter processing without prejudice to protection of the environment or the decisions to be made after completion of the environmental review.

A similar matter that CEQ should consider in fashioning new NEPA rules is the situation where, for the lead agency, the project or decision is a CE, but it is not of a type classed as a CE by one or more other agencies with a decision making role (such as permit authority). In such cases, under a new CEQ rule, the other agencies should be directed to proceed promptly, or be given authority on a case-by-case basis to agree to the CE status assigned to the project by the lead agency, even if such a project is not on the agency's own list of CE projects and decisions.

Conclusion

The transportation departments of Idaho, Montana, North Dakota, South Dakota, and Wyoming commend CEQ for working to improve and accelerate the NEPA review process by updating applicable regulations. This can be done in a way that saves time and money, does not weaken review and is consistent with environmental protection.

We thank CEQ for its consideration and ask that any further CEQ action with respect to the subject matter of this docket be in accord with these comments.

\*\*\*\*\*

## New docket item to post; 8/14 items not yet accessible

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**From:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
**To:** "Szabo, Aaron L. EOP/CEQ" <(b) (6)>  
**Cc:** "Boling, Ted A. EOP/CEQ" <(b) (6)> "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**Date:** Thu, 16 Aug 2018 09:49:42 -0400

**Attachments**  
: E-0008 Charleston County, SC.pdf (371.06 kB)

Aaron,

Please post to the docket – today, per Ted’s request – the attached comment document from Jim Armstrong, Deputy County Administrator, Transportation / Public Works, Charleston County, SC. It was transmitted 8/15 via email to Ted.

Also today, please check the status of the 4 comment documents sent for posting on 8/14, as they still don’t appear in the docket.

Thanks,

Yardena

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**From:** Mansoor, Yardena M. EOP/CEQ  
**Sent:** Thursday, August 16, 2018 8:15 AM  
**To:** Boling, Ted A. EOP/CEQ <(b) (6)>  
**Cc:** Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** FYI: Additions to the Regulations.gov docket

FYI: As of this morning, these do not yet appear on the regulations.gov docket.

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**From:** Mansoor, Yardena M. EOP/CEQ  
**Sent:** Tuesday, August 14, 2018 10:11 AM  
**To:** Szabo, Aaron L. EOP/CEQ <(b) (6)>  
**Cc:** Boling, Ted A. EOP/CEQ <(b) (6)> Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** Additions to the Regulations.gov docket

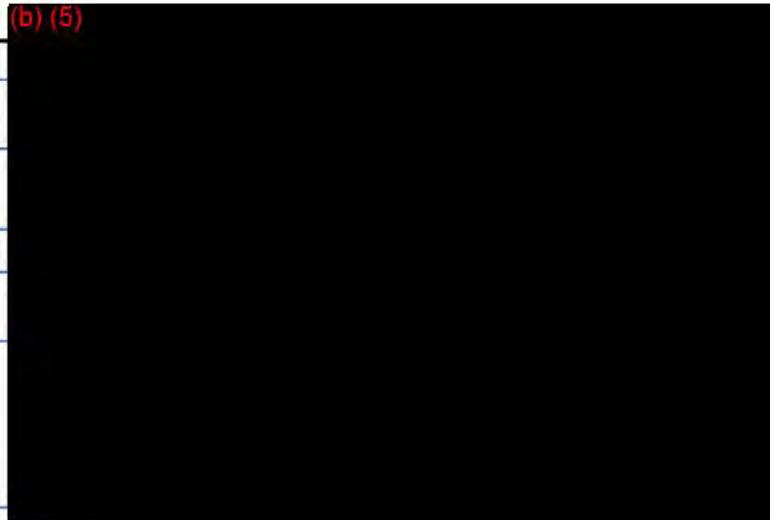
Aaron,

Attached are 2 mail and 2 email documents that were sent to CEQ in response to the ANOPR but not also submitted through the portal. (We also received 4 by mail and 4 by email that duplicate portal submittals.) Please let me know the resulting docket ID numbers.

Let me know if I can be of further assistance.

Yardena

<b>Mail</b>	
M-0003	Indiana Wildlife Federation
M-0007	Brandt Mannchen
<b>Email</b>	
E-0002	The Nature Conservancy, Karen Onley
E-0006	Nicholas Churchill Yost, Former General Counsel, Council on Environmental Quality





CHARLESTON  
COUNTY  
SOUTH CAROLINA

**Jim Armstrong**  
Deputy County Administrator  
Transportation/Public Works

843.958.4011  
Fax: 843.958.4507  
[jarmstrong@charlestoncounty.org](mailto:jarmstrong@charlestoncounty.org)  
Lonnie Hamilton III Public Services Building  
4045 Bridge View Drive, Suite B252  
North Charleston, SC 29405

August 14, 2018

Edward A. Boling  
Associate Director for the National Environmental Policy Act  
Council on Environmental Quality  
730 Jackson Place, N.W.  
Washington, DC 20503

Dear Mr. Edward Boling,

Please see the attached responses in regards to the Advance Notice of Proposed Rulemaking. We appreciate the opportunity to provide input regarding the NEPA process. If there are any concerns, please do not hesitate to make contact with our office.

Sincerely,

Jim Armstrong  
Deputy County Administrator  
Transportation / Public Works

Cc: Steve Thigpen, Director of Transportation Development

Enclosed: NEPA Response



American Public Works Association

[www.charlestoncounty.org](http://www.charlestoncounty.org)

CEQ REQUEST FOR COMMENTS ON UPDATE ON NEPA REGULATIONS

QUESTION

COMMENT

NEPA PROCESS

1. Should CEQ's NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?

- The amount of time it takes to complete NEPA reviews correctly depends on many factors and mandating a timeframe will not necessarily lead to correct or legally defensible documents and decisions. Mandating interagency agreements or requirements on timeframes for revisions would help facilitate efficiencies and timeliness. NEPA regulations should specify that cooperating agencies should engage in concurrent reviews of NEPA documents. Additionally, if invited to cooperate or comment on another agencies' NEPA document(s), schedules for reviews should be established and adhered to by cooperating agencies and/or tribes; after which time a lead agency can demonstrate that due diligence to solicit input was sufficiently completed.
- All agencies should participate in earnest during NEPA process, not ignore NEPA and wait for 404 permitting to get actively involved. Expand cooperating agencies to include participation agencies (such as SCDNR) per SAFETEA-LU Section 6002.

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**CEQ REQUEST FOR COMMENTS ON UPDATE ON NEPA REGULATIONS**

**QUESTION**

**COMMENT**

2. Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions, and if so, how?

- The regulations currently specify that the NEPA process use the best available data; in the absence of data that sufficiently characterizes the environment to be impacted, gathering additional data may be justified (currently in 40 CFR 1502.22). Revisions could allow or encourage agencies to establish standardized or "master" impact discussion that can be cited and incorporated by reference. In a sense, encourage reuse of applicable, sufficient descriptions. Rather than each EIS author rewriting sections that essentially are the same or very similar in every EIS, the analysis could be cited by reference. As an example, it is not necessary for every FHWA noise document appended to every FHWA EIS to describe what constitutes an FHWA noise impact is, what classes of use fall into which category, how the human ear interprets noise, etc. The EIS can report the noise levels and refer the reader a web site or pdf document incorporated by reference that describes the interpretation of the impact.
- There is no doubt that there are multiple, redundant studies that could be used as reference for an agency decision. However, I acknowledge the difficulties in using these studies as basis of a decision for various reasons, including but not limited to property owner rights, client privileges, and overall accuracy due to changing regulations, guidelines, and procedures. In my experience, the agency reviews have been trending to require more detailed and specific data for agency decisions. Some of this is a direct result in a change in regulations, but most is a result of increased counsel involvement in agency decisions. As a result, there is reluctance from individual managers and local branches to issue final decisions/actions. Use of both current project data as well as past studies and approvals could provide increased protection and documentation for these agency actions. This would ultimately result in more timely reviews and approvals. This will require to have a database of information that is user friendly and agency wide. The increased use of digital submissions and approvals further enhance the capabilities of developing a usable database.

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3. Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?

- Any revision to regulations regarding mandated federal agency participations should consider the realities of agency staffing/funding, and also that state agencies are involved and may not be subject to the same requirements as federal agencies.
- The outcome of NEPA for any one particular project, regardless of how many agencies have decisions to be made, should be mandated to be one federal decision document. This would promote increased and proactive coordination by the agencies involved. In the event that the one federal document did not entirely meet a cooperating agency's review requirements or regulatory requirements of a subsequent permit, the cooperating agency should provide a supplement to the "one-federal EIS" focusing on only the area that was not addressed.
- Revisions could include language similar to the SAFETEA-LU Q&A where, if an invited agency that does not have a decision subject to the NEPA review, declines or does not agree to participate at project initiation, then they lose their right to comment later in the process, or their comments do not have to be addressed.
- Including a formal elevation process/conflict resolution process in the regulations that can be implemented at any time in the project development process could also prove helpful in promoting coordination and efficiency.
- An integrated, multi-agency review and approval would expedite the federal actions by developing one, comprehensive document that allows multi agency approvals. However, in order to make this a manageable process, current regulations must be revised so the agencies have the flexibility and protection from litigation.
- The effectiveness and benefits of multi-agency cooperation can be demonstrated through the recent findings from the Federal Permitting Improvement Steering Council (FPISC). The FPISC was created in 2015 to accelerate federal environmental approval process for major infrastructure by facilitating interagency coordination and reviews on major (>\$200 million) infrastructure projects. To date, the FPISC has been most involved in utility and energy related projects. A recent report from the FPISC has documented significant cost and time savings associated on projects with FPISC. While the FPISC will sunset, they have established a baseline for streamlining agency cooperation, review, and ultimate approval.

**CEQ REQUEST FOR COMMENTS ON UPDATE ON NEPA REGULATIONS**

**QUESTION**

**COMMENT**

**SCOPE OF NEPA REVIEW**

4. Should the provisions in CEQ's NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?

- Making documents shorter is a great goal, but the documentation still needs to stand up to legal challenges. Do not simply make documents and timeframes shorter if it leads to greater chance of legal risk. Imposing page lengths is often an arbitrary exercise and is not recommended as a streamlining tool, as it focuses more on the symptom (extraneous amounts of data to avoid litigation) than the underlying problem of increased litigation against the quality or range of data used. Requiring page limits in the regulations would not be helpful.
- Revisions should consider requiring affected environment and environmental consequences to be combined into one section could effectively shorten NEPA documents without affecting content or quality.
- Yes, to accommodate the additional legal reviews that are required such as wetland documentation, T&E requirements, SHPO requirements, EJ, noise, etc.

5. Should CEQ's NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decision makers and the public, and if so, how?

- Revisions should provide a clearer definition of "significant", including:
  - A requirement for agencies to identify and briefly describe in the document the issues identified from scoping that are potentially "significant."
  - An agency decision point for concurrence on what issues are significant.
  - Clarification that issues that are not significant do not need be discussed in the NEPA document, or only discussed enough to demonstrate the impacts are not significant
- Scoping should extend to EA's and the issues that result from the scoping should be the main focus of the NEPA document, unless changes to the project or study area occur after scoping.
- Yes; obviously the spirit of NEPA is to have an all-encompassing review of potential impacts to the human and natural environment. However, most projects tend to have the potential to only impact a few resources. The cooperation of the consulting agencies would play a critical role in improving the focus of NEPA review. Again, this would be improved by integrated review, along with cooperating agency consultation.

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**CEQ REQUEST FOR COMMENTS ON UPDATE ON NEPA REGULATIONS**

<b>QUESTION</b>	<b>COMMENT</b>
<p>6. Should the provisions in CEQ's NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?</p>	<ul style="list-style-type: none"> <li>• Revisions should provide for more flexibility to truly engage and listen to the public in the NEPA process, including using updated communication and mass/social media tools, so that NEPA public involvement is less stilted and rigid and more efficient at identifying issues on which to focus NEPA analysis.</li> <li>• Yes, the PI process should be formalized to include at least one meeting prior to document completion and one Public Hearing. There should be a plan prepared for each project that has as it's goal an inclusive outreach for each particular project and location.</li> </ul>
<p>7. Should definitions of any key NEPA terms in CEQ's NEPA regulations, such as those listed below, be revised, and if so, how?</p> <ol style="list-style-type: none"> <li>a. Major Federal Action;</li> <li>b. Effects;</li> <li>c. Cumulative Impact;</li> <li>d. Significantly;</li> <li>e. Scope; and</li> <li>f. Other NEPA terms.</li> </ol>	<ul style="list-style-type: none"> <li>• Revisions should include more specific description of what "categorical exclusion" means and what documentation is sufficient for categorically excluded actions.</li> <li>• No major concern with current terminology regarding the CEQ regulations.</li> </ul>

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**CEQ REQUEST FOR COMMENTS ON UPDATE ON NEPA REGULATIONS**

<b>QUESTION</b>	<b>COMMENT</b>
<p>8. Should any new definitions of key NEPA terms, such as those noted below, be added, and if so, which terms?</p> <ul style="list-style-type: none"> <li>a. Alternatives;</li> <li>b. Purpose and Need;</li> <li>c. Reasonably Foreseeable;</li> <li>d. Trivial Violation; and</li> <li>e. Other NEPA terms.</li> </ul>	<ul style="list-style-type: none"> <li>• Definitions for all terms should be included.</li> <li>• Clarify the difference between purpose and need. Need should be defined specifically and separately from Purpose. Revisions to regulations should include specific direction on how need for a proposed action should be defined.</li> <li>• Suggest that the following terms be added:               <ul style="list-style-type: none"> <li>○ Alternatives – definition should specify that alternatives should be reasonable and implementable;</li> <li>○ Connected Actions - the term Connected Action should be added and clarified so that the scope of upstream and downstream actions to be considered as connected is limited to those directly and immediately affected by the proposed activity.</li> </ul> </li> <li>• “Substantive comment” on a draft EIS should be defined.</li> </ul>
<p>9. Should the provisions in CEQ’s NEPA regulations relating to any of the types of documents listed below be revised, and if so, how?</p> <ul style="list-style-type: none"> <li>a. Notice of Intent;</li> <li>b. Categorical Exclusions Documentation; This should be simplified to demonstrate compliance with required laws (ESA, NHPA, etc)</li> <li>c. Environmental Assessments;</li> <li>d. Findings of No Significant Impact;</li> <li>e. Environmental Impact Statements;</li> <li>f. Records of Decision; and</li> <li>g. Supplements.</li> </ul>	<ul style="list-style-type: none"> <li>• Provide clarity on when a Categorical Exclusion, Environmental Assessment, or Environmental Impact Statement would be required.</li> <li>• Define what is required for reevaluation of NEPA documents.</li> <li>• Clarify what is needed for supplemental documents.</li> </ul>

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**CEQ REQUEST FOR COMMENTS ON UPDATE ON NEPA REGULATIONS**

<b>QUESTION</b>	<b>COMMENT</b>
<p>10. Should the provisions in CEQ's NEPA regulations relating to the timing of agency action be revised, and if so, how?</p>	<ul style="list-style-type: none"> <li>• With introduction of formal Public involvement and changes to agency coordination requirements the comment period should be reduced to 30 days.</li> <li>• Administrative notice and review times can be revised to reduce the timing due to the increased digital submittal and today's technology.</li> </ul>
<p>11. Should the provisions in CEQ's NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised, and if so, how?</p>	<ul style="list-style-type: none"> <li>• Revisions should clarify what constitutes a conflict of interest.</li> <li>• NEPA regulations should note that preparation of NEPA documents by contractors or project applicants is fully endorsed, but that it remains the responsibility of the lead agency to adopt the NEPA documentation and associated decision document within a specific time-frame (suggestion that requirement for review take place within 30 days of receipt of NEPA document).</li> <li>• Revisions should limit the realm of reasonable alternatives that are required to be analyzed by an applicant (or 3<sup>rd</sup>-Party consultant) to those alternatives that are both reasonable and implementable, consistent with the scope of the agency's authorities (see comments on 13 below).</li> <li>• All NEPA documents should clearly identify preparers and their affiliations.</li> <li>• Could be revised to provide more integration and cooperation between agencies on projects with multiple federal decisions.</li> </ul>
<p>12. Should the provisions in CEQ's NEPA regulations relating to programmatic NEPA documents and tiering be revised, and if so, how?</p>	<ul style="list-style-type: none"> <li>• Current NEPA regulations provide the opportunity for tiering; however some agencies tend not to pursue tiered documents out of fear that subsequent documentation and approvals will be just as onerous as the original. Revisions should make tiering easier and reduce risk to agencies that pursue tiered NEPA reviews. No change in the regulation is needed.</li> </ul>

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**CEQ REQUEST FOR COMMENTS ON UPDATE ON NEPA REGULATIONS**

**QUESTION**

**COMMENT**

13. Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised, and if so, how?

- NEPA regulations should be revised to specify the realm of reasonable alternatives. There is confusion on how many alternatives should be examined. Clarify that if alternatives are not reasonable they need not be examined in detail and how reasonableness can be established. Provide clarification regarding the "range of alternatives" and "reasonable alternatives" and "reasonable range of alternatives." Suggest defining reasonable alternatives to be considered to include the following:
  - Be consistent with laws and regulations
  - Be technically feasible (i.e., available technology)
  - Be practicable (including economically practicable)
  - If the applicant is a non-governmental organization (e.g., private party, company or group), the range of alternatives would focus on means to avoid or minimize adverse effects of the proposed action.
- Clarify how to use environmental data in the screening of alternatives. Explain how avoidance and minimization requirements of other laws (e.g. Clean Water Act, National Historic Preservation Act, etc.) can be used to determine that alternatives are not reasonable. Clarify how "economic feasibility" and cost data can be used to screen alternatives for reasonableness.
- Regulations should clearly state that a NEPA document need only analyze one alternative in detail if there are no other reasonable alternatives.

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**CEQ REQUEST FOR COMMENTS ON UPDATE ON NEPA REGULATIONS**

**QUESTION**

**COMMENT**

<b>GENERAL</b>	
<p>14. Are any provisions of the CEQ's NEPA regulations currently obsolete? If so, please provide specific recommendations on whether they should be modified, rescinded, or replaced.</p>	<ul style="list-style-type: none"> <li>• Section 1506.9 Filing requirements incorporates EPA's obsolete requirements pertaining to providing hardcopies and discs of EIS materials (including NOIs and NOAs). Regulations regarding the filing of EIS materials should be replaced with the option of electronically filing all such materials.</li> <li>• The discussions in NEPA documents of "the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity" and "irreversible and irretrievable commitments of resources" seem to have evolved into a cut/paste of canned language, with little substantive content or understanding of what they are addressing on the part of agencies and the public. Consider updating in regulations to explain what is required. As long as all the effects of the action are being discussed and a cumulative impacts analysis is included in the EIS, these topics do not seem necessary.</li> </ul>
<p>15. Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient?</p>	<ul style="list-style-type: none"> <li>• The regulations should state that use of websites and social media should be encouraged for posting documents and project information. This change could be "media commonly used for mass communication" to prevent having dated technologies codified into regulations.</li> <li>• Clarify that agencies only need to receive electronic documents.</li> <li>• Use of GIS and other remote sensing techniques for identifying impacts associated with alternatives can reduce cost and time for the analysis and provide as equivalent analysis to more detailed "boots on the ground" approach.</li> </ul>

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**CEQ REQUEST FOR COMMENTS ON UPDATE ON NEPA REGULATIONS**

<b>QUESTION</b>	<b>COMMENT</b>
<p>16. Are there additional ways CEQ's NEPA regulations should be revised to promote coordination of environmental review and authorization decisions, such as combining NEPA analysis and other decision documents, and if so, how?</p>	<ul style="list-style-type: none"> <li>• NEPA is the umbrella for demonstrating compliance for a host of other laws, yet the CEQ regulations are silent on how to coordinate the reviews and document compliance with those other laws within a NEPA process. Update the regulations to integrate decision points and analysis requirements for such laws as NHPA Section 106, Clean Water Act, Endangered Species Act, etc.</li> <li>• Consider including a provision in the regulations allowing for combining of the FEIS and ROD. This would require identifying the Preferred Alternative in the DEIS. The comments received on the DEIS would also have to be evaluated to determine whether a combined FEIS/ROD is appropriate or whether a separate publishing of the FEIS and waiting 30 days to issue the ROD would be required.</li> </ul>
<p>17. Are there additional ways CEQ's NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA, and if so, how?</p>	<ul style="list-style-type: none"> <li>• The regulations should clearly state when corresponding compliance actions should be implemented in coordination with the NEPA process (e.g., Section 106 of the National Historic Preservation Act [NHPA]), and mandate timeframes for required comments or responses so the NEPA process is not held up. This would, for example, complement and strengthen the 30-day response requirement in the NHPA (36 CFR 800), which is not always followed.</li> </ul>
<p>18. Are there ways in which the role of tribal governments in the NEPA process should be clarified in CEQ's NEPA regulations, and if so, how?</p>	<ul style="list-style-type: none"> <li>• NEPA regulations should specify the role and responsibilities of tribal governments so that due diligence in efforts to coordinate with tribes per Executive Order Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments" can be documented within the NEPA process. Regulations should state the specific amount of time (suggestion 30 or 45 days) for tribes to respond to NEPA scoping or review requests and participate in NEPA processes that may impact tribal resources in a timely manner, so that tribal input can be incorporated and considered by the federal decision-maker.</li> </ul>
<p>19. Are there additional ways CEQ's NEPA regulations should be revised to ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible, and if so, how?</p>	<ul style="list-style-type: none"> <li>• The regulations should revise Section 1507.3 to encourage uniformity in application of the CEQ's regulations and discourage major subunits or agencies within a federal department to adopt their own NEPA procedures. Each federal executive department should have one method for NEPA compliance.</li> </ul>

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**CEQ REQUEST FOR COMMENTS ON UPDATE ON NEPA REGULATIONS**

**QUESTION**

**COMMENT**

20. Are there additional ways CEQ's NEPA regulations related to mitigation should be revised, and if so, how?

- The regulations should clearly state that mitigation measures in a NEPA document are going to be implemented (not just being considered), and establish the need for mitigation monitoring and reporting program to be included in the NEPA document and decision documents.

**GENERAL STATEMENT**

I think the entire regulation needs to be evaluated based on today's technologies, mainly in regards to digital submittals, reviews and approvals. This also includes the administrative record process to eliminate timely and inefficient hardcopy record keeping. Again, my opinion on overall efficiencies is in regard to the actual agency review's and approvals, which includes redundant studies, submittals, and review times.

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# FW: [EXTERNAL] AMWA Comment Letter for Docket CEQ-2018-0001

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**From:** "Boling, Ted A. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlit)/cn=recipients/cn=eae5b047f871428b9b46baf8afd1176a-bo">  
**To:** "Loyola, Mario A. EOP/CEQ" <(b) (6)>  
**Cc:** "Mansoor, Yardena M. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlit)/cn=recipients/cn=2712a19fd57447088e0b9da580c16e15-ma">, "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**Date:** Fri, 17 Aug 2018 14:35:11 -0400  
**Attachments** Association of Metropolitan Water Agencies Comment Letter CEQ-2018-0001.pdf : (239.26 kB)

Mario – are these the comments that you were looking for?

**From:** McLaurin, Juschelle D. EOP/CEQ  
**Sent:** Friday, August 17, 2018 1:58 PM  
**To:** Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** FW: [EXTERNAL] AMWA Comment Letter for Docket CEQ-2018-0001

FYI

**From:** Stephanie Hayes Schlea <schlea@amwa.net>  
**Sent:** Friday, August 17, 2018 12:34 PM  
**To:** McLaurin, Juschelle D. EOP/CEQ <>  
**Subject:** [EXTERNAL] AMWA Comment Letter for Docket CEQ-2018-0001

On behalf of the Association of Metropolitan Water Agencies, please find attached the comment letter regarding CEQ's *Advance Notice of Proposed Rulemaking: Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act* (CEQ-2018-0001).

---

Stephanie Hayes Schlea  
Manager, Regulatory and Scientific Affairs  
Association of Metropolitan Water Agencies  
Office: 202.331.2820

1620 I Street NW Suite 500  
Washington, DC 20006  
><http://www.amwa.net/><



August 17, 2018

Mr. Edward A. Boling  
Associate Director for the National Environmental Policy Act  
White House Council on Environmental Quality  
730 Jackson Place, N.W.  
Washington, DC 20503

Re: Docket No. CEQ-2018-0001, *Advance Notice of Proposed Rulemaking: Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act*

Dear Mr. Boling:

The Association of Metropolitan Water Agencies (AMWA) welcomes the opportunity to comment on the Council on Environmental Quality's (CEQ) advance notice of proposed rulemaking to update the regulations on implementing certain provisions of the National Environmental Policy Act (NEPA). AMWA represents the largest metropolitan, publicly owned drinking water systems in the nation and collectively our members serve more than 130 million people.

AMWA is supportive of NEPA as a cornerstone of our country's environmental protection laws. It is important to our members because it ensures that possible impacts to the environment and public input related to these considerations are taken into account during federal decision making, particularly as it relates to protecting our nation's water resources. Our members are affected by actions on federal lands that could have environmental impacts on the source of drinking water, such as projects on national forest lands, where many metropolitan cities' drinking water originates, or projects on federal reservoirs where our members have drinking water storage contracts. NEPA plays a vital role in protecting these water sources and the larger environment by requiring the development of environmental assessments and environmental impact assessments to identify potential impacts of federal actions. While AMWA supports improving the efficiency of the NEPA process, it is important for the integrity of NEPA to be maintained and the opportunity for public participation and comment remain intact.

Our members are often applicants for projects that require NEPA reviews, such as projects for water supply and delivery that will receive funding via drinking water or clean water State Revolving Fund loans or through the Water Infrastructure Financing and Innovation Act. Many of our members have had experiences where the NEPA process has lasted several years and

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Robert Hunter  
Municipal Water District of  
Orange County

Carrie Lewis  
Portland Water District

James S. Lochhead  
Denver Water Department

Ron Lavan  
Northern Kentucky Water  
District

Sue McConick  
Great Lakes Water Authority

J. Brett Jokela  
Anchorage Water &  
Wastewater Utility

Charles M. Murray  
Fairfax Water

William Stowe  
Des Moines Water Works

Kathryn Sorensen  
Phoenix Water Services

Jeffrey Szabo  
Suffolk County Water Authority

Douglas Yoder  
Miami-Dade Water and Sewer  
Department

**CHIEF EXECUTIVE  
OFFICER**  
Diane VanDe Hei

therefore AMWA encourages CEQ to consider ways to optimize interagency coordination and streamline authorization decisions. AMWA supports improvements to NEPA regulations, particularly those that would improve the efficiency of environmental reviews and authorizations involving multiple agencies, provided that the decision process remains transparent to the applicant and the public's opportunity for input remains intact.

AMWA supports the administration's one federal decision goal of NEPA reviews being conducted in two years or less provided there is still sufficient opportunity for public input and recognition that some decisions may still take longer, whether due to the complexity of the project itself or the number of collaborating agencies participating. Timely, synchronized and concurrent reviews should be conducted, and to the extent possible, the lead federal agency should be responsible for ensuring this occurs.

Finally, in light of the impacts of climate change on our water resources, it's important that NEPA policies and guidelines facilitate adaptation approaches including projects developed to address future needs for resilience to extreme events and weather disasters, such as storms and droughts, which have been well documented in the United States over the past decade.

Therefore, as the White House takes steps to ensure that the federal "environmental review and permitting process for infrastructure projects is coordinated, predictable, and transparent," AMWA supports the efficiency of NEPA reviews and the Administration's one federal decision goal. As stated elsewhere in this letter, AMWA's support also assumes that the integrity of NEPA will be maintained and the opportunity for public participation and comment will remain intact. AMWA appreciates the opportunity to comment and looks forward to working with CEQ throughout this process.

Sincerely,



Diane VanDe Hei  
Chief Executive Officer

## Re: [EXTERNAL] RE: Comment from CEQ?

---

**From:** "Schneider, Daniel J. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=70576341fcb44ab780c5f4d1ca218647-sc">

**To:** Nick Sobczyk <nsobczyk@eenews.net>

**Date:** Mon, 20 Aug 2018 12:00:25 -0400

In regards to your questions,

CEQ will review the comments we have received before we determine next steps and any potential revisions.

Sent from my iPhone

On Aug 20, 2018, at 11:25 AM, Nick Sobczyk <nsobczyk@eenews.net> wrote:

Yeah just was able to pull that up as well. Thanks.

**From:** Schneider, Daniel J. EOP/CEQ [mailto:(b) (6)]

**Sent:** Monday, August 20, 2018 11:25 AM

**To:** Nick Sobczyk <nsobczyk@eenews.net>

**Subject:** RE: Comment from CEQ?

FYI: I believe I found the letter/comments we discussed on the phone.

><https://www.regulations.gov/document?D=CEQ-2018-0001-10560><

**From:** Nick Sobczyk <nsobczyk@eenews.net>

**Sent:** Monday, August 20, 2018 10:06 AM

**To:** Schneider, Daniel J. EOP/CEQ <(b) (6)>

**Subject:** [EXTERNAL] RE: Comment from CEQ?

Hey Dan,

Hope all is well. I'm working on a brief update story this morning with the comment period ending today for CEQ's proposed NEPA regs re-write. Just wanted to reach out and see if you have a comment/statement.

What are the next steps and how long do you expect them to take?

Based on the comments that have come in, do you have any sense of what aspects of the NEPA regulations CEQ will seek to change?

Many of the comments, unsurprisingly, appear to be form letters written by environmental groups.

How much weight will you give these?

Best,

Nick Sobczyk  
E&E News reporter  
[nsobczyk@eenews.net](mailto:nsobczyk@eenews.net)  
Office: 202-446-0437  
Cell: (b) (6)  
[@nick\\_sobczyk](#)

### E&E NEWS

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>>[www.eenews.net](http://www.eenews.net)<< | [@EENewsUpdates](#)  
Energywire, Climatewire, Greenwire, E&E Daily, E&E News PM

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## [EXTERNAL] RE: Comment from CEQ?

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## RE: Comment from CEQ?

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Hey Nick, what's your deadline?

Dan

---

**From:** Nick Sobczyk <[nsobczyk@eenews.net](mailto:nsobczyk@eenews.net)>  
**Sent:** Tuesday, June 19, 2018 9:52 AM  
**To:** Schneider, Daniel J. EOP/CEQ <(b) (6)>  
**Subject:** [EXTERNAL] RE: Comment from CEQ?

Good Morning Dan,

We're going to run a story on this in today's Greenwire, so I wanted to see if CEQ has any additional comment.

Is the series of 20 questions a typical format for an ANPRM? If not, what is the rationale?  
Was CEQ waiting to advance this document until it got a nominee for director?  
Does Ms. Neumayr's official nomination make things easier, or will it effectively be the same?  
I suspect this will be a popular document. How many comments do you think you'll get?

Best,  
Nick

---

**From:** Schneider, Daniel J. EOP/CEQ [mailto:(b) (6)]  
**Sent:** Monday, June 18, 2018 3:55 PM  
**To:** Nick Sobczyk <nsobczyk@eenews.net>  
**Subject:** RE: Comment from CEQ?

Hey Nick,

Just wanted to flag this for you given your interest in the subject matter. CEQ submitted an ANPRM to the Federal Register for publication on Friday, June 15, 2018 requesting public comment on potential revisions to update and clarify CEQ's NEPA regulations. Through a series of 20 questions, CEQ is requesting comments on provisions of the regulations to the NEPA process and the scope of NEPA review. It should be published in the Federal Register in the next couple of days.

Fact Sheet: <https://www.whitehouse.gov/wp-content/uploads/2017/11/FINAL-ANPRM-Fact-Sheet-20180615.pdf>

Prepublication Text: [https://www.whitehouse.gov/wp-content/uploads/2017/11/CEQ-NEPA-ANPRM\\_WebVersion-20180615.pdf](https://www.whitehouse.gov/wp-content/uploads/2017/11/CEQ-NEPA-ANPRM_WebVersion-20180615.pdf)

Webpage: <https://www.whitehouse.gov/ceq/initiatives/>

Dan

---

**From:** Nick Sobczyk <nsobczyk@eenews.net>  
**Sent:** Monday, May 21, 2018 10:46 AM  
**To:** Schneider, Daniel J. EOP/CEQ <(b) (6)>  
**Subject:** [EXTERNAL] RE: Comment from CEQ?

Sure: 202-446-0437

---

**From:** Schneider, Daniel J. EOP/CEQ [mailto:(b) (6)]  
**Sent:** Monday, May 21, 2018 10:46 AM  
**To:** Nick Sobczyk <nsobczyk@eenews.net>  
**Subject:** RE: Comment from CEQ?

What's the best number to reach you at? Would like to discuss. Thanks.

---

**From:** Nick Sobczyk <[nsobczyk@eenews.net](mailto:nsobczyk@eenews.net)>  
**Sent:** Monday, May 21, 2018 10:39 AM  
**To:** Schneider, Daniel J. EOP/CEQ <(b) (6)>  
**Subject:** [EXTERNAL] RE: Comment from CEQ?

Hey Dan – any update on this? If you'd like to provide a statement from CEQ, I could work with that, too. I'm wondering:

How long will the process take?  
Are there any specific areas of the NEPA regulations that are ripe for reform?  
Do you think the FAST Act and MAP-21 provide a model for streamlining/change?  
How will the current lack of Senate-confirmed political leadership affect how CEQ handles the potential regulatory changes?  
How many public comments is CEQ expecting to get?

Best,  
Nick

---

**From:** Schneider, Daniel J. EOP/CEQ [[\(mailto:\(b\) \(6\)\)](mailto:(b) (6))]  
**Sent:** Friday, May 18, 2018 12:49 PM  
**To:** Nick Sobczyk <[nsobczyk@eenews.net](mailto:nsobczyk@eenews.net)>  
**Subject:** RE: Comment from CEQ?

Hey Nick, still checking in on this.

Dan

---

**From:** Nick Sobczyk <[nsobczyk@eenews.net](mailto:nsobczyk@eenews.net)>  
**Sent:** Friday, May 18, 2018 10:06 AM  
**To:** Schneider, Daniel J. EOP/CEQ <(b) (6)>  
**Subject:** [EXTERNAL] RE: Comment from CEQ?

Hey Dan – any word yet on whether you'll be able to connect me with Mr. Boling?

Nick

---

**From:** Schneider, Daniel J. EOP/CEQ [[\(mailto:\(b\) \(6\)\)](mailto:(b) (6))]  
**Sent:** Thursday, May 17, 2018 11:58 AM  
**To:** Nick Sobczyk <[nsobczyk@eenews.net](mailto:nsobczyk@eenews.net)>  
**Subject:** RE: Comment from CEQ?

Hey Nick,

What's your timing on this?

Dan

---

**From:** Nick Sobczyk <[nsobczyk@eenews.net](mailto:nsobczyk@eenews.net)>  
**Sent:** Thursday, May 17, 2018 11:43 AM  
**To:** Schneider, Daniel J. EOP/CEQ <(b) (6)>  
**Subject:** [EXTERNAL] RE: Comment from CEQ?

Hey Dan,

I'm hoping to do a follow up to the below examining in more detail what the process will look like and what areas of CEQ's NEPA regulations would be ripe for change.

Would you be able to set up an interview with Ted Boling? Would be great to get some of his thoughts on the issue and have his voice in the story.

Best,  
Nick

---

**From:** Schneider, Daniel J. EOP/CEQ [[\(b\) \(6\)](mailto:(b) (6))]  
**Sent:** Monday, May 07, 2018 3:16 PM  
**To:** Nick Sobczyk <[nsobczyk@eenews.net](mailto:nsobczyk@eenews.net)>  
**Subject:** RE: Comment from CEQ?

Hey Nick,

On background, attributable to a CEQ Spokesman:

On May 3<sup>rd</sup>, the Council on Environmental Quality (CEQ) submitted a draft Advanced Notice of Proposed Rulemaking (ANPRM) entitled "Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act" to the Office of Management and Budget for interagency review consistent with Executive Order 12866. After completion of interagency review, CEQ anticipates will publish the ANPRM in the Federal Register for public comment.

This ANPRM is being developed in response to Executive Order 13807 issued by President Trump on August 15, 2017. While CEQ has issued memoranda and guidance documents over the years, it has only amended its regulations once. Therefore, CEQ believes it is appropriate at this time to solicit public comment and consider updating the implementation regulations.

Hope that helps,

Dan

---

**From:** Nick Sobczyk <[nsobczyk@eenews.net](mailto:nsobczyk@eenews.net)>  
**Sent:** Monday, May 7, 2018 2:27 PM  
**To:** Schneider, Daniel J. EOP/CEQ <(b) (6)>  
**Subject:** [EXTERNAL] Comment from CEQ?



## [EXTERNAL] RE: Comment from CEQ?

---

**From:** Nick Sobczyk <nsobczyk@eenews.net>

**To:** "Schneider, Daniel J. EOP/CEQ" <(b) (6)>

**Date:** Mon, 20 Aug 2018 10:06:19 -0400

Hey Dan,

Hope all is well. I'm working on a brief update story this morning with the comment period ending today for CEQ's proposed NEPA regs re-write. Just wanted to reach out and see if you have a comment/statement.

What are the next steps and how long do you expect them to take?

Based on the comments that have come in, do you have any sense of what aspects of the NEPA regulations CEQ will seek to change?

Many of the comments, unsurprisingly, appear to be form letters written by environmental groups. How much weight will you give these?

Best,

Nick Sobczyk  
E&E News reporter  
[nsobczyk@eenews.net](mailto:nsobczyk@eenews.net)  
Office: 202-446-0437  
Cell: (b) (6)  
[@nick\\_sobczyk](#)

### E&E NEWS

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Energywire, Climatewire, Greenwire, E&E Daily, E&E News PM

**From:** Schneider, Daniel J. EOP/CEQ [mailto:(b) (6)]

**Sent:** Tuesday, July 10, 2018 11:04 AM

**To:** Nick Sobczyk <nsobczyk@eenews.net>

**Subject:** RE: Comment from CEQ?

We received a number of requests to extend public comment.

><https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=CEQ-2018-0001&refD=CEQ-2018-0001-0001><

---

**From:** Nick Sobczyk <[nsobczyk@eenews.net](mailto:nsobczyk@eenews.net)>  
**Sent:** Tuesday, July 10, 2018 11:00 AM  
**To:** Schneider, Daniel J. EOP/CEQ <(b) (6)>  
**Subject:** [EXTERNAL] RE: Comment from CEQ?

Hey Dan,

Thanks for the heads up. Does this come in direct response to the environmental groups that requested last month that it be extended to 90 days? Or did you get other input as well?

Best,  
Nick

---

**From:** Schneider, Daniel J. EOP/CEQ [[\(b\) \(6\)](mailto:(b) (6))]  
**Sent:** Tuesday, July 10, 2018 10:49 AM  
**To:** Nick Sobczyk <[nsobczyk@eenews.net](mailto:nsobczyk@eenews.net)>  
**Subject:** RE: Comment from CEQ?

Hey Nick,

Just wanted to make sure you were aware. CEQ is extending the comment period on the Advanced Notice of Proposed Rulemaking, which was originally set to close on July 20, 2018. We've extended it through August 20, 2018. The notice is expected to be published in the Federal Register tomorrow, July 11, 2018. The pre-publication version is available at the link below.

>><https://www.federalregister.gov/documents/2018/07/11/2018-14821/implementation-of-the-procedural-provisions-of-the-national-environmental-policy-act><<

Dan

---

**From:** Nick Sobczyk <[nsobczyk@eenews.net](mailto:nsobczyk@eenews.net)>  
**Sent:** Tuesday, June 19, 2018 11:37 AM  
**To:** Schneider, Daniel J. EOP/CEQ <(b) (6)>  
**Subject:** [EXTERNAL] RE: Comment from CEQ?

Thanks, Dan. Appreciate you getting back to me. I'll let you know if I have any additional follow ups.

---

**From:** Schneider, Daniel J. EOP/CEQ [[\(b\) \(6\)](mailto:(b) (6))]  
**Sent:** Tuesday, June 19, 2018 11:35 AM  
**To:** Nick Sobczyk <[nsobczyk@eenews.net](mailto:nsobczyk@eenews.net)>  
**Subject:** RE: Comment from CEQ?

On background, attributable to a CEQ spokesman.

In terms of the format of the ANPRM, it depends on agency preference and different groups choose different techniques. We feel this approach is the best way to increase public engagement. Given that

we've had lots of interest over the years from stakeholders, we're hopeful we receive a number of substantive comments.

In regards to the 30 day comment period, if we receive requests for a longer than a 30 day comment period, we will consider it.

I'm happy to keep you informed as things progress.

---

**From:** Nick Sobczyk <[nsobczyk@eenews.net](mailto:nsobczyk@eenews.net)>  
**Sent:** Tuesday, June 19, 2018 11:18 AM  
**To:** Schneider, Daniel J. EOP/CEQ <(b) (6)>  
**Subject:** [EXTERNAL] RE: Comment from CEQ?

Hey Dan – one additional question for you. An early criticism I'm hearing from environmentalists is that 30 days is an exceedingly short comment period. Do you have a response to that? What was the rationale for that time frame?

---

**From:** Schneider, Daniel J. EOP/CEQ [<mailto:> <(b) (6)>]  
**Sent:** Tuesday, June 19, 2018 10:32 AM  
**To:** Nick Sobczyk <[nsobczyk@eenews.net](mailto:nsobczyk@eenews.net)>  
**Subject:** RE: Comment from CEQ?

Hey Nick, what's your deadline?

Dan

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**From:** Nick Sobczyk <[nsobczyk@eenews.net](mailto:nsobczyk@eenews.net)>  
**Sent:** Tuesday, June 19, 2018 9:52 AM  
**To:** Schneider, Daniel J. EOP/CEQ <(b) (6)>  
**Subject:** [EXTERNAL] RE: Comment from CEQ?

Good Morning Dan,

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Is the series of 20 questions a typical format for an ANPRM? If not, what is the rationale?  
Was CEQ waiting to advance this document until it got a nominee for director?  
Does Ms. Neumayr's official nomination make things easier, or will it effectively be the same?  
I suspect this will be a popular document. How many comments do you think you'll get?

Best,  
Nick

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**From:** Schneider, Daniel J. EOP/CEQ [<mailto:> <(b) (6)>]  
**Sent:** Monday, June 18, 2018 3:55 PM

**To:** Nick Sobczyk <[nsobczyk@eenews.net](mailto:nsobczyk@eenews.net)>

**Subject:** RE: Comment from CEQ?

Hey Nick,

Just wanted to flag this for you given your interest in the subject matter. CEQ submitted an ANPRM to the Federal Register for publication on Friday, June 15, 2018 requesting public comment on potential revisions to update and clarify CEQ's NEPA regulations. Through a series of 20 questions, CEQ is requesting comments on provisions of the regulations to the NEPA process and the scope of NEPA review. It should be published in the Federal Register in the next couple of days.

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Prepublication Text: [https://www.whitehouse.gov/wp-content/uploads/2017/11/CEQ-NEPA-ANPRM\\_WebVersion-20180615.pdf](https://www.whitehouse.gov/wp-content/uploads/2017/11/CEQ-NEPA-ANPRM_WebVersion-20180615.pdf)

Webpage: <https://www.whitehouse.gov/ceq/initiatives/>

Dan

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**From:** Nick Sobczyk <[nsobczyk@eenews.net](mailto:nsobczyk@eenews.net)>

**Sent:** Monday, May 21, 2018 10:46 AM

**To:** Schneider, Daniel J. EOP/CEQ <(b) (6)>

**Subject:** [EXTERNAL] RE: Comment from CEQ?

Sure: 202-446-0437

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**To:** Nick Sobczyk <[nsobczyk@eenews.net](mailto:nsobczyk@eenews.net)>

**Subject:** RE: Comment from CEQ?

What's the best number to reach you at? Would like to discuss. Thanks.

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**Subject:** [EXTERNAL] RE: Comment from CEQ?

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How long will the process take?

Are there any specific areas of the NEPA regulations that are ripe for reform?

Do you think the FAST Act and MAP-21 provide a model for streamlining/change?

How will the current lack of Senate-confirmed political leadership affect how CEQ handles the potential regulatory changes?  
How many public comments is CEQ expecting to get?

Best,  
Nick

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**From:** Schneider, Daniel J. EOP/CEQ [mailto: [REDACTED]]  
**Sent:** Friday, May 18, 2018 12:49 PM  
**To:** Nick Sobczyk <[nsobczyk@eenews.net](mailto:nsobczyk@eenews.net)>  
**Subject:** RE: Comment from CEQ?

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**Sent:** Friday, May 18, 2018 10:06 AM  
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**Subject:** [EXTERNAL] RE: Comment from CEQ?

Hey Dan – any word yet on whether you'll be able to connect me with Mr. Boling?

Nick

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**Sent:** Thursday, May 17, 2018 11:58 AM  
**To:** Nick Sobczyk <[nsobczyk@eenews.net](mailto:nsobczyk@eenews.net)>  
**Subject:** RE: Comment from CEQ?

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Dan

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**From:** Nick Sobczyk <[nsobczyk@eenews.net](mailto:nsobczyk@eenews.net)>  
**Sent:** Thursday, May 17, 2018 11:43 AM  
**To:** Schneider, Daniel J. EOP/CEQ <(b) (6)>  
**Subject:** [EXTERNAL] RE: Comment from CEQ?

Hey Dan,

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Would you be able to set up an interview with Ted Boling? Would be great to get some of his thoughts on the issue and have his voice in the story.

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**Sent:** Monday, May 07, 2018 3:16 PM  
**To:** Nick Sobczyk <[nsobczyk@eenews.net](mailto:nsobczyk@eenews.net)>  
**Subject:** RE: Comment from CEQ?

Hey Nick,

On background, attributable to a CEQ Spokesman:

On May 3<sup>rd</sup>, the Council on Environmental Quality (CEQ) submitted a draft Advanced Notice of Proposed Rulemaking (ANPRM) entitled "Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act" to the Office of Management and Budget for interagency review consistent with Executive Order 12866. After completion of interagency review, CEQ anticipates will publish the ANPRM in the Federal Register for public comment.

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**From:** Nick Sobczyk <[nsobczyk@eenews.net](mailto:nsobczyk@eenews.net)>  
**Sent:** Monday, May 7, 2018 2:27 PM  
**To:** Schneider, Daniel J. EOP/CEQ <(b) (6)>  
**Subject:** [EXTERNAL] Comment from CEQ?

Hi Dan,

Hope all is well and that you're enjoying your new gig at the White House! I saw CEQ submitted a prerule with OMB on May 3 to update its NEPA regulations. I'm looking for a comment from CEQ on the following questions. My deadline is 3:15 pm.

Does CEQ plan to follow this up with an advanced notice of proposed rulemaking? Or are there other options available?

What are the next steps and what is the timeline looking like?

What specific changes will CEQ make to its NEPA regs? How will they affect permitting processes at other agencies?

Thanks!

Nick Sobczyk  
E&E News reporter  
[nsobczyk@eenews.net](mailto:nsobczyk@eenews.net)  
Office: 202-446-0437  
Cell: (b) (6)  
[@nick\\_sobczyk](#)

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## [EXTERNAL] Alliance Sends NEPA Comments to CEQ

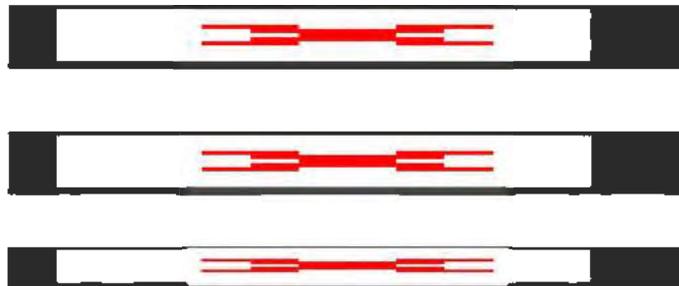
---

**From:** "Dan Keppen, Executive Director" <dan@familyfarmalliance.org>

**To:** "Patella, Michael A. EOP/CEQ" <[REDACTED]>

**Date:** Mon, 20 Aug 2018 18:17:39 -0400

Can't See This Message? [View in a browser](#)

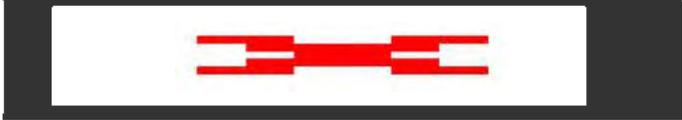


Posted: 20/08/2018

The Family Farm Alliance earlier today sent formal written comments to the White House Council on Environmental Quality (CEQ) in response to an advance notice of proposed rulemaking on a potentially sweeping update of its National Environmental Policy Act (NEPA) implementing rules. Continue reading to learn more and to download a PDF version of the Alliance response to CEQ.



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## Fwd: [EXTERNAL] Comments re ANKPRM - Proposed Procedural Revisions of NEPA

---

**From:** "Boling, Ted A. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlf)/cn=recipients/cn=eae5b047f871428b9b46baf8afd1176a-bo">  
**To:** "Mansoor, Yarden M. EOP/CEQ" <(b) (6)> "Szabo, Aaron L. EOP/CEQ" <(b) (6)>  
**Cc:** "Seale, Viktoria Z. EOP/CEQ" <(b) (6)>  
**Date:** Mon, 20 Aug 2018 17:22:11 -0400  
**Attachments** page4image3681664 (114 bytes); page5image3682080 (10.32 kB); CEQ ANPRM : CR Comments 8.19.18.pdf (38.33 kB)

---

Trouble at [regulations.gov](https://www.regulations.gov/)?

Sent from my iPhone

Begin forwarded message:

**From:** Charlotte Roe <[charlottecroe@yahoo.com](mailto:charlottecroe@yahoo.com)>  
**Date:** August 20, 2018 at 4:04:40 PM CDT  
**To:** Mary Neumayr <>  
**Cc:** "Boling, Ted A. EOP/CEQ" <>  
**Subject:** [EXTERNAL] Comments re ANKPRM - Proposed Procedural Revisions of NEPA

I'm submitting these comments via email as I had trouble accessing the Federal eRulemaking portal. Thank you for accepting them. Roe

August 19, 2018

Mary Neumayr, Chief of Staff Council on Environmental Quality 730 Jackson Place NW Washington, DC 20503

RE: Request for Comment, Advanced Notice of Rulemaking Change (ANPRM) to Regulations Implementing the National Environmental Policy Act (83 Fed Reg 28591-28592 June 20, 2018)

Dear Ms. Neumayr,

Thank you for the opportunity to comment on the ANPRM under consideration by the Council on Environmental Quality.

On behalf of In Defense of Animals and The Cloud Foundation, I strongly object to the proposed revisions contained in the Advanced Notice of Proposed Rulemaking (ANPRM) issued by the Council on Environmental Quality with respect to regulations implementing the National Environmental Policy Act (NEPA). CEQ was founded to be a facilitator of robust environmental review and a pillar of the National Environmental Policy Act, our magna carta for environmental protection.

The proposed rule changes are just the opposite. They represent an effort to dismantle these vital regulations that have stood the test of time for decades. They would open the door for commercial interests to block meaningful engagement by the American public and the science community. This has already begun to take place by the Department of Interior's use of Determination of NEPA Adequacy, a procedure not now in the CEQ regulations, that is being used to bypass citizen participation in, or knowledge of, environmental review processes. This is violating an essential public trust. We will not stand silent in the face of such disrespect for the intent and purpose of the National Environmental Policy Act.

I request that CEQ withdraw these proposed rule changes and instead focus on training and education to promote more effective NEPA implementation by federal agencies.

With respect to the proposed categories, should this ill-advised process continue, I offer the following comments:

1. As to the first question regarding multiple agencies: **No changes are necessary.** CEQ is already empowered to encourage timely, efficient inter-agency and multiple agency environmental reviews under Section 1502.2 of CEQ regulations. The best rule to avoid government over-reach or bureaucratic confusion is always: "If it's not broken, don't fix it." This needs no fixing.
2. Should the NEPA process be made more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions? **No.** This issue is fully addressed by Section 1501.6(a)(2) of the CEQ regulations. If agencies are not implementing this regulation, the flaw needs to be addressed by better training and leadership, not by more bureaucracy.
3. Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions? **No.** Section 1501.6 of the CEQ regulations adequately addresses the need for agency cooperation, encourages early agency cooperation, and spells out procedures such as the lead agency inviting others to be cooperating entities. If this process has broken down in some instances, it is not due to a defect in the regulations but, instead a failure on the part of the agencies. More effective CEQ leadership could help address any gaps in implementation.
4. With reference to the question of format and page length of NEPA documents and time limits for completion: **No revision is needed.** The pertinent regulations, Section 1502.10 (format), Section 1502.7 (page limit), and Section 1501.8 (time limit) already allow for flexibility and common sense measures depending on project size and the nature of the environmental issue. No rule-making change is needed to improve on this guidance.,
5. Should rules be revised to ensure NEPA documents better focus on significant issues that are relevant and useful to decision makers and the public? **No.** The CEQ requirements regarding significance outline a bare minimum of what is required to fulfill the purposes and requirements of

NEPA. Substantial case law advises the agencies, the public, and regulated communities providing greater assurance and detail regarding the level of analysis required.

If CEQ wishes to revisit the question of when an EIS is required, it should only strengthen the basis upon which a full environmental review is triggered. In that case, the “intensity” factors calling for an EIS should be broadened to include those such as: a) the degree to which members of the general public and members of the affected community are concerned about the proposed action and its environmental, social, cultural and historical impacts; b) the degree to which the proposed action may impact the future genetic viability of a species, including wild horse and burro herds; and c) the degree to which the proposed action may affect the public’s ability to benefit from the preservation of a federally protected species, whether through photography, on-range documentation and monitoring, or tourist activity benefiting the local economy.

6. Should the provisions in CEQ’s NEPA regulations relating to public involvement be revised to be more inclusive and efficient? **No changes are needed at this time.** However, if this rulemaking process proceeds, the public’s role should be expanded to require comments when changing or defining the categories of actions that may fall under a categorical exclusion (CE).

7. Should definitions of any key NEPA terms in CEQ’s NEPA regulations, such as those listed below, be revised? **No.** These definitions are fine in themselves. Their definitions are clarified by case law and best practices, in our American system based on rule of law.

8. Should any new definitions of key NEPA terms be added? **No.** Any effort to add definitions to those which have been working over the life of the statute would only serve to confuse new practitioners. It would undermine the purpose and intent of NEPA.

9. Should the provisions in CEQ’s NEPA regulations relating to any of the types of documents noted be revise? **No.** Nonetheless, should this process continue, the following should be clarified and strengthened: **Supplements -**

CEQ should issue guidance on the use of documents or procedures used either to supplement NEPA review under Section 1502.9(c) of the CEQ regulations or to avoid such review. For example, the Department of Interior has increasingly used an agency protocol, Determination of NEPA Adequacy (DNAs), to bypass public comment, accountability and the need for environmental review. This is an unacceptable attack on the core purpose of NEPA.

10. Should the provisions in CEQ’s NEPA regulations relating to the timing of agency action be revised? **No.** Section 1501.2 of CEQ regulations clearly spells out the why and how to “Apply

NEPA early in the process.” To revise these regulations can only lead to confusion, delay and NEPA avoidance.

11. Should the provisions in CEQ’s NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised? **No.** Nonetheless, if this process continues, we would accept a strengthening of Section 1506.5 of the CEQ regulations. This regulation states that contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. The execution of any disclosure statement under Section 1506.5 should be made public.

12. Should the provisions in CEQ’s NEPA regulations relating to programmatic NEPA documents and tiering be revised? **No.** Existing regulations allow agencies to tier off a programmatic EIS to avoid repetitive analyses of an issue and save energy while taking a thorough look at the case in hand.

13. Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised? **No.** The consideration of alternatives is at the heart of the NEPA process, and this is emphasized in CEQ regulations. The determination of whether a certain alternative is appropriate depends, and must arise, from the facts of each case.

14. Are any provisions of the CEQ's NEPA regulations currently obsolete? **I do not recommend** revising CEQ regulations on the pretext that a few references are out-dated. The question should be: Do such references harm or weaken the implementation of the statute? The answer is no.

15. Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient? **No.** Nonetheless, without any change in regulations, CEQ could and should take the initiative to create a central collection of all NEPA documents including draft EISs, environmental assessments, preliminary EAs, finding of no significant impacts, categorical exclusions, and record of decisions along with appendices, comments and responses for any of the aforementioned documents.

16. Are there additional ways CEQ's NEPA regulations should be revised to promote coordination of environmental review and authorization decisions, such as combining NEPA analysis and other decision documents? **No, and no again.** Section 1502.25 of the CEQ regulations states that agencies "[t]o the fullest extent possible" shall prepare draft EISs concurrently with and integrated with other environmental reviews..." Combining NEPA environmental reviews and other decision documents would indelibly harm public participation, as it would cause confusion and obfuscation. If that is the intent of this proposed rulemaking process, it should be dropped immediately.

17. Are there additional ways CEQ's NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA? **No.** NEPA regulations have not impeded the capacities of federal agencies in their application of this vital legislation. On the contrary, the types of changes now being considered by CEQ would lead to delays and uncertainty and in all likelihood trigger litigation that would delay federal projects.

18. Are there ways in which the role of tribal governments in the NEPA process should be clarified in CEQ's NEPA regulations? **No changes** are necessary in CEQ regulations to address this issue. If the rulemaking process continues, a revision of language should be considered to broaden the engagement of native American tribes whether or not cultural

artifacts are identified on the present location of Indian reservations. For example, where Section 1503.1(a)(2)(ii) of the CEQ regulations reads, "when the effects may be on a reservation" it could best be replaced with the broader terms "if their interests may be affected," so that the section reads: "Indian tribes, if their interests may be affected; and."

19. Are there additional ways CEQ's NEPA regulations should be revised to ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible? This question was answered in responses found above to questions 1, 2, 3, 4 & 17.

20. Are there additional ways CEQ's NEPA regulations related to mitigation should be revised? **No changes** are needed to improve mitigation. CEQ's "Final Guidance for Federal Departments and Agencies on the Appropriate Use of Mitigation and Monitoring and Clarifying

the Appropriate Use of Mitigated Findings of No Significant Impact," should be followed by agencies which have in the past often downplayed the mitigation process. Mitigation is a crucial part of NEPA implementation and a prime responsibility of the agencies. The regulations are clear. They need to be followed.

Respectfully yours,

Charlotte Roe

Science Advisor, The Cloud Foundation

Wild Horse and Burro Project Partner, In Defense of Animals 1621 So. County Rd. 13

Berthoud, CO 80513

[charlotteroe@yahoo.com](mailto:charlotteroe@yahoo.com)

August 19, 2018

Mary Neumayr, Chief of Staff  
Council on Environmental Quality  
730 Jackson Place NW  
Washington, DC 20503

RE: Request for Comment, Advanced Notice of Rulemaking Change (ANPRM)  
to Regulations Implementing the National Environmental Policy Act  
(83 Fed Reg 28591-28592 June 20, 2018)

Dear Ms. Neumayr,

Thank you for the opportunity to comment on the ANPRM under consideration by the Council on Environmental Quality.

On behalf of In Defense of Animals and The Cloud Foundation, I strongly object to the proposed revisions contained in the Advanced Notice of Proposed Rulemaking (ANPRM) issued by the Council on Environmental Quality with respect to regulations implementing the National Environmental Policy Act (NEPA). CEQ was founded to be a facilitator of robust environmental review and a pillar of the National Environmental Policy Act, our magna carta for environmental protection.

The proposed rule changes are just the opposite. They represent an effort to dismantle these vital regulations that have stood the test of time for decades. They would open the door for commercial interests to block meaningful engagement by the American public and the science community. This has already begun to take place by the Department of Interior's use of Determination of NEPA Adequacy, a procedure not now in the CEQ regulations, that is being used to bypass citizen participation in, or knowledge of, environmental review processes. This is violating an essential public trust. We will not stand silent in the face of such disrespect for the intent and purpose of the National Environmental Policy Act.

I request that CEQ withdraw these proposed rule changes and instead focus on training and education to promote more effective NEPA implementation by federal agencies.

With respect to the proposed categories, should this ill-advised process continue, I offer the following comments:

1. As to the first question regarding multiple agencies: **No changes are necessary.** CEQ is already empowered to encourage timely, efficient inter-agency and multiple agency environmental reviews under Section 1502.2 of CEQ regulations. The best rule to avoid government over-reach or bureaucratic confusion is always: "If it's not broken, don't fix it." This needs no fixing.
2. Should the NEPA process be made more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions? **No.** This issue is fully addressed by Section 1501.6(a)(2) of the CEQ regulations. If agencies are not implementing this regulation, the flaw needs to be addressed by better training and leadership, not by more bureaucracy.
3. Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions? **No.** Section 1501.6 of the CEQ regulations adequately addresses the need for agency cooperation, encourages early agency

cooperation, and spells out procedures such as the lead agency inviting others to be cooperating entities. If this process has broken down in some instances, it is not due to a defect in the regulations but, instead a failure on the part of the agencies. More effective CEQ leadership could help address any gaps in implementation.

4. With reference to the question of format and page length of NEPA documents and time limits for completion: **No revision is needed.** The pertinent regulations, Section 1502.10 (format), Section 1502.7 (page limit), and Section 1501.8 (time limit) already allow for flexibility and common sense measures depending on project size and the nature of the environmental issue. No rule-making change is needed to improve on this guidance.,

5. Should rules be revised to ensure NEPA documents better focus on significant issues that are relevant and useful to decision makers and the public? **No.** The CEQ requirements regarding significance outline a bare minimum of what is required to fulfill the purposes and requirements of NEPA. Substantial case law advises the agencies, the public, and regulated communities providing greater assurance and detail regarding the level of analysis required.

If CEQ wishes to revisit the question of when an EIS is required, it should only strengthen the basis upon which a full environmental review is triggered. In that case, the “intensity” factors calling for an EIS should be broadened to include those such as: a) the degree to which members of the general public and members of the affected community are concerned about the proposed action and its environmental, social, cultural and historical impacts; b) the degree to which the proposed action may impact the future genetic viability of a species, including wild horse and burro herds; and c) the degree to which the proposed action may affect the public’s ability to benefit from the preservation of a federally protected species, whether through photography, on-range documentation and monitoring, or tourist activity benefiting the local economy.

6. Should the provisions in CEQ’s NEPA regulations relating to public involvement be revised to be more inclusive and efficient? **No changes are needed at this time.** However, if this rulemaking process proceeds, the public’s role should be expanded to require comments when changing or defining the categories of actions that may fall under a categorical exclusion (CE).

7. Should definitions of any key NEPA terms in CEQ’s NEPA regulations, such as those listed below, be revised? **No.** These definitions are fine in themselves. Their definitions are clarified by case law and best practices, in our American system based on rule of law.

8. Should any new definitions of key NEPA terms be added? **No.** Any effort to add definitions to those which have been working over the life of the statute would only serve to confuse new practitioners. It would undermine the purpose and intent of NEPA.

9. Should the provisions in CEQ’s NEPA regulations relating to any of the types of documents noted be revise? **No.** Nonetheless, should this process continue, the following should be clarified and strengthened: **Supplements -**

CEQ should issue guidance on the use of documents or procedures used either to supplement NEPA review under Section 1502.9(c) of the CEQ regulations or to avoid such review. For example, the Department of Interior has increasingly used an agency protocol, Determination of NEPA Adequacy (DNAs), to bypass public comment, accountability and the need for environmental review. This is an unacceptable attack on the core purpose of NEPA.

10. Should the provisions in CEQ’s NEPA regulations relating to the timing of agency action be revised? **No.** Section 1501.2 of CEQ regulations clearly spells out the why and how to “Apply

NEPA early in the process.” To revise these regulations can only lead to confusion, delay and NEPA avoidance.

11. Should the provisions in CEQ’s NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised? **No.** Nonetheless, if this process continues, we would accept a strengthening of Section 1506.5 of the CEQ regulations. This regulation states that contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. The execution of any disclosure statement under Section 1506.5 should be made public.

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artifacts are identified on the present location of Indian reservations. For example, where Section 1503.1(a)(2)(ii) of the CEQ regulations reads, "when the effects may be on a reservation" it could best be replaced with the broader terms "if their interests may be affected," so that the section reads: "Indian tribes, if their interests may be affected; and."

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the Appropriate Use of Mitigated Findings of No Significant Impact," should be followed by agencies which have in the past often downplayed the mitigation process. Mitigation is a crucial part of NEPA implementation and a prime responsibility of the agencies. The regulations are clear. They need to be followed.

Respectfully yours,

Charlotte Roe  
Science Advisor, The Cloud Foundation  
Wild Horse and Burro Project Partner, In Defense of Animals  
1621 So. County Rd. 13  
Berthoud, CO 80513  
[charlotteeroe@yahoo.com](mailto:charlotteeroe@yahoo.com)



## RE: NEPA ANPRM Comment Letter

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**From:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
:  
**To:** Stephen Schima <sschima@partnershipproject.org>, "Boling, Ted A. EOP/CEQ" <(b) (6)>  
**Date:** Mon, 20 Aug 2018 12:45:24 -0400

Thanks Stephen.

**From:** Stephen Schima <sschima@partnershipproject.org>  
**Sent:** Monday, August 20, 2018 12:37 PM  
**To:** Boling, Ted A. EOP/CEQ <(b) (6)> Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** [EXTERNAL] NEPA ANPRM Comment Letter

Ted and Michael,

We submitted our comment letter with attachments on Friday, but I thought I would send along a copy directly to you as well. Also, the attached version corrects two small typos that a shocking number of people flagged to me.

If you have any questions, please feel free to contact me.

Thanks and I hope all is well!  
Stephen

# RE: [EXTERNAL] AMWA Comment Letter for Docket CEQ-2018-0001

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**From:** "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
**To:** "Boling, Ted A. EOP/CEQ" (b) (6) "Loyola, Mario A. EOP/CEQ" <(b) (6)>  
**Cc:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**Date:** Mon, 20 Aug 2018 09:19:16 -0400

AMWA also submitted their comments directly to the docket -- CEQ-2018-0001-9739.

**From:** Boling, Ted A. EOP/CEQ  
**Sent:** Friday, August 17, 2018 2:35 PM  
**To:** Loyola, Mario A. EOP/CEQ <(b) (6)>  
**Cc:** Mansoor, Yardena M. EOP/CEQ <(b) (6)> Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject:** FW: [EXTERNAL] AMWA Comment Letter for Docket CEQ-2018-0001

Mario - are these the comments that you were looking for?

**From:** McLaurin, Juschelle D. EOP/CEQ  
**Sent:** Friday, August 17, 2018 1:58 PM  
**To:** Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** FW: [EXTERNAL] AMWA Comment Letter for Docket CEQ-2018-0001

FYI

**From:** Stephanie Hayes Schlea <schlea@amwa.net>  
**Sent:** Friday, August 17, 2018 12:34 PM  
**To:** McLaurin, Juschelle D. EOP/CEQ <(b) (6)>  
**Subject:** [EXTERNAL] AMWA Comment Letter for Docket CEQ-2018-0001

On behalf of the Association of Metropolitan Water Agencies, please find attached the comment letter regarding CEQ's *Advance Notice of Proposed Rulemaking: Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act* (CEQ-2018-0001).

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Stephanie Hayes Schlea  
Manager, Regulatory and Scientific Affairs  
Association of Metropolitan Water Agencies  
Office: 202.331.2820  
1620 I Street NW Suite 500  
Washington, DC 20006  
><http://www.amwa.net/><

## Re: ANPRM Comments

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**From:** "Boling, Ted A. EOP/CEQ" </o=exchange organization/ou=exchange administrative group : (fydibohf23spdf)/cn=recipients/cn=eae5b047f871428b9b46baf8afd1176a-bo">

**To:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>

**Date:** Tue, 21 Aug 2018 16:56:17 -0400

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Thanks!

Sent from my iPhone

> On Aug 21, 2018, at 3:54 PM, Drummond, Michael R. EOP/CEQ <(b) (6)> wrote:

>

>

>

> Michael Drummond

> Deputy Associate Director for NEPA

> Council on Environmental Quality

>

>

> <1418 Western Governors Association.pdf>

> <1036 Tripp, Environmental Defense Fund (with law review article on strea...pdf>

> <12056 Dinah Bear.pdf>

> <12161 Ray Clark.pdf>

> <12381 Horst Greczmiel.pdf>

> <11812 Multistate AG comments (76 pages).pdf>

> <8267 AASHTO.pdf>

> <9917 GW Regulatory Studies Center.pdf>

> <9917 GW Regulatory Studies Center.pdf>

> <11898 Nicholson (NAEP).pdf>

## [EXTERNAL] Thank you & NEPA Comments

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**From:** Nancy Sopko <nsopko@awea.org>  
**To:** "Boling, Ted A. EOP/CEQ" <(b) (6)>  
**Cc:** Lauren Bachtel <lbachtel@awea.org>, Gene Grace <ggrace@awea.org>  
**Date:** Tue, 21 Aug 2018 16:43:54 -0400  
**Attachments:** AWEA Comments to CEQ on NEPA ANPR.pdf (124.91 kB)

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Hi Ted,

I wanted to send a quick note thanking you for meeting with our members and us last week to talk about issues impacting the offshore wind industry. It was a great opportunity for our companies to discuss the One Federal Decision MOU, greater interagency coordination on offshore wind permitting, and fisheries issues. We will continue to keep you and your colleagues abreast of the progress we're making in the permitting process and areas where we could use your help.

I also wanted to make sure you saw the attached comments AWEA filed on CEQ's Update to the Regulations for Implementing the Procedural Provisions of NEPA. Please let us know if you have any questions or comments.

Thanks,

Nancy

**Nancy Sopko**

Director | Offshore Wind Policy & Siting  
American Wind Energy Association

[nsopko@awea.org](mailto:nsopko@awea.org)

202.383.2554 **direct**

(b) (6) **cell**

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**August 20, 2018**

Edward A. Boling  
Associate Director for the National Environmental Policy Act  
Council on Environmental Quality  
730 Jackson Place NW  
Washington, DC 20503

*Submitted electronically via [www.regulations.gov](http://www.regulations.gov)  
Docket ID: Docket ID CEQ-2018-0001*

**RE: AWEA Comments on the Council of Environmental Quality’s Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act.**

The American Wind Energy Association (“AWEA”)<sup>1</sup> submits these comments in response to the Council on Environmental Quality’s (“CEQ”) June 20, 2018 Advance Notice of Proposed Rulemaking—Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (“NEPA”) (the “Notice”).<sup>2</sup> AWEA appreciates that CEQ is considering an update to its NEPA implementing regulations and for the extension of time to allow for meaningful review and opportunity to provide comments on the proposed changes.<sup>3</sup>

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<sup>1</sup> AWEA is a national trade association representing a broad range of entities with a common interest in encouraging the expansion and facilitation of wind energy resources in the United States. AWEA members include wind turbine manufacturers, component suppliers, project developers, project owners and operators, financiers, researchers, renewable energy supporters, utilities, marketers, customers, and their advocates.

<sup>2</sup> 83 Fed. Reg. 28,591 (Jun. 20, 2018).

<sup>3</sup> 83 Fed. Reg. 32,071 (July 11, 2018).



## I. Background

NEPA requires federal agencies to incorporate environmental considerations in their planning and decision-making through a systematic interdisciplinary approach. NEPA's statutory requirements are implemented through CEQ regulations, which are binding on all federal agencies. It is these regulations that are currently under review by CEQ and upon which these comments focus.

Among other things, the NEPA process is triggered for projects that occur on land that is owned or managed by the federal government and for projects subject to U.S. Fish and Wildlife Service control. As of March 2018 there were 35 Bureau of Land Management ("BLM") approved wind energy projects on public lands,<sup>4</sup> totaling one percent of the cumulative installed U.S. wind power capacity.<sup>5</sup> For each project, the BLM conducted a NEPA analysis, and any future wind energy development on federal land will require the same.

While wind energy development on public lands currently represents a somewhat small percentage of total wind energy development in the United States, the potential for offshore wind development is vast. Estimates show that ten gigawatts of offshore wind will be installed by 2027, with an expected total of 86 gigawatts installed by 2050.<sup>6</sup> Many of these

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<sup>4</sup> BLM, *Wind Energy Fact Sheet*, [https://www.blm.gov/sites/blm.gov/files/energy\\_renewablewindfactsheet.pdf](https://www.blm.gov/sites/blm.gov/files/energy_renewablewindfactsheet.pdf) (March 2018).

<sup>5</sup> AWEA, 2017 Annual Market Report at 83.

<sup>6</sup> United States Department of Energy and United States Department of the Interior, *National Offshore Wind Strategy*, viii (Sept. 2016), available at <https://www.energy.gov/sites/prod/files/2016/09/f33/National-Offshore-Wind-Strategy-report-09082016.pdf>.



offshore wind farms will be sited in waters managed by the Bureau of Ocean Energy Management (“BOEM”) and will undergo NEPA analysis prior to leasing and development. As wind development on federal land and in federal waters continues to grow, a coordinated, efficient, and legally sufficient NEPA process is critical to ensuring timely development in the coming years.

NEPA can also be triggered by applications for issuance of federal permits for wind energy projects on private lands, such as eagle take permits under the Bald and Golden Eagle Protection Act or incidental take permits under the Endangered Species Act. Since the overwhelming percentage of wind energy facilities are deployed on privately-owned lands,<sup>7</sup> NEPA related to issuance of federal permits for species and similar issues for wind projects on private lands projects is of particular importance to AWEA members.

## **II. Comments**

AWEA supports CEQ revising its NEPA regulations to ensure that all environmental reviews and authorization decisions are conducted in a coordinated, consistent, timely, and legally sufficient manner. Due to the breadth of the subject matter, AWEA has focused its comments below on those questions posed by CEQ that may significantly affect the wind industry.

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<sup>7</sup> AWEA, 2017 Annual Market Report at 83.



**A. NEPA Process**

- Notice Question #2 - *Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions, and if so, how?*

AWEA supports CEQ revising its NEPA regulations to ensure that previously conducted environmental studies, analyses, and decision documents are incorporated at an early stage of the review process. During the scoping process, the Lead Agency should be required to reach out to all relevant Federal, state, or local governmental agencies to invite submissions of previously conducted environmental studies, analyses, and decision documents. The Lead Agencies should then be required to review such documents and data to determine whether they can be incorporated in the current analysis. By requiring the Lead Agency to both consider and incorporate, where appropriate, information from preexisting reviews early in the NEPA process, it will prevent duplicative processes.

The agencies should exercise all efforts to streamline the NEPA process in accordance with Executive Order 13807. At the same time, agencies' actions under NEPA should be transparent in that all science and studies used to inform decision-making be made available through appropriate government data portals (i.e. BOEM's Marine Cadastre and the FWS's Environmental Conservation Online System ("ECOS")). These changes will ensure that the agency preparing the ultimate NEPA document has a full and complete picture of the underlying purpose, need, setting, and context of the action, as well as access to relevant and



specific information gathered or obtained by Federal, state, and local agencies and tribes with particular expertise in the matter.

- Notice Question # 3 - *Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decision, and if so, how?*

AWEA supports revising the CEQ regulations to ensure optimal interagency coordination through the NEPA review process by making sure all of the necessary agencies are brought into the review early in the process. Section 102(C) of NEPA requires that, prior to conducting an environmental impact statement, the Lead Agency must “consult with and obtain the comments of any Federal agency with jurisdiction by law or special expertise regarding the environmental impacts involved.”<sup>8</sup> However, at the expense of a fully informed and efficient review, agencies often do not seek special expertise if they perceive that expertise may challenge their in-house experts or policy goals. The CEQ regulations should be modified to emphasize that the Lead Agency is required to request the participation of each agency with jurisdiction by law or special expertise in the NEPA process. This will ensure that all of the necessary agencies are brought to the table.

The CEQ regulations also need to be modified to ensure that cooperating agencies are brought in prior to initiation of the scoping process. As written, CEQ regulation § 1501.6 requires, among other things, that the lead agency request participation of cooperating agencies “at the earliest possible time.” The CEQ regulations should be modified to clarify

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<sup>8</sup> 42 U.S.C. § 4332(C).



that this “earliest possible time” is prior to the initiation of the scoping process. This will ensure that the cooperating agencies can be involved in the scoping process and help shape the review from the very beginning, thereby reducing the chance for unforeseen delays and duplication of work in the review process.

In addition, there needs to be increased transparency and adherence to strict timelines. Cooperating agencies should expressly told the timeline allowed for the completion of each step of the review process. If a cooperating agency misses a deadline, the process shall continue without the input of that agency.

**B. Scope of NEPA Review**

- Notice Question # 4 - *Should the provisions in CEQ’s NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?*

AWEA supports streamlining the NEPA process by, among other things, incorporating time and page limits for NEPA documents. Such limitations will force agencies to review their current process to eliminate duplicative actions and unnecessary delays, and will likely result in more concise and comprehensible NEPA documents. However, the page and time limits need to be reasonable and take into consideration the technical complexity of projects subject to NEPA review, as well as the legal sufficiency that is required for such analysis to withstand legal challenge.

AWEA recommends that CEQ require Federal agencies to adopt or amend their existing agency-specific NEPA procedures to provide for shorter, more readable documents. While such procedures should include both page and time limitations, there should be a clear



process within each agency for receiving variances where, for example, the complexity of a Federal action warrants a departure from the limitations that would otherwise apply. This will help ensure that strictly enforced time or page limits will not make certain NEPA documents more susceptible to Administrative Procedure Act challenges because an agency needs additional space or time to fully explore the range of alternatives, environmental consequences, or mitigation associated with a complex project or one that is likely to face strong public opposition.

In addition, in order to effectively streamline NEPA without causing delays for pending projects, CEQ should require that agencies grandfather all pending NEPA analyses that have been substantially completed. AWEA recommends that “substantially completed” include NEPA analyses that have been published as drafts. Otherwise, agencies may cause further delays trying to revise draft NEPA analyses to fit within the newly established page limitations.

- Notice Question # 7 - *Should the provisions in CEQ's NEPA regulations relating to any of the types of documents listed below be revised, and if so, how?*

a. *Categorical Exclusions Documentation*

Agencies are not fully utilizing Categorical Exclusions as a tool to satisfy NEPA obligations. To assist with the streamlining process, the CEQ regulations relating to Categorical Exclusions should be revised to ensure that agencies can properly and efficiently apply exclusions to all qualifying actions. Currently, the regulations define categorical exclusions as “a category of actions which do not individually or cumulatively have a



significant effect on the human environment... and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.”<sup>9</sup> Agencies, not CEQ, create a categorical exclusion for certain classes of activities. While CEQ encourages the use of categorical exclusions to reduce unnecessary paperwork and delays,<sup>10</sup> the regulations need to be modified to provide enough clarity as to what constitutes a “significant effect” to assist agencies in determining what falls under the exclusion.

There are multiple actions that occur during wind energy development that have limited effect on the human environment and thus should always be categorically excluded from NEPA. These include, among others: (1) deployment of floating instrument buoys, such as FLiDAR, for offshore wind development; and (2) placement of meteorological towers for land-based wind development. While AWEA will continue to engage with the necessary agencies for specific categorical exclusions, the CEQ regulations should be modified to provide for an efficient and streamlined approach for the development and use of categorical exclusions by all Federal agencies. CEQ should require that agencies maximize the use of Categorical Exclusions and make all Categorical Exclusions available in a publicly searchable database. This approach will reduce costs, promote infrastructure development, and satisfy NEPA requirements. Furthermore, the Categorical Exclusions relied on by one agency with jurisdiction shall be available to all agencies for similar actions.

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<sup>9</sup> 40 C.F.R § 1508.4.

<sup>10</sup> 75 Fed. Reg. 75632 (Dec. 6, 2010)(“[a]ppropriate reliance on categorical exclusions provides a reasonable, proportionate, and effective analysis for many proposed actions, helping agencies reduce paperwork and delay.”).



- Notice Question # 11 - *Should the provisions in CEQ's NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised, and if so, how?*

Many NEPA project proponents end up paying twice for the necessary NEPA analysis for their project or action. While the Lead Agency often hires a private company and/or contractor to prepare the NEPA document for the agency at the expense of the proponent, the project proponent typically also hires outside help to assist with navigating the NEPA process. To correct this problem, AWEA recommends that CEQ provide or push for action agencies to get the necessary funding to effectively complete the NEPA analysis required for all projects and actions. In the alternative, the CEQ regulations should be revised to specifically allow the project proponent, or its contractor, to prepare the draft NEPA documents.

- Notice Question # 12 - *Should the provisions in CEQ's NEPA regulations relating to programmatic NEPA documents and tiering be revised, and if so, how?*

CEQ should revise its regulations to specifically state that the Bureau of Land Management (BLM) is to permit tiering off of existing BLM Wind Energy Programmatic Environmental Impact Statements ("PEIS"). This would allow projects within the PEIS purview to utilize the PEIS and conduct site-specific NEPA analysis only as needed. CEQ should clarify what constitutes a new and significant issue that would trigger the need for additional analysis after the issuance of a PEIS. In addition, these modifications would allow wind energy projects to avail themselves of the incentives of locating in Designated Leasing Areas under BLM regulations.



- Notice Question # 13 - *Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised, and if so, how?*

In many circumstances a Federal agency's involvement in an action that requires NEPA compliance stems from an application for Federal permitting, licensing, or other authorization of a project. For these matters the agency's role is limited to determining whether such application is consistent with the relevant statutory or regulatory framework. The agency has very little discretion to make material changes to the underlying activity. Accordingly, the CEQ regulations should be revised to account for these circumstances. It should not require the agency to spend time and resources providing an exhaustive list of alternative actions when such a course is an exercise in futility.

### **C. General**

- Notice Question # 20 - *Are there additional ways CEQ's NEPA regulations related to mitigation should be revised, and if so, how?*

Federal agencies are not obligated under NEPA to mitigate the potential adverse environmental impacts of a proposed action or to require an applicant to do so before the issuance of a permit or license. However, Federal agencies often propose mitigation as a means to reduce impacts associated with a proposed action in order to allow for a finding of no significant impact ("FONSI") for the project. These determinations are called "mitigated FONSI." While the CEQ regulations define "mitigation,"<sup>11</sup> the regulations are currently

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<sup>11</sup> See 40 C.F.R. 1508.20.



silent as to the use of such mitigated FONSI's. AWEA suggests that CEQ revise its regulations to direct the use and implementation of mitigated FONSI's.

### **III. Conclusion**

AWEA appreciates the opportunity to comment on CEQ's update to its regulations implementing NEPA, and looks forward to engaging with CEQ throughout this process.

Sincerely,

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## **[EXTERNAL] Problem Uploading Public Comments to Docket No. CEQ-2018-0001 Yesterday**

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**From:** Jesse Marquez <jnm4ej@yahoo.com>  
**To:** "Boling, Ted A. EOP/CEQ" <(b) (6)>  
**Cc:** Jesse Marquez <jnm4ej@yahoo.com>  
**Date:** Tue, 21 Aug 2018 12:43:13 -0400  
**Attachments:** CFASE Final et al Public Comments 8-20-2018.docx (153.25 kB)

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Dear Mr. Boling

Yesterday at approximately 5:15pm (PST) I tried to upload our non-profit organizations public comments to the Council on Environmental Quality

Docket No. CEQ-2018-0001

Yesterday was the deadline for submission.

When I went to the website I clicked on upload and it appeared that my document was uploading but after about 10-15 minutes it would

never say upload completed. I tried several times and it would not complete uploading.

My document was only 15 pages with no photos or illustrations.

I was referred to you by Earthjustice and recommended that I forward our comments to you.

I also drove to the LAX US Post Office to mail a copy, which was normally open until 10:00pm but they now changed their office hours

and close at 6:00pm.

Respectfully Requested,

Jesse N Marquez

Executive Director

---

Coalition For A Safe Environment

310-590-0177

Ms. Mary Neumayr  
Chief of Staff  
Council on Environmental Quality  
730 Jackson Place, N.W.  
Washington, D.C. 20503  
<https://www.regulations.gov/comment?D=CEQ-2018-0001-0001>  
<https://www.regulations.gov/docket?D=CEQ-2018-0001>

RE: Docket No. CEQ-2018-0001  
SU: Advance Notice of Proposed Rulemaking Public Comments

Dear Ms. Naumayr:

The Coalition For A Safe Environment and undersigned organizations submit the following public comments on behalf of our Environmental Justice Communities and the public's best interest. Communities throughout the United States have participated in the NEPA process and trust the foundation of principles it is based upon.

We Request No Changes To Remove Any Existing Requirements.

### **Our Public Comments**

Our joint submitted public comments will focus on our NEPA experience with the Ports and Goods Movement Industries at the Port of Los Angeles, Port of Long Beach and with the U.S. Army Corp of Engineers.

### **NEPA Should Be Protected**

Environmental Justice Communities have supported NEPA Law and the Council on Environmental Quality Regulations. EJ Community Organizations have been active in the NEPA Public Participation process by reading, assessing, researching, analyzing, preparing written comments and attending public hearings on major Port Infrastructure Project EIS's.

Environmental Justice Communities have been the most negatively impacted by project direct and indirect environmental impacts such as increased: air pollution, climate change impacts, public health impacts, safety risks from projects and natural disasters, water contamination, land contamination, biological degradation, wildlife habitat destruction, truck & train traffic congestion, truck & train accidents, cargo handling accidents, public infrastructure damage, blight, degradation of community aesthetics and loss of land for public use, community gardens, housing, parks and recreation.

### **Environmental Justice Must Be Protected**

Environmental Justice Communities have been the most negatively impacted by major infrastructure project proposals and poor federal agency decision making. We request that no decision or recommendation violate or conflict with any existing federal law, executive order, memorandum, regulation, program, guidance document or any established federal agency regulation, program or guidance document.

We Recommend No Changes To Remove Any Existing Requirements.

Our experience has shown that additional NEPA and CEQ Regulation Compliance Enforcement and Oversight should be placed on ensuring that agencies staff are trained, agencies have adequate budgets and are aware of Environmental Justice requirements and information resources. The following documents adequately address the subject of Environmental Justice:

- A. Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations  
Executive Order 12898  
February 11, 1994  
<https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>
- B. Memorandum For The Heads Of All Departments And Agencies  
The White House  
February 11, 1994  
[https://www.epa.gov/sites/production/files/2015-02/documents/clinton\\_memo\\_12898.pdf](https://www.epa.gov/sites/production/files/2015-02/documents/clinton_memo_12898.pdf)
- C. Environmental Justice Guidance Under the NEPA - CEQ  
December 10, 1997  
[https://www.epa.gov/sites/production/files/2015-02/documents/ej\\_guidance\\_nepa\\_ceq1297.pdf](https://www.epa.gov/sites/production/files/2015-02/documents/ej_guidance_nepa_ceq1297.pdf)

### **NEPA Purpose**

Sec. 2 [42 USC § 4321].

The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

### **Congressional Declaration of National Environmental Policy**

Sec. 101 [42 USC § 4331].

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consist with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --

1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

## **Responses To Request For Comment On The Questions Outlined In The Advance Notice of Proposed Rulemaking**

### ***NEPA Process:***

1. **Should CEQ's NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?**

We Recommend No Changes To Remove Any Existing Requirements.

NEPA Law and CEQ Regulations already require EIS's to be processed in a concurrent, synchronized, timely and efficient manner. This can easily be accomplished with appropriate budget funding and staff resources. Our experience has shown that more NEPA and CEQ Regulation Compliance Enforcement and Oversight should be placed on ensuring agencies comply with NEPA requirements. In *NATURAL RESOURCES DEFENSE COUNCIL, INC., et al., Plaintiffs and Appellants, v. CITY OF LOS ANGELES, et al., Defendants and Respondents*. 126 Cal.Rptr.2d 615 (2002), 103 Cal.App.4th 268. The City of Los Angeles and Port of Los Angeles failed to prepare an EIS/EIR for the new China Shipping Terminal. They claimed it was not necessary because all future projects were covered by two previous EIS/EIRs. (West Basin Transportation Improvements Program EIR 1997 and Port of Los Angeles Channel Deepening EIS/EIR 2000). They were found guilty of violating NEPA/CEQA because the two previous EIS/EIRs never mentioned the China Shipping Terminal Project. The U.S. Army Corps of Engineers only rubber stamped the Port of Los Angeles project approval with no adequate overview. More comprehensive CEQ Regulations Descriptions, Enforcement, Oversight and Periodic Compliance Audits would have prevented the three year project completion delay and extra multimillion dollar project costs.

2. **Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions, and if so, how?**

We Recommend No Changes To Remove Any Existing Requirements.

NEPA Law and CEQ Regulations are already efficient and outline what must be included in an EIS and the review process. Our experience has shown that additional NEPA and CEQ Regulation Compliance Enforcement and Oversight should be placed on ensuring agencies complete all required Direct and Indirect Environmental Analysis's, Environmental Studies and previous Decisions. Our experience has shown that Agencies failed to require that all Off-Port Tidelands Port Projects Support Sites Indirect Impacts were analyzed and included in the Draft and

Final EIS. This can easily be accomplished with appropriate budget funding and staff resources. Projects traditionally fail to include as a minimum:

- a. Container Storage Yards Environmental Impact Analysis
- b. Chassis Storage Yards Environmental Impact Analysis
- c. TRU Genset Storage Yards Environmental Impact Analysis
- d. Container Transloading Facility Environmental Impact Analysis
- e. Container Fumigation Facilities Environmental Impact Analysis
- f. Public Health Impact Analysis
- g. Public Socio-Economic Support Services Cost Impact Analysis
- h. Environmental Justice Impact Analysis
- i. Migratory Bird Nesting Season Analysis
- j. Zero Emissions Technology Availability Mitigation Analysis
- k. Emissions Capture & Treatment Technology Availability Mitigation Analysis
- l. Best Available Control Technologies (BACT) Availability Mitigation Analysis
- m. Potential Detour Routes through community vs Alternative Truck Routes Analysis
- n. Off-Port Tidelands Project Support Sites Increased Public Safety-Accident Risk Analysis
- o. Off-Port Tidelands Project Support Sites increased Risk Insurance Needs Analysis
- p. Truck and Train idling emissions on Lift Bridges and from supporting diesel power support generators Analysis

**3. Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?**

We Recommend No Changes To Remove Any Existing Requirements.

NEPA Law and CEQ Regulations already require optimal interagency coordination, efficient and outline what must be included in an EIS and the review process. Our experience has shown that additional NEPA and CEQ Regulation Compliance Enforcement and Oversight should be placed on ensuring agencies meet all statutory deadlines. This can easily be accomplished with appropriate budget funding and staff resources. Agencies have the legal authority to request additional funding in their budget requests and NEPA requires agencies to notify CEQ of their inability to cooperate and participate in the NEPA Process.

**Scope of NEPA Review:**

**4. Should the provisions in CEQ's NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?**

We Recommend No Changes To Remove Any Existing Requirements.

Our experience has shown that the format is adequate, time limits are adequate and page lengths are adequate and must be flexible for various project sizes and complexity. As an Environmental Justice Organization, we have never objected to the size of an EIS or its addendums. Agencies must however, be reasonable and accommodating to public requests for extension of public comment periods when they have identified that an EIS is so large that it require more time for public review and comment. Port of Los Angeles EIS's regularly exceed 5,000 pages. It is near impossible for the public to read, assess, research, analyze and prepare written comments when they have to read 166 technical and legal pages per day in a 30 day public comment period.

**5. Should CEQ's NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to**

**decisionmakers and the public, and if so, how?**

We Recommend No Changes To Remove Any Existing Requirements.

NEPA Law and CEQ Regulations already require the identification, assessment and mitigation of significant project environmental impacts. As Environmental Justice Organizations we review EIR's and their Addendums to assure that all significant environmental impacts have been identified, assessed and mitigated. In our public comments we identify numerous inadequacies in the EIS and Addendums and request that the Port and US Army Corp of Engineers include all missing information and analysis's and correct misrepresentations. Our experience has shown that additional NEPA and CEQ Regulation Compliance Enforcement and Oversight should be placed on ensuring agencies meet all NEPA requirements during the Draft EIS and Final EIS.

**6. Should the provisions in CEQ's NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?**

We Recommend No Changes To Remove Any Existing Requirements.

NEPA Law and CEQ Regulations already mandate public participation throughout the NEPA process. Our experience has shown that additional NEPA and CEQ Regulation Compliance Enforcement and Oversight should be placed on ensuring agencies provide adequate public notice, allow adequate public comment time to read, assess, research, analyze and prepare written comments. Information must be translated into languages based on the community that is being impacted by the project and translators be made available at all public hearings and meetings. Agencies must also utilize all local community public media and social media to advise the public of all NEPA actions. Agencies must not rely solely on their in-house mail lists. Agencies should require staff to attend community organization based public meetings and events to advertise NEPA projects.

**7. Should definitions of any key NEPA terms in CEQ's NEPA regulations, such as those listed below, be revised, and if so, how?**

- A. Major Federal Action;**
- B. Effects;**
- C. Cumulative Impact;**
- D. Significantly;**
- E. Scope; and**
- F. Other NEPA terms.**

We Recommend No Changes To Remove Any Existing Requirements.

Our experience has shown that additional NEPA and CEQ Regulation Compliance Enforcement and Oversight should be placed on ensuring agencies staff are trained and aware of cumulative impacts information resources. The following documents adequately address the subject of Cumulative Impacts:

- A. Consideration Of Cumulative Impacts In EPA Review of NEPA Documents  
U.S. Environmental Protection Agency, Office of Federal Activities (2252A) EPA 315-R-99-002/May 1999  
<https://www.epa.gov/sites/production/files/2014-08/documents/cumulative.pdf>

- B. Considering Cumulative Effects Under the National Environmental Policy Act  
Council on Environmental Quality  
January 1997  
[https://www.energy.gov/sites/prod/files/nepapub/nepa\\_documents/RedDont/G-CEQ-ConsidCumulEffects.pdf](https://www.energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-ConsidCumulEffects.pdf)
- C. Questions and Answers Regarding the Consideration of Indirect and Cumulative Impacts in the NEPA Process  
U.S. DOT federal Highway Administration  
<https://www.environment.fhwa.dot.gov/nepa/QAimpact.aspx>
- D. Guidance on the Consideration of Past Actions in Cumulative Effects Analysis  
CEQ Memorandum  
June 24, 2005  
<https://www.fs.fed.us/rmrs/sites/default/files/documents/CEQ%20%282005%29-Cumulative%20effects.pdf>
- E. Recent NEPA Cases 2005  
In 2005, federal courts issued 20 substantive decisions involving implementation of the National Environmental Policy Act (NEPA) by federal agencies  
[https://ceq.doe.gov/docs/laws-regulations/NEPA\\_Cases\\_2005\\_NAEP\\_paper.pdf](https://ceq.doe.gov/docs/laws-regulations/NEPA_Cases_2005_NAEP_paper.pdf)
- F. NEPA and CEQA: Integrating Federal and State Environmental Reviews  
CEQ NEPA CEQA Handbook  
February 2014  
[https://ceq.doe.gov/docs/ceq-publications/NEPA\\_CEQA\\_Handbook\\_Feb\\_2014.pdf](https://ceq.doe.gov/docs/ceq-publications/NEPA_CEQA_Handbook_Feb_2014.pdf)
- G. Assessing Indirect Effects And Cumulative Impacts Under NEPA  
Center for Environmental Excellence by AASHTO (American Association of State Highway and Transportation Officials)  
August 2016  
<https://environment.transportation.org/pdf/programs/ph12-2.pdf>
- H. Indirect And Cumulative Impact Analysis  
American Association of State Highway and Transportation Officials  
Standing Committee on the Environment  
January 2006  
[http://onlinepubs.trb.org/onlinepubs/archive/NotesDocs/25-25\(11\)\\_FR.pdf](http://onlinepubs.trb.org/onlinepubs/archive/NotesDocs/25-25(11)_FR.pdf)
- I. Writing Impact Analysis Sections for EAs and EISs  
National Park Service  
September 2015  
[https://www.nps.gov/subjects/nepa/upload/SupplementalGuidance\\_Impact-Analysis\\_Final\\_9-2015\\_accessible.pdf](https://www.nps.gov/subjects/nepa/upload/SupplementalGuidance_Impact-Analysis_Final_9-2015_accessible.pdf)
- J. CEQA Guidelines for Cumulative and Indirect Impacts  
California DOT  
January 19, 2005  
[http://www.dot.ca.gov/ser/cumulative\\_guidance/downloads/CEQA\\_Guidelines\\_for\\_Cumulative\\_and\\_Indirect\\_Impacts.pdf](http://www.dot.ca.gov/ser/cumulative_guidance/downloads/CEQA_Guidelines_for_Cumulative_and_Indirect_Impacts.pdf)
- K. Cumulative Effects Evaluation Process for Nationwide Permits  
U.S. Army Corps of Engineers – Seattle District  
February 2, 2016  
<http://www.nws.usace.army.mil/Portals/27/docs/regulatory/NewsUpdates/Cumulative%20Effects%20PowerPoint%20%20Feb%202016.pdf>
- L. Cumulative Effects Evaluation Quick Guide

Florida Department of Transportation  
December 2012  
<http://www.fdot.gov/environment/pubs/cee/cee-quickguide-2012-1218.pdf>

- M. Guidance on Preparing Cumulative Impact Analyses  
Washington State Department of Transportation  
February 2008  
[https://www.wsdot.wa.gov/sites/default/files/2017/11/09/ENV-NSEPA\\_YellowCumEffGuid.pdf](https://www.wsdot.wa.gov/sites/default/files/2017/11/09/ENV-NSEPA_YellowCumEffGuid.pdf)
- N. Cumulative Impacts Analysis Guidelines  
Texas Department of Transportation  
July 2016  
<https://ftp.dot.state.tx.us/pub/txdot-info/env/toolkit/720-03-gui.pdf>
- O. Cumulative Impact Violation Complaint Against U.S. Army Corps of Engineers  
The Coalition To Protect Puget Sound Habitat  
June 22, 2016  
<http://coalitiontoprotectpugetsoundhabitat.org/wp-content/uploads/2016/06/complaint-22jun2016.pdf>

**8. Should any new definitions of key NEPA terms, such as those noted below, be added, and if so, which terms?**

- A. Alternatives;**
- B. Purpose and Need;**
- C. Reasonably Foreseeable;**
- D. Trivial Violation; and**
- E. Other NEPA terms.**

We Recommend No Changes To Remove Any Existing Definitions.

We do recommend the following:

- A. Health and Healthful needs to be included and defined.
- B. Health Analysis needs to be included and defined. We request that all projects include a Public Health Baseline and a Health Impact Assessment in order to determine if adopted Mitigation has in fact improved public health.

As an Example: The Ports of Los Angeles, Long Beach and Oakland in California claim 70%-80% Reductions in PM which is true based on a 10.0 and 25 PM standards, but have shown no evidence and studies of an equivalent improvement in public health. We believe that a new 1.0 PM standard needs to be adopted to accurately reflect that Ultrafine PM is now a significant respiratory public health impact from projects. There are now hundreds of Ultrafine PM scientific-medical studies that validate this.

**9. Should the provisions in CEQ's NEPA regulations relating to any of the types of documents listed below be revised, and if so, how?**

- A. Notice of Intent;**
- B. Categorical Exclusions Documentation;**

- C. Environmental Assessments;
- D. Findings of No Significant Impact;
- E. Environmental Impact Statements;
- F. Records of Decision; and
- G. Supplements.

We Recommend No Changes To Remove Any Existing Requirements.

- 10. Should the provisions in CEQ's NEPA regulations relating to the timing of agency action be revised, and if so, how?**

We Recommend No Changes To Remove Any Existing Requirements.

- 11. Should the provisions in CEQ's NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised, and if so, how?**

We Recommend No Changes To Remove Any Existing Requirements.

Our experience has shown that additional NEPA and CEQ Regulation Compliance Enforcement and Oversight should be placed on ensuring agencies comply with all NEPA requirements during the NOI, Draft EIS and Final EIS as lead agency. Agencies cannot delegate any of its legal responsibilities to a subcontractor.

- 12. Should the provisions in CEQ's NEPA regulations relating to programmatic NEPA documents and tiering be revised, and if so, how?**

We Recommend No Changes To Remove Any Existing Requirements.

Our experience has shown that additional NEPA and CEQ Regulation Compliance Enforcement and Oversight should be placed on ensuring agencies comply with all NEPA requirements and regulations.

- 13. Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised, and if so, how?**

We Recommend No Changes To Remove Any Existing Requirements.

Our experience has shown that additional NEPA and CEQ Regulation Compliance Enforcement and Oversight should be placed on ensuring agencies comply with all NEPA requirements and regulations. We believe that CEQ Guideline should provide more direction in the following:

- A. All public non-industry recommended alternatives must be included and equally assessed and equally funded. Agency and project sponsors abuse NEPA by providing limited public non-industry recommended alternatives information and always claim budget constraints. But always have adequate funds for their alternatives.
- B. All public non-industry recommended alternatives assessments must be initiated

at the same time as agency and sponsor alternatives.

- C. Agency, applicant and industry recommended alternatives should be limited to a maximum of 3 alternatives. Agency and project sponsors abuse NEPA by including numerous alternatives which have little to no significance but include them to show that many alternatives were considered. This only causes more delays and additional costs with no benefits.

**General:**

- 14. Are any provisions of the CEQ's NEPA regulations currently obsolete? If so, please provide specific recommendations on whether they should be modified, rescinded, or replaced.**

No comment.

- 15. Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient?**

We Recommend No Changes To Remove Any Existing Requirements.

Our experience has shown that additional NEPA and CEQ Regulation Compliance Enforcement and Oversight should be placed on ensuring agencies comply with all NEPA requirements and regulations. We believe that CEQ Guideline should provide more direction in the following:

- A. All NEPA Project and EIS information and documentation must be provided on the Agency and Project Sponsor website and on a CD/DVD/USB Memory Drive in a timely manner without any requirement to file a FOIA request.
- B. Website must provide easy access to find the NEPA project information. We have discovered that many website search engines have not been updated to allow public access and participation.

- 16. Are there additional ways CEQ's NEPA regulations should be revised to promote coordination of environmental review and authorization decisions, such as combining NEPA analysis and other decision documents, and if so, how?**

We Recommend No Changes To Remove Any Existing Requirements.

- 17. Are there additional ways CEQ's NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA, and if so, how?**

We Recommend No Changes To Remove Any Existing Requirements.

Our experience has shown that additional NEPA and CEQ Regulation Compliance Enforcement and Oversight should be placed on ensuring agencies comply with all NEPA requirements, regulations and EIS requirements. We believe that CEQ Guideline should provide more direction in the following:

- A. The agency and project sponsor must include an analysis on all public non-industry identified Indirect Impacts during the NOI and Draft EIS. Agencies and project sponsors delay efficient and rapid processing of project EIS's by failing to assess them upfront.
- B. The agency and sponsor should include an Analysis of all workforce manpower, truck driver, truck and chassis availability based on project development projections. As an example: The Port of Los Angeles and Port of Long Beach

failed to conduct this Analysis, monitor milestone timelines and ships were waiting off-shore for days before container ships could be unloaded. The air pollution emissions were also never mitigated.

- C. Public NEPA lawsuits can be avoided if the agency and project sponsors identify and include Analysis's of Indirect Impacts in the Draft EIS.
- D. CEQ can create Standard Industry Checklists of Indirect Impacts that would facilitate efficient and rapid preparation of EIS's and Analysis's and eliminate future NEPA lawsuits and project delays.

- a. Chapter 1 Introduction to Cumulative Effects Analysis Table 1-1 provides a good general example.  
Considering Cumulative Effects Under the National Environmental Policy Act  
Council on Environmental Quality  
January 1997  
[https://www.energy.gov/sites/prod/files/nepapub/nepa\\_documents/RedDont/G-CEQ-ConsidCumulEffects.pdf](https://www.energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-ConsidCumulEffects.pdf)
- b. See our example Attachment A.

**18. Are there ways in which the role of tribal governments in the NEPA process should be clarified in CEQ's NEPA regulations, and if so, how?**

Yes. We recommend the following:

- A. As Sovereign Nations they should be accorded the same rights as a lead agency.
- B. Sovereign Nations can also impose additional environmental protection and enforcement requirements beyond NEPA.

**19. Are there additional ways CEQ's NEPA regulations should be revised to ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible, and if so, how?**

We Recommend No Changes To Remove Any Existing Requirements.

**20. Are there additional ways CEQ's NEPA regulations related to mitigation should be revised, and if so, how?**

We Recommend No Changes To Remove Any Existing Requirements.

Our experience has shown that additional NEPA and CEQ Regulation Compliance Enforcement and Oversight should be placed on ensuring agencies staff are trained, aware of mitigation information resources and monitor Mitigation compliance. As an example: It was discovered in 2015 that the Port of Los Angeles failed to implement 11 out of 52 mitigation measures contained in the 2008 China Shipping Terminal Project Final EIS/EIR. We request that an Independent 3<sup>rd</sup> Party be contracted for administrating Mitigation Monitoring and Reporting Programs.

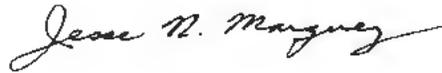
The following documents adequately address the subject of Mitigation:

- A. Promising Practices for EJ Methodologies in NEPA Reviews  
Report of the Federal Interagency Working Group on Environmental Justice & NEPA  
Committee  
March 2016  
[https://www.epa.gov/sites/production/files/2016-08/documents/nepa\\_promising\\_practices\\_document\\_2016.pdf](https://www.epa.gov/sites/production/files/2016-08/documents/nepa_promising_practices_document_2016.pdf)

- B. Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact  
CEQ Memorandum for Heads of federal Departments and Agencies  
January 14, 2011  
<https://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1188.pdf>  
<https://www.federalregister.gov/documents/2011/01/21/2011-1188/final-guidance-for-federal-departments-and-agencies-on-the-appropriate-use-of-mitigation-and>
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[https://www.fws.gov/endangered/improving\\_esa/pdf/Interim\\_Guidance\\_for\\_Implementing\\_the\\_Endangered%20Species%20Act%20Jan%202017.pdf](https://www.fws.gov/endangered/improving_esa/pdf/Interim_Guidance_for_Implementing_the_Endangered%20Species%20Act%20Jan%202017.pdf)

The principal contact for these submitted public comments is Jesse N. Marquez. All inquiries should be directed to him first for timely response.

Respectfully Submitted,



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# Attachment A

Example

## Port Container Terminal Projects (New & Expansion) Checklist

- A. Will project Truck and Train Rail infrastructure, operations and support services impacts expand off-port tidelands site?
  - a. Identify all public transportation infrastructure that will be impacted by project within 25 miles, 50 miles and 100 miles.
  - b. Analyze traffic congestion by project within 25 miles, 50 miles and 100 miles.
  - c. Analyze public safety accident increases by project within 25 miles, 50 miles and 100 miles.
  - d. Analyze accelerated aging of infrastructure damage, increased, maintenance, repair, replacement and costs.
  - e. Will potential Detours be through the community or designated alternative freight routes.
- B. Will project require off-port tidelands site Container Storage Yards/Locations?
  - a. Identify all Container Storage Yards/Locations within 25 miles, 50 miles and 100 miles.
  - b. Was an analysis of site air pollution (Criteria, Toxic Pollutants, GHG), ground hydrocarbon contamination & contaminated rain water runoff conducted?
  - c. Was an analysis of increased vector problems, blight and aesthetics impacts conducted?
  - d. Was an analysis of truck route air pollution on public streets, highways, freeways and bridges ground hydrocarbon contamination, hydrocarbon contaminated rain water runoff, increased traffic congestion, increased accidents, accelerated aging of infrastructure damage, increased, maintenance, repair, replacement and costs conducted?
  - e. Was an Analyze of public safety-accident risk increases at site conducted?
  - f. Was an Analysis of noise and vibration at site conducted?
- C. Will project require off-port site Chassis Storage Yards/Locations?
  - a. Identify all Container Storage Yards/Locations within 25 miles, 50 miles and 100 miles.
  - b. Was an analysis of site air pollution (Criteria, Toxic Pollutants, GHG), ground hydrocarbon contamination & contaminated rain water runoff conducted?
  - c. Was an analysis of increased vector problems, blight and aesthetics impacts conducted?
  - d. Was an analysis of truck route air pollution on public streets, highways, freeways and bridges ground hydrocarbon contamination, hydrocarbon contaminated rain water runoff, increased traffic congestion, increased accidents, accelerated aging of infrastructure damage, increased, maintenance, repair, replacement and costs conducted?
  - f. Was Analyze of public safety-accident risk increases at site conducted?
  - g. Was an Analysis of noise and vibration at site conducted?
- D. Will project require off-port site TRU Genset Storage Yards/Locations?
  - a. Identify all TRU Genset Storage Yards/Locations within 25 miles, 50 miles and 100 miles.
  - b. Was an analysis of site air pollution (Criteria, Toxic Pollutants, GHG), ground hydrocarbon contamination & contaminated rain water runoff conducted?
  - c. Was an analysis of increased vector problems, blight and aesthetics impacts conducted?
  - d. Was an analysis of truck route air pollution on public streets, highways, freeways and bridges ground hydrocarbon contamination, hydrocarbon contaminated rain water runoff, increased traffic congestion, increased accidents, accelerated aging of infrastructure

- damage, increased, maintenance, repair, replacement and costs conducted?
- e. Was an Analyze of public safety-accident risk increases at site conducted?
- f. Was an Analysis of noise and vibration at site conducted?

E. Will project require off-port site Truck Storage Yards/Locations?

- a. Identify all Truck Storage Yards/Locations within 25 miles, 50 miles and 100 miles.
- b. Was an analysis of site air pollution (Criteria, Toxic Pollutants, GHG), ground hydrocarbon contamination & contaminated rain water runoff conducted?
- c. Was an analysis of increased vector problems, blight and aesthetics impacts conducted?
- d. Was an analysis of truck route air pollution on public streets, highways, freeways and bridges ground hydrocarbon contamination, hydrocarbon contaminated rain water runoff, increased traffic congestion, increased accidents, accelerated aging of infrastructure damage, increased, maintenance, repair, replacement and costs conducted?
- e. Was an Analyze of public safety-accident risk increases at site conducted?
- f. Was an Analysis of noise and vibration at site conducted?

F. Will project require off-port site Truck staging areas?

- a. Identify all Truck Staging Areas, Yards, Locations within 25 miles, 50 miles and 100 miles.
- b. Was an analysis of site air pollution (Criteria, Toxic Pollutants, GHG), ground hydrocarbon contamination & contaminated rain water runoff conducted?
- c. Was an analysis of increased vector problems, blight and aesthetics impacts conducted?
- d. Was an analysis of truck route air pollution on public streets, highways, freeways and bridges ground hydrocarbon contamination, hydrocarbon contaminated rain water runoff, increased traffic congestion, increased accidents, accelerated aging of infrastructure damage, increased, maintenance, repair, replacement and costs conducted?
- e. Was an Analyze of public safety-accident risk increases at site conducted?
- f. Was an Analysis of noise and vibration at site conducted?

G. Will project require off-port site Container Fumigation?

- a. Identify all Container Fumigation Facilities within 25 miles, 50 miles and 100 miles.
- b. Was an analysis of site air pollution (Criteria, Toxic Pollutants, GHG), ground hydrocarbon contamination & contaminated rain water runoff conducted?
- c. Was an analysis of increased vector problems, blight and aesthetics impacts conducted?
- d. Was an analysis of truck route air pollution on public streets, highways, freeways and bridges ground hydrocarbon contamination, hydrocarbon contaminated rain water runoff, increased traffic congestion, increased accidents, accelerated aging of infrastructure damage, increased, maintenance, repair, replacement and costs conducted?
- e. Was an Analyze of public safety-accident risk increases at site conducted?
- f. Was an Analysis of noise and vibration at site conducted?

## RE: Thank you & NEPA Comments

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**From:** "Boling, Ted A. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdft)/cn=recipients/cn=eae5b047f871428b9b46baf8afd1176a-bo">  
**To:** Nancy Sopko <nsopko@awea.org>  
**Cc:** Lauren Bachtel <lbachtel@awea.org>, Gene Grace <ggrace@awea.org>  
**Date:** Wed, 22 Aug 2018 17:12:25 -0400

Nancy – thanks for organizing a great meeting and following up with specific comments on the ANPRM. I'm looking forward to a follow-up meeting with Mary Neumayr, which is being organized for September 13.

Best,  
Ted

Edward A. Boling  
Associate Director for the  
National Environmental Policy Act  
Council on Environmental Quality  
730 Jackson Place  
Washington, DC 20503

**From:** Nancy Sopko <NSopko@awea.org>  
**Sent:** Tuesday, August 21, 2018 4:44 PM  
**To:** Boling, Ted A. EOP/CEQ <(b) (6)>  
**Cc:** Lauren Bachtel <LBachtel@awea.org>; Gene Grace <GGrace@awea.org>  
**Subject:** [EXTERNAL] Thank you & NEPA Comments

Hi Ted,

I wanted to send a quick note thanking you for meeting with our members and us last week to talk about issues impacting the offshore wind industry. It was a great opportunity for our companies to discuss the One Federal Decision MOU, greater interagency coordination on offshore wind permitting, and fisheries issues. We will continue to keep you and your colleagues abreast of the progress we're making in the permitting process and areas where we could use your help.

I also wanted to make sure you saw the attached comments AWEA filed on CEQ's Update to the Regulations for Implementing the Procedural Provisions of NEPA. Please let us know if you have any questions or comments.

Thanks,

Nancy

**Nancy Sopko**

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## [EXTERNAL] Women's Mining Coalition's Comments on ANPR for CEQ's Rules Implementing NEPA

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**From:** Debra Struhsacker <debra@struhsacker.com>  
**To:** "Prandoni, Christopher D. EOP/CEQ" <[REDACTED]>  
**Cc:** Liz Arnold <ejbarnold@gmail.com>  
**Date:** Wed, 22 Aug 2018 21:11:03 -0400  
**Attachments:** Women's\_Mining\_Coalition\_CEQ\_ANPR\_NEPA\_Comments\_081418.pdf (487.31 kB)

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Hello Christopher:

As promised in my voice mail message earlier this month, I am sending the comments that the Women's Mining Coalition submitted last week to the regulations.gov website in response to CEQ's ANPR requesting comments on the 40 CFR Parts 1500 – 1508 regulations implementing NEPA.

As emphasized in our comments, there are many elements of the existing regulations that do not require much – if any – modification. This is especially true of the sections on reducing paperwork (40 CFR § 1500.4), reducing delay (40 CFR § 1500.5), time limits (40 CFR § 1501.8), and page limits (40 CFR § 1502.7).

A rulemaking should not be required to enforce these provisions in the existing rule. Because these sections of the regulations are appropriate, and better compliance with these sections would expedite the preparation of NEPA documents, we recommend that CEQ evaluate ways to compel federal agencies to comply with these existing provisions in the immediate future rather than waiting for a rulemaking process

to be completed. At the same time, CEQ could initiate rulemaking to amend those sections of the regulations that need to be modified or updated.

Better compliance with the paperwork reduction directives in 40 CFR § 1500.4 would greatly improve NEPA documents for several reasons. First compliance with this section would reduce the length and complexity of the documents which would make them easier for the public to understand. More importantly, it would make NEPA documents more focused on aspects of the environment related to the specific decision to be made, which would make them more useful to the decisionmaker. It would also likely reduce the time it takes to prepare the document resulting in more timely decisions, which would benefit the public, regulatory agencies, and the regulated community. Finally, we believe that stricter compliance with the paperwork reduction section would help reduce litigation by producing more focused documents that would in turn limit the issues that could be litigated.

The Women's Mining Coalition appreciates the opportunity to provide these comments to CEQ, the presentation that you gave to our group in April, and taking the time to meet with me and Liz Arnold.

Please don't hesitate to contact me if you have any questions about our comments.

Regards,

Debbie

**Debra W. Struhsacker**

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August 14, 2018

Mr. Edward A. Boiling  
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Docket ID. Number CEQ-2018-0001  
<https://www.regulations.gov>

Dear Mr. Boling:

### **Introduction**

The Women's Mining Coalition (WMC) applauds the Council on Environmental Quality's (CEQ's) initiative to evaluate its 40 CFR Parts 1500 – 1508 regulations for implementing the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* This letter provides WMC's suggestions in response to the Advance Notice of Proposed Rulemaking (ANPR), Federal Register Vol. 83, Number 119, Pages 28591 – 28592 seeking comments to update NEPA implementation procedures.

WMC's comments and suggestions are based on our members' extensive NEPA experience starting in the 1980s in conjunction with mineral exploration and development projects on public lands administered by the U.S. Bureau of Land Management (BLM) and the U.S. Forest Service (USFS). Based on this experience, WMC members have firsthand knowledge of the costs, complexities, delays, and uncertainties associated with the NEPA process. WMC has filed numerous comments in response to NEPA documents that BLM and USFS have prepared to evaluate specific projects and various land management plans and plan amendments, including land use plans for the Greater Sage-Grouse.

CEQ's proposed rulemaking is long overdue from an historical perspective. As one of the nation's first federal environmental laws, NEPA provided an important and at the time, unique opportunity for the public to review and comment upon projects that had the potential to affect the environment. In the nearly forty years since NEPA's enactment, Congress and state legislatures have passed and amended numerous environmental protection statutes. CEQ's NEPA regulations date back to 1978 and need to be updated to reflect that today's environmental protection statutes fill the environmental review and protection gap that NEPA sought to fill in 1969. CEQ's proposed rulemaking is an important opportunity to update the NEPA regulations in light of the many post-NEPA federal and state environmental protection and environmental review statutes, and to integrate the NEPA process with other federal and state environmental permitting procedures.

Over the course of our experience with the NEPA process, WMC members have seen NEPA documents balloon in size and complexity, take much more time to complete, and cost much more to prepare. This is the exact opposite of the trend that should be expected given the enactment of numerous federal and state environmental protection and review statutes since 1970.

From the perspective of a project applicant, the NEPA process is fraught with uncertainties and is a source of intolerable delays that chill investment in U.S. projects. The main driver for the delays and uncertainty is the prospect of litigation challenging the sufficiency of an agency's NEPA document. As such, anti-project interests have effectively weaponized the NEPA process, turning it into a significant obstacle that must be overcome before a project can proceed. The overarching purpose of CEQ's rulemaking to update its NEPA regulations should be to reduce the uncertainties and delays by expediting the NEPA process and making NEPA documents less vulnerable to appeal and litigation.

In the ANPR, CEQ asks whether many of the procedural provisions should be changed or updated. As discussed in detail below, WMC believes that some of the existing NEPA procedures are sound and do not require much – if any – modification. This is especially true of the sections on reducing paperwork (40 CFR § 1500.4), reducing delay (40 CFR § 1500.5), time limits (40 CFR § 1501.8), and page limits (40 CFR § 1502.7).

Although a rulemaking would be required to make some of the updates and changes discussed below, it should not be necessary to enforce the existing rule. In fact, a new rule would not necessarily ensure better compliance with the page and time limits and other provisions in the rule. Because the above-noted sections of the 40 CFR Parts 1500 – 1508 regulations are sound, WMC strongly recommends that CEQ evaluate ways to compel federal agencies to comply with these existing provisions in the immediate future rather than to wait for a rulemaking process to be completed. At the same time, CEQ could initiate rulemaking to amend those sections of the regulations that need to be modified or updated.

Better compliance with the paperwork reduction directives in 40 CFR § 1500.4 would greatly improve NEPA documents for several reasons. First compliance with this section would reduce the length and complexity of the documents which would make them easier for the public to understand. More importantly, it would make NEPA documents more focused on aspects of the environment related to the specific decision to be made, which would make the documents more useful to the decisionmaker. It would also likely reduce the time it takes to prepare NEPA documents resulting in more timely decisions, which would benefit the public, regulatory agencies, and the regulated community. Finally, we believe that stricter compliance with the paperwork reduction section would help reduce litigation by producing more focused documents that would in turn limit the issues that could be litigated.

Based on our experience we find that the federal agencies have developed procedures that deviate significantly from many of the directives in the CEQ regulations. Instead of writing concise and timely NEPA documents as the CEQ regulations require, the procedures the agencies have developed over the years produce lengthy and complex documents that take years to complete. These massive tomes are so long and complicated that they do not fulfill NEPA's fundamental purposes and are vulnerable to NEPA challenges and litigation. As established in 40 CFR § 1500.2(b) federal agencies shall to the fullest extent possible:

“Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact

statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.”

Voluminous NEPA documents produced during a protracted NEPA process typically frustrate NEPA’s basic purpose to inform the public and decisionmakers and to assist in decisionmaking:

“NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken...Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.” 40 CFR § 1500.1(b)

“Ultimately, of course, it is not better documents but better decisions that count. NEPA’s purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.” 40 CFR 1500.1(c)

As discussed in more detail below, WMC members find that one of the main reasons that NEPA documents are lengthy and overly complex is due to an improper and inflated scope that examines all aspects of the environment in detail when the potential impacts from the Proposed Action only affect specific environmental resources. Lengthy and complicated NEPA documents are similarly inappropriate for actions where the decisionmaker’s authority is narrow and limited to a specific permit decision. We believe the overly broad scope is largely due to agencies’ attempts to make NEPA documents bulletproof as a safeguard against appeal and litigation. We recommend clarifying that the scope of the decisionmaker’s authority – the “decision space” – should define the focus of the NEPA document being prepared to assist the decisionmaker in making the decision.

Because the agencies significantly deviate from many of the CEQ’s directives, WMC suggests modifying and clarifying specific NEPA terminology in 40 CFR § 1508 to be more consistent with the overarching purpose of NEPA, to assist agencies comply with the CEQ regulations, and to reduce NEPA litigation.

#### About WMC

WMC is a grassroots organization with over 200 members nationwide. Our members work in all sectors of the mining industry including hardrock, industrial minerals, and coal; energy generation and mining-related distribution, manufacturing, transportation, and service industries. We hold annual Washington, DC Fly-Ins to meet with members of Congress and their staff, and federal land management and regulatory agencies to discuss issues of importance to both the hardrock and coal mining sectors.

For many years, WMC has been concerned about the protracted NEPA process for mineral projects on public lands. The delays associated with the NEPA process are a major factor in contributing to the country’s steadily increasing reliance on foreign minerals. During the last several Fly-In’s we have presented the charts shown in Exhibit I from the 1996<sup>1</sup> and 2017<sup>2</sup> USGS’ Mineral Commodity

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<sup>1</sup> U.S. Geological Survey, 1996, Mineral commodity summaries 1995: U.S. Geological Survey, <https://minerals.usgs.gov/minerals/pubs/mcs/1996/nir.gif>.

<sup>2</sup> U.S. Geological Survey, 2017, Mineral commodity summaries 2017: U.S. Geological Survey, 202 p., <https://doi.org/10.3133/70180197>

Summaries. These charts document a shocking increase in the net mineral import reliance in the 21-year period from 1995 to 2016. Given our focus on this important issue, we fully support CEQ's initiative to update its regulations for implementing NEPA.

Our Nation's increasing reliance on imported minerals is not due to a lack of domestic mineral targets warranting exploration and potential development. Rather, WMC believes that the rapid growth in the nation's foreign mineral reliance is due in large part to unfavorable federal policies including the protracted NEPA process that impedes mineral exploration and development.

In December 2017, President Trump issued Executive Order ("EO") No. 13817, "Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals." This Critical Minerals EO establishes:

"It shall be the policy of the Federal Government to reduce the Nation's vulnerability to disruptions in the supply of critical minerals, which constitutes a strategic vulnerability for the security and prosperity of the United States. The United States will further this policy for the benefit of the American people and in a safe and environmentally responsible manner, by...(d) streamlining leasing and permitting processes to expedite exploration, production, processing, reprocessing, recycling, and domestic refining of critical minerals."

CEQ's NEPA rulemaking will be an important step in fulfilling the permit streamlining directive in President Trump's Critical Minerals EO. The remainder of this comment letter responds to the specific questions raised in the ANPR.

### *NEPA Process*

#### **1. Should CEQ's NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?**

Response: The CEQ regulations already include several provisions that direct how agencies must work together to develop coordinated and synchronized documents. For example, NEPA policy at 40 CFR § 1500.2(c) already establishes that:

"Federal agencies shall to the fullest extent possible...[i]ntegrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively."

The CEQ regulations at 40 CFR § 1506 also require federal agencies to coordinate the NEPA review process with state and local agencies to eliminate duplication with state and local procedures. Section 1506.2(b) specifically directs federal agencies to "...cooperate with state and local agencies to the fullest extent possible to reduce duplication between NEPA and state and local requirements."

WMC recommends that the CEQ refine these requirements to direct federal agencies to use state and local permit decisions where a state or local agency has primacy for a federal permit program (herein called "a primacy permit") including but not limited to the Clean Air Act or the Clean Water Act. Similarly, other federal or state environmental protection permit programs should reduce the scope, length and complexity of the NEPA analysis. If a state or local agency determines that a proposed action meets all relevant regulatory requirements to protect the environment and is therefore entitled to a permit,

federal agencies should deem that aspect of the project as having an insignificant impact. In such cases, an Environmental Assessment (EA)/Finding of No Significant Impact (FONSI), a Determination of NEPA Adequacy (DNA), or a Categorical Exclusion should be sufficient to satisfy NEPA requirements. An Environmental Impact Statement (EIS) should not be required unless there are other aspects of the federal agency's decision space that require analysis in an EIS.

The recently signed "Memorandum of Understanding Implementing One Federal Decision Under Executive Order 13807" is consistent with the directives in the CEQ regulations mandating coordination. WMC suggests that it may be appropriate for CEQ to incorporate some or all of the procedures and policies established in this Memorandum of Understanding in a proposed rulemaking. Although the two-year timeframe for completing the NEPA process for a major infrastructure project may be appropriate for complex projects involving numerous federal agencies, it should not be adopted as a universal timeframe to prepare an EIS. Two years is longer than the NEPA process should take for simpler, site-specific third-party proposed actions. We suggest that the Department of the Interior's (DOI's) one-year time frame in its NEPA Streamlining Secretarial Order No. 3355 is more appropriate for applicant-submitted project proposals.

**2. Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions and if so, how?**

Response: Clearly the use of current and applicable environmental analyses is mandatory when an agency is required to make an authorization decision under the NEPA. There are several sections of the current CEQ regulations that already speak to making the NEPA process more efficient such as by incorporating by reference (40 CFR § 1502.21 and § 1500.4(j)), combining environmental documents with other documents (40 CFR § 1506.4 and § 1500.4), and tiering (40 CFR § 1502.20). WMC suggest that CEQ provide further emphasis upon and clarification of these requirements. As noted above, WMC recommends that CEQ evaluate ways to require compliance with the existing provisions on page and time limits rather than pursuing a lengthy rulemaking in an attempt to force better compliance with the current regulations.

**3. Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?**

Response: Please see response to Number 1 above.

*Scope of NEPA Review*

**4. Should the provisions in CEQ's NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?**

Response: The CEQ regulations already provide the following regulations on page limits: 40 CFR §§1500.4(a), 1501.7(b)(1), 1502.7 and 1502.2(c). For example, 40 CFR § 1502.2(c) states:

"Environmental impact statements shall be kept concise and *shall* be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should

vary first with potential environmental problems and then with project size.” (italics emphasis added)

Regrettably, federal agencies largely ignore the page limits and document length directives to write concise documents that are explicitly stated in the existing regulations. (A notable exception is DOI’s recent Secretarial Order 3355 on NEPA streamlining). As emphasized above, rather than revising these regulations, CEQ should evaluate ways to enforce the page limits in the existing regulations.

Similarly, the CEQ regulations already include directives on time limits including: 40 CFR §§ 1500.5(e), 1501.1(e), 1501.7(b)(2), and 1501.8 that the agencies widely disregard. The time limits in the existing regulations do not need to be changed, they just need to be enforced. Again, we support the one-year time limit for EIS preparation specified in DOI Secretarial Order 3355.

WMC recommends retaining the EIS format regulation at 40 CFR § 1502.10 because the public is accustomed to reviewing documents with this format. However, this section should be clarified to underscore that for some projects, elements of the standard format should be as concise as possible through the use of appropriate tiering and incorporating by reference to avoid repetition. As discussed above, there may be no need to devote many pages in an EIS discussing aspects of the affected environment that are outside of the decisionmaker’s decision space. Similarly, for some projects with land ownership, spatial, topographic, or geologic constraints where there are few if any viable alternatives that would lessen environmental impacts or create environmental benefits, the Alternatives section may be restricted to the No Action Alternative and the Proposed Alternative. (See Section 7a. below).

**5. Should CEQ’s NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decisionmakers and the public, and if so, how?**

Response: The CEQ regulations explicitly require NEPA documents to focus on significant issues:

“...NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.” 40 CFR § 1500.1(b);

“Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses.” 40 CFR § 1502.1.

“Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues.” 40 CFR §1502.2(b);

“Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary first with potential environmental problems and then with project size.” 40 CFR §1502.2(c)

These are examples of the clear directives in the CEQ regulations that agencies frequently violate and reviewing courts ignore. CEQ should amend the regulations to force agencies and courts to focus on significant issues. Specifically, the regulations should be amended to add a section that identifies “significant” and “not significant” issues in every NEPA document. Any issue that is “not significant” need not be addressed in the NEPA document.

Issues that are “not significant,” by rule should include the following categories:

- 1) Issues covered by substantive environmental standards and/or permits by other agencies under federal environmental laws, delegated state programs, or state environmental laws should be defined by rule as being “not significant”. Thus, for example a NEPA document evaluating a proposed action that requires an air quality permit from EPA and/or a state air quality authority (e.g., a primacy permit) should not include a detailed discussion of potential impacts to air quality. In this case under the amended regulations, air quality would be a “not significant” issue and would require no more than a reference to the substantive permitting process; and
- 2) Issues that are not relevant to the agency’s decision on the proposed action and/or are outside the scope of the agency’s decision space would be a “not significant” issue.

The regulations should also define where the agency has the discretion to determine that issues are “not significant” based on scoping, prior experience with the environment associated with a proposed action, or the range of alternatives. If the potential impacts to a particular resource are not relevant to an agency’s choice among alternatives, then impacts to that resource should be “not significant” and need not be discussed in the NEPA document.

The discussion in the NEPA document might be analogous to current discussion of alternatives considered but “eliminated from detailed study” (40 CFR § 1502.14(a)). The document would identify the “significant” issues, which may be no more than two or three for a particular project, and then explain why other issues are “not significant” and will not be addressed further in the NEPA document. Forcing agencies and courts to focus on those resources and issues that are important to the agency’s decision is the most effective way to make NEPA useful to agencies and the public. Documents that focus on issues that are “not significant” are unnecessarily long and complex, which detracts from the key issues associated with a project, and make it harder for the public and the decisionmaker to get to the meat of the issue.

CEQ should evaluate more timely mechanisms than a rulemaking to enforce the provisions in the existing regulations that already require NEPA documents to focus on significant issues. Documents that fail to adhere to this requirement do a disservice to the public by obscuring the key issues associated with a proposed project. They also make it harder for the decisionmaker to get to the “meat” of the issue.

**6. Should the provisions in CEQ’s NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?**

Response: For site-specific project proposals, the public involvement provisions should be modified to give more weight to local stakeholders who live near a proposed project and who may directly experience impacts from the proposed action compared to stakeholders who live elsewhere participating through national interest groups. We believe that according more importance to comments from local stakeholders would improve the quality of public participation in the NEPA process.

This is especially true for those who live in rural resource-dependent communities that are surrounded by federal public land and depend on mining, oil and gas production, ranching and logging activities on public lands to provide jobs, tax revenue, and infrastructure support. Local communities generally understand the impacts of nearby projects and are in a better position than outside interest groups including Non-Governmental Organizations (NGOs) to provide substantive comments based on local knowledge that will improve the project, reduce environmental impacts, and increase environmental

benefits. This approach would give federal agencies better tools to expend more resources in responding to local concerns and comments and a more effective way to respond to cookie-cutter, anti-project comments typically received from NGO-sponsored letter writing campaigns.

CEQ should consider updating the public involvement provisions in the CEQ regulations by broadening the outreach efforts to include agency websites, email, and various social media outlets as discussed in Section 8a. below.

**7. Should definitions of any key NEPA terms in CEQ's NEPA regulations, such as those listed below, be revised, and if so, how?**

a. Major Federal Action

CEQ needs to clarify the two-pronged aspect of the definition of "Major Federal Action" at 40 CFR § 1508.18: "Major federal action" includes actions with effects that may be major and which are potentially subject to federal control and responsibility." In order for a project to constitute a Major Federal Action it must: 1) be associated with effects that may be major; and 2) the project must be subject to federal control and responsibility that would be exercised through a decision made by a federal decisionmaker. Federal agencies typically overlook the second prong of this definition. Consequently, the scope of NEPA documents frequently exceeds the extent of the agency's regulatory authority and the range of the decisions the agency is authorized to make.

For example, the BLM and the USFS regulate mineral exploration and development on public lands open to operation of the U.S. Mining Law (30 U.S.C §§ 21a *et seq*) under their surface management regulations.<sup>3</sup> Neither BLM nor USFS have specific or direct regulatory jurisdiction over air quality, water quality, water quantity, or plant and wildlife species that are not endangered or threatened species under the Federal Endangered Species Act (16 U.S.C. § 1531 *et seq*). Most states have primacy for the federal Clean Air Act and Clean Water Act federal regulatory programs and are thus responsible for issuing primacy permits pertaining to air quality and water quality. All states have jurisdiction over water quantity (e.g., water rights) and non-listed wildlife species. Despite BLM's and USFS's limited decisionmaking authority with regard to these issues, their NEPA documents typically contain extensive information about air quality, water quality, water quantity, and wildlife.

Because neither BLM nor the USFS have regulatory jurisdiction over these resources, there are no decisions for BLM or the USFS to make. Consequently, there is no BLM or USFS Major Federal Action related to air quality, water quality, water quantity, or wildlife. The Major Federal Action should be congruent with and limited to the scope of the agencies' regulatory authorities pursuant to BLM's or USFS's surface management regulations. In the context of the BLM's decision, these resources are "not significant" and should be dismissed from further consideration as explained above.

Additionally, issuance of a state air quality or water quality permit or a water right means the project complies with all applicable requirements. Therefore, there is no significant environmental impact associated with these aspects of a project.

Making the scope of NEPA analyses correspond to the decisionmaker's authority would greatly simplify and shorten some NEPA documents. It could also lead to the preparation of more EAs,

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<sup>3</sup> The BLM regulates mineral activities under the 43 CFR Subpart 3809 regulations. The U.S. Forest Service regulates the under 36 CFR Part 228A.

DNAs, or Categorical Exclusions and fewer EIS documents, which would conserve federal resources and respond to the permit streamlining directives in Executive Order 13807. CEQ should thus provide clear guidance to implement the second prong of the Major Federal Action definition and direct federal agencies to focus the NEPA analysis on the decisions to be made.

b. Effects

The effects analysis should be consistent with the scope of the Major Federal Action as discussed above.

c. Cumulative Impact

The cumulative effects analysis should be consistent with the scope of the Major Federal Action (see Section 7a. above). As discussed in Section 8c. below, the cumulative effects analysis must be confined to realistically defined Reasonably Foreseeable Future Actions (RFFAs) that do not involve conjecture or speculation about the future. Additionally, it is important to define a reasonable scope for the Cumulative Effects Study Area (CESA). The geographic scope of a CESA should not be so large that it requires an analysis of numerous completely unrelated projects, some of which may have no federal component. Such analyses add little value to a NEPA document but typically add considerable length and complexity.

The CEQ regulations are currently silent on how the CESA is to be defined. CEQ may wish to evaluate whether the updated CEQ regulations should include specific directives pertaining to the size and scope of the CESA analysis.

d. Significantly

The definition of significantly should be tied to the scope of the Major Federal Action for the federal agency preparing the NEPA document. Decisions that are outside the federal agency's purview should be handled as insignificant issues that do not need to be considered in detail. The concept of significantly should be directly tied to compliance with the requirements for federal or state permits. If a proposed project can meet the requirements for a permit, it should be categorically classified as having an insignificant impact for the environmental resource or resources governed by the permit. As discussed in Section 7a, if a state agency issues a permit, there can be no significant impact associated with that aspect of the proposed action. The CEQ regulations should be modified to define proposed actions that meet federal and state permit requirements as having insignificant environmental impacts.

e. Scope

The definition of scope should be clarified to specify that the scope of a NEPA document must be coincident with the scope of the Major Federal Action. The "range of actions" currently included in the definition of Scope at § 1508.25 should clearly mean the federal agency's range of actions as defined and limited by its regulatory authority. Actions like issuance of permits that are outside of the federal agency's authority are not part of the federal agency's decision or within the "range of action" and should not be analyzed in detail.

f. Other NEPA terms

No comments.

**8. Should any new definitions of key NEPA terms, such as those noted below be added, and if so, which terms?**

a. Alternatives

Many sections of the CEQ regulations discuss alternatives but 40 CFR § 1508 does not include a definition of alternatives. It would be useful to define this term to emphasize that the alternatives analysis must only evaluate technically and economically feasible alternatives that may have significant environmental differences. This definition should also acknowledge that the range and number of feasible alternatives may be quite limited for some kinds of projects and much broader for others.

For example, natural resource development projects to exploit a resource with a fixed location determined by geology, like a mineral deposit or a geothermal resource, can only be developed where these resources have been discovered. Because these resources cannot be moved, there are no alternative locations for the mineral deposit or the geothermal heat source. Although there may be viable alternatives for certain ancillary features and infrastructure components that merit detailed analysis, this will be dictated by site-specific conditions including topography, land ownership, and project economics.

The NEPA statutory directive concerning alternatives at U.S.C. § 4332(E) that requires federal agencies to "...study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of resources" should be the dominant focus of the alternatives evaluation. Project proposals about which there are no "unresolved conflicts concerning alternative uses of resources" should not require a detailed alternatives analysis. In such cases, most project alternatives should be eliminated from detailed consideration.

b. Purpose and Need

The definition of Purpose and Need at 40 CFR § 1502.13 should be expanded to clarify that the Purpose and Need for the NEPA document must dovetail with the scope of the Major Federal Action as described in Section 7a. above. Because the Purpose and Need establish the scope of the NEPA document, it is important to articulate the range of the federal agency's action and decision space.

Some NEPA documents for third-party proposed actions specify a Purpose and Need for the federal agency and a second Purpose and Need for the project proponent. This is a useful distinction. The federal agency's Purpose and Need should describe the scope of the regulatory decisions to be made for the proposed project.

c. Reasonably Foreseeable

Agencies should not be required to have a crystal ball when determining what is a RFFA. The RFFA analysis must be limited to proposed actions for which there is enough detail to make a reasoned evaluation of how future development of the RFFA and the Proposed Action would result in cumulative impacts. Third-party actions that are anticipated to occur but for which a project proposal has not yet been submitted should not be considered a RFFA. Similarly, proposed federal actions that are likely but that have not yet been initiated should not be considered a RFFA because there is not enough information about the future action to make an informed analysis. As discussed in Section 7c, CESA boundaries should be based on practical and available RFFA information.

d. Trivial Violation

The CEQ regulations do not currently define “trivial violation.” The directive at 40 CFR § 1500.3: “...it is the Council’s intention that any trivial violation of these regulations not give rise to any independent cause of action” needs more direction and amplification because trivial violations have become fertile grounds for successful NEPA litigation.

Complaints alleging failure to evaluate insignificant impacts have resulted in court orders remanding NEPA documents. This is one of the principal reasons that agencies prepare encyclopedic NEPA documents that examine all environmental resources in detail rather than focusing on significant issues as NEPA directs. (See, for example 40 CFR §§ 1500.4(g) and 1501.1(d)).

Just as the CEQ regulations clearly direct federal agencies to prepare NEPA documents that focus on significant issues, the legal basis for challenging the scope of an agency’s NEPA document should be limited to the analysis of the significant issues and the range of the federal agency’s action and decision space as defined by the Major Federal Action. With this in mind, CEQ should consider defining the term “trivial action.”

e. Other NEPA terms

No comments.

**9. Should the provisions in CEQ’s NEPA regulations relating to any of the types of documents listed below be revised, and if so, how?**

a. Notice of Intent

In 1970, publication in the Federal Register may have been the best way to notify a broad sector of the public about a proposed project and to initiate the public scoping process to obtain public comments on the proposal. However, given the range and ease of today’s electronic communication options, CEQ should evaluate whether publishing a Notice of Intent (NOI) in the Federal Register is the best or even an appropriate mechanism for notifying the public and conducting public scoping. Modern and more broadly read and more efficient substitutes for Federal Register notices would use the Internet to support email distribution of the NOI to an agency’s mailing list, press releases on agency websites announcing preparation of an EIS and requesting public comments, and social media outlets. Far more people receive email, electronic press releases, and follow social media than receive and read the Federal Register.

Additionally, as discussed in Section 5, the public scoping effort for site-specific project proposals should focus on obtaining comments from local stakeholders who may be affected by a proposed project. With this in mind, publishing the NOI in the Federal Register is not the most efficient or appropriate way to engage local communities.

It is interesting to note that 40 CFR § 1501.7, the section of the regulations pertaining to public scoping, specifically mentions publishing the NOI in the Federal Register. However, the definition of NOI at 40 CFR § 1508.22 does not include a requirement to publish the NOI in the Federal Register. The NOI announcement that an agency has decided to prepare an EIS is not the decision on the Major Federal Action and should not require publishing in the Federal Register. The publication protocols for NOIs should focus on the best way to inform the public that the agency is seeking public comments on a proposed project that involves a Major Federal Action.