

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

[EXTERNAL] Comments on the CEQ ANPRM -- includes specific issues for OIRA

From: "Slesinger, Scott" <sslesinger@nrdc.org>

To: "Boling, Ted A. EOP/CEQ" <(b) (6)> "Whiteman, Chad S. EOP/OMB" <(b) (6)>

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Date: Fri, 17 Aug 2018 13:37:57 -0400

Attachments
: NRDC ANPRM Comments.pdf (756.84 kB)

Enclosed are NRDC comments on the ANPRM. There are several issues dealing with OIRA. I was not sure where to forward those comments. Thanks.

SCOTT SLESINGER
Senior Advisor for Federal Affairs



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RE: Advance Notice of Proposed Rulemaking
40 CFR Parts 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, and 1508
[Docket No. CEQ-2018-0001]

Dear Ms. Neumayr and Ms. Rao:

The Natural Resources Defense Council (NRDC) is a national, not-for-profit environmental advocacy organization whose purpose is to safeguard the Earth: its people, its plants and animals, and the natural systems on which all life depends. NRDC has hundreds of thousands of members, all of whom depend on the Council of Environmental Quality (CEQ) to assure that the aims and goals of the National Environmental Policy Act are fulfilled. These comments on the Advanced Notice of Proposed Rulemaking of June 20, 2018, are in addition to comments submitted by the Partnership Project. We support all the comments in that document. These additional views intended to assist CEQ in meeting the stated goals of having a more efficient NEPA process. The first comment addresses whether CEQ has met the test to do a regulation. The second is a recommendation to speed up the process before any regulatory process is completed by immediately reinstating the climate guidance. Because these comments question CEQ compliance with Executive Orders under the responsibility of the Office of Information and Regulatory Affairs (OIRA), these comments are also addressed to that office.

1. Concerns with the ANPRM Process

We believe the ANPRM was premature. Section 1 of Executive Order 12,866, a popular executive order that the House of Representatives have often tried to make statutory, requires in Section 1:

“In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, **including the alternative of not regulating**. Costs

and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.”

Instead of this analysis, the only rationale given for opening up these rules is that it has been a long time since the rules were amended.

The Agency has failed to show that amending these regulations are helpful or necessary or will have a positive benefit. There is little or no research on delays caused by the regulatory process of environmental reviews, just questionable anecdotes. [see Appendix A for a fact check of those anecdotes <https://www.nrdc.org/experts/scott-slesinger/course-its-ok-we-are-only-lying-about-nepa>]

Rewriting the NEPA regulations will unsettle a very settled area of the law, causing industry to have to deal with uncertainty and possibly new processes. The process alone could be disruptive, not only to project sponsors, states and NEPA officials but will inevitably lead to more litigation as settled areas of the law become unsettled.

This disruption is similar to the experience with Executive Order 13,766, “Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects”, issued on January 24, 2017. It caused more delays in the NEPA process according to a letter from Senator Portman and Senator McCaskill [see Appendix B for full letter <https://www.portman.senate.gov/public/index.cfm/2017/6/portman-mccaskill-urge-trump-administration-to-use-permitting-reforms-recently-enacted-into-law>] Part of the August 15, 2018, Executive Order 13,807, “Presidential Executive Order on Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure” undid some of the damage and delays caused by 13,766. But EO 13,807 directed CEQ to consider changes in guidance as well as regulations.

A key question under Office of Management and Budget policy is whether guidance would be preferable to new rulemaking. There has been no discussion or analysis of that. We ask that OIRA require CEQ to make the case why changes in regulations are necessary before a decision is made on going forward with a proposal. We believe that the existing regulations establish an efficient and legally solid foundation for NEPA reviews; what is lacking is adequate resources for staff to comply with the legal requirements in a more efficient timeline. OIRA should use its authority to judge whether our argument is correct and proceed accordingly.

In addition, with the drastic reductions of the CEQ staff over the past years, new rulemaking will require detailees from agencies to complete the regulatory process. Ironically, this undoubtedly will require detailees to be pulled off environmental reviews, slowing down projects already in the pipeline – the exact opposite policy outcome enunciated by President Trump.

Although this rule is listed on the Unified Agenda and the Office of OIRA has met with interested groups before the ANPRM, CEQ so far seems to have ignore the policy of EO 12,866 in justifying re-writing these rules. We urge OIRA to require the analysis in EO 12,866 and successor polices before letting this wasteful process go forward.

Climate Guidance

The NEPA process is governed not only by regulations but by statutes, court decisions and agency guidance and Presidential Orders. [Executive Order 13,783](#) withdrew the climate guidance and required agencies to remove any of its agency actions that implemented that guidance.

Another section of 13,783, requires CEQ to:

“review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. Such review shall not include agency actions that are mandated by law, necessary for the public interest, and consistent with the policy set forth in section 1 of this order.” Section 2.

As part of its actions, under Section 2, the Administration should reinstitute the climate guidance. The rescinding of the climate guidance and the directive to remove all agency implementation of that guidance contradicts the Section 1 requirement because its removal will “burden the development or use of domestically produced energy resources” by slowing down the NEPA process and provide ample grounds for litigation.

That revoked guidance on measuring climate guidance did not establish any new requirements. The product of broad comment and review, the guidance provided a useful roadmap for agencies whose actions would directly or indirectly impact the climate. [See Appendix C for the blog to these comments <https://www.nrdc.org/experts/sharon-buccino/trumps-bad-bet-2-rescinding-wh-climate-guidance>]

The revocation conflicts with the proclaimed aim of the ANPRM to make environmental reviews more efficient. Courts have made it clear¹ that agencies **are required by law** to consider the environmental impact of a project or policy, which must also consider climate-related environmental impacts when you are evaluating environmental impacts. Undertaking analysis of a project or policy’s impact on climate change, or of the impact of climate change on the viability of a project, is complex. CEQ’s guidance was tremendously helpful in guiding project sponsors, contractors, federal permitting and environmental review personnel on the issues that

¹ *Center for Biological Diversity v. NHTSA*, 508 F.3d 508, 556, 37 ELR 20281 (9th Cir. 2007); []; *Western Organization of Resource Councils et al v. U.S. Bureau of Land Management et al*, No. 4:2016cv00021 - Document 34 (D. Mont. 2017); *High Country Conservation Advocates v. United States Forest Service*, Civil Action No. 13-cv-01723-RBJ (D. Colo. June 27, 2014).

an adequate environmental impact analysis will have to address. By setting forth the relevant issues, the guidance sped up the process, sets clear parameters for the review, and reduces the risk that the analysis will be found deficient by a reviewing court. The Executive Order revoking the guidance and requiring agencies to remove any of its agency actions that implemented that guidance, may have been to throw a bone to climate deniers. Its impact has been to make the NEPA process more difficult, and more prone to successful challenges. As a result, it will cause the very project delays it was intended to avoid.

For these reasons, the climate guidance should be immediately restored (before the regulatory process is completed). Whatever the senior-most officials in this administration may believe about climate science, the fact remains that analysis of climate impacts is legally required under NEPA. Restoring the guidance will enhance the NEPA process, and it will properly and efficiently assist in achieving the President's other objective of shortening permitting and environmental reviews and decreasing unnecessary litigation.

The climate guidance should remain as guidance. Analysis of climate impacts is often undergoing refinement; the guidance should remain as guidance so that the most up to date science can be more quickly implemented.

Thank you for considering our views.

s/ Scott Slesinger

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CC: Ted Boling, Council of Environmental Quality

Chad S. Whiteman, Office of Information and Regulatory Affairs

Appendix A

<https://www.nrdc.org/experts/scott-slesinger/course-its-ok-we-are-only-lying-about-nepa>

Of Course, It's OK, We Are Only Lying About NEPA

June 06, 2018 Scott Slesinger

There are few principles as basic to Americans as the right to participate in decisions when the federal government is going to affect the environment or economy of a community. Because this is inconvenient for developers they have enlisted the Congress and the White House in trying to cripple that right that is enshrined in the National Environmental Policy Act (NEPA). There have been over 60 separate bills introduced this year to scale it back NEPA and on June 6, 2018, another hearing on weakening NEPA is scheduled. This hearing is based on the theory that oil and gas drilling and fracking on public lands would never have a more than insignificant impact on the environment, ever.

Over the past several months, the propaganda about the required environmental reviews that agencies conduct before projects has been overwhelming. I wrote a blog on one of those misrepresentations [here](#). The major theme of the critics of environmental reviews is that despite its almost 50-year history, government projects, private fossil fuel development, and infrastructure has been stymied, mainly because of the National Environmental Policy Act. This is obviously untrue, based on the growth of our economy that included becoming a net exporter of energy during President Obama's term. I will use this blog to critique several recent poster children of NEPA and note the misstatements. (Or, if you prefer, "lies.")

Poster Child #1 Bayonne Bridge

CNBC did a story about the delays President Trump cited for road and highway projects, and, at the behest of the White House, spotlighted the case of the Bayonne Bridge raising, which critics said was slowed because of permitting and environmental reviews. The CNBC investigative tory, if you watch the short clip [here](#), found that weather and continuing the use of the bridge during construction were the drivers of the delays. The claims of a "10-year" review, were off base: It only took 26 months.

Poster Child #2 Anderson Bridge

On February 13, in conjunction with its federal infrastructure plan rollout, the White House published a blog post titled "[Washington Will No Longer be a Roadblock to Rebuilding America](#)." The blog uses the long delay of the Anderson Memorial Bridge project in Boston as an example of how federal environmental reviews and federal permitting is hindering infrastructure development across the country. **The problem, once again, is that federal environmental permitting had nothing to do with this project.** The Anderson Memorial Bridge project was funded completely by the State of Massachusetts and did not alter the existing waterway along the Charles River, **so at no point was federal-level environmental permitting needed** for this project. The implication is clear: While the White House has come

up with a mythical conclusion, it failed to find an example of even one project that fit that conclusion.

Poster Child #3: Dredging the Port of Corpus Christi

This is a typical scapegoating NEPA story. Politicians often get authorization for projects (and local press about the project) but fail to get the Congress to “appropriate” money to build them. Authorizations mean nothing without appropriations. Often, rather than admit they were unable to get real money, members will put the blame on environmental reviews. On March 6, 2018, according to the [Corpus Christi Business News](#), officials representing the Port of Corpus Christi met with their former governor and now Secretary of Energy Rick Perry about the need for federal **funding** for the dredging of the Port of Corpus Christi. The environmental reviews for this project weren’t mentioned.

However, the following week, [Perry testified before the Senate Commerce Committee](#) about the president’s infrastructure package loaded with anti-NEPA provisions. He didn’t urge lawmakers to fund the dredging project, as the port officials had requested. Instead, he claimed the reason the project failed to go forward wasn’t money, but bureaucrats:

“This isn’t a matter of we’re coming up here, or they’re coming up here, and asking for more money, they’re asking for federal agencies to basically get out of the way, to give them approval, so I think that’s one of the things that the president is talking about.”

This will be sad news to the Port which said the problem wasn’t NEPA, but the need for 225 million *federal* dollars.

Stories like this can be repeated a million times, or rather 97 billion times. [A Republican memo](#) to the Transportation and Infrastructure committee about funding of Army Corps of Engineers projects, noted that there are \$97 billion of projects ready to go, but the Corps’ construction budget is only \$5 billion a year. The problem isn’t NEPA; it’s where is the \$92 billion.

NRDC is working to protect NEPA, one of the landmark environmental statutes. The main goal of NEPA is assuring that the federal government looks before it leaps. It requires the federal government, when it is doing something to your community, to allow the public and local officials a chance to comment and these comments often lead to better projects. It should not be gutted as a diversion from the real problem addressing our infrastructure.

I recently was on a [podcast](#) with a Nick Goldstein, Vice President of Regulatory & Legal Issues of the American Road & Transportation Builders Association. I was well armed to defend NEPA from attacks by the road builders, but instead found myself nodding along while Goldstein made the same point I did: The real problem with infrastructure is the lack of federal financing.

Appendix B

<https://www.portman.senate.gov/public/index.cfm/2017/6/portman-mccaskill-urge-trump-administration-to-use-permitting-reforms-recently-enacted-into-law>

June 8, 2017

President Donald J. Trump

The White House

1600 Pennsylvania Ave, NW

Washington, D.C. 20500

Dear President Trump:

We were pleased that your Administration's recently released budget proposal recognized the need to improve the permitting process for major infrastructure projects. As the co-sponsors of the Federal Permitting Improvement Act, which was enacted into law last Congress as Title 41 of the Fixing America's Surface Transportation Act (FAST-41), however, we are concerned that your Administration is not making use of important tools Congress has given it to accomplish this goal.

The budget correctly notes that "the legal requirements and processes for the permitting and review of major infrastructure projects have developed in a siloed and ad-hoc way, creating complex *processes that in some cases take multiple years to complete.*" And, furthermore, that "[d]elays and uncertainty in project review timelines can affect critical financing and siting decisions [and] postpone *needed upgrades, replacements, or new development.*" We could not agree more strongly that the federal government needs to make timely and coordinated decisions regarding permits, and those same concerns drove us to author FAST-41. This bipartisan effort gave the federal government tools to streamline and improve the federal permitting process, which, as you have noted, is laden with uncertainty that hinders investment, economic growth, and job creation.

Through FAST-41, we sought to improve the permitting process for major capital projects across all sectors in three ways: better coordination and deadline-setting for permitting decisions; enhanced transparency; and reduced litigation delays. Despite deep divisions in other areas, we were able to come together to create a smarter, more transparent, better-managed process while not altering substantive public input or safeguards that exist in the review process.

Since Congress enacted FAST-41, however, neither the past Administration nor your Administration has realized the Federal Permitting Improvement Steering Council's (FPISC) potential. It took President Obama seven months to appoint an Executive Director, and FPISC barely got off the ground before the election. And now, given the Administration's stated interest in facilitating the permitting process and infrastructure development, it is perplexing that the Administration has not taken full advantage of the powerful tools Congress gave it in FAST-41 to accomplish those goals. Moreover, Executive Order 13,766, Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects, issued on January 24, 2017, appears to duplicate or conflict with many of the permit streamlining provisions in FAST-41. That executive order directs the Chairman of the Council on Environmental Quality (CEQ)—a position that has not yet been filled—to identify "High Priority Infrastructure Projects" and to coordinate with the appropriate agency heads to clarify

deadlines for such projects. While these are important tasks, FAST-41 already requires FPISC and its Executive Director to identify similar covered projects and to then work across all government agencies to set timetables and to ensure that they are met. We have heard from numerous stakeholders that the executive order is confusing and makes the permitting process even more complex—the exact opposite result of what seems to have been intended.

Moreover, we are increasingly concerned that the Administration's failure to appoint a permanent Executive Director is significantly impairing the ability of FPISC to achieve its mission of greater coordination across government. We have heard from a number of entities involved in FPISC-designated covered projects that a lack of clear leadership from the top has hampered cross-agency efforts and allowed permit siloing to continue.

Therefore, we ask that you expeditiously fill the role of FPISC Executive Director and clarify how CEQ's role can complement rather than conflict with FPISC's statutorily-mandated responsibilities.

We thank you for your attention to this critical issue and look forward to working with you on efforts to improve the federal permitting process so that we can deliver a smarter, faster, and more responsive government to the American people.

Sincerely,

<https://www.nrdc.org/experts/sharon-buccino/trumps-bad-bet-2-rescinding-wh-climate-guidance>

Trump's Bad Bet #2 – Rescinding WH Climate Guidance

April 03, 2017 / Sharon Buccino

Houses flooded. Trees and power lines down. Wildfires. Drought. Climate chaos is disrupting our lives and destroying our homes. Last year, the White House Council on Environmental Quality (CEQ) took action to do something about the damage. The White House issued guidance to help agencies include climate change in their environmental reviews. The agencies have a legal obligation under the National Environmental Policy Act (NEPA) to do so. The guidance provided consistency and tools to help.

On March 28, President Trump rescinded this guidance.

President Trump has run casinos. You'd think he would know a good bet when he sees one. Rescinding Obama's climate guidance isn't. Here's why:

1. ***Taxpayers lose.*** Courts have already said that federal agencies must consider climate in their environmental analysis. Trump's action doesn't get rid of this legal obligation. Now each agency will be left on its own to determine how best to do the analysis. Without the guidance, agencies will waste time and taxpayer money.
2. ***Companies lose.*** The guidance provided consistency. Whether dealing with the Bureau of Land Management to lease coal, the Army Corps of Engineers to build a pipeline or the Department of Transportation to build a highway, a company would know what kind of climate analysis was needed. Now they won't. The lack of guidance will trigger more litigation and delay.
3. ***Our lands and waters lose.*** From our coastal waters to the canyons of Utah, our public lands and waters are priceless assets belonging to each one of us. The guidance provided tools to assess the climate consequences of actions like drilling for oil and gas or mining for coal. It did not prohibit these actions; instead the guidance helped us make smart decisions about our energy choices for today and tomorrow.
4. ***Cities like Miami Beach lose.*** Miami Beach is spending \$500 million to keep rising sea levels from destroying the hotels, restaurants and shops that provide its glamor and glitz. The city needs information to spend this money wisely. How is climate change affecting sea level rise? How are government actions and taxpayer dollars affecting climate change? The guidance helped provide answers. Trump's action leaves cities like Miami Beach in the dark.
5. ***Our pocketbooks lose.*** Smart investment today will save billions tomorrow. Hurricane Sandy caused billions of dollars of damage. New York is working to rebuild in a way that limits future damage. The guidance helped federal agencies respond in similar ways—

making smarter decisions and investments in response to our changing climate. Trump's action denies us the information we need to invest wisely.

6. **Communities lose.** Working with local and state governments, the federal government invests billions of dollars in our communities. The guidance was designed to help communities build roads, seawalls, sewer systems and other investment that lasts. We don't want to build something that will get washed away in a year or two. Trump's action leaves cities and states in the dark.
7. **Democracy loses.** The federal government is spending our hard-earned dollars. Decisions to mine more coal or drill offshore affect the public lands and waters that belong to all of us. We have a right to a say in those decisions. We have a right to expect decisions informed by the best science available. The guidance helped deliver on these rights. Trump's action has taken them away.
8. **Nature loses.** Protecting nature helps us save ourselves. Fish, wildlife and plants provide jobs, food and clean water that sustain people, communities and economies across the nation. Information and action is needed now to ensure that we continue to have these natural resources tomorrow. The guidance helped agencies develop adaptation strategies to our changing climate. Trump's action ignores that our climate is changing.
9. **Our health loses.** Today's scientists point to climate change as "the biggest global health threat of the 21st century." As temperatures spike, so does the incidence of illness, emergency room visits, and death. Climate change makes us sick, hurting the most vulnerable like the young and the old the most.
10. **Our children lose.** Numerous tools now exist to estimate greenhouse gas emissions. Numerous solutions exist to reduce emissions and respond to climate change. We stumble blindly into the future if we fail to use them. The guidance helped provide them. Trump's action takes them away.

[EXTERNAL] Comments re ANKPRM - Proposed Procedural Revisions of NEPA

From: Charlotte Roe <charlotteeroe@yahoo.com>

To: Mary Neumayr <(b) (6)>

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

Date: Mon, 20 Aug 2018 17:04:40 -0400

Attachments: CEQ ANPRM CR Comments 8.19.18.pdf (38.33 kB)

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
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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.

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.

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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
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[EXTERNAL] CEQ NEPA RULEMAKING 2018 Comments

From: Geraldine Link <glink@nsaa.org>
To: "Boling, Ted A. EOP/CEQ" <(b) (6)>
Cc: "French, Chris -FS" <cfrench@fs.fed.us>, "Wetterberg, Sean B -FS" <swetterberg@fs.fed.us>
Date: Mon, 20 Aug 2018 16:55:44 -0400

Attachments
: CEQNEPARULEMAKING2018Comments.docx (35.53 kB)

Hi all,
I wanted to copy you on the comments that NSAA filed today on CEQ's NEPA ANPR.
Best regards,
Geraldine

NATIONAL
SKI AREAS
ASSOCIATION



August 20, 2018

Submitted via regulations.gov

Council of Environmental Quality
730 Jackson Place NW
Washington, DC 20503

RE: Comments of National Ski Areas Association on NEPA Advanced Notice of Proposed Rulemaking, Docket No. CEQ-2018-0001

Dear Council on Environmental Quality:

The National Ski Areas Association (“NSAA”) submits these comments in response to the Council on Environmental Quality’s June 20, 2018 advance notice of proposed rulemaking for the agency’s National Environmental Policy Act (“NEPA”) regulations published at 83 Fed. Reg. 28,591. Please add these comments to the administrative record for the rulemaking.

Interest of NSAA in the Rulemaking

NSAA is the national trade association for ski area owners and operators. NSAA has 320 ski area members, accounting for over 90 percent of the skier and snowboarder visits nationwide. One hundred and twenty-two (122) of these ski area members are located on National Forest System (NFS) lands and operate under permit pursuant to Ski Area Permit Act of 1986. These public land resorts work in partnership with the U.S. Forest Service to deliver an outdoor recreation experience unmatched in the world. Our longstanding partnership—dating back to the 1940s, is a model public-private partnership that greatly benefits the American public. The recreation opportunities provided at public land ski areas provide a boost to rural economies, improve the health and fitness of millions of Americans of all ages, promote appreciation for the natural environment, and deliver a return to the U.S. government through fees paid for use of the land.

NSAA’s member resorts have considerable experience as applicants in the NEPA process, and with the CEQ’s implementing regulations. Actions proposed and implemented at NSAA’s member resorts located on National Forest System lands are frequently the subject of NEPA documents prepared by or for the Forest Service. NSAA’s member resorts are often the private proponent of an action on public lands that triggers NEPA and, thus, will be directly affected by the CEQ’s proposal to improve the efficiency of its NEPA implementing regulations.

Comments

1. NSAA Supports the Rulemaking

NSAA supports the CEQ's proposed rulemaking. According to the CEQ's regulations, the purpose of NEPA is "to foster excellent action," rather than to generate paperwork. 40 C.F.R. § 1500.1(c). Too often, however, a NEPA process can promote paperwork over effective decision-making. NSAA commends the CEQ for launching a rulemaking to improve the efficiency of its decision-making process. NSAA intends to participate in the rulemaking process to help the CEQ accomplish its objectives. NSAA appreciates that the CEQ has taken the extra step of requesting comments in the advance notice of proposed rulemaking, before releasing proposed rules for comment. NSAA looks forward to the opportunity to review and comment on the proposed regulations.

2. Use of Existing Studies and Analysis (Question 2)

NSAA supports revisions to CEQ's NEPA regulations that would facilitate agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions. Such use would make the NEPA process more efficient for all stakeholders. NEPA decision making should be driven by actual impacts, rather than fear of litigation, and it needs to be based on full recognition of the amount of analysis that has already taken place, and the impacts that have already occurred, on the land at issue. Ski area permit lands are without a doubt some of the most analyzed acres on the National Forest. Countless studies have been conducted over many decades on the same acres of land. Yet currently, the level of NEPA applied to ski area lands is often that which would apply to an area of the forest that had not been analyzed before. This really needs to change, as it wastes resources for both the Forest Service and the industry, does not adequately recognize the previous studies or work that have been done on those lands, and ultimately does not result in better decision making.

CEQ regulations should be amended to facilitate the use of existing analyses not only on the same site in the future, but also for different projects, even in a different region, to the extent that it can help support new decisions or at least provide a starting point on unfamiliar issues. A database of NEPA decisions and underlying studies that is easily accessible to project analysis teams could help increase efficiency by reducing the time and resources spent by agencies in addressing commonly analyzed issues. It could help with the sharing of information among the various agencies that address resort NEPA.

3. Better Interagency Coordination (Question 3)

Revising CEQ's NEPA regulations to improve interagency coordination of environmental reviews is something NSAA strongly supports. In particular, CEQ regulations should require agencies to run parallel reviews when seeking the participation of consulting agencies. Under the current regulations, agencies often run consultations sequentially, which adds unnecessary time and delay to the process. Incorporation of simultaneous inter-agency review would dramatically increase efficiency in consulting agency review.

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4. Selection of Third-Party Contractors (Question 11)

NSAA member resorts and other private stakeholders who operate on federal government lands often engage third-party contractors to prepare NEPA documents for the federal land manager. Currently, CEQ regulations require that a third-party contractor selected to prepare a NEPA document be chosen “solely” by the agency. 40 C.F.R. § 1506.5(c). Some agencies have issued handbooks or guidance documents providing more specificity regarding how a proponent can participate in the contractor selection process. CEQ regulations, however, provide very little direction on this issue.

The CEQ should revise its regulations, including in particular 40 C.F.R. § 1506.5(c), to clarify the extent to which a proponent may participate in selection of a third-party contractor. Revised regulations should expressly permit a proponent to (1) solicit bids or proposals from contractors and then pass them along to the agency, and (2) develop criteria to aid the agency in selecting the contractor.

This would provide increased certainty to project proponents by establishing clear direction that proponents may participate in selection of third-party contractors. Increased proponent participation would relieve agencies from some of the burden involved in the NEPA process, resulting in a quicker and more efficient NEPA process.

5. Proponent Funding for Agency NEPA Review (Question 11)

The CEQ should make it easier for project proponents to fund preparation of NEPA documents. Typically, the project proponent and the responsible agency enter into a memorandum of understanding under which the proponent agrees to fund preparation of the NEPA document. The agency will then engage a third-party contractor to prepare the NEPA document. Under existing CEQ regulations, the agency must evaluate and take responsibility for the NEPA document. 40 C.F.R. § 1506.5(c). Agencies, however, often lack resources to quickly evaluate NEPA documents, resulting in delays in the NEPA process because agencies may lack staff to review the NEPA analysis prepared by an agency-approved contractor.

The CEQ should revise its regulations, including in particular 40 C.F.R. § 1506.5, to make it clear that agencies may—and are encouraged to—accept proponent funding to hire contract employees or specialized consultants to evaluate a particular NEPA document. Currently, it appears that no provision of law prevents agencies from accepting proponent funding to satisfy the requirement that the agency evaluate the NEPA document prepared by a contractor. However, the CEQ should provide additional clarity to agencies regarding the scope of their authority to do so. Individual agencies might then issue regulations or prepare guidance documents providing additional clarity to project proponents. These revisions would increase the speed and efficiency of the NEPA process, without increasing costs to the agencies.

6. Proponent Participation in Agency’s Interdisciplinary Team Review of NEPA Documents (Question 11)

CEQ regulations do not discuss whether and to what extent a proponent may participate in the agency’s interdisciplinary preparation of a NEPA document. This lack of guidance often results in an agency’s taking an overly conservative view of how much a proponent may participate,

[APG]

and cutting off the ability of the proponent to provide information to the agency to make the NEPA review process more efficient and effective.

The CEQ should revise its regulations, including in particular 40 C.F.R. §§ 1500.5, 1501.2, and 1502.6 to provide that a proponent—the party most knowledgeable about the proposed project and, often, the environment to be affected—may participate in the agency’s interdisciplinary team in preparation of the NEPA document. This participation would relieve the responsible agency of some of the burdens involved in the NEPA process, and make it easier for the agency to access information needed to complete the NEPA review.

Existing CEQ regulations require agencies to “reduce delay” by taking a number of measures, including establishing deadlines, early resolution of agency disputes, combining environmental documents, etc. 40 C.F.R. § 1500.5. This “reducing delay” regulation does not recognize the proponent’s unique ability to provide information and assist in the preparation of a NEPA document. The CEQ should revise its regulations to encourage agencies to solicit information from the proponent to the maximum extent permitted by law.

7. Definition of “Trivial Violation” (Question 8(d))

Existing CEQ regulations provide that the intent of the regulations is that any “trivial violation” of the regulations does not give rise to a claim that the agency has violated NEPA. 40 C.F.R. § 1500.3. The regulations do not define or discuss what constitutes a “trivial violation.” Such a definition could generally define a “trivial violation” as, for example, failure to comply with a requirement that is not central to NEPA’s objectives. Alternatively, the definition could reference certain requirements which, if violated, do not give rise to a cause of action. Supplying a regulatory definition of “trivial violation” would provide more certainty to responsible agencies and project proponents, while ensuring that NEPA’s core objective—ensuring that agency actions are taken only after considering environmental impacts—is achieved.

* * *

NSAA appreciates the CEQ’s efforts to modernize and improve its NEPA implementing regulations. Thank you for this opportunity to comment.

Respectfully submitted,

Geraldine Link
Director of Public Policy
National Ski Areas Association

[APG]

ELI comments

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, 20 Aug 2018 16:13:59 -0400
Attachments
: 11058 Environmental Law Institute.pdf (307.88 kB)

Attached and at <https://www.regulations.gov/document?D=CEQ-2018-0001-11058>



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August 20, 2018

Mr. Edward A. Boling
Associate Director for NEPA
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

Re: CEQ-2018-0001

Dear Mr. Boling:

The Environmental Law Institute (ELI) offers the following comments in response to CEQ's Advance Notice of Proposed Rulemaking, 83 Fed. Reg. 28591 (June 20, 2018), which seeks advice concerning possible changes to the National Environmental Policy Act (NEPA) regulations.

ELI is a non-profit, non-partisan research and policy organization. Our members and board of directors represent all facets of the environmental professions, bringing together the private sector, government, advocacy organizations, and academia. Our mission is to foster innovative, just, and practical law and policy solutions to enable leaders across borders and sectors to make environmental, economic, and social progress. ELI builds the skills and capacity of tomorrow's leaders and institutions; researches and analyzes complex and pressing environmental challenges; promotes and disseminates the best thinking through print and electronic media; and convenes people with diverse perspectives to build understanding through robust debate.

Throughout our history, ELI has been the leading non-partisan, non-governmental source of information on NEPA and its implementation. Incorporated in 1969 on the same day that NEPA passed the Senate, ELI began its operations in 1970, the year NEPA began to inform U.S. government decisions. ELI prepared the first study of NEPA litigation in 1973, and in 1981 prepared for CEQ a commissioned series of studies of NEPA compliance by nineteen federal agencies. ELI is the publisher of the standard reference work, *The NEPA Deskbook*, now in its fourth edition (2014), and of studies including [*Rediscovering the National Environmental Policy Act: Back to the Future*](#) (1995), [*Judging NEPA: A 'Hard Look' at Judicial Decision Making Under the National Environmental Policy Act*](#) (2004), and [*NEPA Success Stories: Celebrating 40 Years of Transparency and Open Government*](#) (2010).

In addition, ELI has published over a hundred articles on NEPA and NEPA practice in the *Environmental Law Reporter*, and retrospectives on NEPA implementation in *The Environmental Forum* at the 20th, 25th, 30th, and 40th anniversaries of the law. We have organized evaluations, continuing education courses, interactive training for federal agencies and policy forums on NEPA implementation. ELI has also trained environmental officials, judges, academics, and advocates in over 40 countries on Environmental Impact Assessment (EIA) best practices, including comparisons of NEPA with other EIA regimes across the globe.

Based on this record, our comments address key facets of NEPA implementation that will need attention should CEQ contemplate changes to the regulatory framework. (We have not addressed each of CEQ's 20 questions, but we identify question numbers to which each comment is relevant.)

➤ **Robust alternatives identification and analysis in EAs and EISs** (Questions 8a, 9c, 13). NEPA §§102(2)(C)&(E) and its implementing regulations (40 CFR 1502.14, 1503.4(a), 1508.9(b), 1508.25) are grounded in robust identification and analysis of alternatives, which the regulations identify as the “heart” of the environmental analysis. One of the key advantages of NEPA over EIA regimes in other countries is that it relies on consideration of alternatives to the proposed action, including partial alternatives, and that it solicits identification of additional alternatives from affected communities, tribes, businesses, and members of the public. CEQ's regulations, bolstered by a long line of judicial decisions under the Administrative Procedure Act, require the lead agency to evaluate all “reasonable alternatives” and explain its exclusion of any alternative from analysis (40 CFR 1502.14).

Restricting the range of alternatives or establishing narrow criteria for consideration of alternatives could undermine the value of the analysis and deprive federal agencies of key information that they need. In numerous cases, NEPA alternatives proposed by towns, tribes, individuals and others were selected by federal agencies in preference to those the agency started with. See “The Role of NEPA Alternatives,” 35 *Env'tl. L. Rep.* 10911 (Dec. 2005) (list of citizen and non-federally proposed alternatives that produced superior outcomes). See also, Center for the Rocky Mountain West, *Reclaiming NEPA's Potential: Can Collaborative Processes Improve Environmental Decisionmaking?* (2000) and CEQ, *The National Environmental Policy Act: A Study of Its Effectiveness After Twenty-five Years* (1997). See generally, Russell Train, Foreword to ELI, *NEPA Success Stories: Celebrating 40 Years of Transparency and Open Government* (2010) (“No longer could federal agencies say ‘we know best’ ... [NEPA] recognized that citizens, local and state governments, Indian tribes, corporations, and other federal agencies have a stake in government actions—and often unique knowledge of hazards, consequences and alternatives that can produce better decisions”), and the case studies collected therein.

In many instances, federal agencies have grounded their final actions and mitigation measures in a combination of the alternatives analyzed. Premature exclusion of alternatives, or narrowing the range of alternatives under consideration to a narrow band, often leads to poor decisions. ELI noted in response to a Congressional inquiry some years ago that limiting alternatives to those already “supported by feasibility and engineering studies” and certain economic effects would convert the process into one wholly dictated by the federal agency. ELI, *Considering NEPA: Comments to the National Environmental Policy Act Task Force* (2006).

► **Public participation and transparency** (Questions 1, 6, 9c, 15). The NEPA regulations enlist the participation of the public in order to ensure that government agencies benefit from expertise and ideas that would otherwise be unavailable. The existing rules for scoping, commenting, and responses to comments (40 CFR Part 1503, 1506.6) have worked well to maintain the perception of legitimacy for federal decision-making and to improve the quality of decisions. Among the most significant provisions is the requirement that the agency explain itself in responding to comments (40 CFR 1503.4), which has been very effective in ensuring that federal agencies actually address all substantive comments.

Public participation could be improved by supplementing 40 CFR 1501.4(b), 1501.7, 1508.9 to add express authority for, and encouragement of, the use of “scoping” when an agency is preparing an EA — and particularly when the action is one that involves substantial construction, land development, or other activities that may have a long-term impact, even if mitigated to below the significance threshold. Given the extensive reliance by federal agencies on EAs, it may also be worth considering whether to expand the circumstances under which public comments on an EA/FONSI are normally indicated (40 CFR 1501.4(e)(2)).

Finally, CEQ should note that if updating NEPA practices to address use of electronic media and technologies, many underserved and poor communities still lack broadband, cellular telephone service, and other services, and residents may lack the resources to access these even if geographically available. Thus, CEQ should take into account the environmental justice aspects of its own regulatory updates, in accordance with E.O. 12898 (“Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”) and CEQ’s *Environmental Justice Guidance under the National Environmental Policy Act* (1997).

► **Maintain a full range of mitigation options** (Questions 20, 9c). CEQ’s regulations have shaped the entire field of mitigation for forty years, and have been incorporated into numerous federal programs, permits, and regulations (from mitigation “sequencing” under the Corps of Engineers §404 program, to federal agency practices in construction, contracting, and planning). The five-part definition of mitigation in 40 CFR 1508.20 provides a well-understood foundation that should be maintained, as it is fully integrated across numerous government programs. As use of the mitigated FONSI has increased with support of agencies and the courts, and as noted in CEQ’s mitigation guidance, it could be suitable to add to the regulations a definition for mitigated FONSI to confirm its proper use. This would include recognition of the need for implementation of the mitigation actions in order to maintain the finding of no significant impact.

► **Maintain stable terminology and consistent application** (Questions 7, 8, 9). NEPA is a mature program based on a concise statute and regulations whose every substantive term has been litigated. *See generally*, A. Ferlo, K. Sheldon, M. Squillace, *The NEPA Litigation Guide* (2d. ed) (American Bar Assoc. 2012) (discussing court decisions interpreting each term of the regulations). The CEQ regulations have created well-settled expectations, and have received extraordinary deference from the federal courts. *Andrus v. Sierra Club*, 442 U.S. 347, 357-58 (1979) (regulations entitled to “substantial deference” as a “single set of uniform, mandatory

regulations”). NEPA practice has evolved under this stability such that most federal actions can be, and are, readily addressed as categorical exclusions, simple EAs, or mitigated EA/FONSI.

Because of this, CEQ should in general eschew changes to NEPA terms, as this is likely to produce more litigation (with concomitant delay and uncertainty) over the meaning and implementation of revised or new terms going forward. It would also create complex questions about the extent to which courts may rely upon their prior NEPA judicial precedents. Federal agency NEPA procedures and administrative tribunals have also adopted and interpreted these terms; so changes in definitions may cause substantial disruption to government operations.

➤ **Efficiencies in NEPA implementation are achievable** (Questions 1-3, 16-19). There are many opportunities to improve coordination among agencies and reduce inefficiencies. Most of these are available under the current regulations but will require greater attention and investment by the agencies tasked with implementation. For example, recent moves to increase reliance on a single NEPA document for multiple agencies and to establish agreed timelines are authorized by the regulations. As the [final report](#) of the December 2014 Cohen NEPA Summit (co-sponsored by ELI, the Nicholas Institute for Environmental Policy Solutions, and Perkins Coie LLP) found, most reforms can be carried out within existing regulations.

Greater use can be made of cooperating agency status (40 CFR 1508.5); and indeed where there are multiple permitting entities for a single project, cooperating agency status could be made the default approach (requiring affirmative opt-out for clear reasons). Reliance on prior environmental analysis via tiering and adoption is also helpful. Authority to tier to EAs as well as to EISs could be made explicit. In any integration of documents, it will be important to maintain core NEPA characteristics of robust consideration of alternatives, meaningful public participation, and appropriate mitigation. For example, if there is interest in relying on state documents to meet NEPA requirements, these must not limit full consideration of alternatives or public participation in ways that cannot be remedied by the federal process they inform. Also, if timing targets are under consideration, it will be important not to make these hard deadlines or default approvals. As ELI has observed previously, with a “deemed complete” or “deemed approval” mechanism, “the risk of agency misfeasance would fall entirely on the public, including the local governments, tribes, and business organizations that also rely on NEPA.” ELI, *Considering NEPA* (2006).

➤ **The regulations could advance sustainability** (Question 5). 40 CFR 1505.1 directs agencies to adopt procedures to ensure that decisions are made in accordance with the policies and purposes of the Act, including procedures “to achieve the requirements of sections 101 and 102(1).” These include the goals of NEPA, which are parsed out in NEPA §101(b) into six objectives: trust responsibility for future generations, environmental equity, beneficial use, historical, cultural and biological diversity and individual liberty, high standards of living, and management for quality and conservation. CEQ could adopt regulations for agencies to incorporate measures for assessing proposed agency actions with respect to these objectives. ELI, [Rediscovering NEPA: Back to the Future](#) (1995).

ELI appreciates the opportunity to share these views. We would be pleased to perform our traditional and frequent convening role if CEQ decides to engage in further discussions among the affected communities. Please let us know if we may be of assistance in this way.

Sincerely,

A handwritten signature in black ink, appearing to read "James M. McElfish, Jr.", written in a cursive style.

James M. McElfish, Jr.
Senior Attorney, Director Sustainable Use of Land Program

**[EXTERNAL] FW: Your Comment Submitted on Regulations.gov
(ID: CEQ-2018-0001-0001)**

From: gtsiolis@nj.rr.com
To: "Boling, Ted A. EOP/CEQ" <(b) (6)>
Cc: Sarah Richman <srichman@arizonamining.com>
Date: Mon, 20 Aug 2018 15:36:52 -0400
Attachments 2018-8-20f - Arizona Minerals' Comments on CEQ's ANPR re NEPA Rules.pdf
: (76.82 kB)

Dear Mr. Boling,

Attached please find Arizona Minerals Inc.'s comments on CEQ's advance notice of proposed rulemaking, which were submitted into the rulemaking docket earlier today.

If you have any questions, please don't hesitate to let me know.

Thank you.

George A. Tsiolis
Attorney at Law
602-319-4021
201-408-4256
www.gtsiolis.com

Counsel for Arizona Minerals Inc.

From: no-reply@regulations.gov <no-reply@regulations.gov>
Sent: Monday, August 20, 2018 3:28 PM
To: gtsiolis@nj.rr.com
Subject: Your Comment Submitted on Regulations.gov (ID: CEQ-2018-0001-0001)



Please do not reply to this message. This email is from a notification only address that cannot accept incoming email.

Your comment was submitted successfully!

Comment Tracking Number: 1k2-94yj-6m4k

Your comment may be viewable on Regulations.gov once the agency has reviewed it. This process is dependent on agency public submission policies/procedures and processing times. Use your tracking number to find out the status of your comment.

Agency: Council on Environmental Quality (CEQ)

Document Type: Rulemaking

Title: Implementation of Procedural Provisions of National Environmental Policy Act

Document ID: CEQ-2018-0001-0001

Comment:

Arizona Minerals Inc. Comments on CEQ's Advance Notice of Proposed Rulemaking re NEPA Rules

Uploaded File(s):

- 2018-8-20f - Arizona Minerals' Comments on CEQ's ANPR re NEPA Rules.pdf

This information will appear on Regulations.gov:

First Name: George A. Tsiolis

Last Name: Attorney at Law

Organization Name: Arizona Minerals Inc.

This information will not appear on Regulations.gov:

All of the information will appear on Regulations.gov

For further information about the Regulations.gov commenting process, please visit <https://www.regulations.gov/faqs>.

GEORGE A. TSIOLIS
ATTORNEY AT LAW
351 Lydecker Street
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Web: www.gtsiolis.com

August 20, 2018

Via Docket

<https://www.regulations.gov>

Docket ID No. CEQ-2018-0001

U.S. Environmental Protection Agency

Re: Arizona Minerals' Comments on the 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), 83 Fed. Reg. 32071 (July 11, 2018)

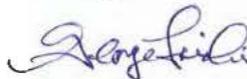
Dear Council on Environmental Quality:

On behalf of Arizona Minerals Inc., I am submitting the attached comments on the above-referenced advance notice of proposed rulemaking. The comments consist of proposed revisions of 40 C.F.R. § 1502.13 (purpose and need) and 40 C.F.R. § 1508.27 (significantly) and include legal rationales for the proposed revisions.

Arizona Minerals Inc. appreciates the opportunity to participate in the rulemaking. If you have any questions, please let me know at gtsiolis@nj.rr.com or 602-319-4021.

Thank you.

Sincerely,



George A. Tsiolis, Attorney at Law
Counsel for Arizona Minerals Inc.

cc: Ted A. Boling, EOP/CEQ (eboling@ceq.eop.gov)
Sarah Richman, Environmental Coordinator, Arizona Minerals Inc.
(srichman@arizonamining.com)

§ 1502.13 Purpose and need.

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action. If the proposed action is a decision to grant a federal permit, approval or other form of license of a specific project, then, absent circumstances that require a different specification, which should be enumerated in the statement, the statement shall:

(a) Specify that the underlying need to which the agency is responding is the need under affirmative law to make a decision, in response to an application therefor, of whether or under what conditions to grant the federal permit, approval or other form of license; and

(b) Describe the underlying purposes to be achieved by the agency's decision in terms of: (i) the specific purposes that the applicant would achieve if the federal permit, approval or other form of license is granted; and (ii) the specific purposes that the agency would achieve if it grants the federal permit, approval or other form of license.

Rationale

The published opinions of federal courts that have considered the meaning and application of § 1502.13 have produced no clear, generally applicable guidelines on how a statement of purpose and need should be structured. Faced with no guidance in the rule itself, the courts have generally held that agencies enjoy “considerable discretion” to define the purpose and need of a project and have upheld statements of purpose and need as long as they were “reasonable” and not unduly “narrow” or overly “broad.”¹ In the context of license applications, the result has often been the inclusion, within the scope of an EIS’ detailed alternatives analysis, of alternatives that do not necessarily satisfy or give enough weight to purposes that the applicant actually sought to achieve in seeking the license or purposes that the agency is required to advance under its organic statutes and implementing rules.² The above proposed revision of § 1502.13 would tend to yield statements of purpose and need that avoid these problems.³

¹ See *National Parks & Conservation Ass’n v. BLM*, 606 F.3d 1058, 1070-72 (9th Cir. 2010); *Little Traverse Lake Prop. Owners Ass’n v. Nat’l Park Serv.*, 883 F.3d 644, 656-57 (6th Cir. 2018); *Utah Env’tl. Cong. v. Bosworth*, 439 F.3d 1184, 1195 (10th Cir. 2006); *Webster v. United States Dep’t of Agric.*, 685 F.3d 411, 422-23 (4th Cir. 2012); *Citizens Against Burlington, Inc. v. Busey*, 938 F.3d 190, 196-97 (D.C. Cir. 1991).

² See, e.g., *National Parks & Conservation Ass’n v. BLM*, 606 F.3d 1058, 1070-72.

³ See *Protect Our Cmty’s Found. v. Jewell*, 825 F.3d 571, 579-580 (9th Cir. 2016) (“In a context, as here, where the agency is tasked with deciding whether to issue a permit or license, the statement of purpose and need may include ‘private goals’ alongside statutory policy objectives . . . The EIS’s purpose-and-need statement reflects both the agency’s immediate objective, “to respond” to Tule Wind’s right-of-way request, as well as the broader policy goals that the agency considered in deciding among alternative proposals.”); *Citizens for Smart Growth v. Sec’y of the DOT*, 669 F.3d 1203, 1212 (11th Cir. 2012) (“[A]gencies must look hard at the factors relevant to the definition of purpose” and “should take into account the needs and goals of the parties involved in the application.”) (quoting *Citizens Against Burlington, Inc.*, 938 F.2d at 196).

§ 1508.27 Significantly.

“Significantly” as used in NEPA requires considerations of both context and intensity:

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial, [although the potential for litigation regarding the proposed action in itself does not necessarily indicate such effects are likely to be highly controversial.](#)

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

**August 20, 2018 – Arizona Minerals Inc. Proposed Revisions of Certain CEQ NEPA Rules
in Response to Advance Notice of Proposed Rulemaking, 83 Fed. Reg. 28591 (June 20, 2018), 83
Fed. Reg. 32071 (July 11, 2018)**

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

Rationale

Federal agencies often treat attention to the federal action (such as website publications in opposition to the action) by organizations with a history of threatening or instituting NEPA litigation as enough, in itself, to meet the “highly controversial” threshold and thus trigger the requirement of an environmental impact statement. This is inconsistent with the body of court opinions that have interpreted § 1508.27(b)(4).⁴ The above proposed revision of subparagraph (b)(4) would codify the case law. The practical effect of the revision would be that the lead agency would decide to require the preparation of an environmental impact statement based on the “highly controversial” threshold only if the agency has previously received public comments regarding a proposed FONSI or other concrete indications that a substantial dispute with the agency or otherwise exists regarding the size, nature or effects of the federal action.⁵

⁴ See *Blue Mts. Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998) (“We have held that ‘controversial’ is ‘a substantial dispute [about] the size, nature, or effect of the major federal action rather than the existence of opposition to a use.’”) (quoting *Greenpeace Action v. Franklin*, 14 F.3d 1324, 1335 (9th Cir. 1992)); *Cold Mt. v. Garber*, 375 F.3d 884, 893 (9th Cir. 2004) (“the existence of opposition does not automatically render a project controversial”); *Town of Cave Creek v. FAA*, 325 F.3d 320, 331 (D.C. Cir. 2003) (“The term ‘controversial’ refers to cases where a substantial dispute exists as to the size, nature, or effect of the major federal action rather than to the existence of opposition to a use.”) (quoting *Found. for N. Am. Wild Sheep v. U.S. Dep’t of Agric.*, 681 F.2d 1172, 1182 (9th Cir. 1982)) (emphasis in the original); *National Parks Conservation Ass’n v. Semonite*, 2018 U.S. Dist. LEXIS 87555, *22 (D.D.C. 2018) (“Courts in this circuit have found that ‘something more is required besides the fact that some people may be highly agitated and be willing to go to court over the matter.’”) (citations omitted); *Middle Rio Grande Conservancy Dist. v. Norton*, 294 F.3d 1220, 1229 (10th Cir. 2002) (“Controversy in the NEPA context does not necessarily denote public opposition to a proposed action, but a substantial dispute as to the size, nature, or effect of the action.”); *WildEarth Guardians v. Conner*, 2017 U.S. Dist. LEXIS 203421, *27 (D. Colo. 2017) (“Mere opposition to a project does not render it highly controversial”); see also *National Parks & Conservation Ass’n v. Babbitt*, 241 F.3d 722, 736-37 (9th Cir. 2001) (finding a substantial controversy existed because the bulk of 450 comments received by the agency “urged that the EA’s analysis was incomplete”).

⁵ See *National Parks & Conservation Ass’n v. Babbitt*, 241 F.3d at 736 (“A substantial dispute exists when evidence, raised prior to the preparation of an EIS or FONSI . . . casts serious doubt upon the reasonableness of an agency’s conclusions.”) (emphasis added); see also *Greenpeace Action*, 14 F.3d at 1334 (holding a party may not establish controversy *post hoc*, when at the time of the agency’s action no controversy existed).

[EXTERNAL] Comments on ANPR

From: Timothy Male <tmale@policyinnovation.org>
To: "Drummond, Michael R. EOP/CEQ" (b) (6) "Boling,
Ted A. EOP/CEQ" <(b) (6)>
Date: Mon, 20 Aug 2018 09:52:25 -0400
Attachments
: EPIC comments on CEQ ANPR.pdf (141.07 kB)

Morning, Ted and Michael!

Attached are our comments on the advanced notice of proposed rulemaking. We have submitted them electronically as well.

Best to you both – so fun to see you (and be at!) the Crab Feast!

Cheers,

Tim

Timothy Male
Executive Director
Environmental Policy Innovation Center
1015 15th Street NW, Suite 600
Washington, DC 20005

(m) (b) (6)
(e) tmale@policyinnovation.org
(w) >www.policyinnovation.org<





August 17, 2018

Mr. Edward A Boling
Associate Director
White House Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

Subject: Docket ID Number: CEQ-2018-0001

The Council on Environmental Quality last issued National Environmental Policy Act regulations in 1980 – we’ve learned a lot since then. The world has changed. We are confident there is value in Council on Environmental Quality’s effort to update them.

These comments are focused on the extent to which a major purpose of the National Environmental Policy Act – to inform the public of the consequences of a proposed government action – is frustrated by the current structure, medium, and length of the National Environmental Policy Act documents.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy Male".

Timothy Male, Executive Director
Environmental Policy Innovation Center

“too damn many pages for any man to understand”

As Lin-Manuel Miranda’s Thomas Jefferson states, *“too damn many pages for any man to understand.”* There are many environmental assessments more than 1,000 pages long and some impact statements that exceed 15,000 pages (without counting appendices). The length and complexity of these documents defy comprehension. Period. The Council on Environmental Quality is correct to consider limiting them.

To provide a stronger basis for your action, we encourage you to seek input from social science experts on the cognitive limits of human brains and how exceedingly long documents may frustrate the purpose of National Environmental Policy Act in informing the public about government actions and in giving government employees and project proponents actionable analysis. We also urge you to please consider taking a more logical approach to the page limits you choose. For example, a study of bestsellers has found that the average book length has increased by 25% over the last 15 years – about 350 letter-sized pages. While it is unlikely that any Environmental Impact Statement will ever make a bestseller list, this 350-page target might be a reasonable approximation of the level of text that the public (or experts) can reasonably process, consume, and use. Because analysis should increasingly be shared online, in formats other than pages or text, we also encourage you to establish language that directs agencies to adopt word count limits and other measures of document size that roughly correlate with the page limits you choose. In addition, the Council on Environmental Quality should establish electronic file size limits, as very large file sizes are a barrier to access to members of the public in large parts of the country where reliable access to high speed internet services is lacking.

In with technology

Imagine that your round of National Environmental Policy Act regulations survives for as long as the last – 32 years. Can you honestly imagine that page limits will be relevant to the audiences for these documents in 2050?

In reality, the world has moved past pages and paper altogether and that trend will continue. Technologies that have evolved since the 1970s allow us to consume information using rich, visual and interactive formats delivered through the internet. Visual tools to convey and improve comprehension of information are more pervasive in our schools, media, businesses, and daily lives. Visuals are processed 60,000 times faster than text.¹ Thus, ‘readability’ is the wrong frame for the Council on Environmental Quality to use – comprehension and understanding are more general and appropriate terms and we encourage you to replace the former with the latter in Council on Environmental Quality regulations and policy.

Because of both the length and complexity of documents, the public is largely excluded from access to and understanding the documents. For example, this Council on Environmental Quality Federal Register notice is written at a 16th grade level, way beyond the comprehension ability of most of the public. Just the single opening introductory paragraph of your notice scores as ‘very confusing’ on the Flesch Reading Ease scale developed by the U.S. Navy (a ‘16’ on that scale of 100, compared to Harry Potter books at 65 out of 100). There is a limit to how simple National Environmental Policy Act documents can be made, but at present there is not even a meaningful effort to make this a significant step in decisions around the length and complexity of documents. Requirements of the Plain Writing Act of 2010 do not apply to Council on Environmental Quality or other regulations, however, should apply to National Environmental Policy Act documents because they provide information about a Federal Government service.

We encourage the Council on Environmental Quality to build additional content into regulations to give comprehension, understanding, and utility – which are central purposes of the statute – a more powerful role in dictating how agencies and practitioners develop National Environmental Policy Act documents and how courts review them. We offer a number of recommendations for how to do so:

- 1) Provide more direction to agencies to limit their review to issues that are truly significant to the action in question and direct them to ensure that the content of analyses is proportionally focused

¹ <http://misrc.umn.edu/workingpapers/fullpapers/1986/8611.pdf>

on issues that are significant and the minimum background necessary to understand that significance.

- 2) Require agencies, during the scoping process, to explicitly consider and seek input on whether visual versus text presentation of specific information and issues would better allow the public and other audiences to understand the issue and its significance *and* how the information is presented affects comprehension and understanding of the totality of the analysis.
- 3) Require that all documents be provided in open, machine-readable format and posted online. For example, Thomas, the Congressional website that tracks legislation, provides all legislative documents in three formats: HTML, text, and (machine-readable) PDF. Today, many National Environmental Policy Act documents exist in only one format and that format is often a non-machine-readable PDF. Providing machine-readable text is also consistent with the requirements of the Americans with Disabilities Act.
- 4) We encourage the Council on Environmental Quality to ‘lean in’ through regulatory language that directs agencies to continuously seek and use technologies that expand the use of visual, interactive, and virtual information that improves understanding of the significant effects of a proposed government action.
- 5) Require agencies to provide all data used in analyses in machine-readable form and to restrict agencies from putting information in appendices that is essential to understanding the significant effects covered by the analysis. Appendices are appropriate places to include public and agency comments. Appendices are appropriate for the storage of raw data, including that which allows those with disabilities to access information that is otherwise provided in graphical, visual, or other formats that are especially difficult for those with disabilities to access.
- 6) Where agencies seek exception to go beyond page or content limits you create, require them to document the effects that providing additional content will have in making the entire analysis – and the analysis of significant effects – less accessible to its intended audiences.
- 7) Require agencies to establish accessibility accommodation procedures that make it easier to use visual and interactive

display analyses using the accommodation procedures under the Americans with Disabilities Act.

Electronic storage

The Council on Environmental Quality is, or was until recently, collocated with the U.S. Digital Service, an agency whose expertise is perfectly situated to help the Council on Environmental Quality figure out better options for the storage and archiving of National Environmental Policy Act analyses, appendices, data, and required monitoring reports. Developing a better storage solution would serve the Council on Environmental Quality's goals around public involvement and engagement but it would also enable the Council on Environmental Quality to expand its regulatory direction to agencies to direct them eliminate repeated text from analyses and instead incorporate it by reference to past documents or other online resources. General descriptions of environmental conditions are routine in National Environmental Policy Act documents but could be avoided by using material already developed in the past. Storage of data is an extreme problem because Federal agencies and project proponents pay for repeated data collection on the same environmental attributes and potential project effects without consistent ability to make use of past datasets that cover the same subject. Just as scientific research and data funded by Federal granting agencies must be made publicly available within 12 months, the Council on Environmental Quality should consider requirements to make data required for analyses or monitoring publicly available.

Mitigate to Find No Significant Impact

The Council on Environmental Quality established helpful guidance that should allow more projects to use compensatory approaches to achieve a net effect that negates the need to develop an environmental impact statement. But few agencies have followed or fully implemented this guidance. We encourage you to make it mandatory for agencies to maximize application of your 2011 guidance.

Alternatives in Environmental Assessments

The National Environmental Policy Act statute provides no direction or requirement for alternatives to be analyzed when potential projects do not have significant environmental effects. The Council on Environmental Quality should make clear that the inclusion of an alternatives analysis in environmental assessments is discretionary for agencies and that they must make clear to project proponents that it is discretionary. The Council on Environmental Quality could also amend the definition of 'environmental assessment' to make clear it does not include alternatives analysis.

Mitigation Hierarchy

The Council on Environmental Quality regulations define mitigation to include avoidance, minimization, rectification, reduction, and compensation. We encourage you to amend the definition to exclude rectifying and reducing as these terms are not in frequent, current use and are subsidiary to 'avoid' and 'minimize.'

Projects with Benefits

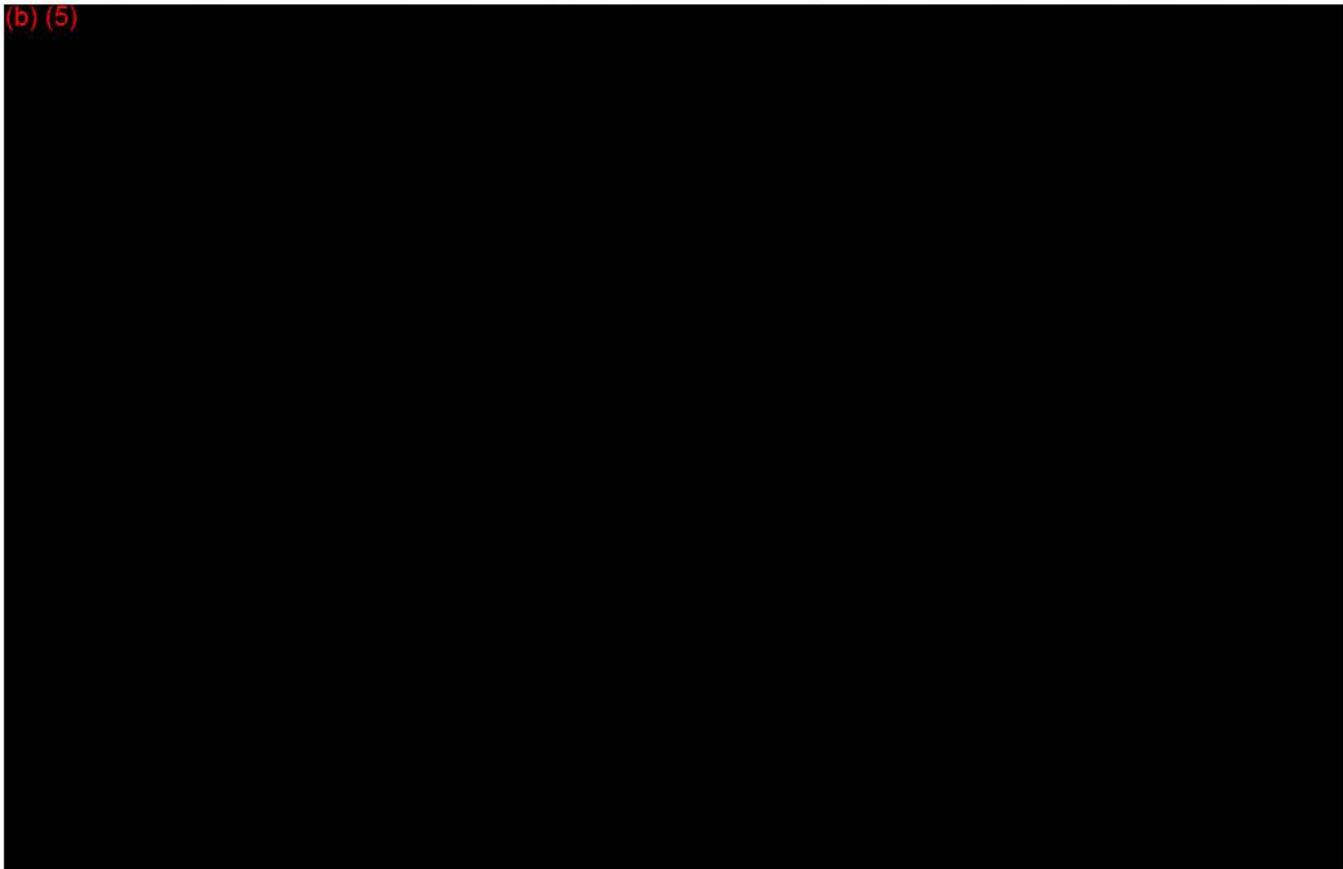
We believe the Council on Environmental Quality should revise its definition of 'significantly' and associated parts of your regulations to make clear that significant beneficial effects should be described in statements or assessments, but are not themselves triggers for requiring an environmental impact statement and that, where a project only has significant beneficial effects, it is appropriate to consider the use of a categorical exclusion. For some resources, the current definition already focuses significance only on adverse effects. For example, the definition focuses only on adverse effects to endangered species or their habitat and on historic structures. The Council on Environmental Quality should consider how to more broadly limit significance determinations to harmful or adverse effects or those proposed actions that have a net harmful or adverse outcome.

RE: First batch of ANOPR comments ready for review

From: "Szabo, Aaron L. EOP/CEQ" <(b) (6)>
:
"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"
To: <(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)>
Date: Tue, 21 Aug 2018 21:15:24 -0400

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)

ANPRM Comments

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

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

Date: Tue, 21 Aug 2018 16:54:12 -0400

Attachments
:
1418 Western Governors Association.pdf (297.33 kB); 1036 Tripp, Environmental Defense Fund (with law review article on strea....pdf (2.19 MB); 12056 Dinah Bear.pdf (161.77 kB); 12161 Ray Clark.pdf (113.82 kB); 12381 Horst Greczmiel.pdf (431.04 kB); 11812 Multistate AG comments (76 pages).pdf (3.62 MB); 8267 AASHTO.pdf (378.5 kB); 9917 GW Regulatory Studies Center.pdf (323.46 kB); 9917 GW Regulatory Studies Center.pdf (323.46 kB); 11898 Nicholson (NAEP).pdf (196.87 kB)

Michael Drummond
Deputy Associate Director for NEPA
Council on Environmental Quality

(b) (6)

[EXTERNAL] National Trust - NEPA Advance Notice of Rulemaking Comments

From: Sharee Williamson <swilliamson@savingplaces.org>
To: "Boling, Ted A. EOP/CEQ" <(b) (6)> jfowler@achp.gov
Cc: Betsy Merritt <emerritt@savingplaces.org>, Tom Cassidy <tcassidy@savingplaces.org>
Date: Tue, 21 Aug 2018 11:06:18 -0400

Attachments
: NTHP Comment Ltr on CEQ regs 8-20-2018.pdf (323.32 kB)

Mr. Boling & Mr. Fowler – Please find attached a copy of the comments submitted yesterday on behalf of the National Trust for Historic Preservation regarding the Advance Notice of Rulemaking, Docket No. CEQ-2018-0001.

Sincerely,

Sharee Williamson | Associate General Counsel
P 202.588.6194 | E SWilliamson@savingplaces.org

NATIONAL TRUST FOR HISTORIC PRESERVATION
The Watergate Office Building
2600 Virginia Avenue NW Suite 1100 Washington, DC 20037
SavingPlaces.org





**National Trust *for*
Historic Preservation**
Save the past. Enrich the future.

August 20, 2018

Ms. Mary Neumayr, Chief of Staff
Council on Environmental Quality
730 Jackson Place, N.W.
Washington, D.C. 20503

**RE: Advance Notice of Proposed Rulemaking
40 CFR Parts 1500, 1501, 1502, 1503, 1504, 1505, 1506,
1507, and 1508 [Docket No. CEQ-2018-0001]**

Dear Ms. Neumayr:

The National Trust for Historic Preservation in the United States (National Trust) offers the following comments in response to the Advance Notice of Proposed Rulemaking (Advance Notice) recently published by the Council on Environmental Quality (CEQ) indicating that revisions to the implementing regulations for the procedural provisions of the National Environmental Policy Act (NEPA) are under consideration. The National Trust offers the following comments with the goal of improving the effectiveness of NEPA.

Statement of Interest

The National Trust is a private nonprofit organization chartered by Congress in 1949 to “facilitate public participation” in the preservation of our nation's heritage, and to further the historic preservation policy of the United States. *See* 54 U.S.C. § 312102(a). Congress intended the National Trust “to mobilize and coordinate public interest, participation and resources in the preservation and interpretation of sites and buildings.” S. Rep. No. 1110, 81st Cong., 1st Sess. 4 (1949). With more than one million members and supporters around the country, the National Trust works to protect significant historic sites and to advocate historic preservation as a fundamental value in programs and policies at all levels of government.

The underlying goal of NEPA is to lead to better informed federal decision-making. The National Trust frequently participates in project reviews under

NEPA and has experienced firsthand how the statute’s “hard look” at alternatives can lead to improved decisions and win-win outcomes that protect natural and cultural resources while allowing projects to proceed. The existing NEPA regulations have proven to be more than adequate to satisfy the goals of NEPA. If CEQ decides to move ahead and revise these regulations, the National Trust believes that such changes should recognize that the existing regulations work well and only minor, targeted changes, such as those described below, should be made.

Revising the NEPA Regulations is Premature

We are concerned that any effort by CEQ to revise its NEPA regulations is premature, given Section 1 of Executive Order 12,866. Section 1 states:

“In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, **including the alternative of not regulating**. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.”

58 Fed. Reg., No. 190 (Oct. 4, 1993) (emphasis added). The text of the Advance Notice does not indicate that this type of cost-benefit analysis has been completed. Instead, the Advance Notice indicates that CEQ is considering revising the NEPA regulations just because they have not been revised recently. There is no detailed information explaining why amending these regulations would be helpful or necessary to meet the goals of NEPA.

Under Office of Management and Budget policy, an important threshold question before an agency conducts a rulemaking is whether developing agency “guidance” would be a better option. From the text of the Advance Notice, it appears that this option has not been considered. Many of the National Trust’s answers to the questions in the Advance Rulemaking identify areas where agency guidance would be the best way to address any identified concerns. Overall, we believe that the existing NEPA regulations already

provide a solid foundation for NEPA reviews and that CEQ has not provided sufficient justification for why a regulatory overhaul would be warranted.

Increased Funding Should be Made Available to Support NEPA Compliance

The National Trust believes that the current regulations provide clear directions and encourage agencies to work efficiently in implementing their obligations under NEPA. Over the decades since NEPA was enacted, agencies have developed and refined their own NEPA regulations, coordinating their reviews under various federal laws, and using available tools, like categorical exclusions and tiering, to streamline their review procedures. The result is that the preparation of detailed Environmental Impact Statements under NEPA is fairly limited. Despite this reality, NEPA has developed a false reputation for being a major cause of regulatory delay.¹

When reviews under NEPA are delayed, the main cause is not inefficient regulation, it is inadequate funding.² Agencies that are understaffed or lack adequate training and expertise will struggle to implement regulations effectively, even if they are revised. In our view, the best way to improve NEPA implementation is to ensure that all agencies have the staff, experience, information technology, resource databases, and training to complete NEPA reviews expeditiously and without sacrificing quality.

Changing NEPA Regulations Will Result in Uncertainty

Existing law under NEPA has been developed over decades and is a relatively settled area of the law. Major changes to the NEPA regulations are likely to result in uncertainty, new review processes, and increased litigation. Regulatory amendments are unlikely to speed up project reviews. Instead,

¹ The Congressional Research Service has concluded that NEPA is not a major cause of project delay. Luther, Linda, *The Role of the Environmental Review Process in Federally Funded Highway Projects: Background and Issues for Congress*. Congressional Research Service Report 7-5700 (2012) (available at https://environment.transportation.org/pdf/proj_delivery_stream/crs_report_envrev.pdf).

² A December 2016 report of the U.S. Department of Treasury, found that inadequate funding is “by far the most common challenge to completing” major transportation infrastructure projects. AECOM, *40 Proposed U.S. Transportation and Water Infrastructure Projects of Major Economic Significance*, Page 2 (2016) (available at <https://www.treasury.gov/connect/blog/Documents/final-infrastructure-report.pdf>).

they are likely to slow them down. Given that the existing regulations are already effective, CEQ should closely consider whether amendments are necessary.

NEPA is the Primary Mechanism that Facilitates Local Input into Federal Decisions

One of the primary reasons for the passage of NEPA was the recognition that federal agencies need to take local concerns into account when making decisions. NEPA is intended to provide opportunities for communities to weigh in on projects before federal decisions that impact them are made. Despite NEPA's public participation requirements, achieving robust participation can be challenging. For example, agencies sometimes focus more on whether precise procedural steps are followed, rather than on whether meaningful public participation opportunities are afforded. Public participation that occurs *after* alternatives have already been developed and considered is another common problem. Any changes to NEPA's regulations regarding public participation should be focused on improving opportunities for the public to participate *early* in the federal decision-making process. Requiring federal agencies to actively solicit and consider input from the local communities that their decisions affect will lead to better outcomes.

Questions and Responses

The National Trust offers responses to the following questions included 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?

The existing regulations provide sufficient opportunities to coordinate NEPA reviews with reviews required by other federal laws. In fact, the regulations already require that "to the fullest extent possible," agencies prepare draft EISs "concurrently with and integrated with environmental impact analyses and related surveys and studies" required by other environmental laws. 40 C.F.R. § 1502.25. If CEQ has identified any specific needs for additional coordination, guidance can be developed on a case-by-case basis. One successful example of guidance being used to coordinate reviews is the

2013 handbook³ developed jointly by CEQ and the Advisory Council on Historic Preservation that provides guidance to agencies to streamline and integrate project review under NEPA and Section 106 of the National Historic Preservation Act. This handbook could provide a model for CEQ to work with other federal agencies where a specific need to enhance coordination has been identified.

Additionally, before making any changes to address a *perception* that coordination needs to be improved, CEQ should first gather data from federal agencies and the public to identify any *actual* on-the-ground barriers to efficient coordination. This information could be used to identify areas where additional agency guidance would be beneficial.

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?

CEQ’s current regulations allow agencies to use existing, professional and reliable, environmental studies and analyses in their reviews under NEPA. Additional use of NEPA’s tiering process is another way that agencies can rely on analysis conducted in prior reviews. When used properly, this review mechanism can help to increase the efficiency and effectiveness of agency reviews under NEPA.

3. Should CEQ’s NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?

CEQ’s existing regulations provide an effective framework for coordination between agencies. Like our answer to Question 1 above, if CEQ identifies a need for improved interagency coordination, CEQ should consider developing guidance specifically tailored to address the identified deficiency.

³ NEPA and NHPA, A Handbook for Integrating NEPA and Section 106; available at <https://www.achp.gov/digital-library-section-106-landing/nepa-and-nhpa-handbook-integrating-nepa-and-section-106>.

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?

CEQ’s regulations already provide useful guidance and factors for agencies to consider when establishing timelines and page limits for individual projects. The current suggested page limits in 40 C.F.R. § 1502.7 are reasonable. Appropriately, the current regulatory language sets target page limits, but does not mandate arbitrary page limits for large or complex projects that require additional pages to conduct a full consideration. Likewise, the factors that agencies are to consider in setting review schedules (which are included in existing regulations) correctly recognize that prescribing compulsory time limits for all projects regardless of their complexity is too inflexible and unworkable in practice. 40 C.F.R. § 1501.8.

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?

Yes. CEQ’s regulations should be revised to clarify federal agencies’ obligations regarding tribal consultation under NEPA. Revisions are needed in 40 C.F.R. §§ 1503.1(a)(2)(ii) and 1506.6(b)(3)(ii) regarding inviting comments from and providing public notice to Indian tribes. The current language limits the request for comments from Indian tribes to projects that may cause effects on tribal land within reservations. Federal agencies are responsible for considering impacts to tribally significant cultural resources whether they are located on or off reservation lands. This language should be modified to require agencies to request comments of Indian tribes and Native Hawaiian Organizations for any project that may impact resources of significance to those communities.

Questions 7 & 8. Requesting suggestions for definitional changes or additions.

The existing definitions of NEPA terms are clear and effective as is, and no additional terms need to be defined. The meaning of these terms is well understood by agencies and the public. Changes are unnecessary and likely to lead to confusion, and potentially to litigation.

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

The existing regulation at 40 C.F.R. § 1502.5 establishes a sound and reasonable approach for agencies to coordinate their NEPA review process to their decision-making regarding a proposed action.

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?

Changes to this regulatory section are not warranted and could create legal uncertainty, slow down the review process, and undercut the effectiveness of NEPA. Instead of regulatory changes, CEQ could consider developing guidance intended to help agencies better coordinate the development and consideration of alternatives, particularly at the early phases of review, i.e. during the pre-scoping and scoping process.

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?

There have been changes in technology that can help to increase the efficiency of permitting reviews under NEPA. The primary barrier to increased use of these technologies is a lack of funding, not a need for regulatory changes.

The most effective way to save time and money in reviewing impacts to historic resources under NEPA is to develop better 21st-century digital maps and databases that identify where historic and cultural resources have already been located and where more are likely to be found. Currently, much of the survey data about the location of important cultural resources (including previously completed state and federal surveys, and information about property boundaries for resources listed on the National Register of Historic Places or designated as National Historic Landmarks) is still stored in paper files and rudimentary databases in state, tribal and federal offices around the country.

Increased availability of survey data in digital formats could significantly reduce the cost and review time needed to consider impacts to historic

resources by making access to this information available electronically to agency staff. Improving the availability of cultural resource survey data would also ensure that resource type and location information was available at the earliest stages of project review. This would reduce the likelihood of resources being discovered late in the project review process and causing agencies to have to significantly revise their consideration of potential project alternatives.

The federal government should ensure that State Historic Preservation Offices (SHPOs) and Tribal Historic Preservation Offices (THPOs) have the resources to invest in digitized GIS-based databases. Fully funding the Historic Preservation Fund (HPF), which supports SHPOs and THPOs, would help enable this transition to new technology.

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?

Please see answer to Question 2.

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?

Please see answer to Questions 1 and 3.

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?

As discussed in the answer to Question 6 above, CEQ's regulations should be amended to clarify agencies' responsibilities to invite comments and ensure the public involvement of tribal governments.

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?

As discussed above, the key to increasing effectiveness and reducing any delays in NEPA reviews is to ensure that agencies have adequate funding, training and other necessary resources. Regulatory language changes do not address these types of lack of capacity issues, and may in fact exacerbate them by requiring retraining for existing staff.

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

This is another area where developing additional guidance for agencies rather than revising regulations could be helpful. CEQ's existing guidance on "Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact" is a helpful document, but could be expanded upon. To ensure appropriate mitigation outcomes, guidance stressing the importance of ensuring that mitigation commitments are monitored and enforced, could improve outcomes.

Conclusion

The National Environmental Policy Act and its implementing regulations play a key role in ensuring that the federal government carefully weighs impacts to natural and cultural resources prior to making decisions. The National Trust appreciates the opportunity to comment on the important issues raised in the Advance Notice. Please don't hesitate to contact us with any questions. We would be pleased to discuss any of the issues raised herein directly with CEQ staff.

Sincerely,



Sharee Williamson
Associate General Counsel

CC: Ted Boling, Council on Environmental Quality
John M. Fowler, Advisory Council on Historic Preservation

RE: Thank you & NEPA Comments

From: "Smith, Katherine R. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=e45de0bbb5ca4e87a4c4528ec12a7b03-sm">
To: "Boling, Ted A. EOP/CEQ" <(b) (6)>
Date: Wed, 22 Aug 2018 15:53:49 -0400

Will do! Waiting on confirmation, should have it on the calendar by the end of the day

From: Boling, Ted A. EOP/CEQ
Sent: Wednesday, August 22, 2018 3:48 PM
To: Smith, Katherine R. EOP/CEQ <(b) (6)>
Cc: Neumayr, Mary B. EOP/CEQ <(b) (6)>
Subject: FW: Thank you & NEPA Comments

Katherine – Mary asked that I be included in the meeting with AWEA that you are scheduling. Attached, for background, are AWEA comments on the ANPRM.

Best,
Ted

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

Director | Offshore Wind Policy & Siting

American Wind Energy Association

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(b) (6) cell

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FW: Thank you & NEPA Comments

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To: "Smith, Katherine R. EOP/CEQ" <(b) (6)>
Cc: "Neumayr, Mary B. EOP/CEQ" <(b) (6)>
Date: Wed, 22 Aug 2018 15:48:15 -0400
Attachments: AWEA Comments to CEQ on NEPA ANPR.pdf (124.91 kB)

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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
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”)¹ 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”).² 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.³

¹ 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.

² 83 Fed. Reg. 28,591 (Jun. 20, 2018).

³ 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,⁴ totaling one percent of the cumulative installed U.S. wind power capacity.⁵ 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 2050.⁶ Many of these

⁴ BLM, *Wind Energy Fact Sheet*, https://www.blm.gov/sites/blm.gov/files/energy_renewablewindfactsheet.pdf (March 2018).

⁵ AWEA, 2017 Annual Market Report at 83.

⁶ 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,⁷ 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.

⁷ 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.”⁸ 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

⁸ 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.”⁹ 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,¹⁰ 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.

⁹ 40 C.F.R § 1508.4.

¹⁰ 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,"¹¹ the regulations are currently

¹¹ See 40 C.F.R. 1508.20.



silent as to the use of such mitigated FONSI. AWEA suggests that CEQ revise its regulations to direct the use and implementation of mitigated FONSI.

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,

Gene Grace
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Fwd: [EXTERNAL] Comment submission

From: "Drummond, Michael R. EOP/CEQ" <(b) (6)>
To: "Boling, Ted A. EOP/CEQ" <(b) (6)> "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>
Date: Wed, 22 Aug 2018 09:03:29 -0400
Attachments
: Proposed NEPA Changes 8-20-18 for filing (2).pdf (1.41 MB)

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>
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

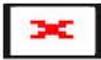
any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (e.g., audio, video) must be accompanied by a written comment. The 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.

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MARINA MICIC

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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.¹

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

¹ 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.²

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

² 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? ³(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.

³ 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.¹

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

¹ See *Modernizing NEPA for the 21st Century: Oversight Hearing Before the H. Comm. on Natural Resources*, 115th 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.”² 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.³ DOE’s median EIS contractor cost was \$1.4 million over that time period.⁴

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.⁵ 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.⁶ NEPA, like other elements of our infrastructure, needs to be updated and brought into the 21st 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.

² 40 C.F.R. § 1502.7.

³ 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).

⁴ *Id.*

⁵ 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.”).

⁶ See *Modernizing NEPA for the 21st Century: Oversight Hearing Before the H. Comm. on Natural Resources*, 115th 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.⁷ 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."⁸ "NEPA's purpose is *not* to generate paperwork—even excellent paperwork—but to foster excellent action."⁹ "Ultimately, it is not better documents but better decisions that count."¹⁰ The regulations go on to include specific instructions targeted at two additional goals: (i) to reduce paperwork and (ii) reduce delay.¹¹ 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.¹²

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.¹³

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

⁷ 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).

⁸ 40 C.F.R. § 1500.1(b).

⁹ *Id.* at § 1500.1(c) (emphasis added).

¹⁰ *Id.*

¹¹ *See* 40 C.F.R. §§ 1500.4-1500.5.

¹² *Id.*

¹³ *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.¹⁵
 - 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.¹⁶
- 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 21st 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,

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

¹⁵ See 40 C.F.R. § 1508.27.

¹⁶ 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.”¹⁷ 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.”¹⁸ 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.

¹⁷ 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).

¹⁸ 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 21st 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.¹⁹ 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.

¹⁹ See 42 U.S.C. § 4370m *et seq.*

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

From: "Upchurch, Sara" <sara.upchurch@fema.dhs.gov>

"Fretwell, Therese J" <therese.j.fretwell@hud.gov>, cathy.tortorici@noaa.gov,
"Bresnick, William" <william.bresnick@hq.dhs.gov>, "Hass, Jennifer"
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Gregory M" <gregory.m.griffin@hud.gov>, "Polacek, Steve - RD, Washington, DC"
<steve.polacek@wdc.usda.gov>, "Gilson, Kristine (MARAD)"

To:

<kristine.gilson@dot.gov>, "Potosnak, Ryan" <ryan.potosnak@fema.dhs.gov>, "Ross, Portia" <portia.ross@fema.dhs.gov>, chelsea.tucker@faa.gov, david.cohen@dot.gov, "Solomon, Rhonda (OST)" <rhonda.solomon@dot.gov>, "Mulligan, Sarah" <sarah.mulligan@fema.dhs.gov>, "Roberson, Jeffrey (Federal)" <jroberson@eda.gov>, "Horter, Ben - FSA, Washington, DC" <ben.horter@wdc.usda.gov>

Cc: "Dawson, John" <john.dawson@fema.dhs.gov>, "Audin, Michael" <michael.audin@fema.dhs.gov>, "Alexander, Benjamin" <benjamin.alexander@fema.dhs.gov>, "Carrino, Sarah" <sarah.carrino@fema.dhs.gov>

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

Attachments
: UFR Work Group Meeting Minutes_071118.docx (34.89 kB)

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

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



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

From: Federal-Unified-Review

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)

(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 31st & June 22nd
- 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) is the POC (copy to UFR Team) with questions or comments. **We request comments by Friday, July 20th.**

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 8th). **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 2nd Interagency Meeting on June 14th. 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 16th 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)

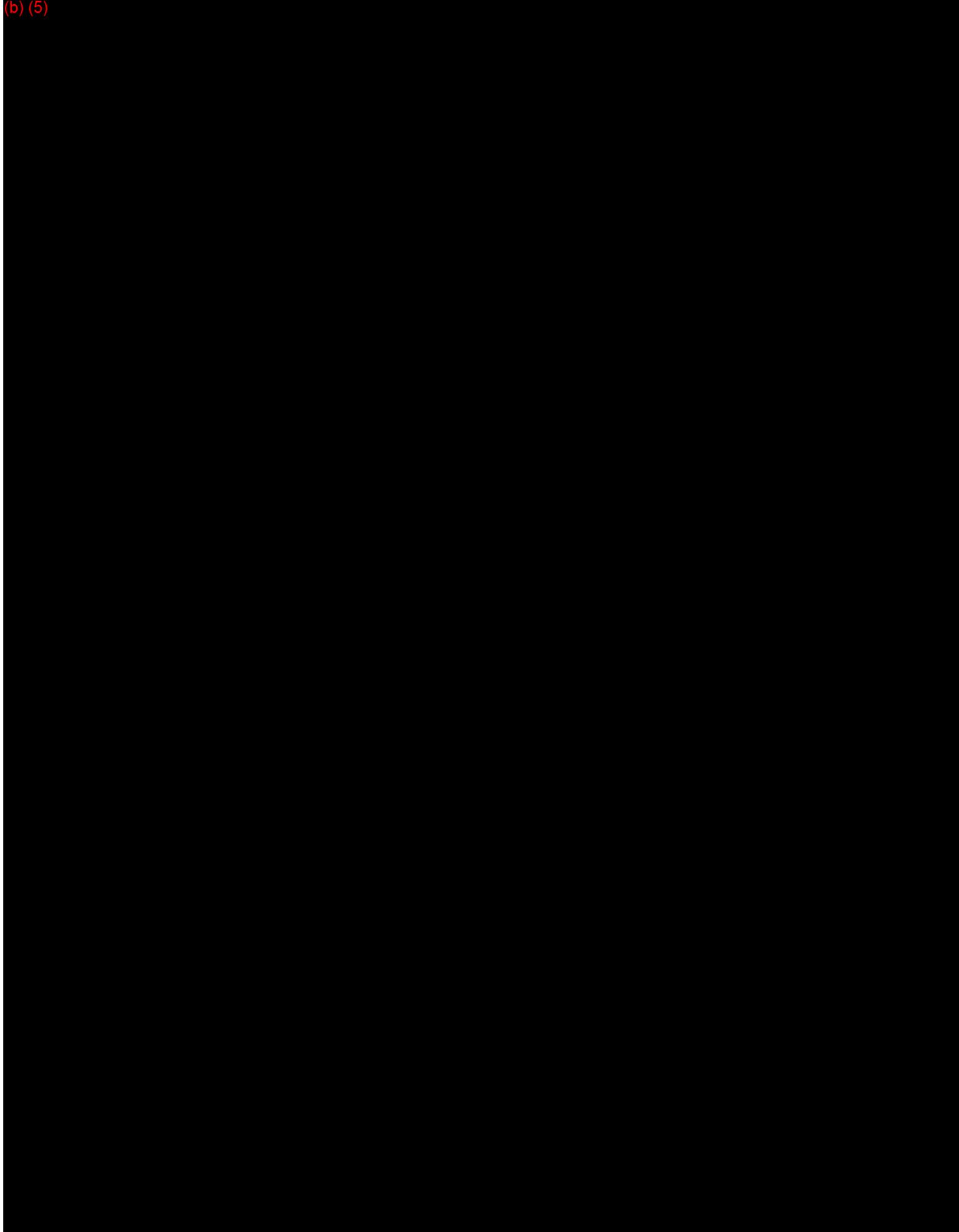
Ted, Michael

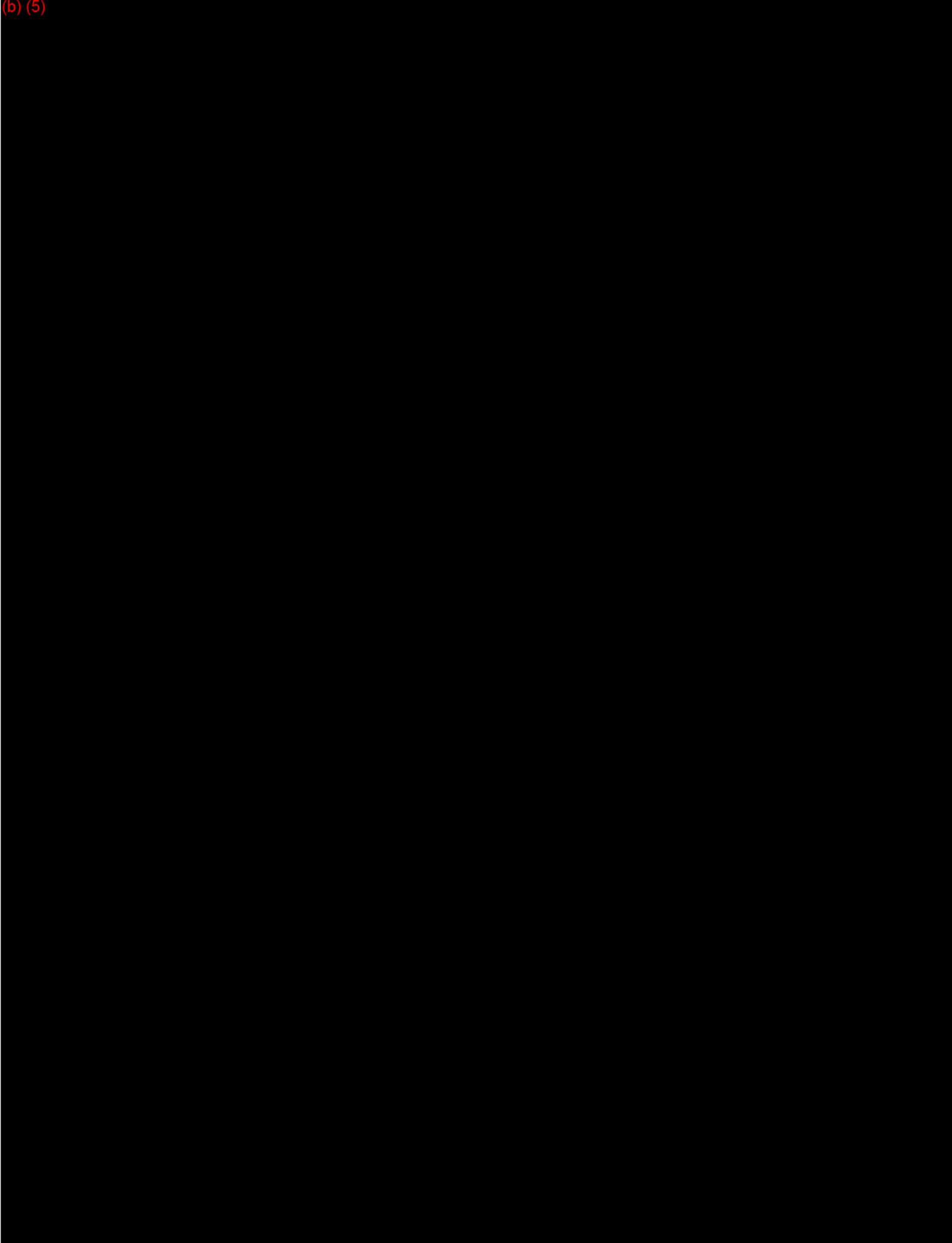
Thank you for requesting input concerning the revisions to 40 CFR 1500-1508. (b) (5)

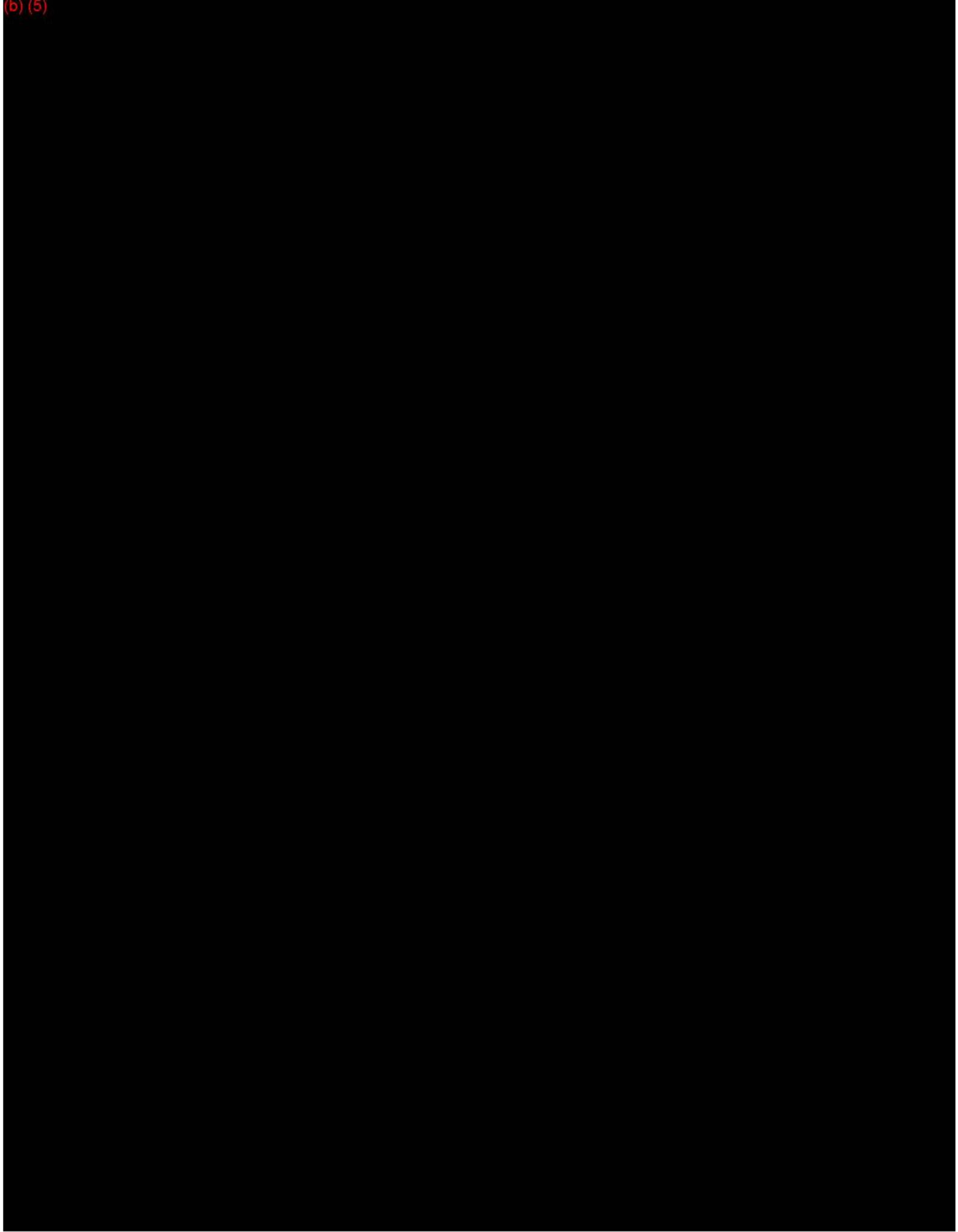
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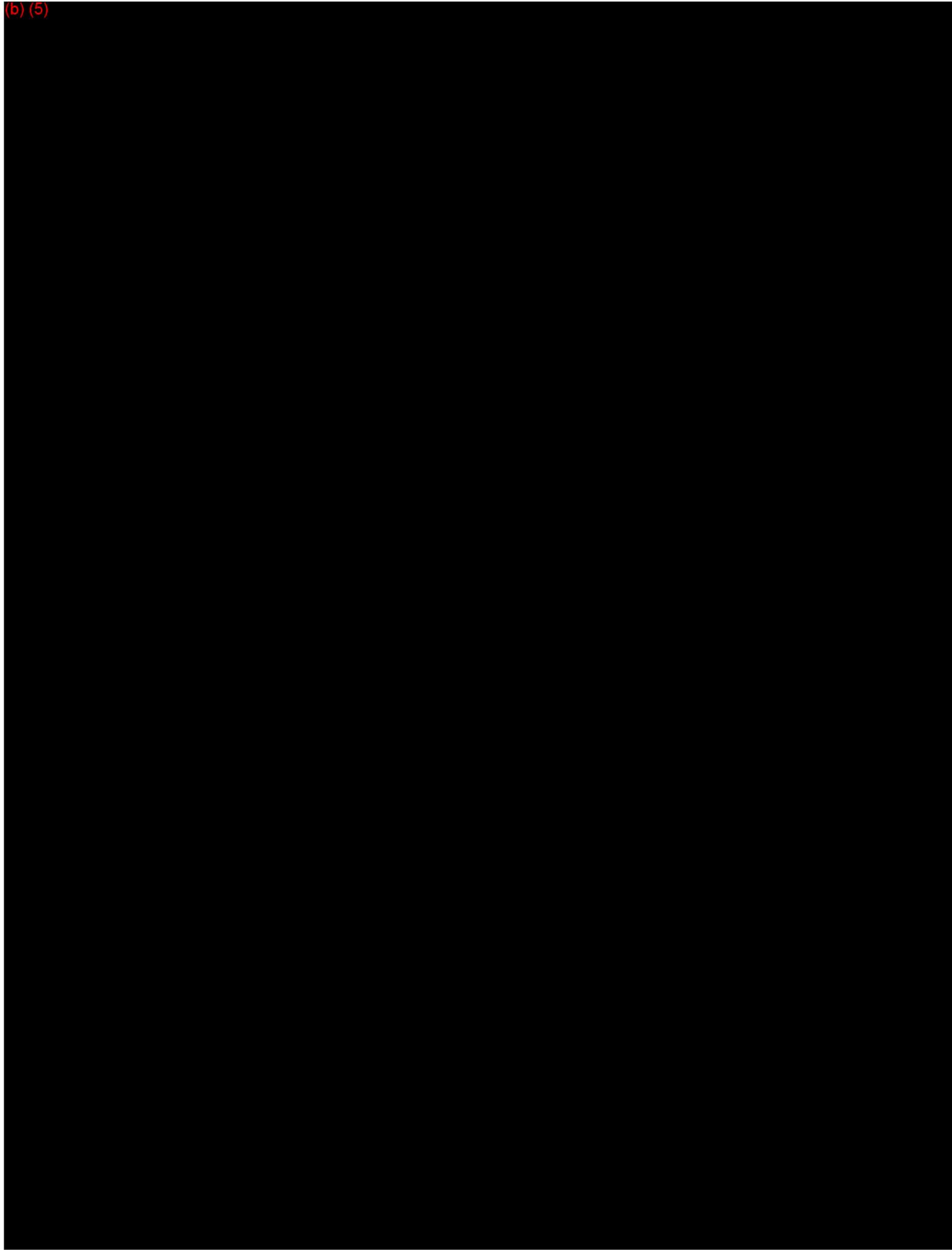
If you have any questions or comments please do not hesitate to contact me. Thanks.

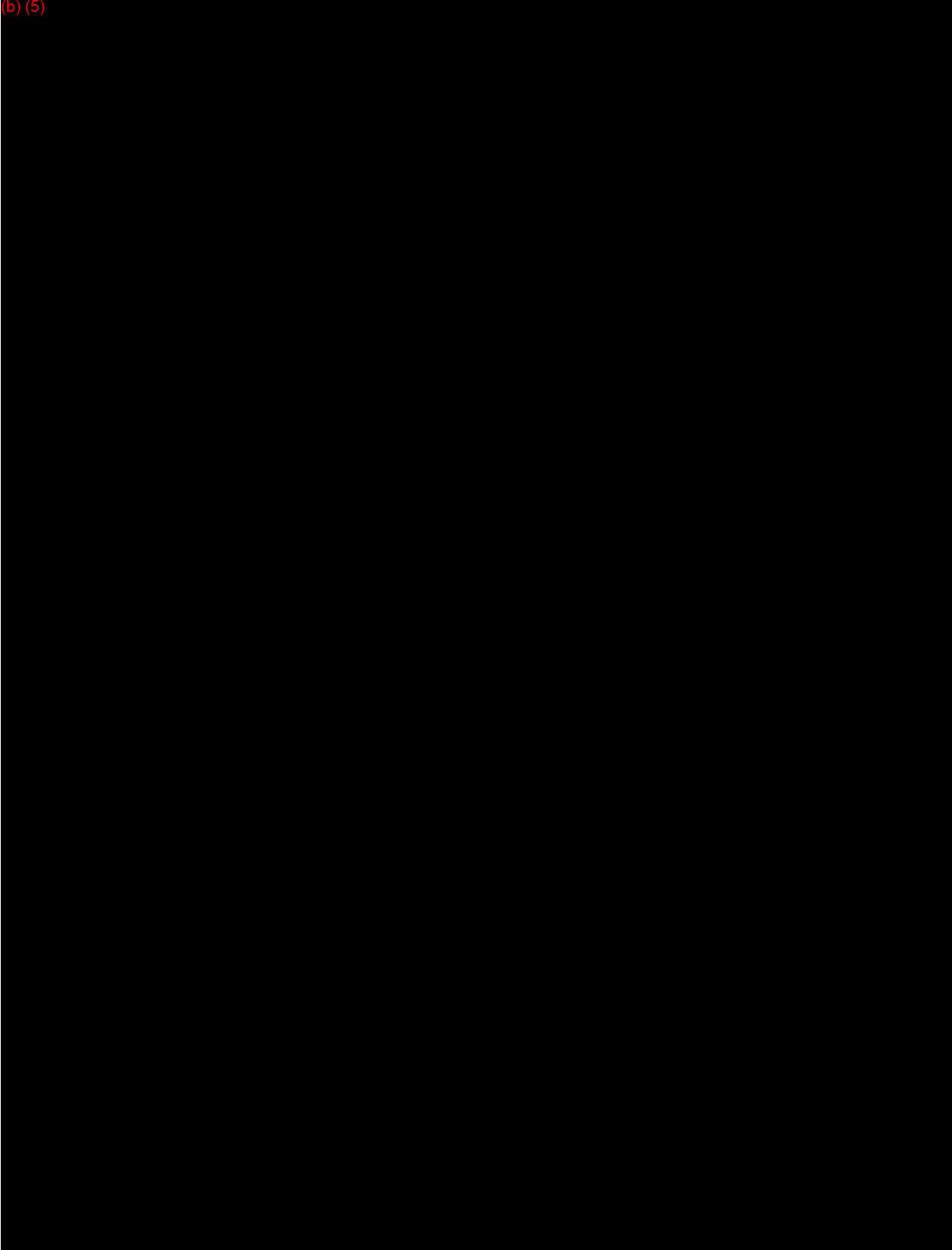
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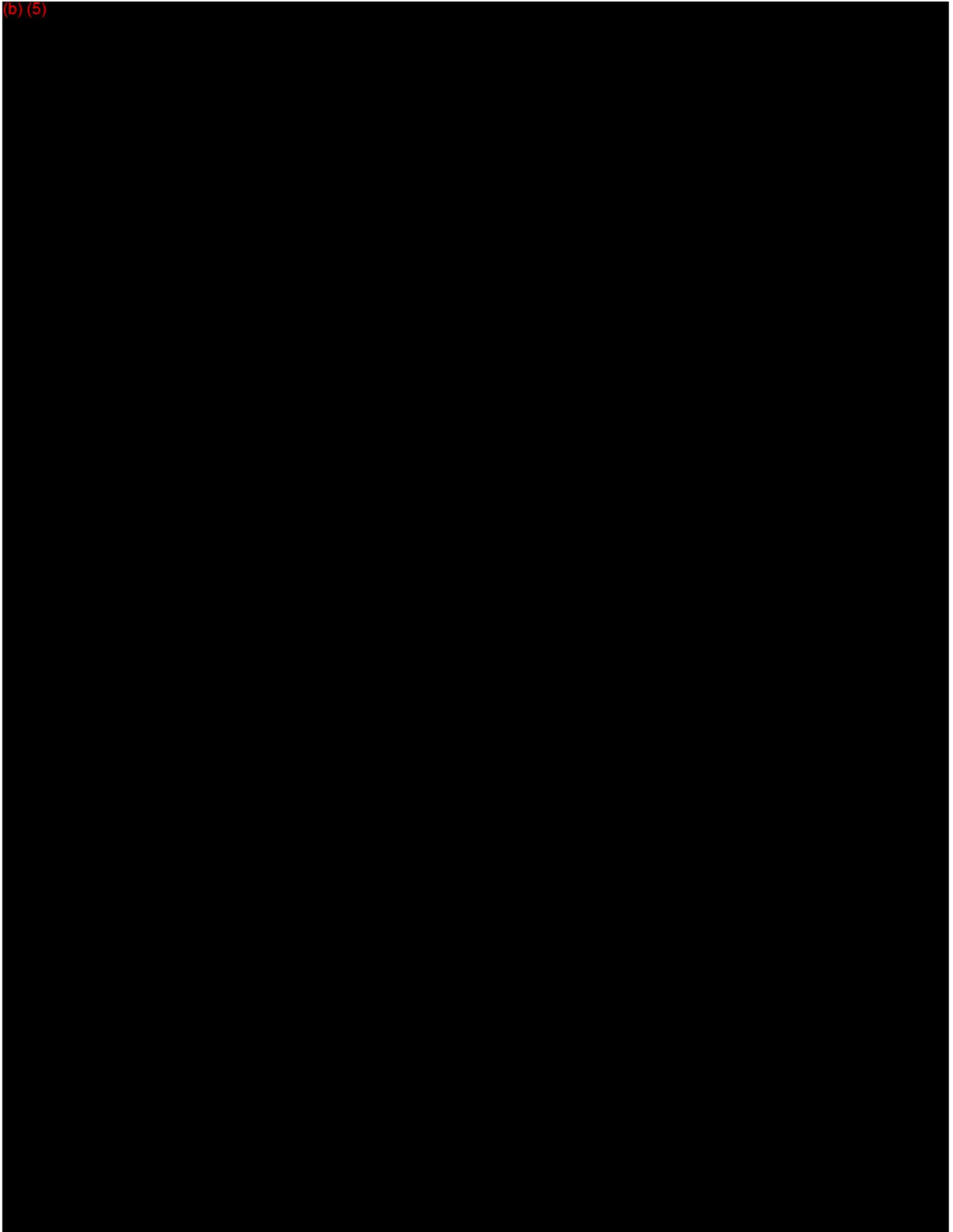


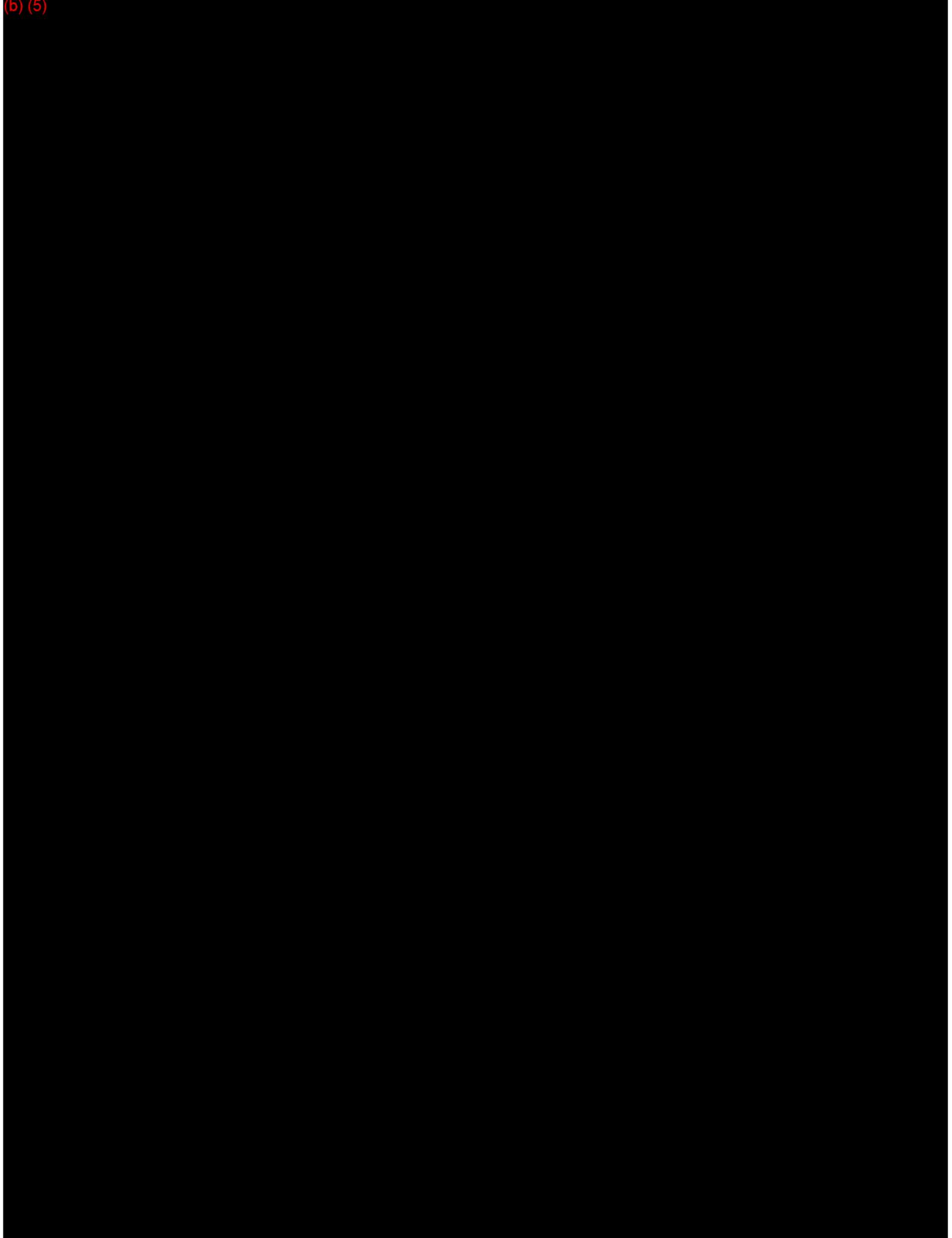


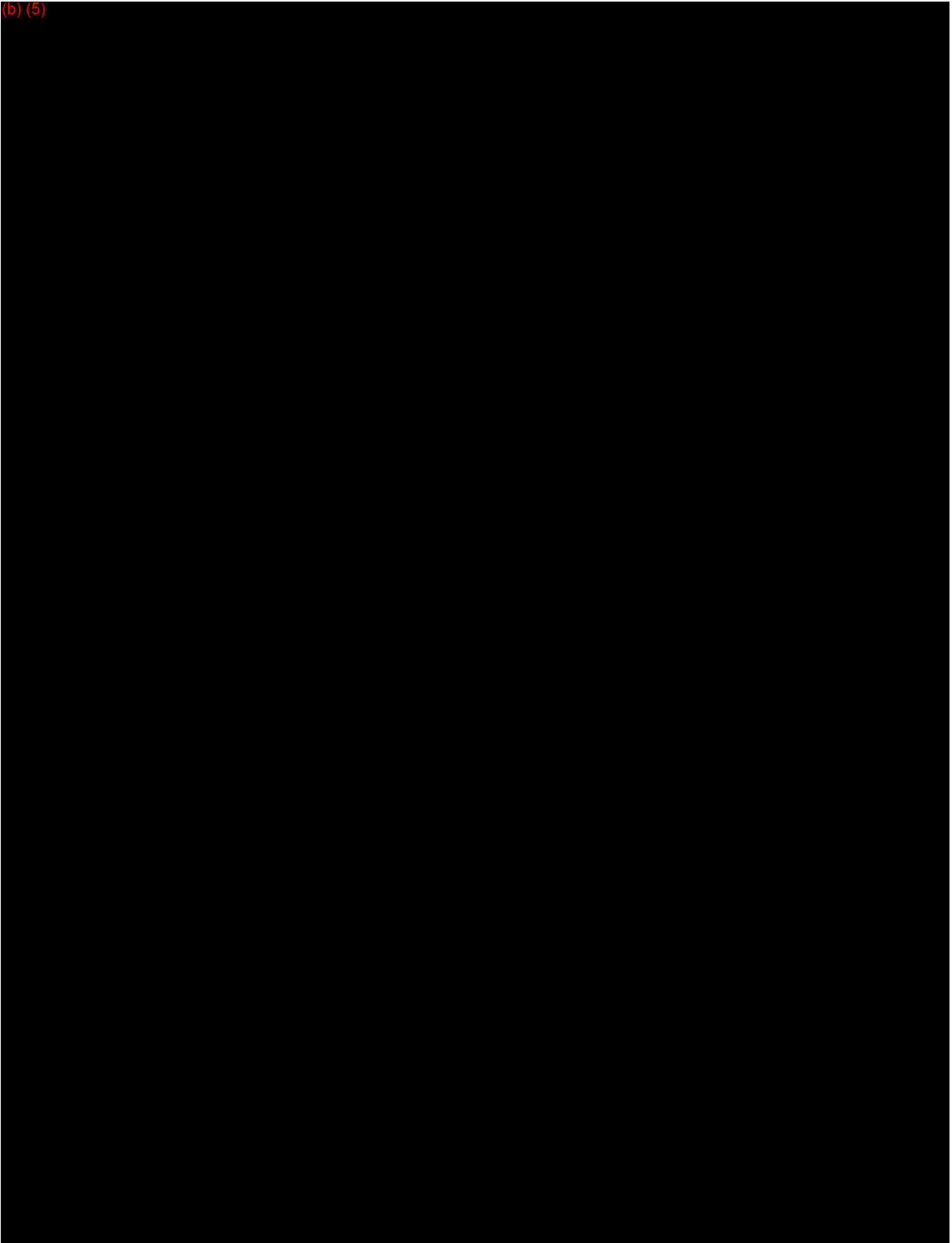


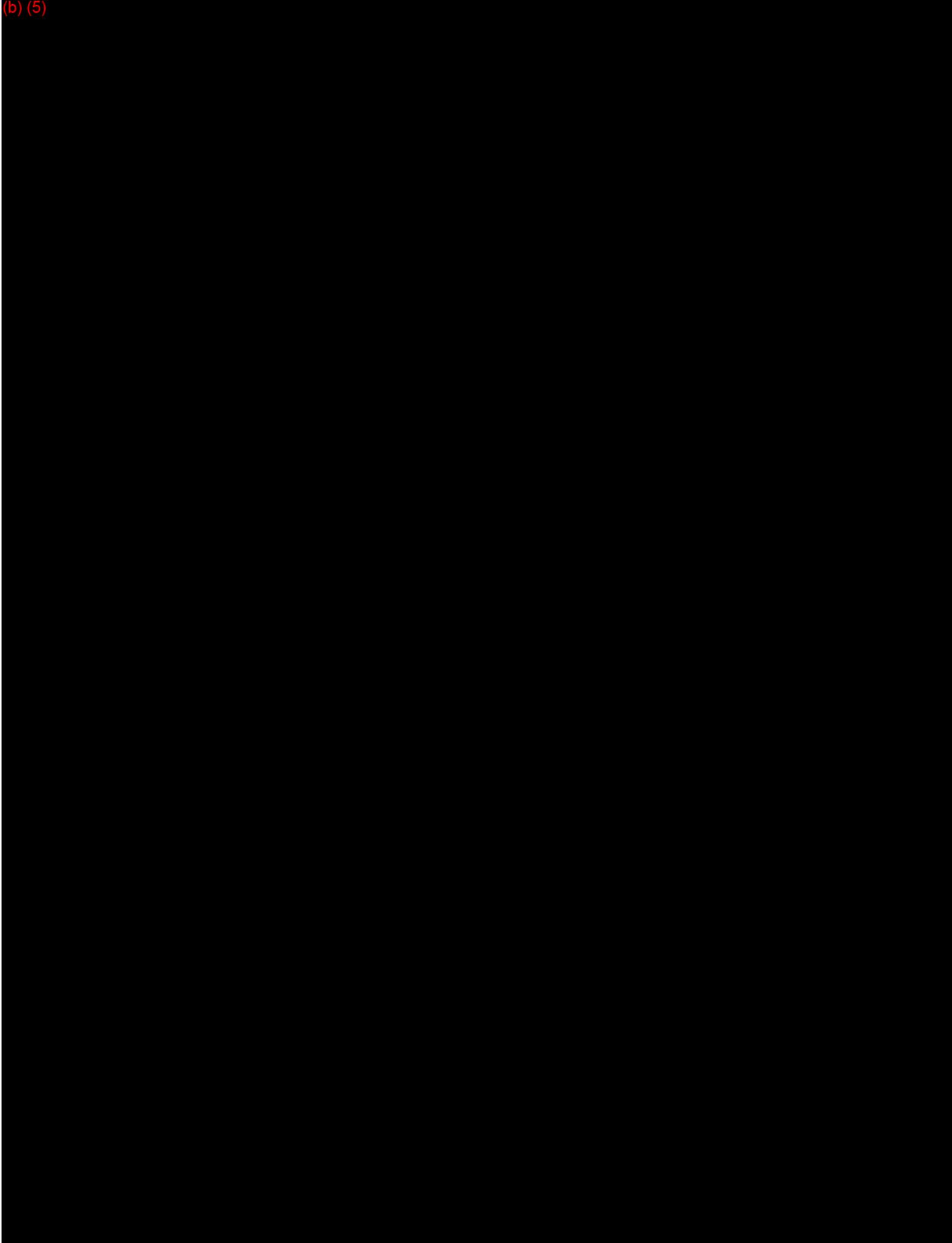










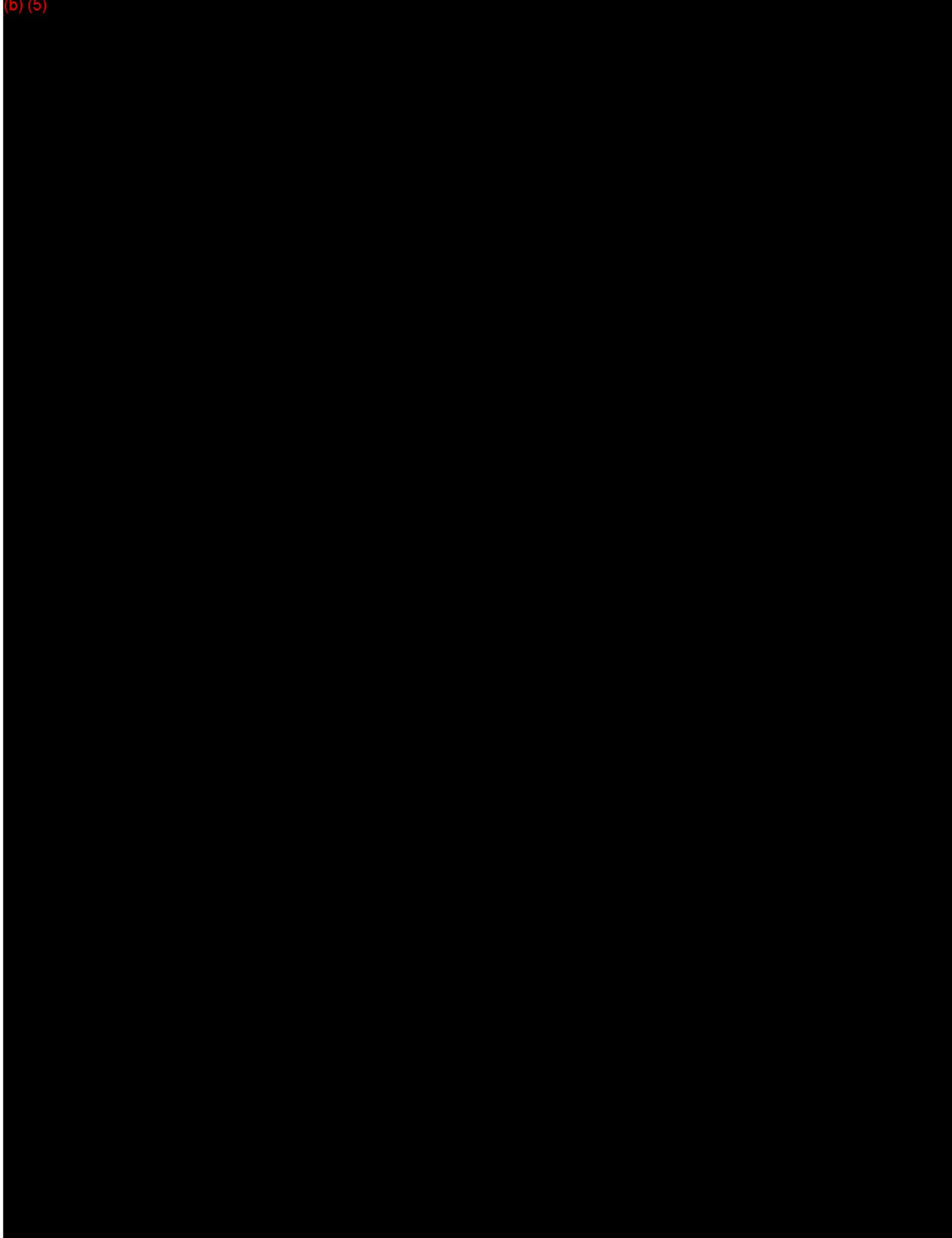


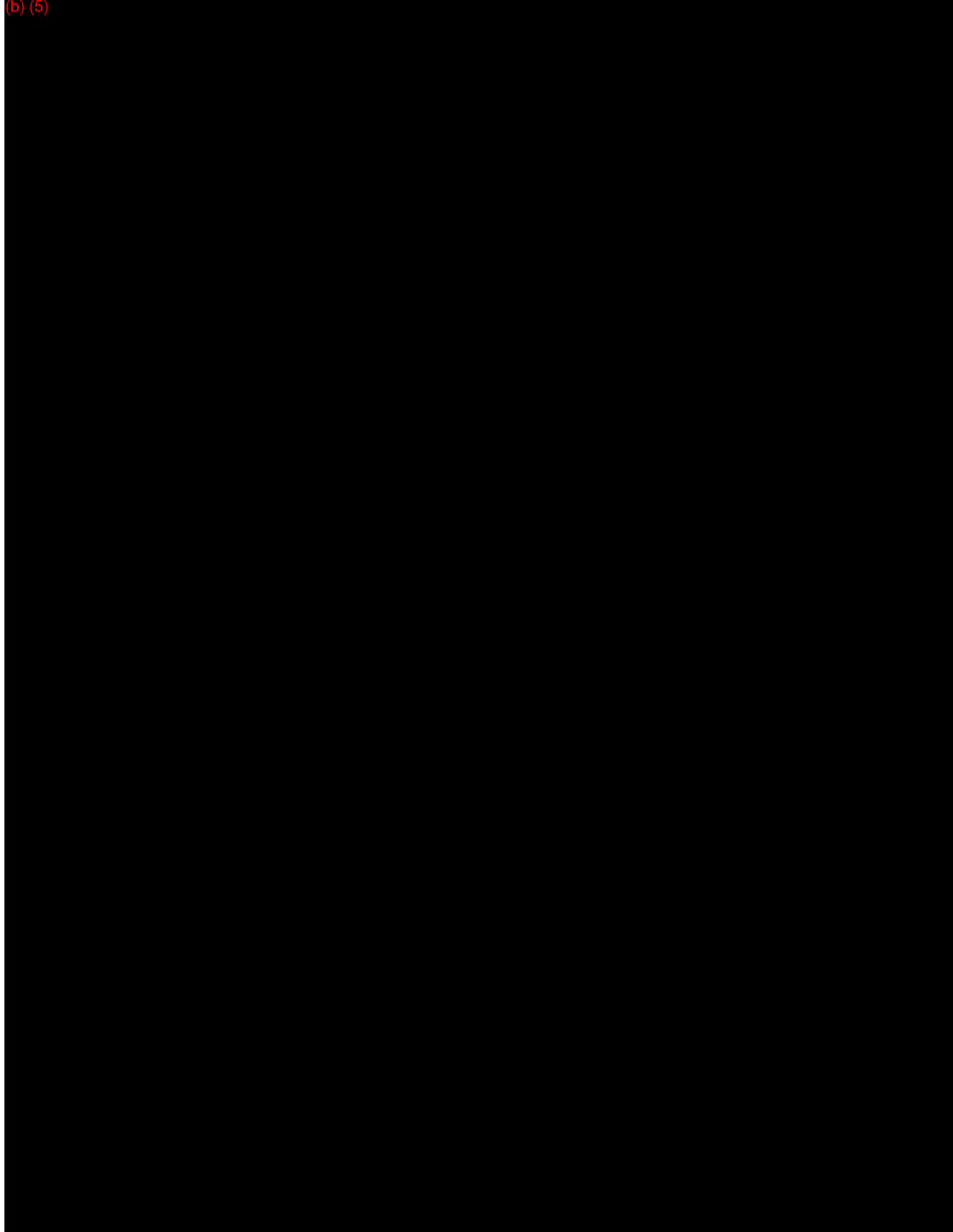
Draft response letter to Sen. Carper for review

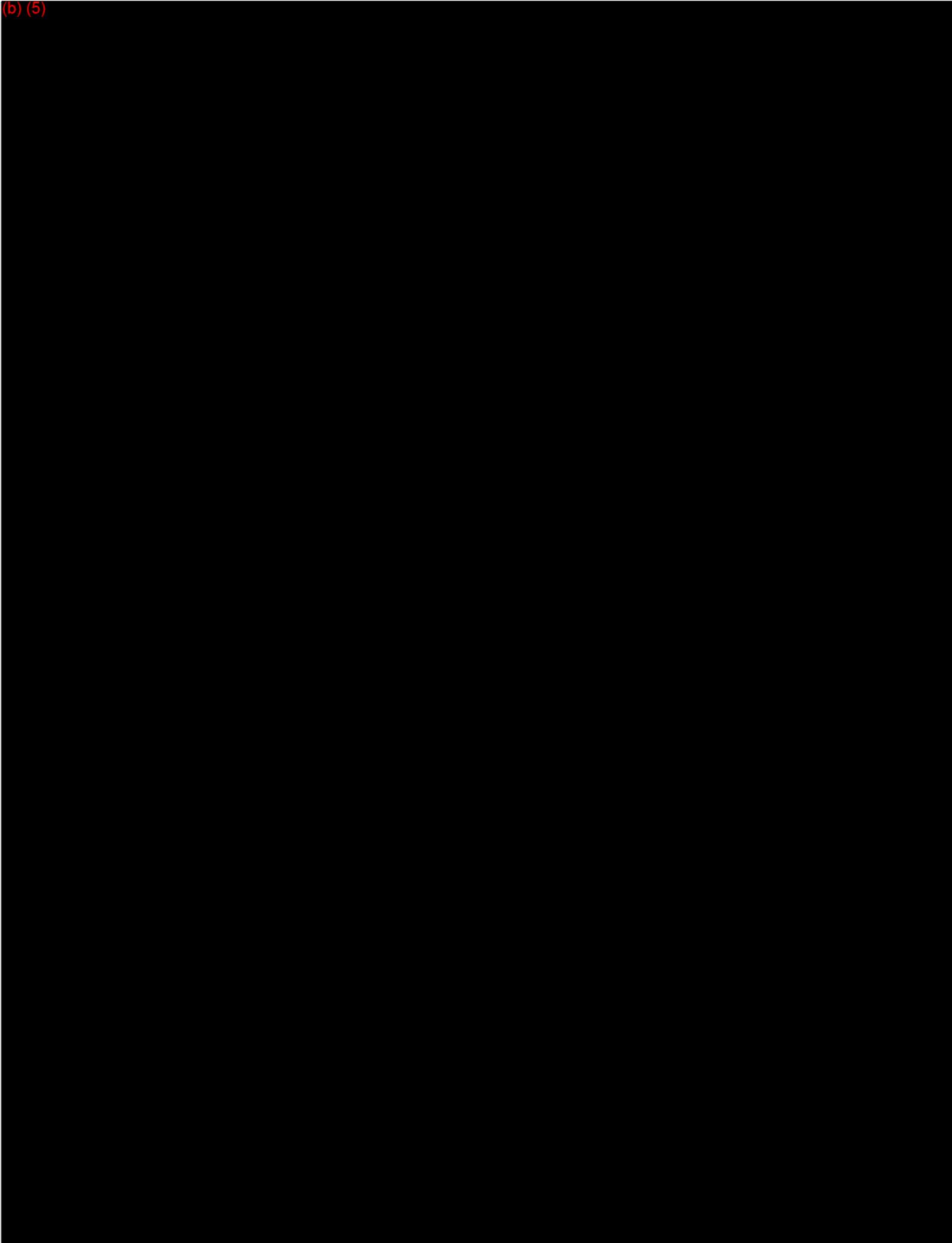
From: "Pettigrew, Theresa L. EOP/CEQ" <(b) (6)>
To: "Moran, John S. EOP/WHO" <(b) (6)>
Cc: "Neumayr, Mary B. EOP/CEQ" <(b) (6)> "Seale, Viktoria Z. EOP/CEQ" <(b) (6)>
Date: Wed, 15 Aug 2018 10:24:32 -0400
Attachments 08.03.17 Senator Carper to Neumayr CEQ Follow-up Letter.pdf (679.21 kB); DRAFT
: Response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

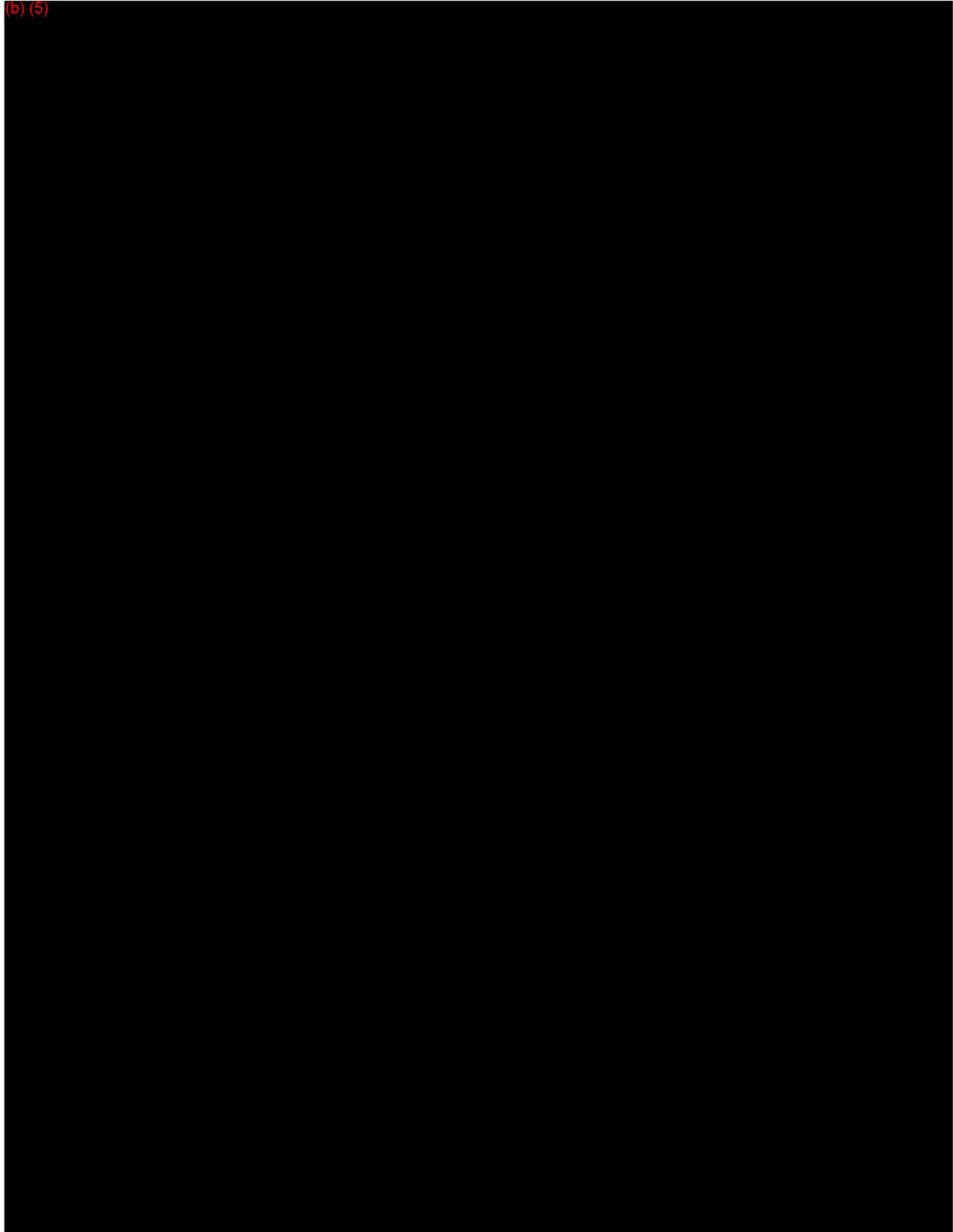
John,
Here is the letter Sen. Carper sent to Mary, and a draft letter with additional responses to his questions.
Thank you for taking a look.
Sincerely,
Theresa

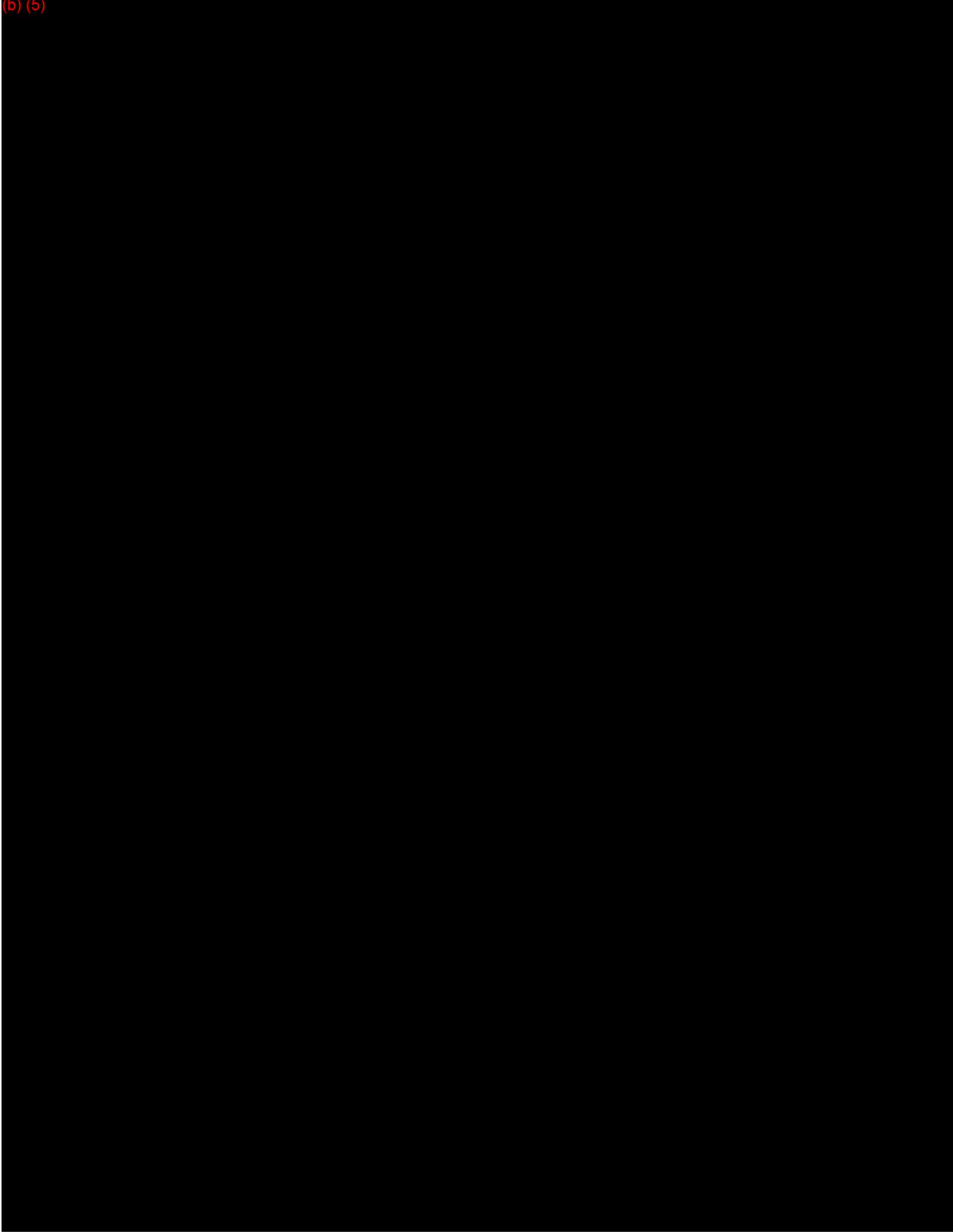
Theresa L. Pettigrew
Associate Director for Legislative Affairs
Council on Environmental Quality
(b) (6) (direct)

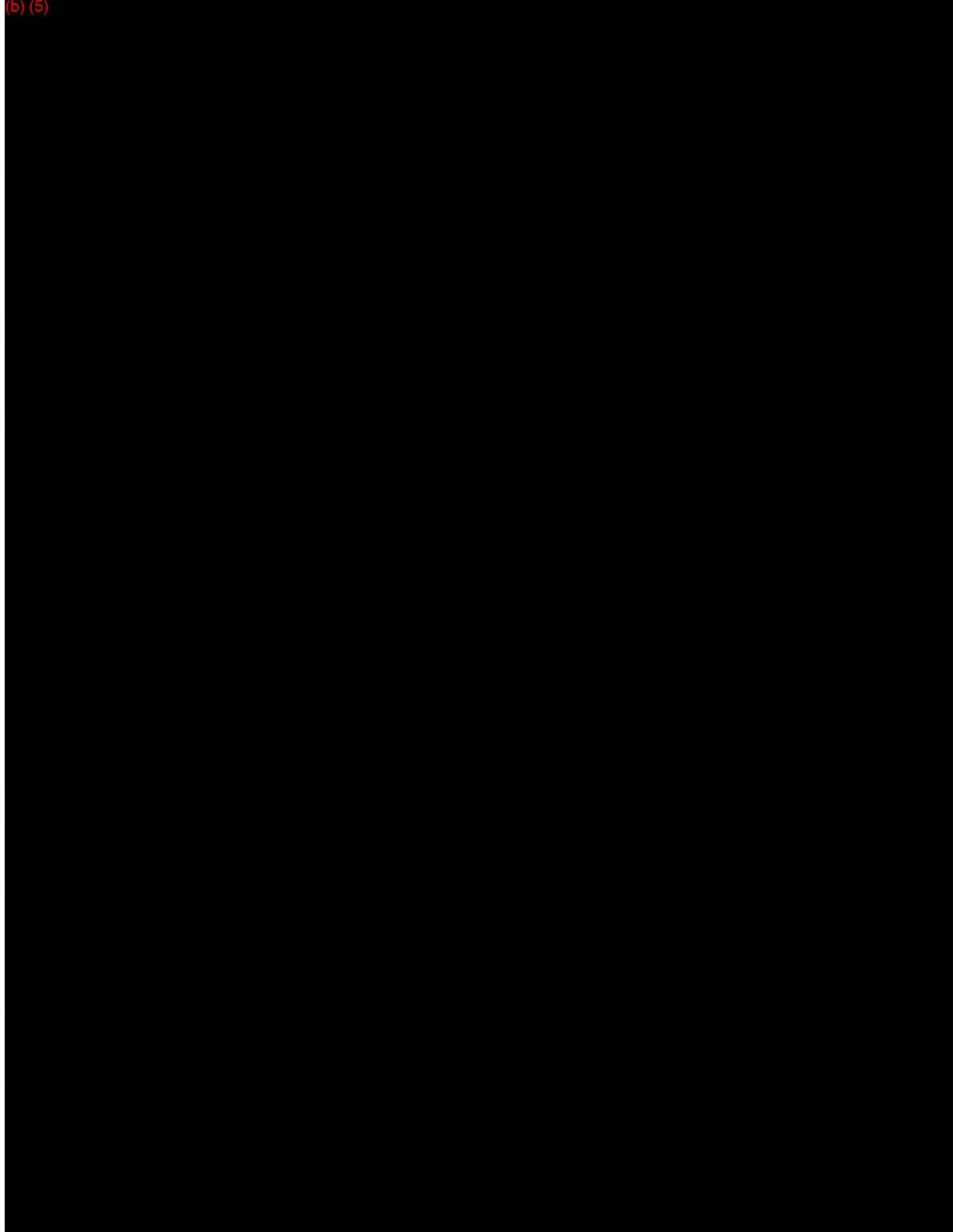


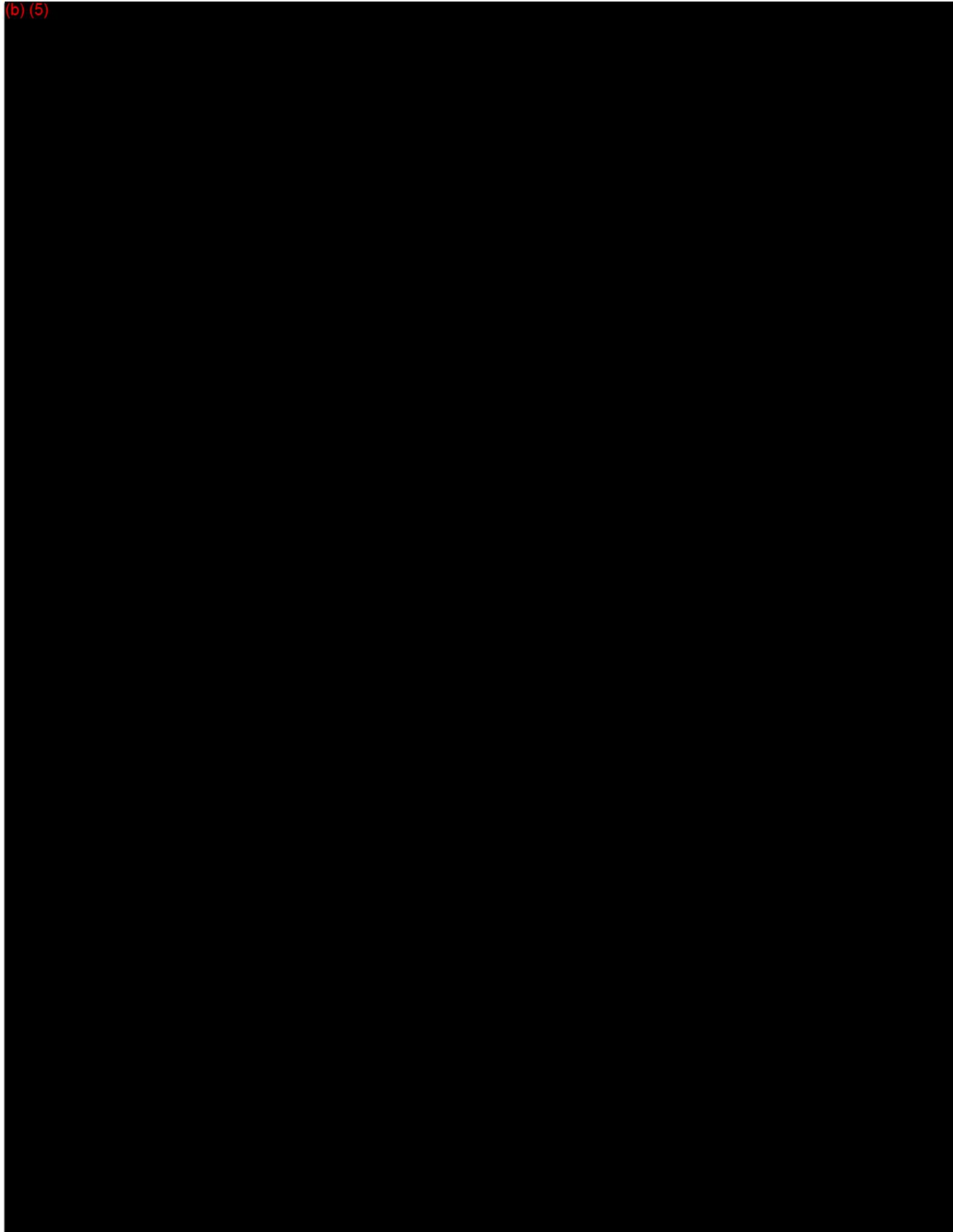


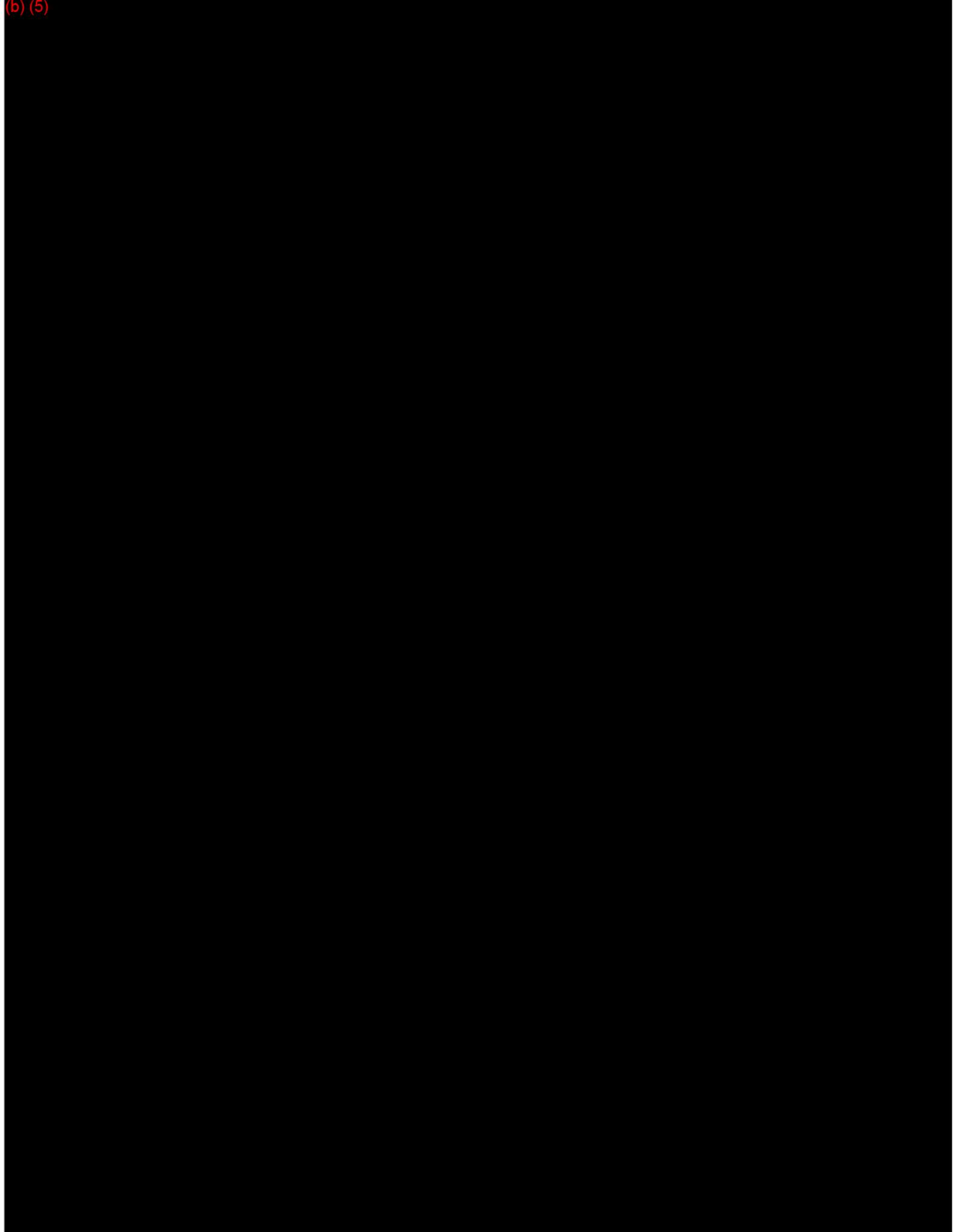


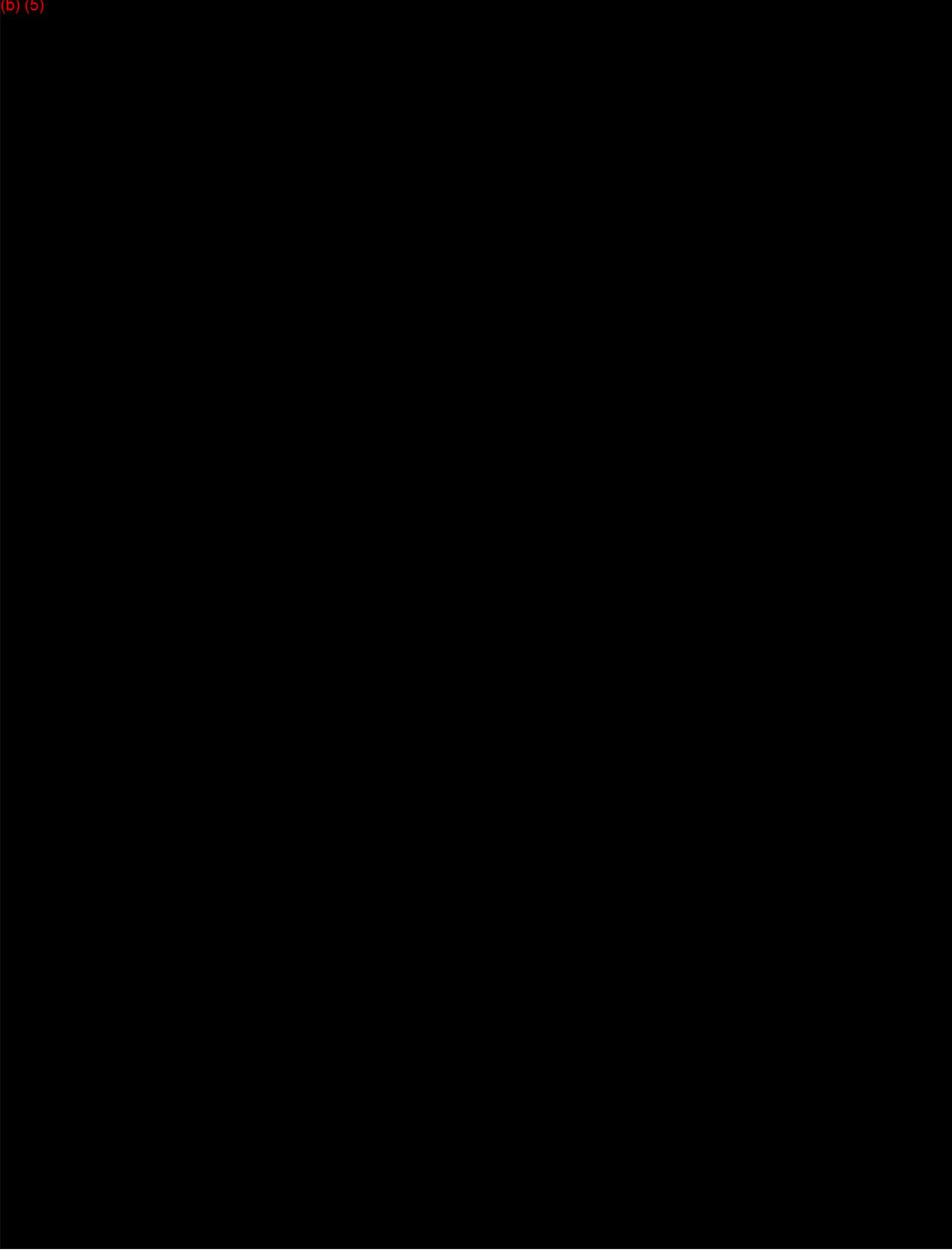


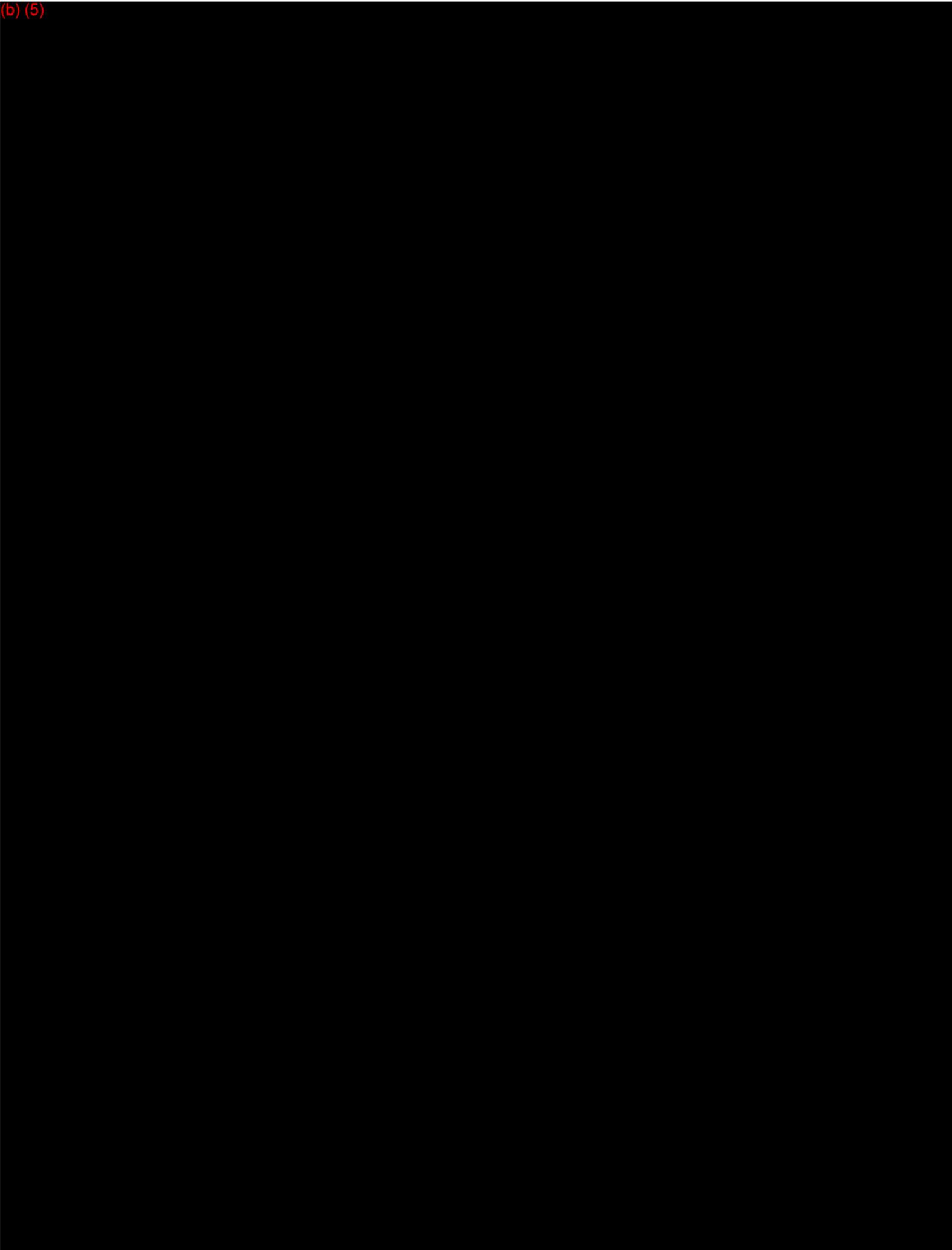


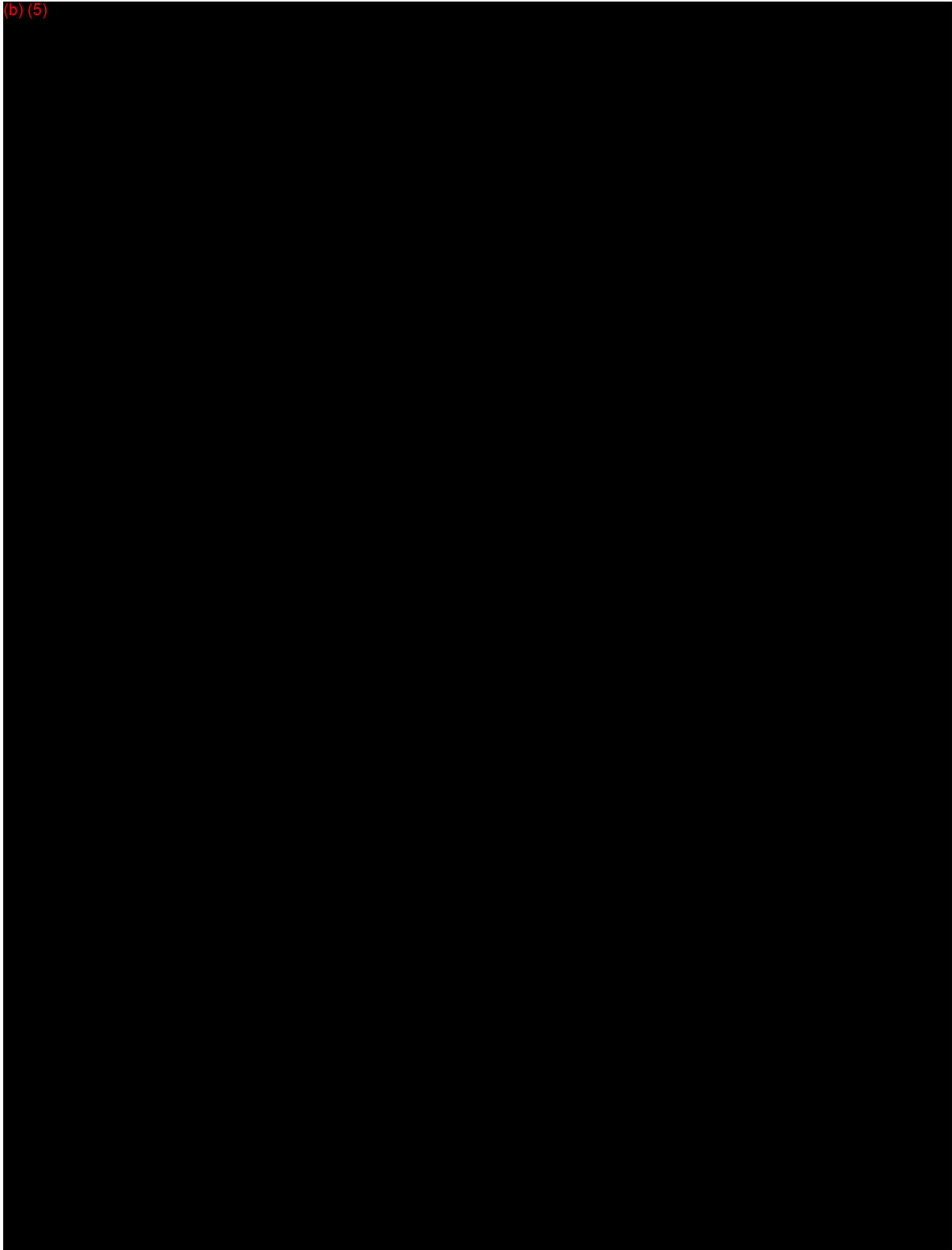


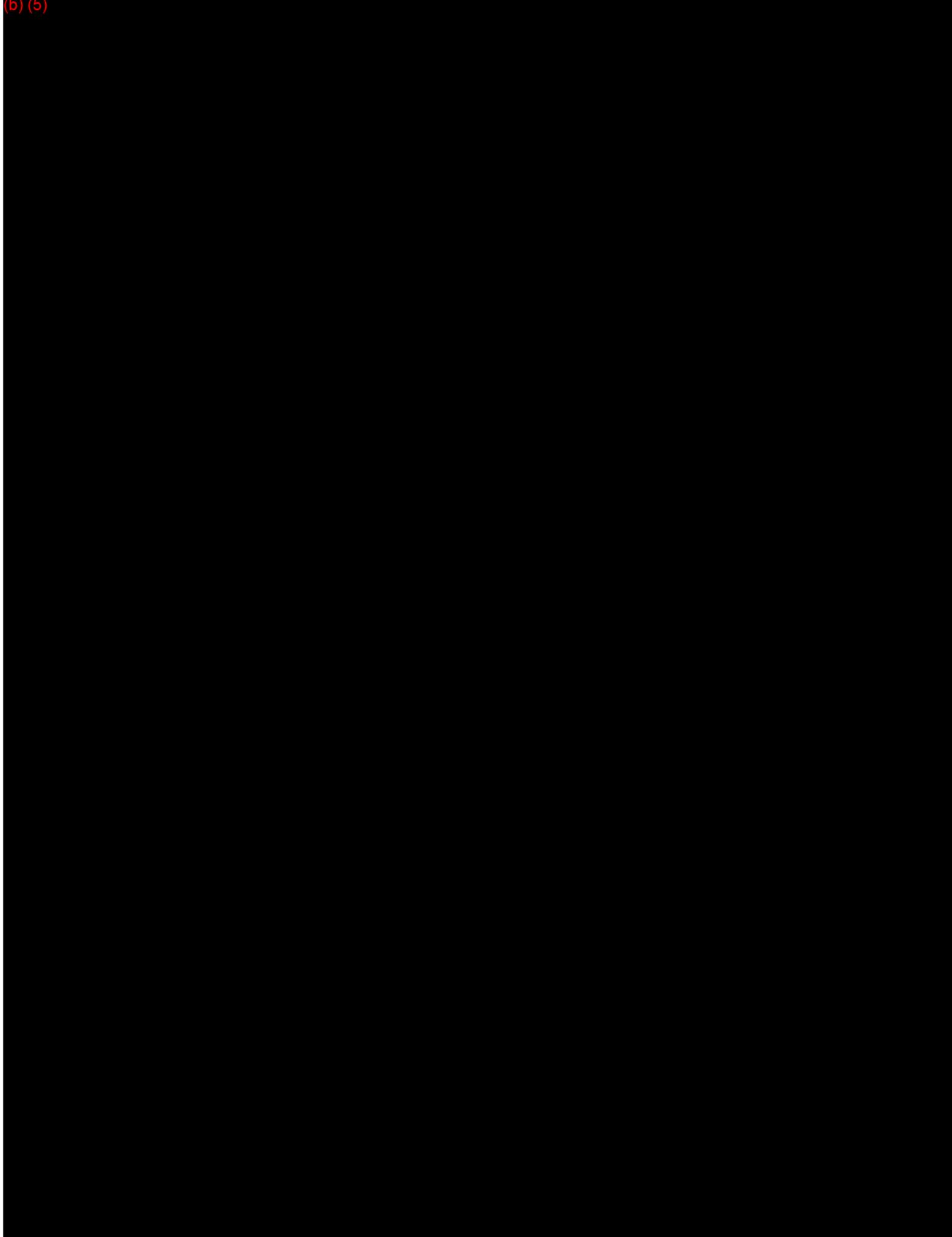


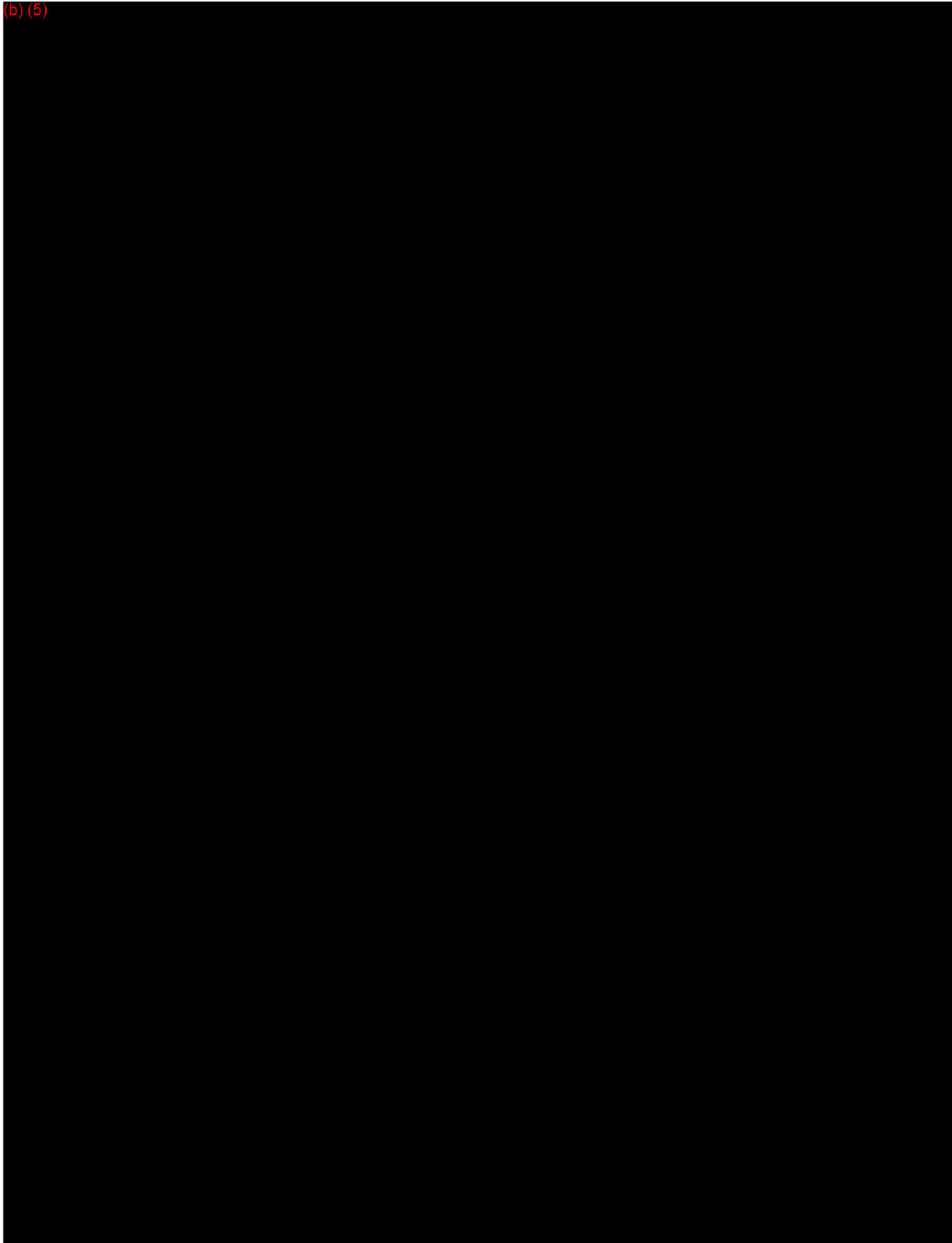


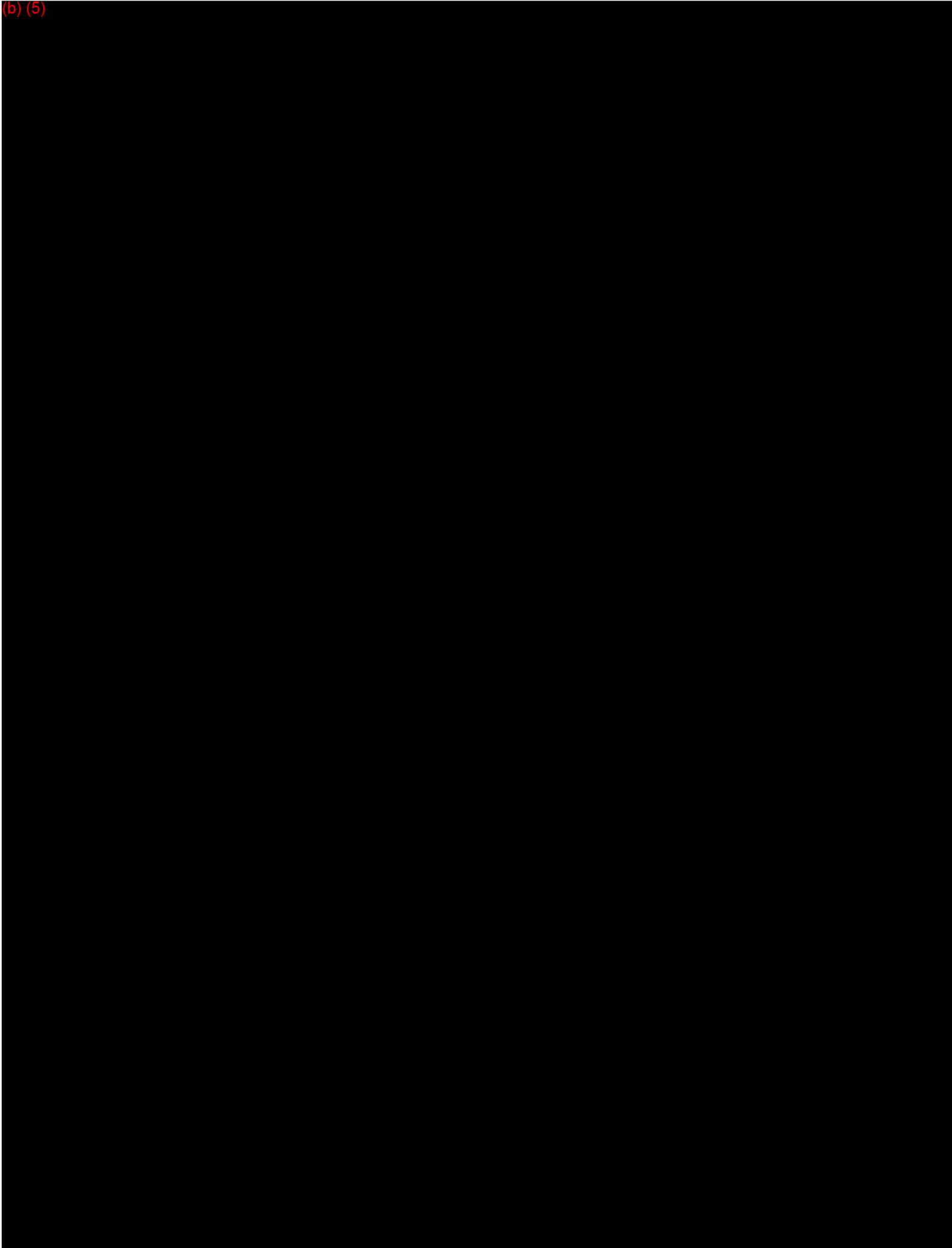


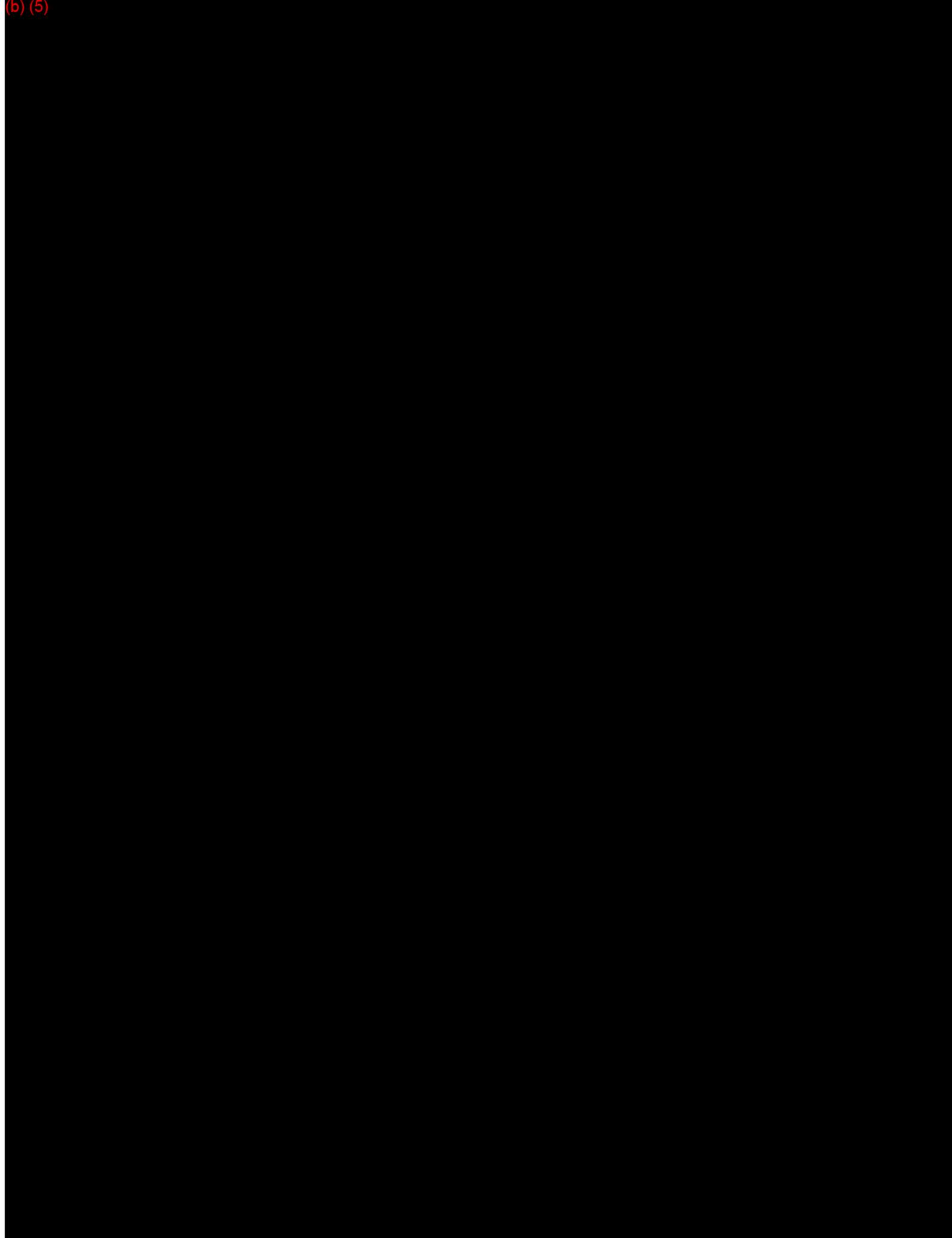


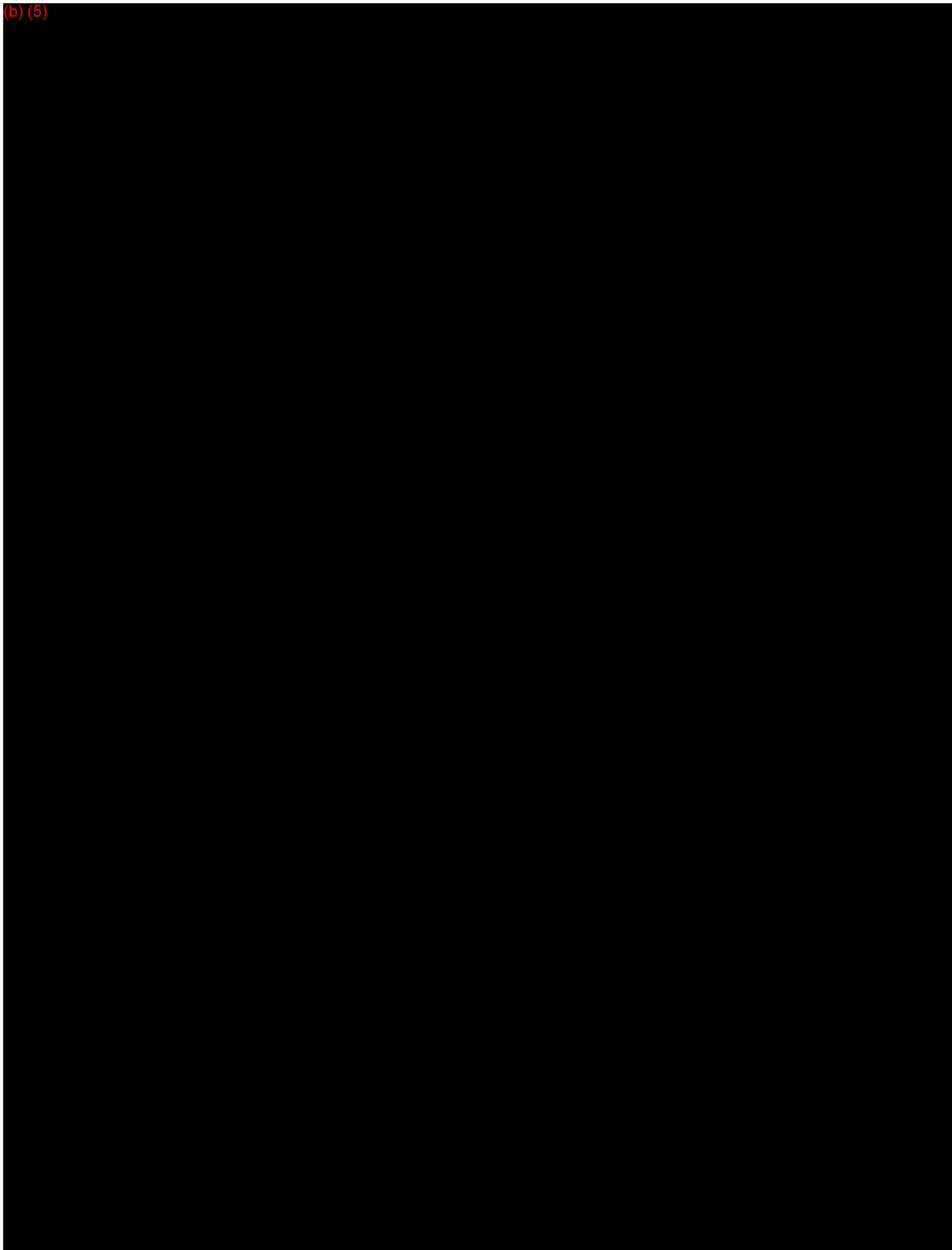


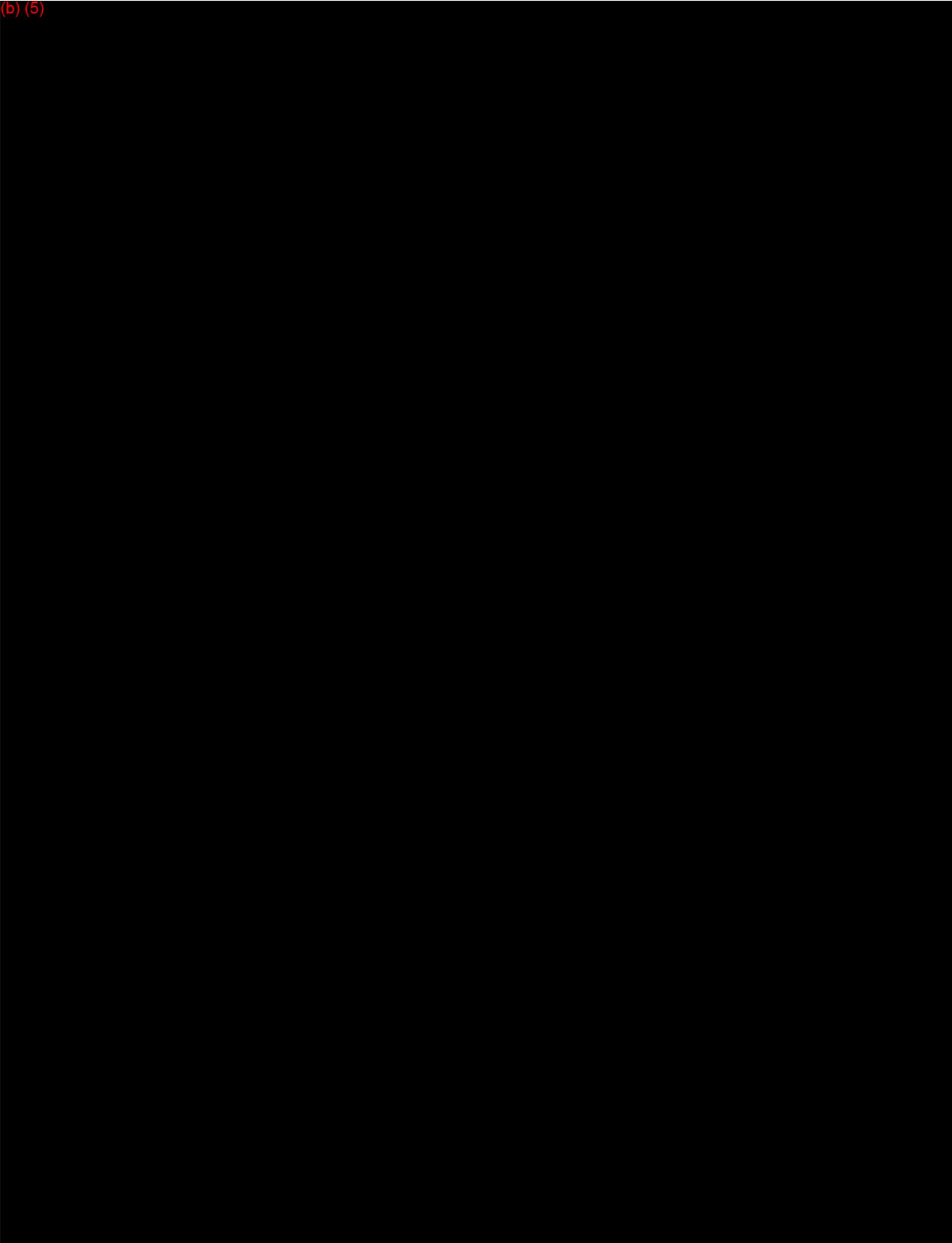


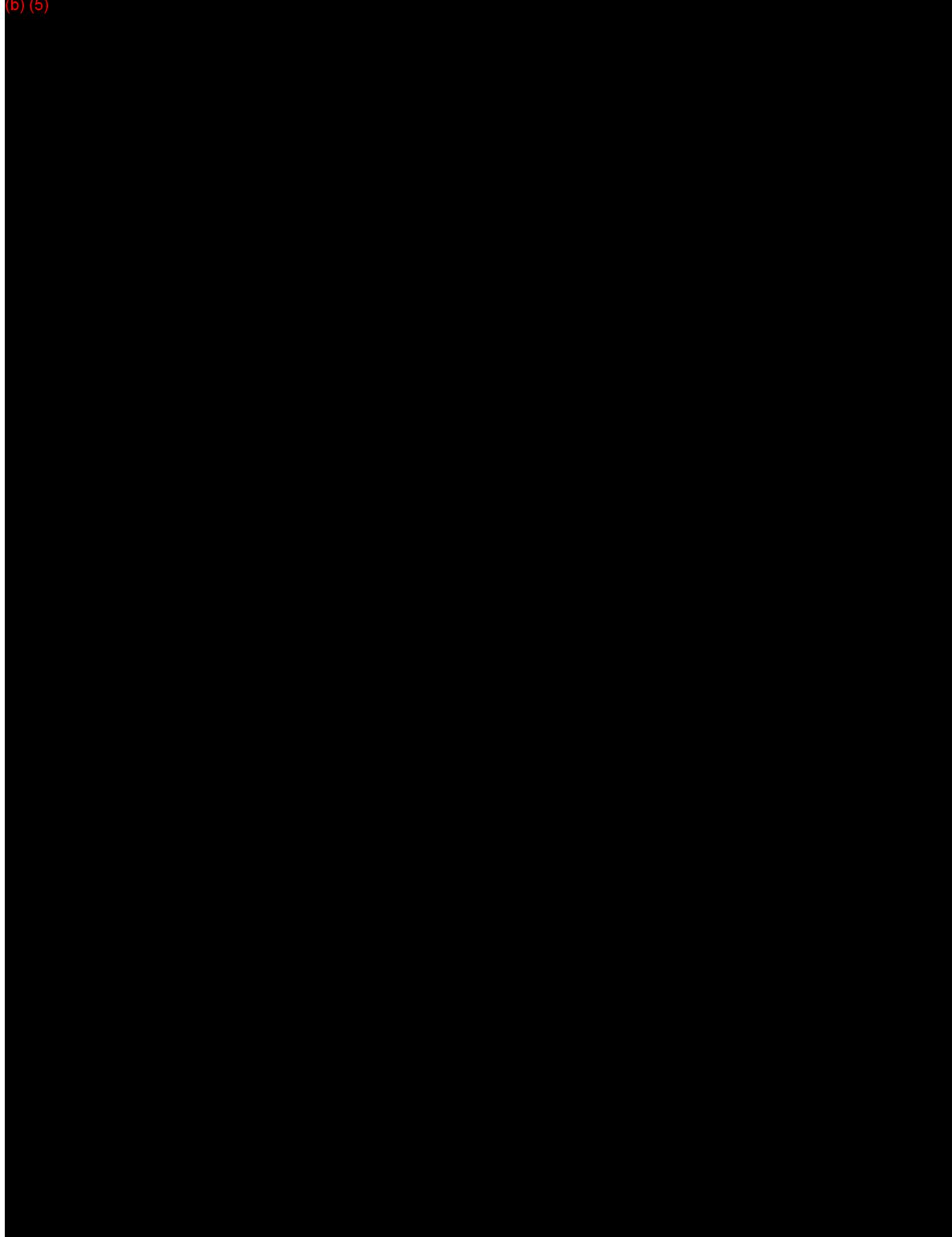












JAMES M. INHOFE, OKLAHOMA
SHELLEY MOORE CAPITO, WEST VIRGINIA
JOHN BOOZMAN, ARKANSAS
ROGER WICKER, MISSISSIPPI
DEB FISCHER, NEBRASKA
JERRY MORAN, KANSAS
MIKE ROUNDS, SOUTH DAKOTA
JONI ERNST, IOWA
DAN SULLIVAN, ALASKA
RICHARD SHELBY, ALABAMA

THOMAS R. CARPER, DELAWARE
BENJAMIN L. CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
JEFF MERKLEY, OREGON
KIRSTEN GILLIBRAND, NEW YORK
CORY A. BOOKER, NEW JERSEY
EDWARD J. MARKEY, MASSACHUSETTS
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 CO₂? 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 CO₂ 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, 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 / 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 / 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

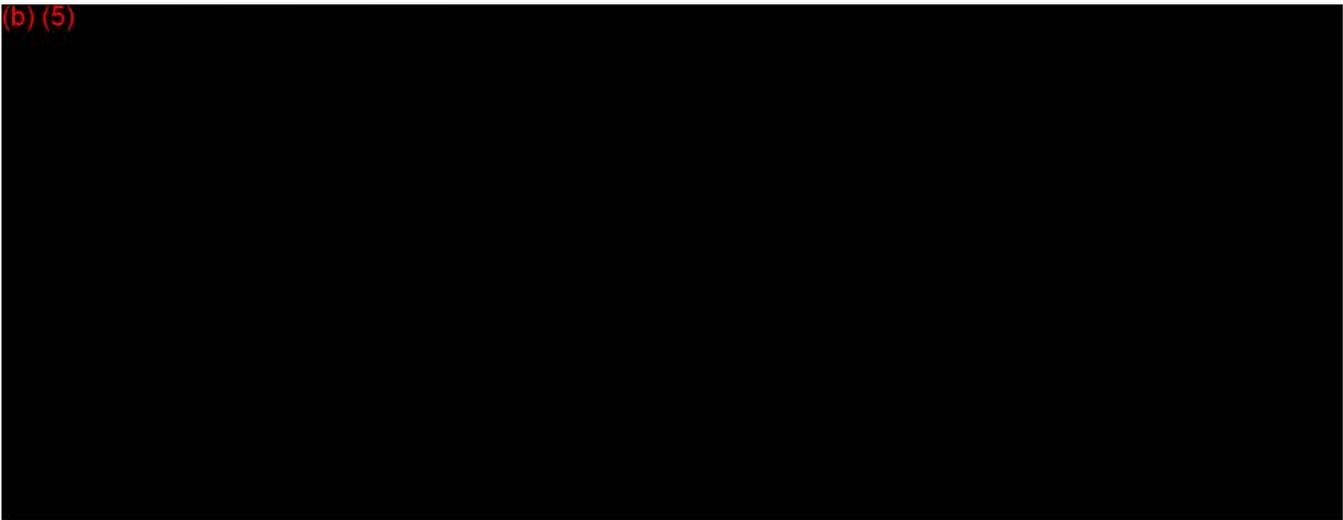
From: "Szabo, Aaron L. EOP/CEQ" <(b) (6)>
:
"Barnett, Steven W. EOP/CEQ" <(b) (6)> "Boling, Ted A.
EOP/CEQ" <(b) (6)> "Drummond, Michael R. EOP/CEQ"
<(b) (6)> "Loyola, Mario A. EOP/CEQ"
<(b) (6)> "Mansoor, Yardena M. EOP/CEQ"
To: <(b) (6)> "Pettigrew, Theresa L. EOP/CEQ"
<(b) (6)> "Schneider, Daniel 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

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)

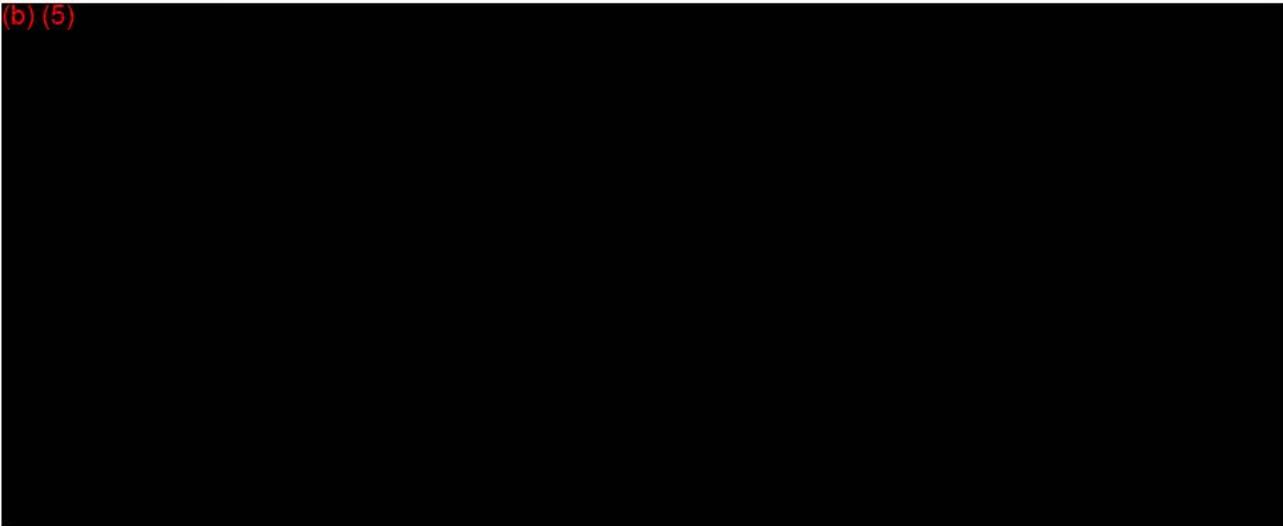
(b) (6)

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

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, 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

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Aaron L. Szabo
Senior Counsel
Council on Environmental Quality

(b) (6) (Desk)

(b) (6) (Cell)

(b) (6)



ANOPR reading list

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

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

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

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

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

Representative Significant Comments

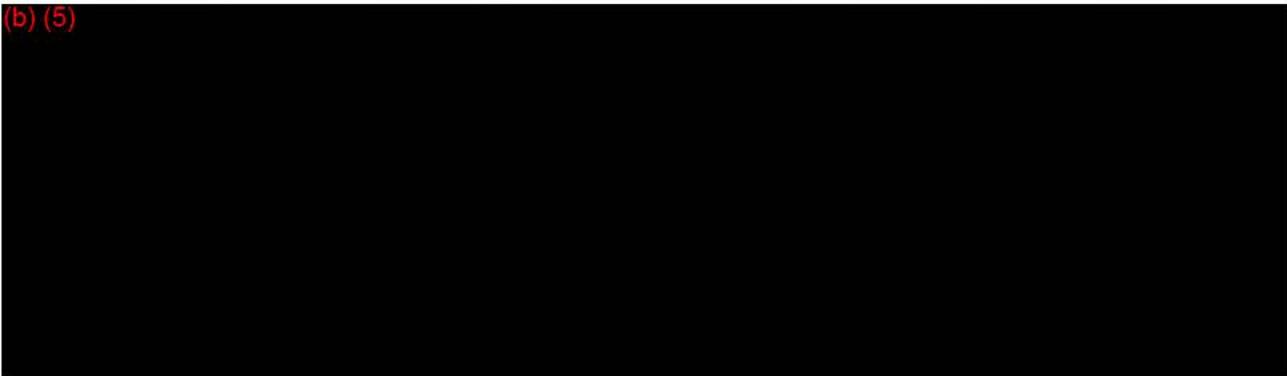
Commenter	Docket #
<i>State and Local Government</i>	
American Association of State Highway and Transportation Officials	CEQ-2018-0001-8267
Virginia Department of Transportation	CEQ-2018-0001-12179
Wyoming County Commissioners Association	CEQ-2018-0001-11266
North Carolina Department of Transportation	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
<i>Companies and Trade Associations</i>	
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	https://www.regulations.gov/document?D=CEQ-2018-0001-12306
<i>NEPA Experts</i>	
Nicholas Yost	https://www.regulations.gov/document?D=CEQ-2018-0001-10400
Dina Bear	https://www.regulations.gov/document?D=CEQ-2018-0001-12056
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)	https://www.regulations.gov/document?D=CEQ-2018-0001-12161
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

<i>Advocacy Groups</i>	
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)	https://www.regulations.gov/document?D=CEQ-2018-0001-9786
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
<i>Tribes</i>	
Federated Indians of Graton Rancheria	CEQ-2018-0001-0482
Alaska Institute for Justice	CEQ-2018-0001-0498
Shoshone-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)



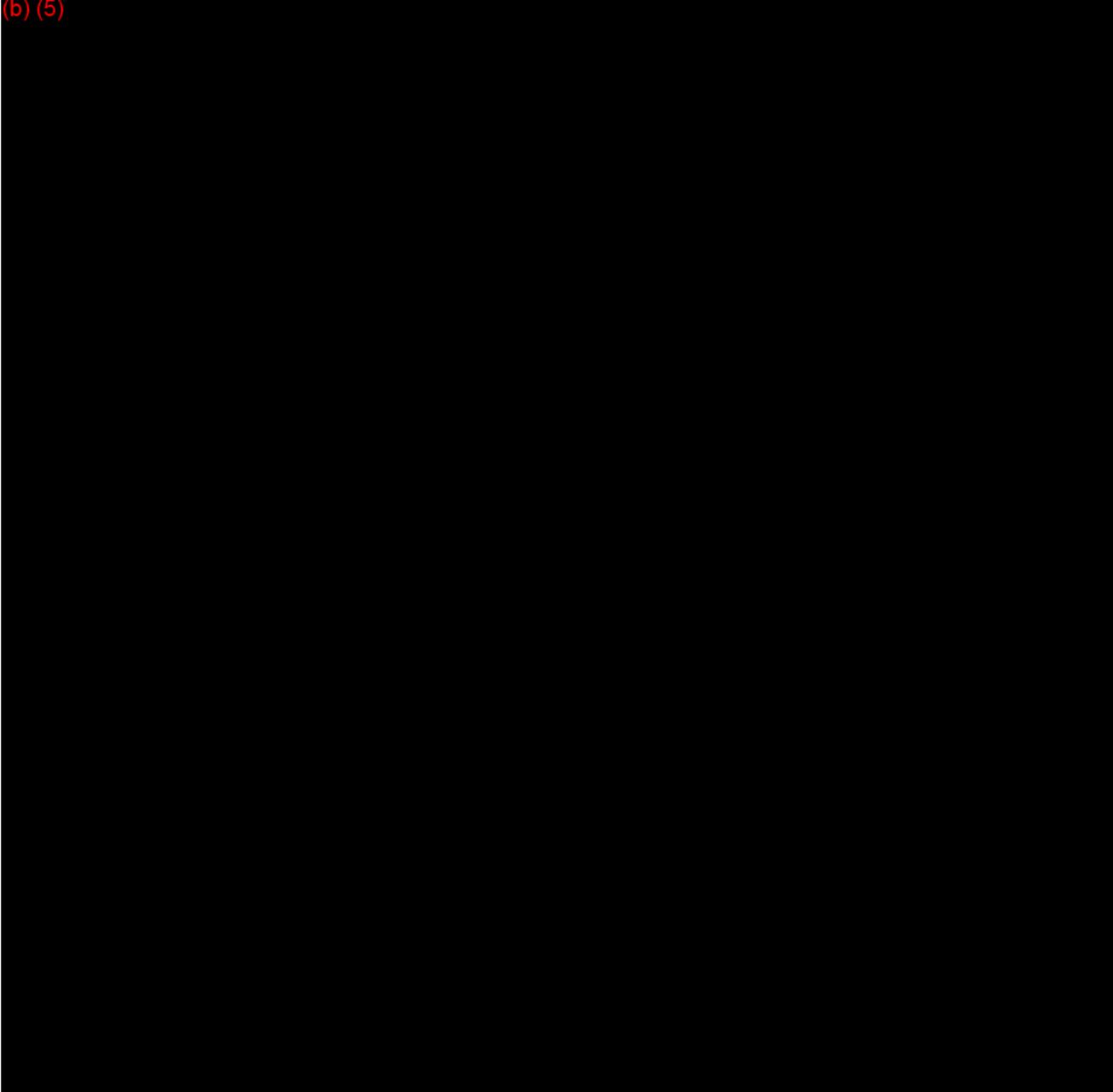
From: Szabo, Aaron L. EOP/CEQ
Sent: Wednesday, August 29, 2018 5:22 PM
To: Barnett, Steven W. EOP/CEQ <(b) (6)> Boling, Ted A. EOP/CEQ <(b) (6)> Drummond, Michael R. EOP/CEQ <(b) (6)> Loyola, Mario A. EOP/CEQ <(b) (6)> Mansoor, Yardena M. EOP/CEQ <(b) (6)> Pettigrew, Theresa L. EOP/CEQ <(b) (6)> Schneider, 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,

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

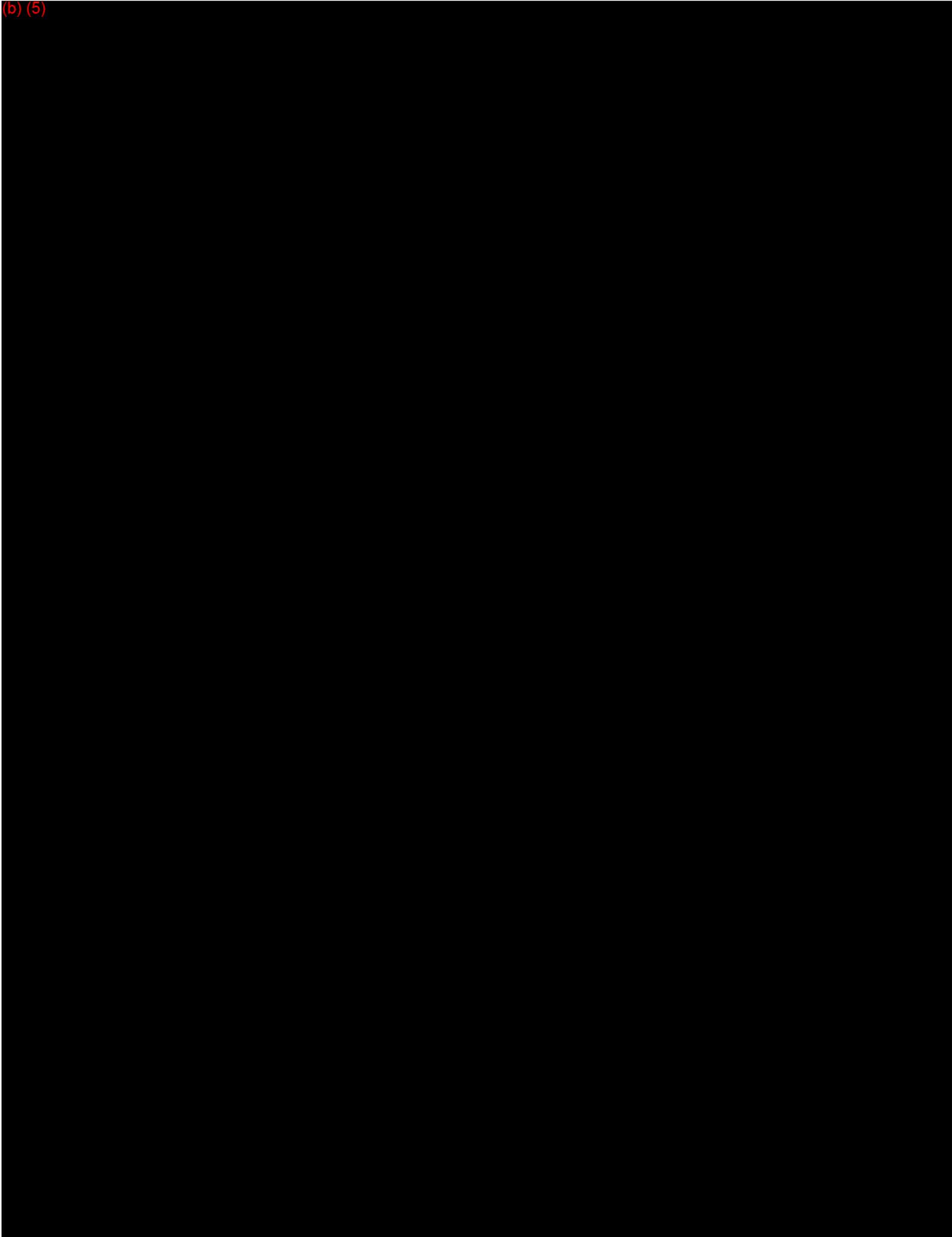
From: Loyola, Mario A. EOP/CEQ
Sent: Tuesday, September 4, 2018 2:01 PM
To: Boling, Ted A. EOP/CEQ <(b) (6)> Drummond, Michael R. EOP/CEQ
<(b) (6)>
Cc: Mansoor, Yardena M. EOP/CEQ <(b) (6)>
Subject: Revised combined draft

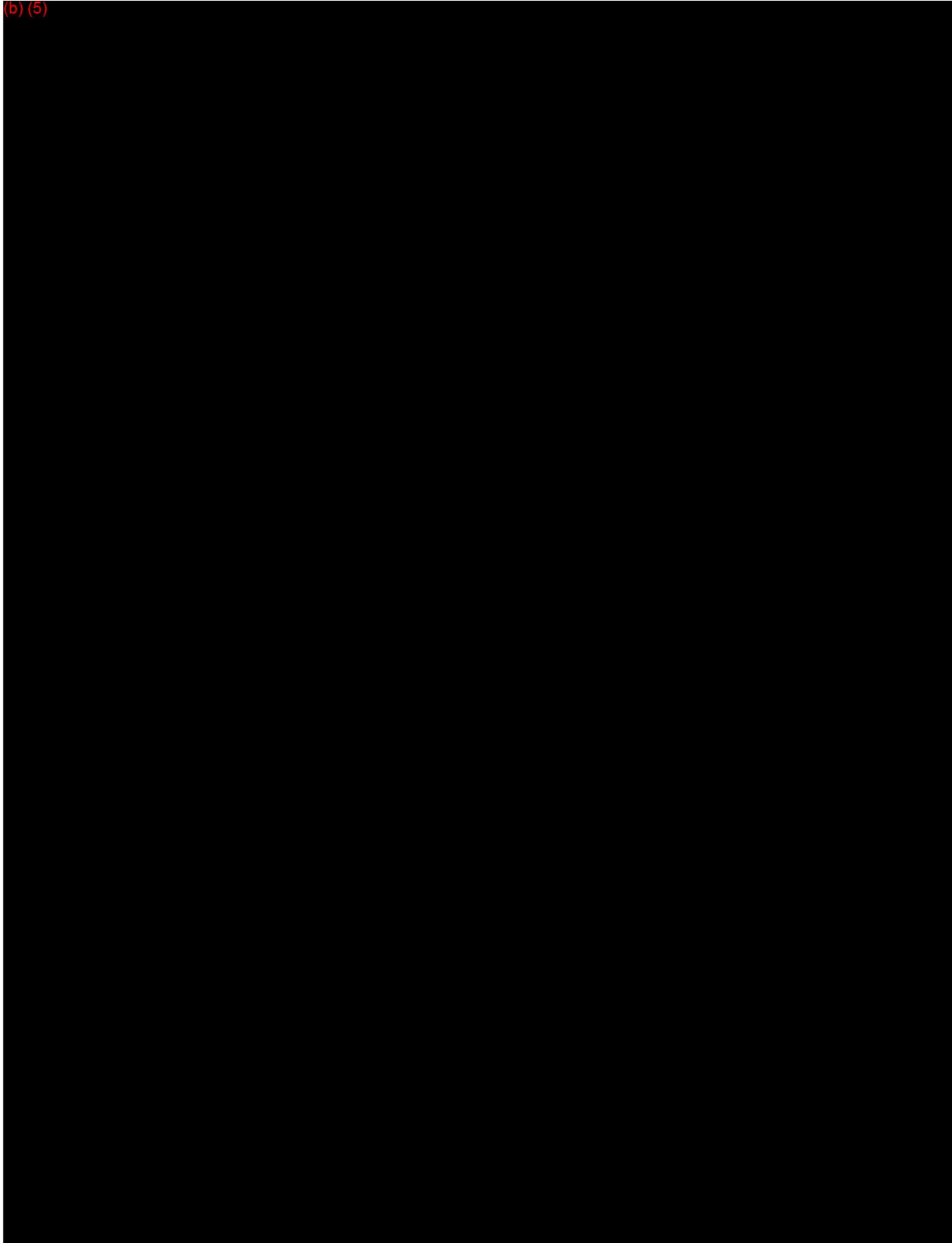
Dear Ted, Mike, and Yardena – (b) (5)

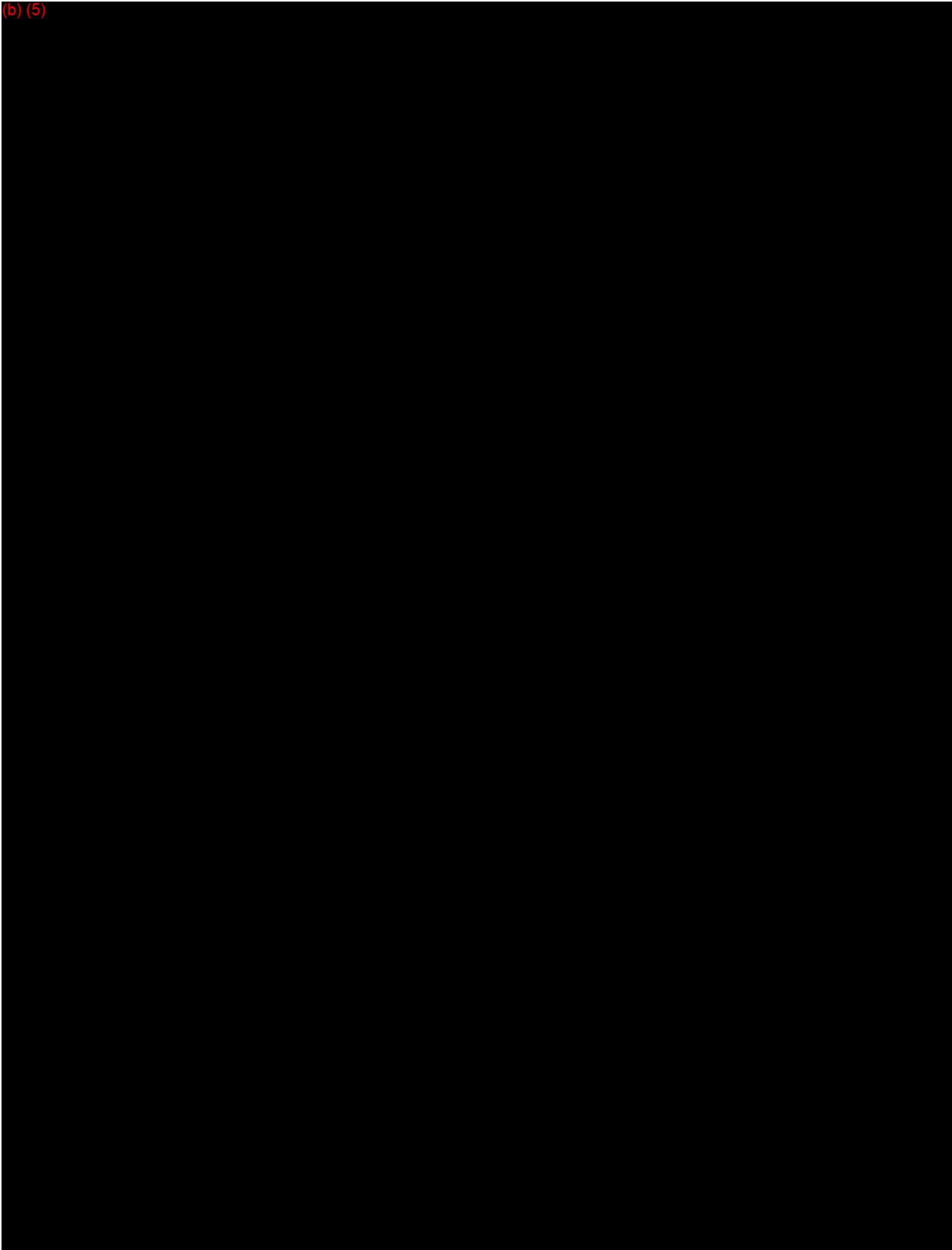
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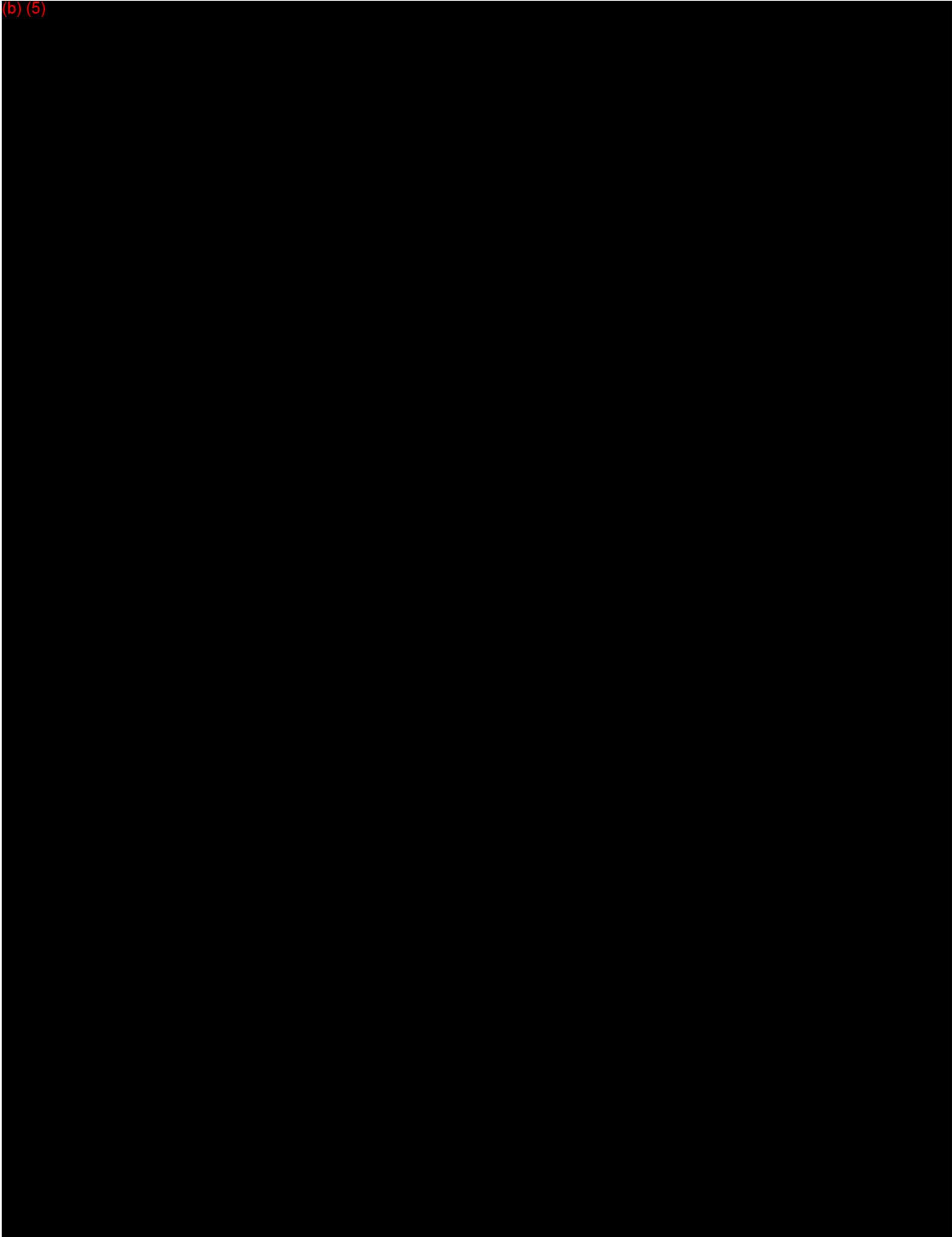
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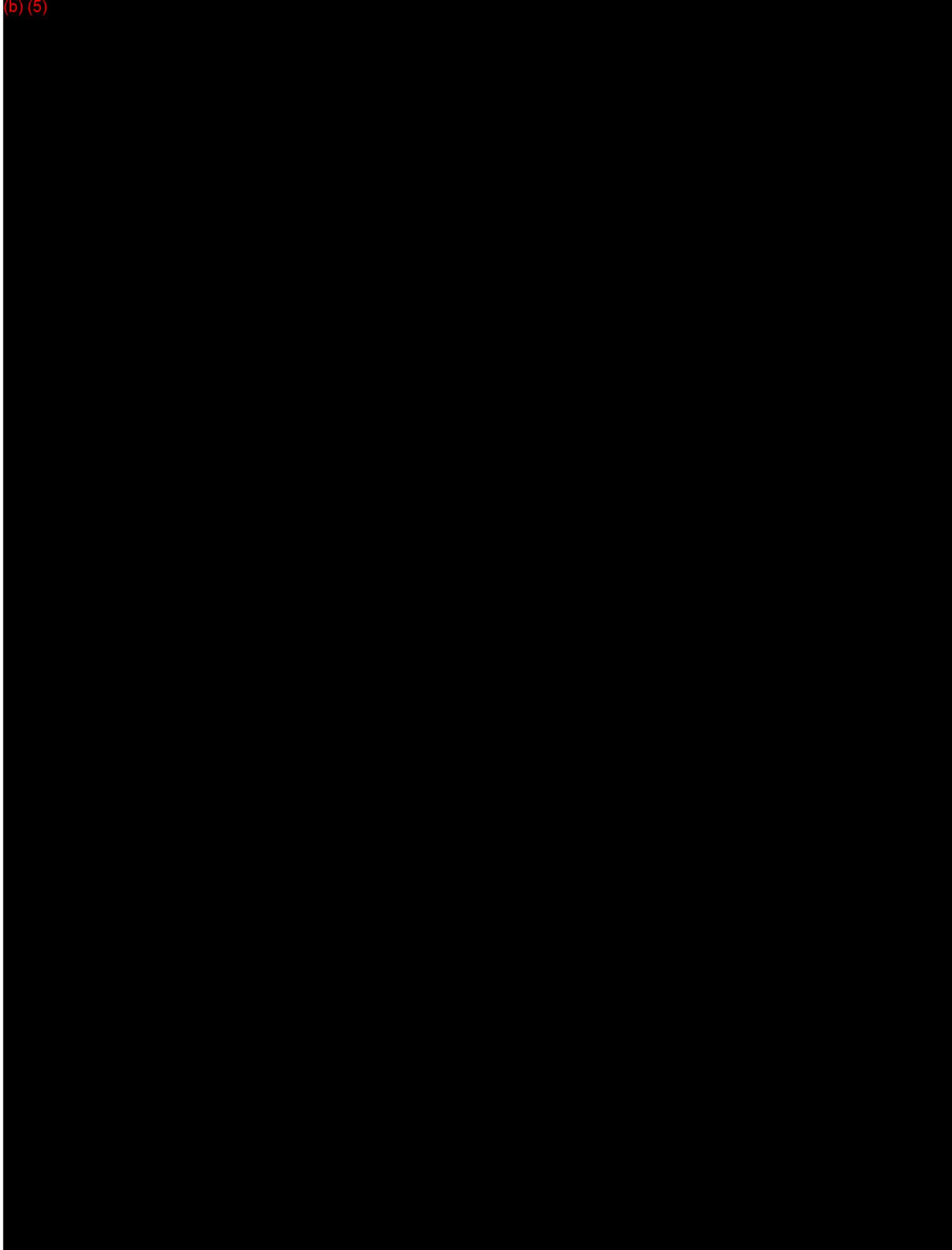
Mario Loyola
Associate Director, Regulatory Reform
White House Council on Environmental Quality
(o) (b) (6) | (c) (b) (6)

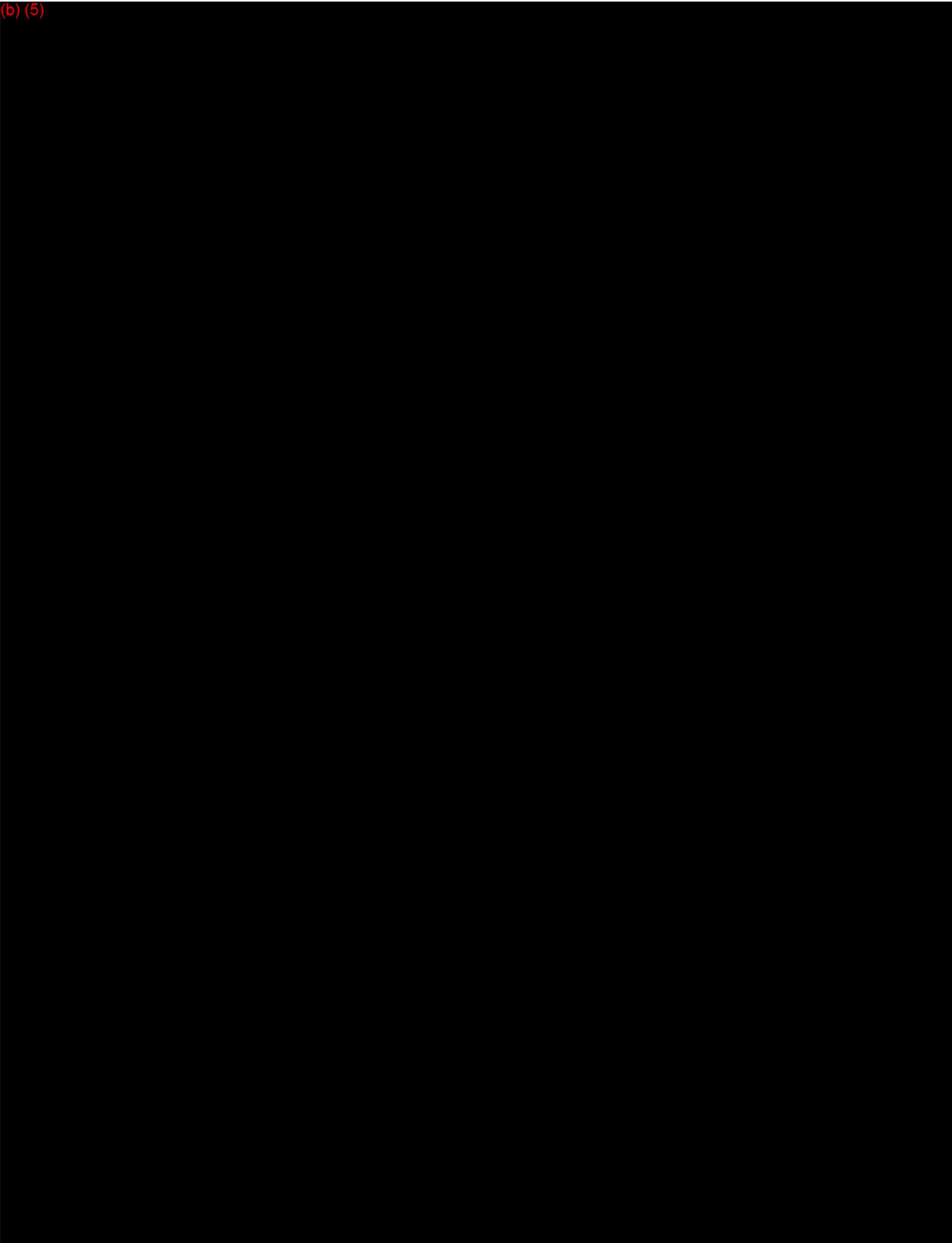


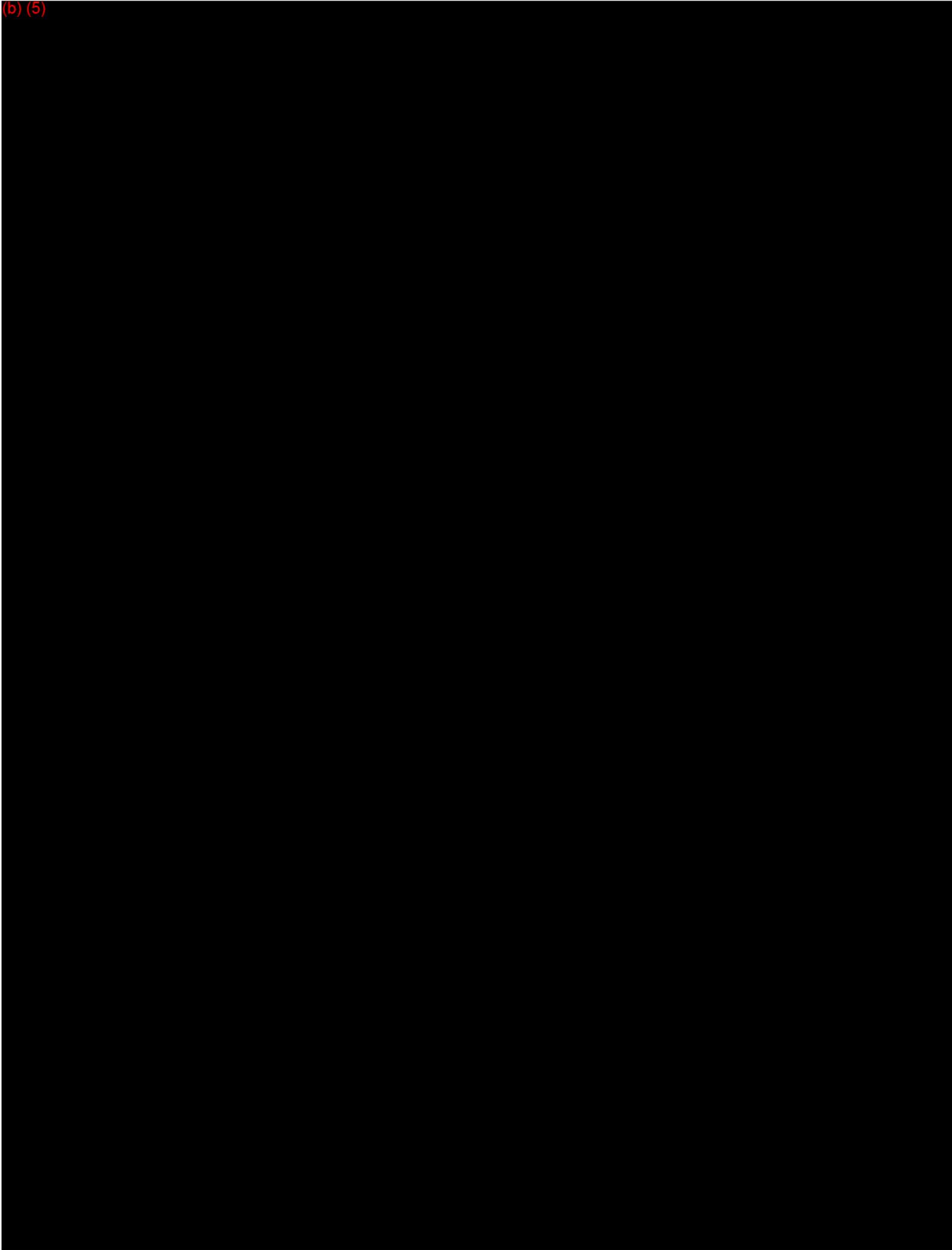


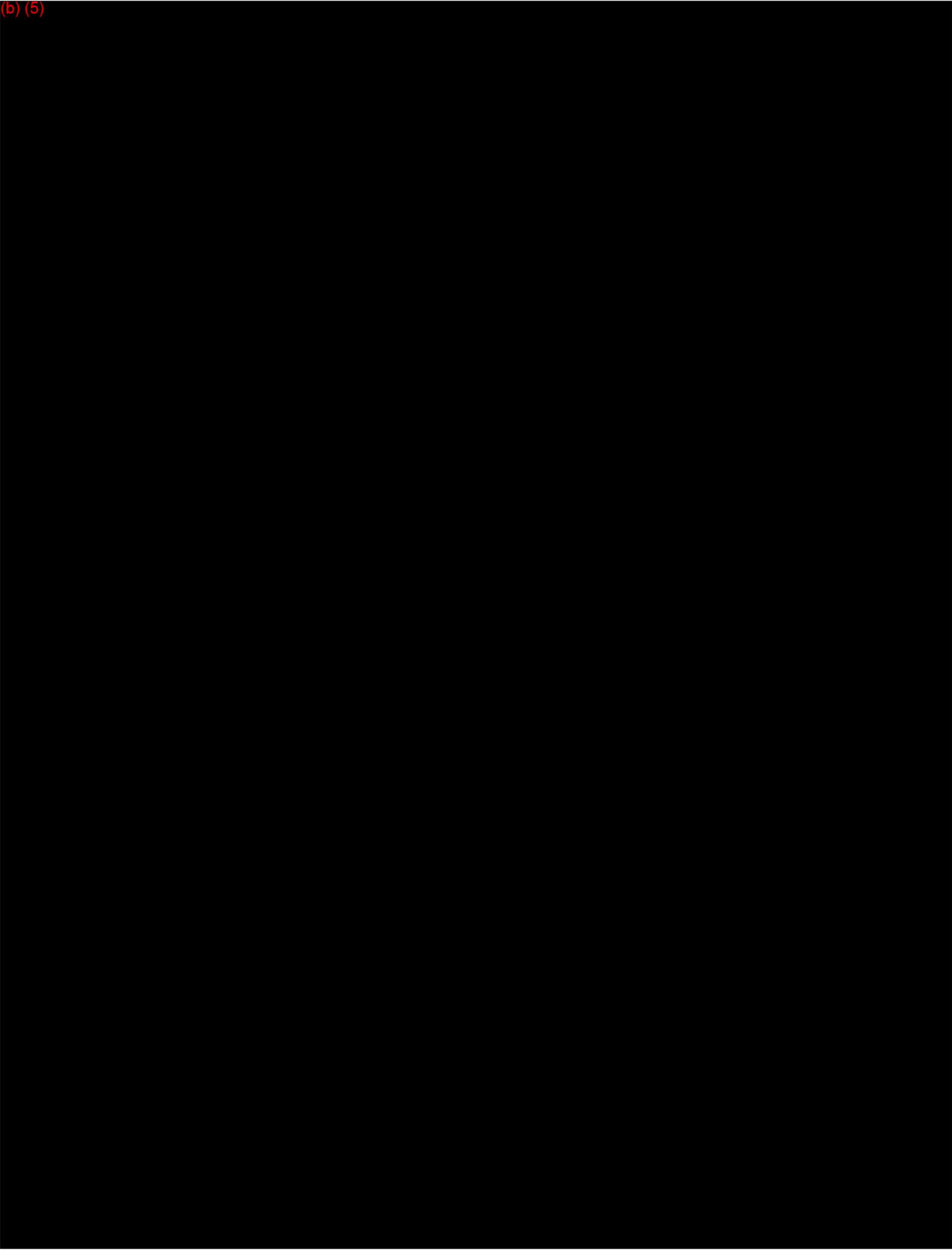


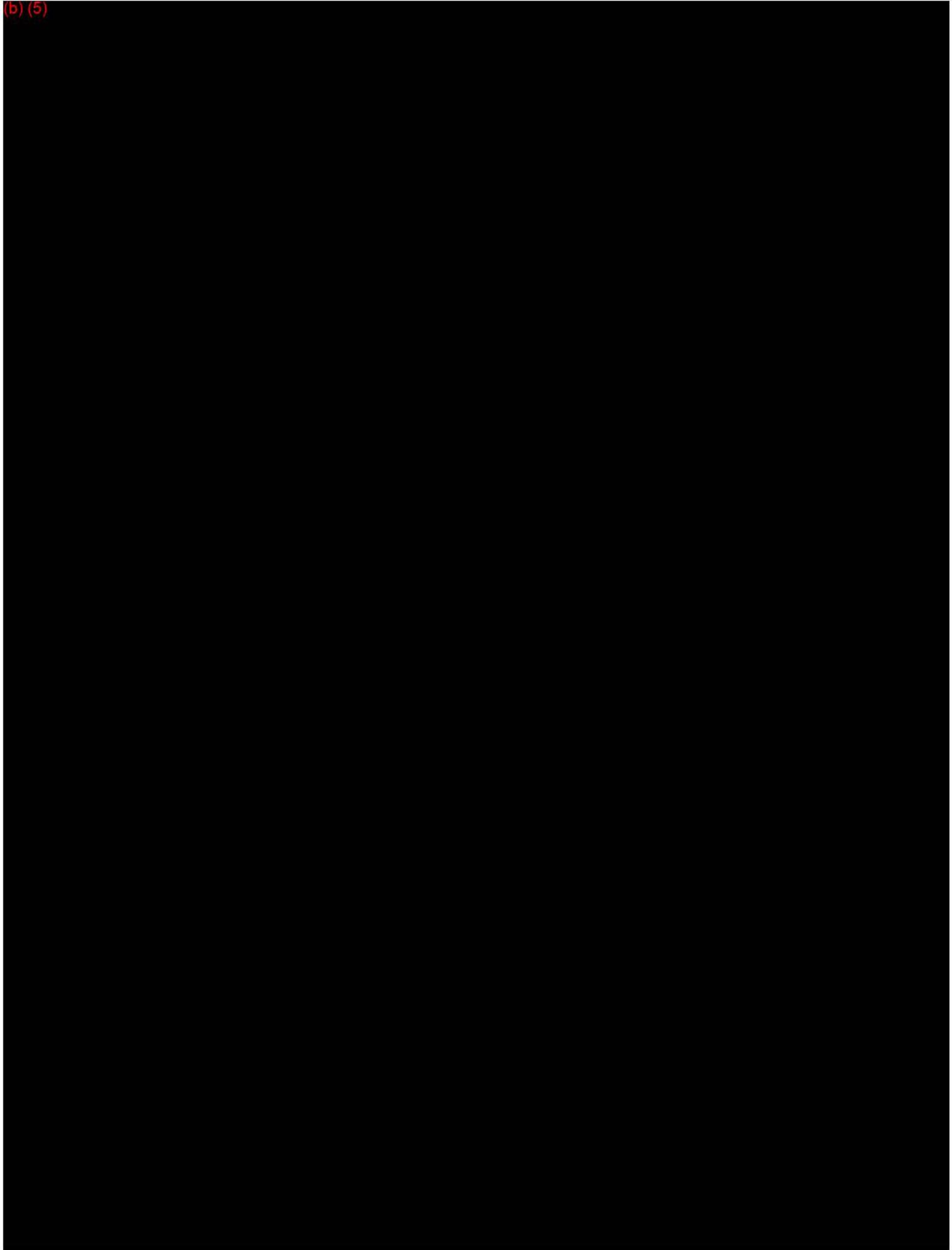


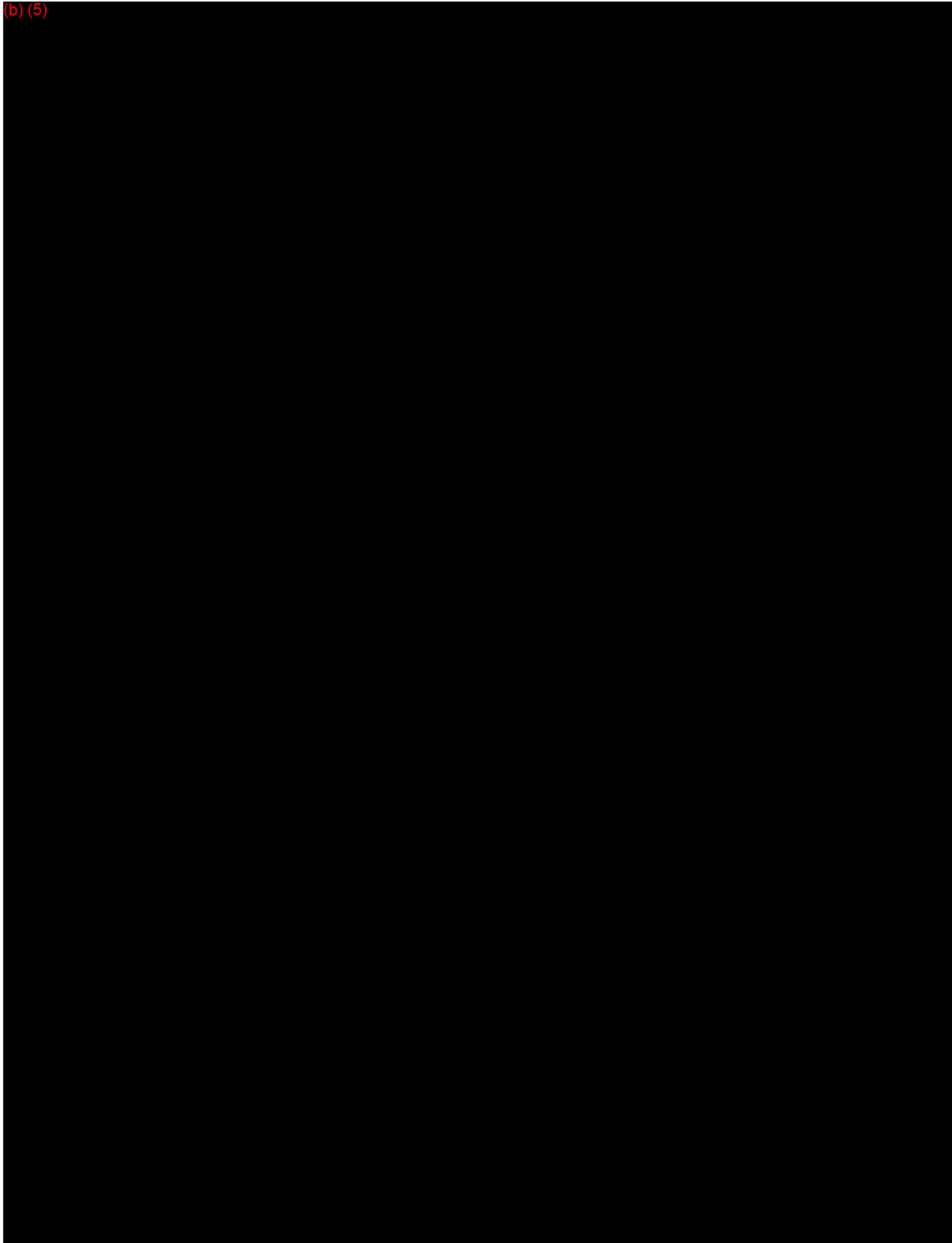


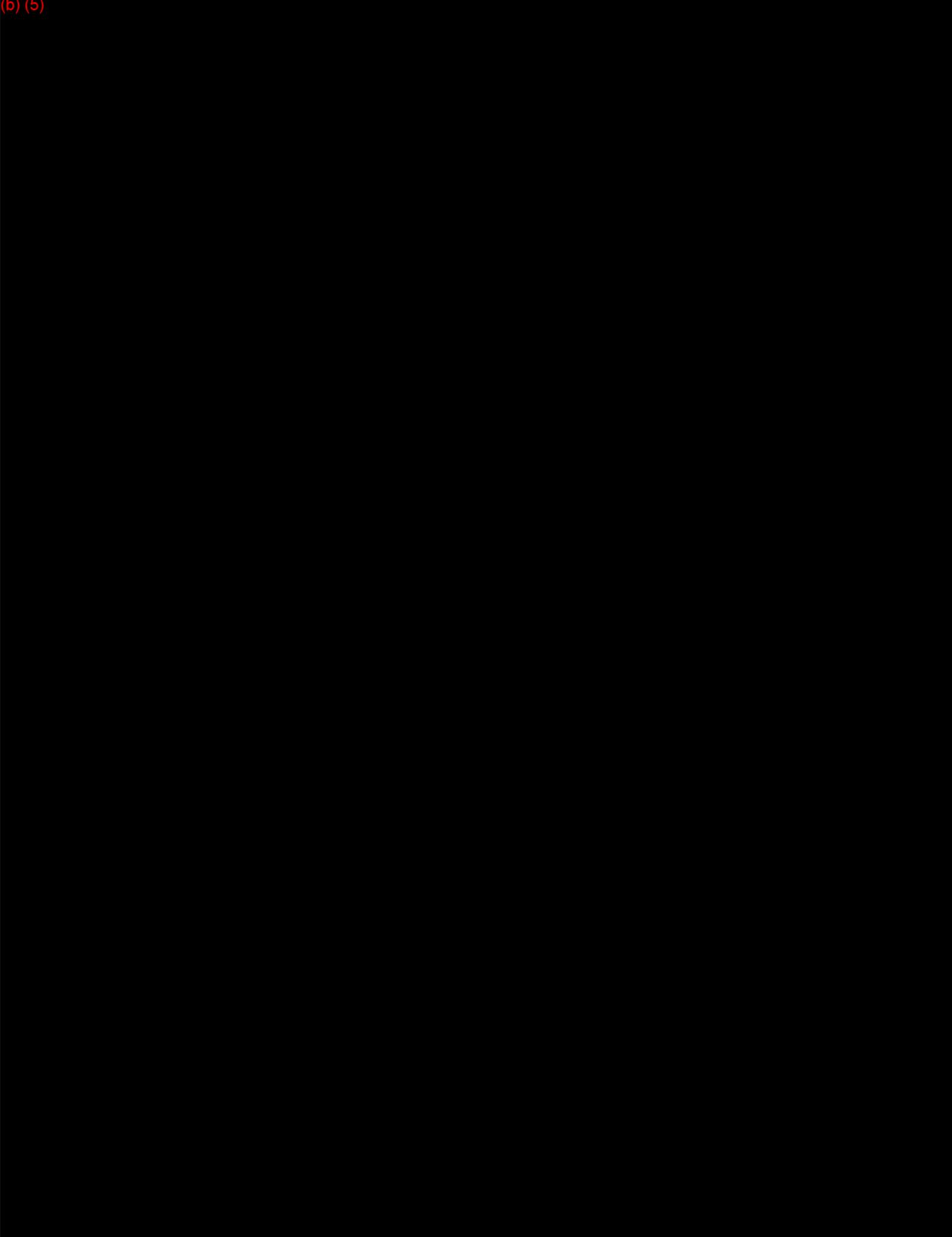


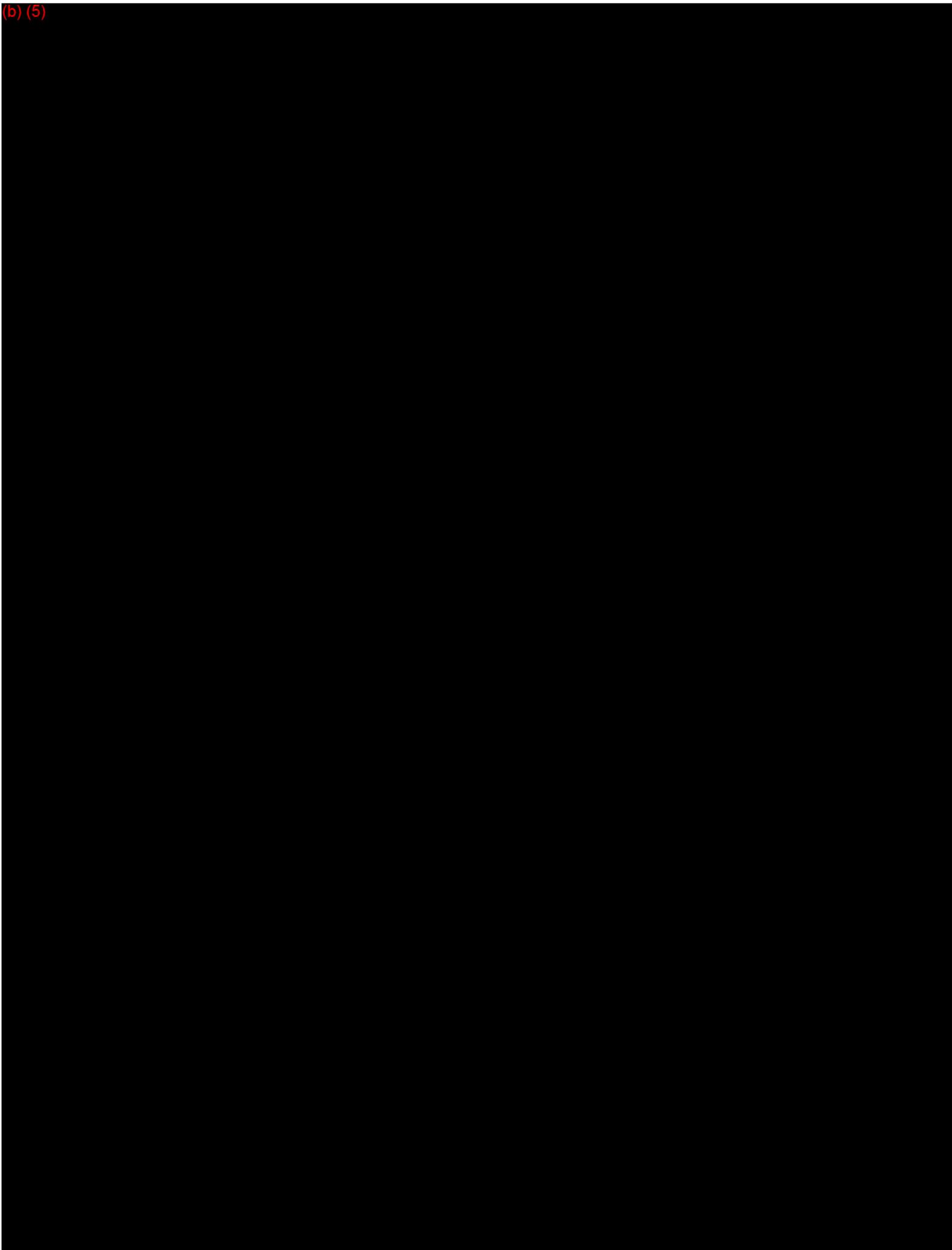


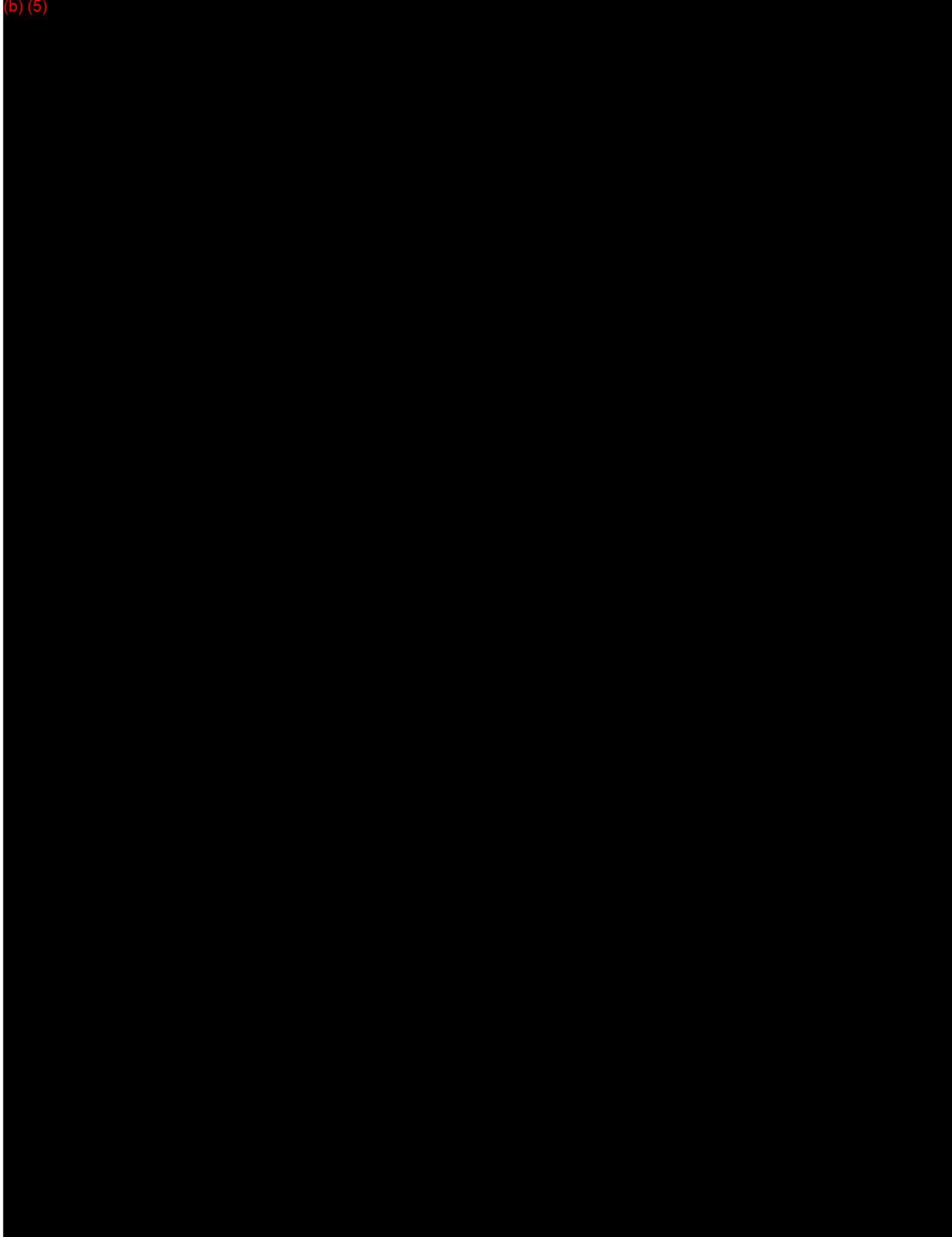


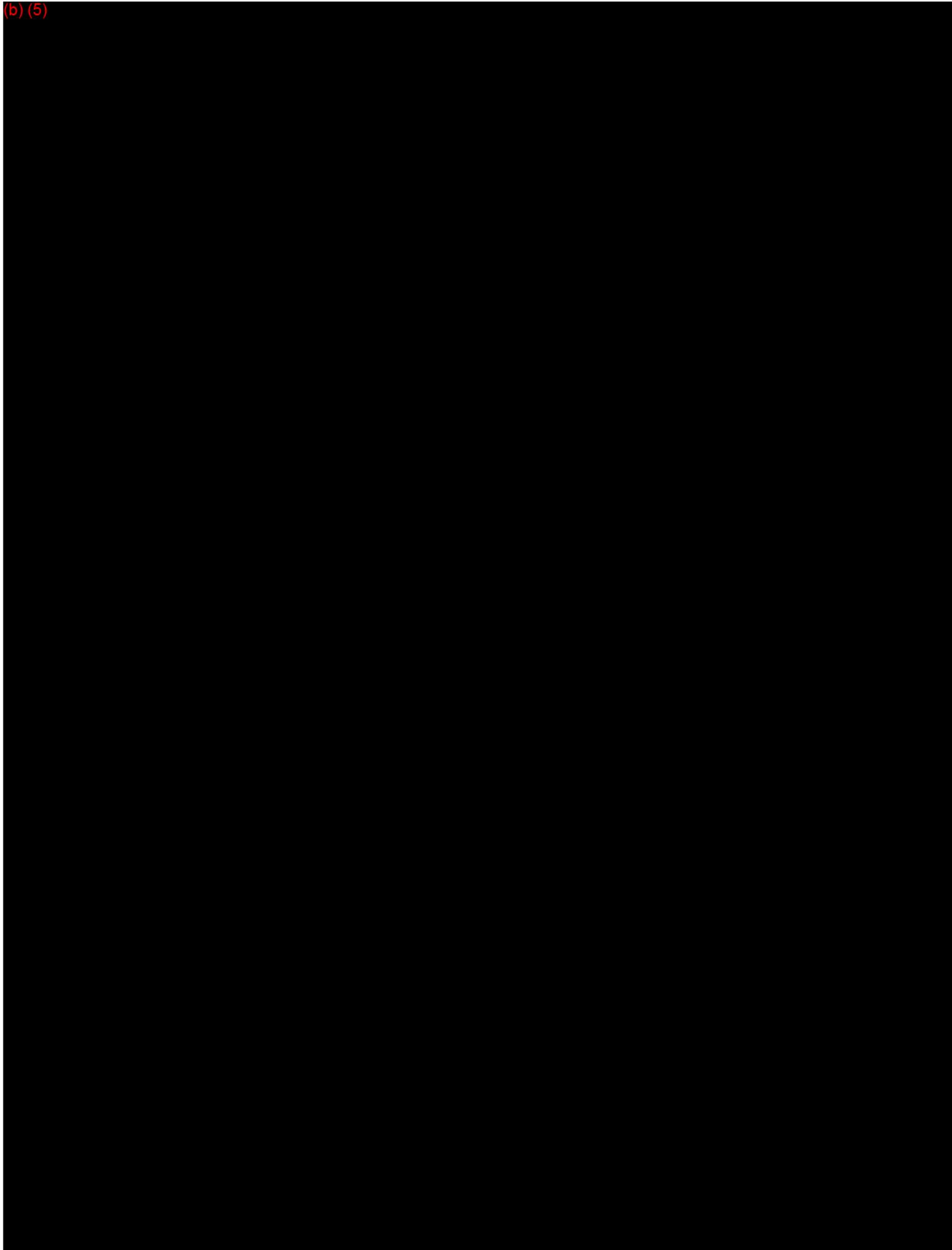


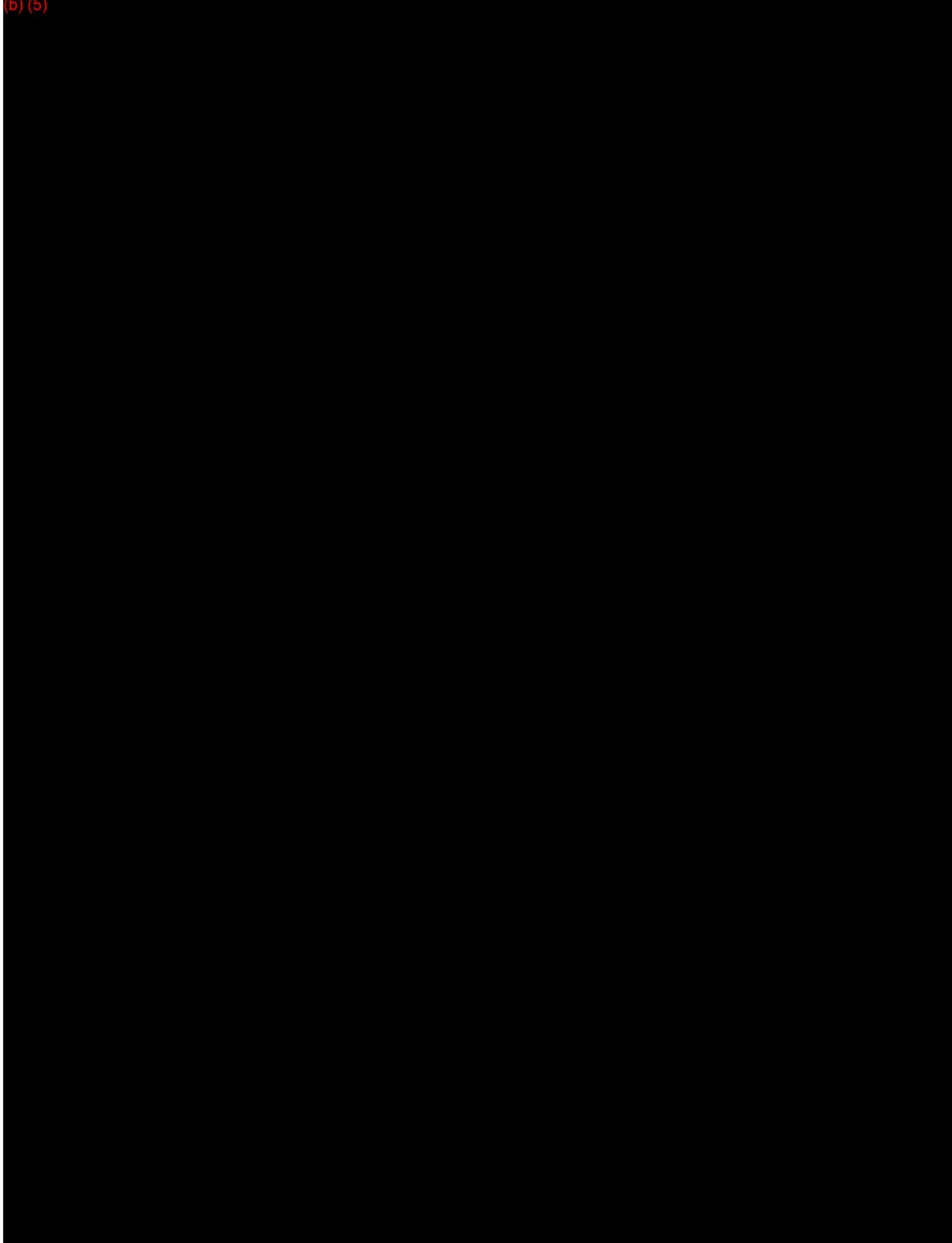


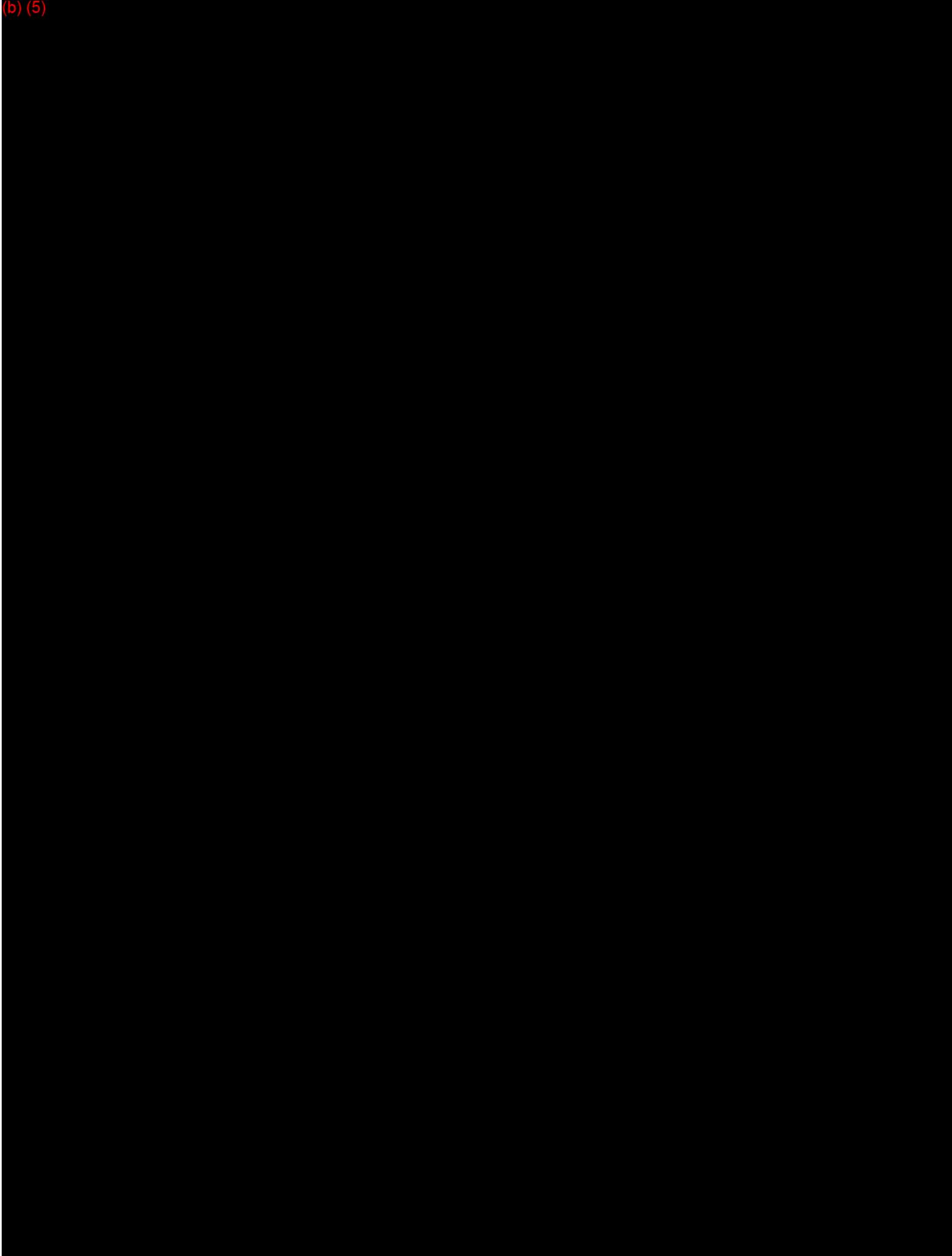


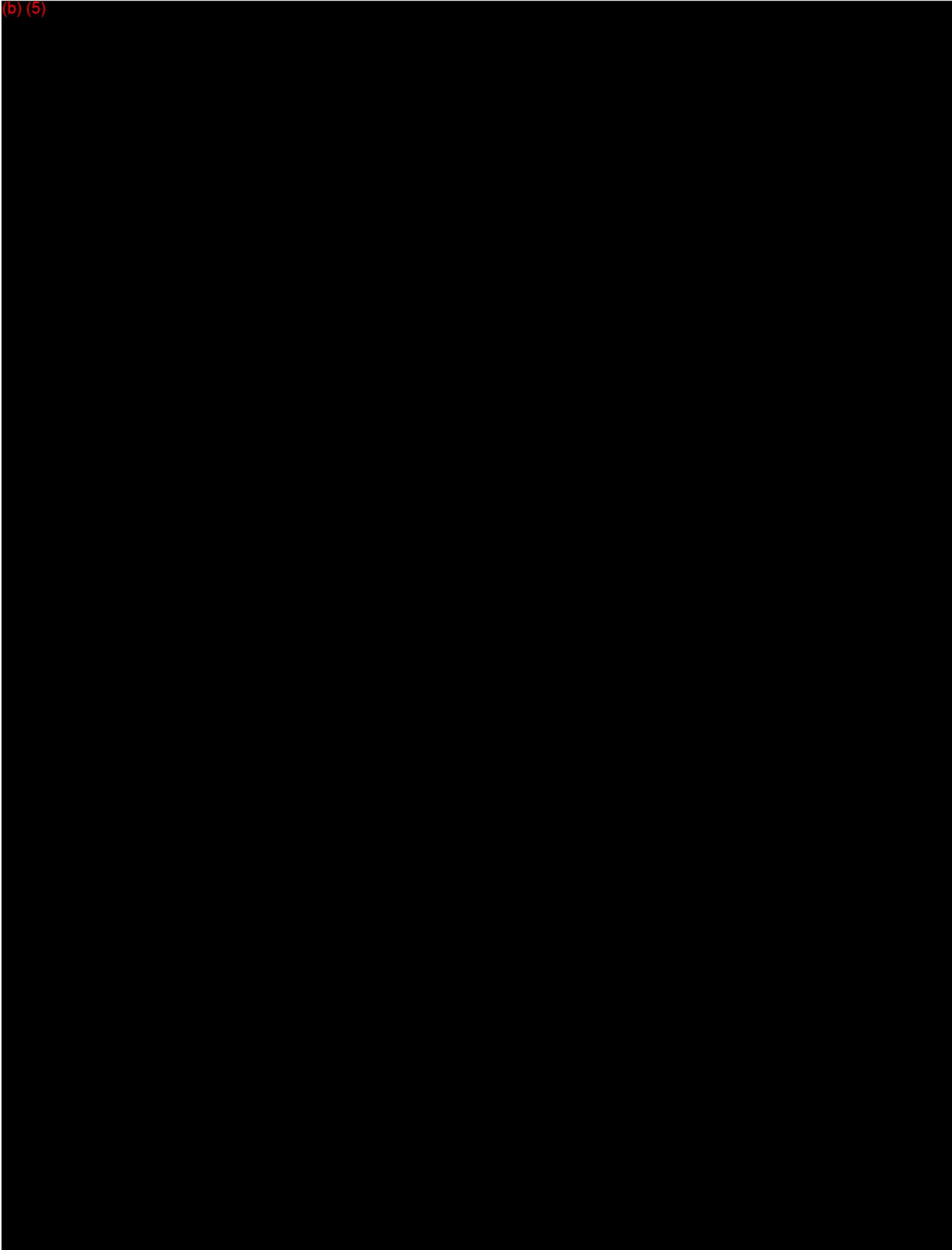


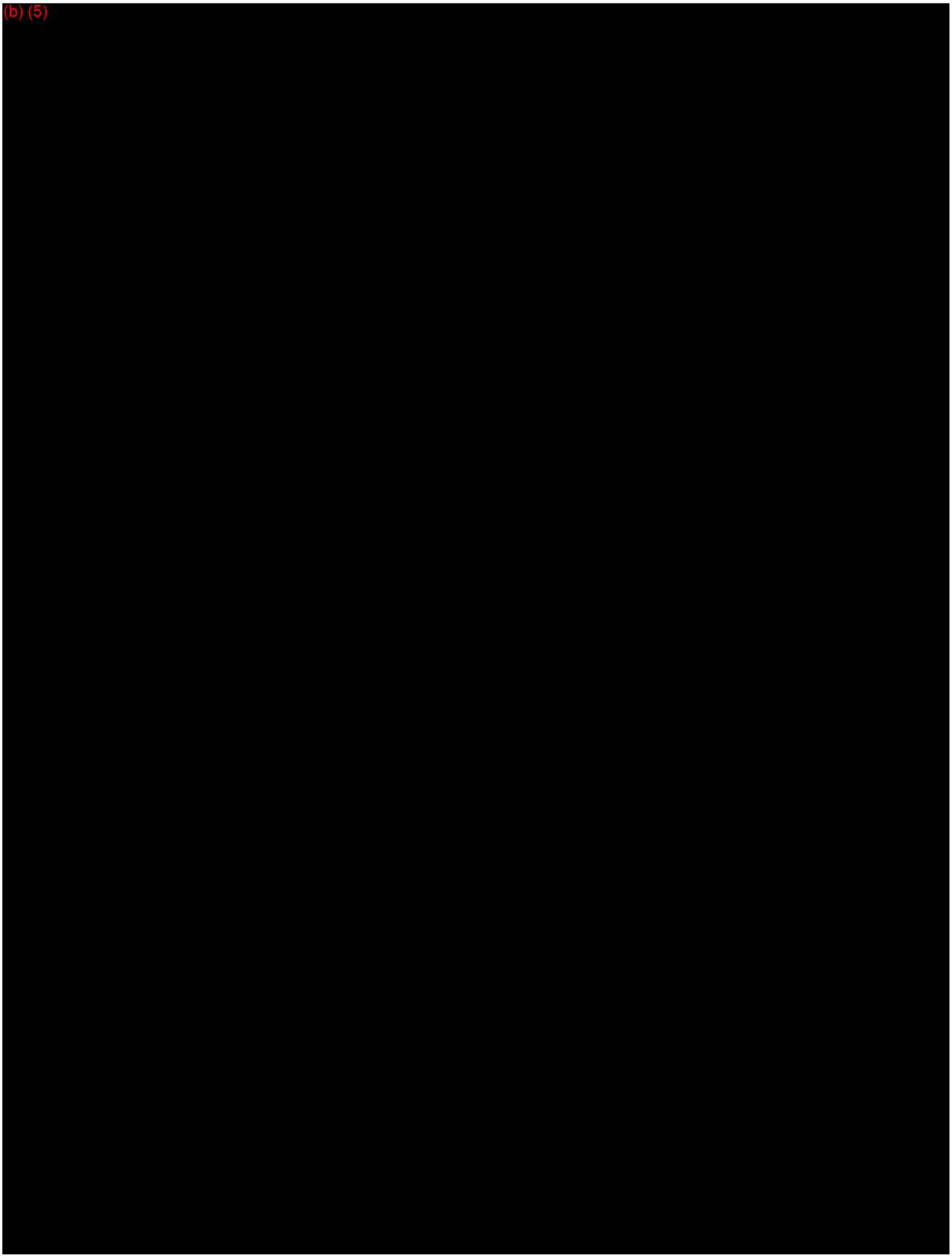


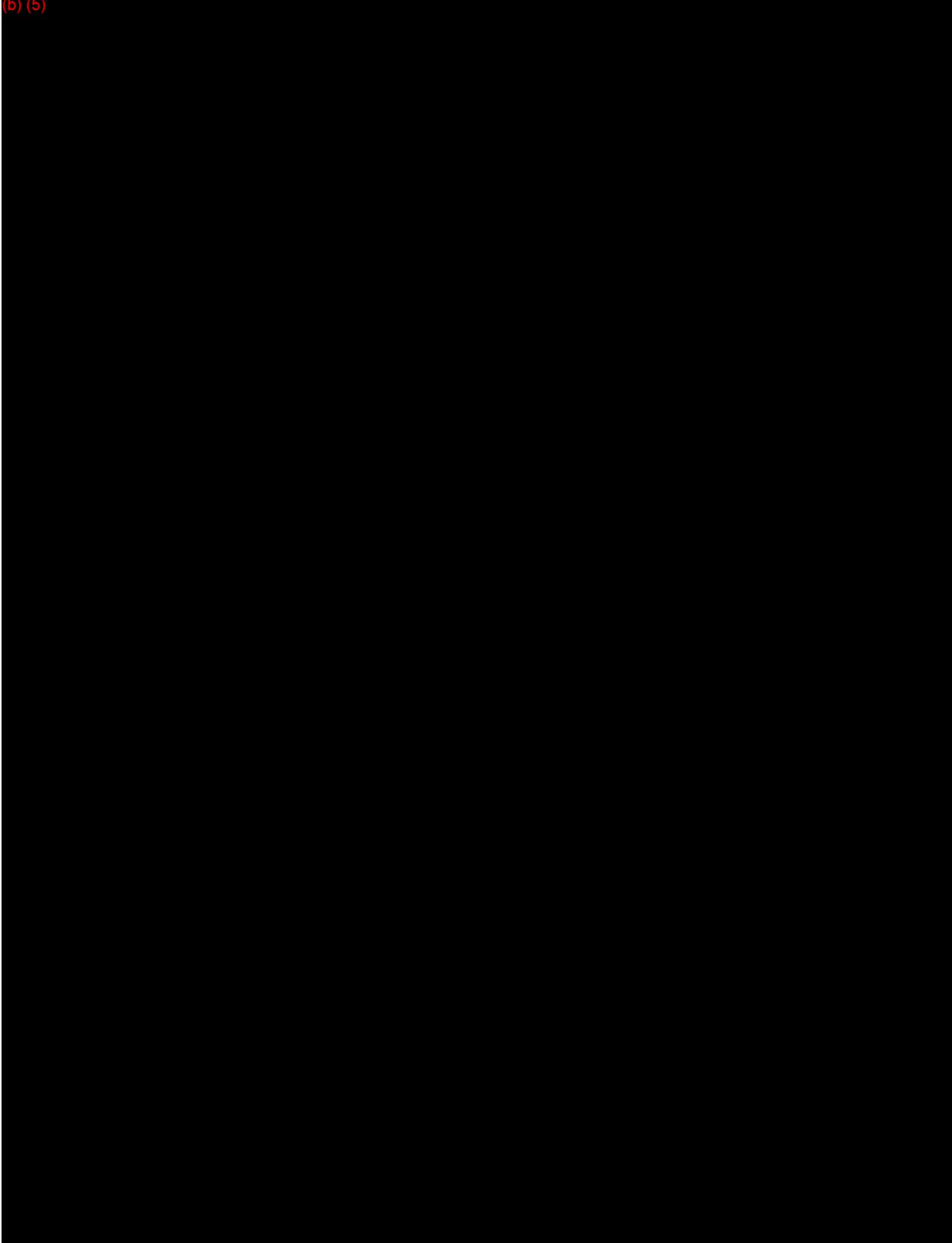


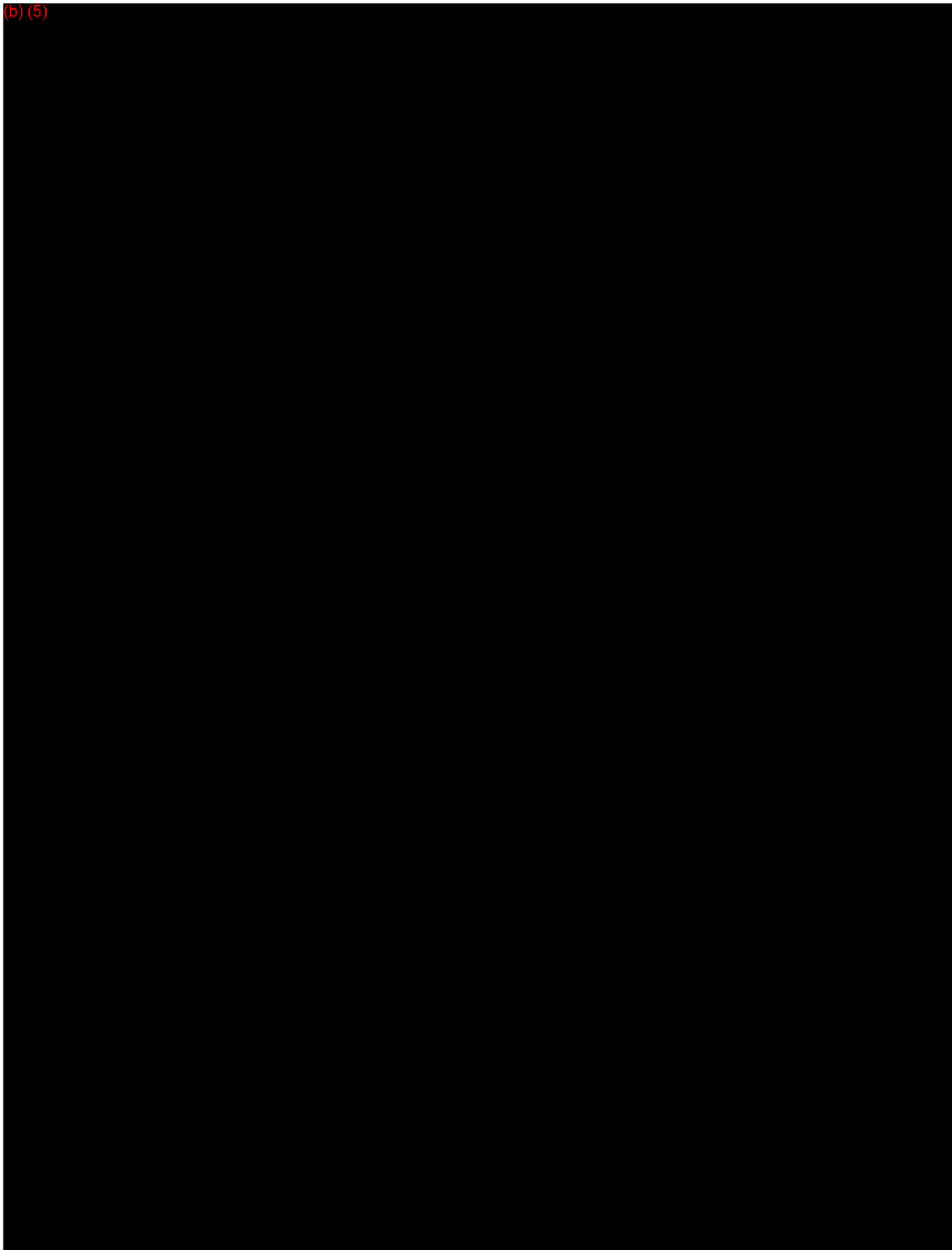












Revised combined draft

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

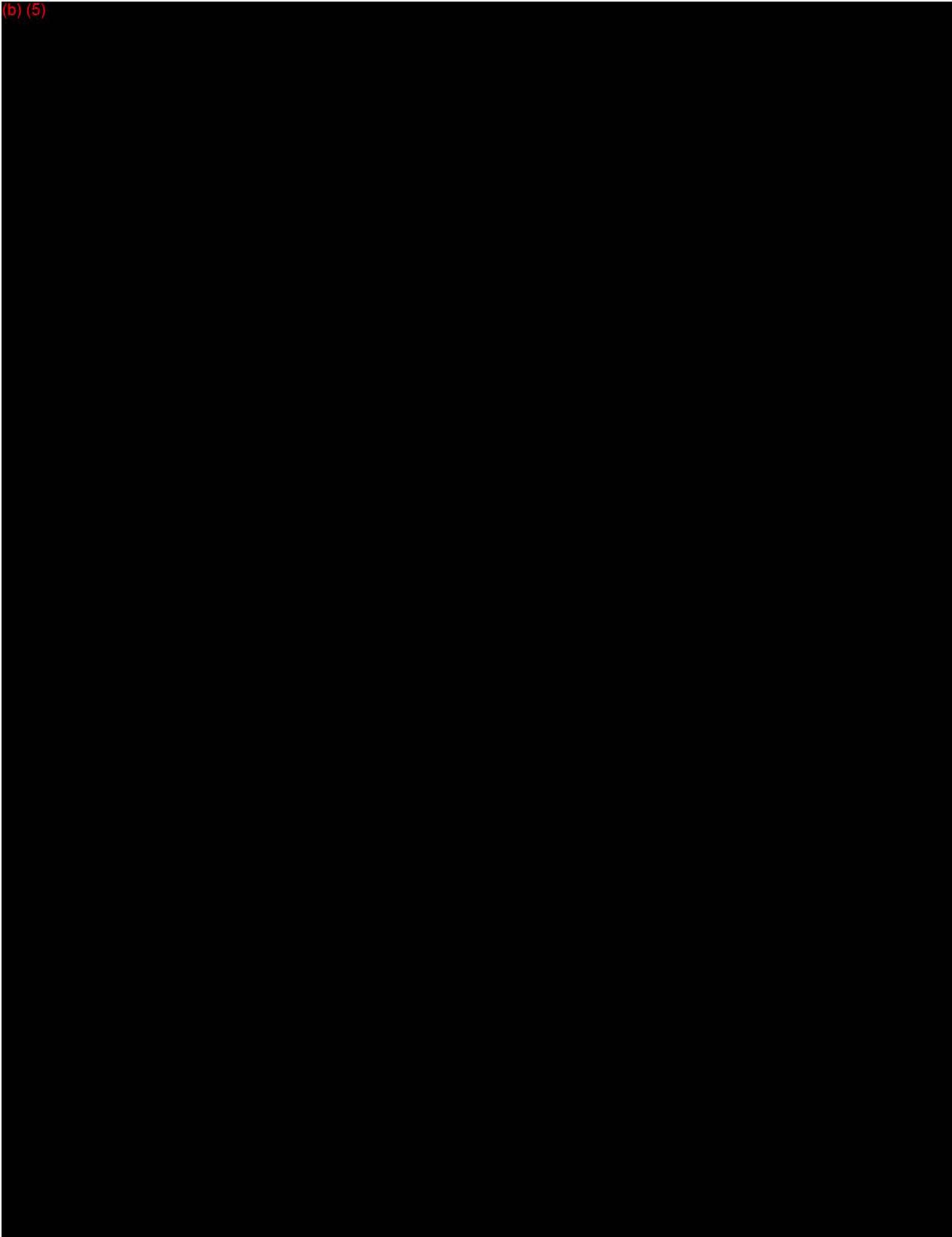
Attachments
: Draft NPRM Background-History 2018-09-04 YM v2 ML.docx (57.97 kB)

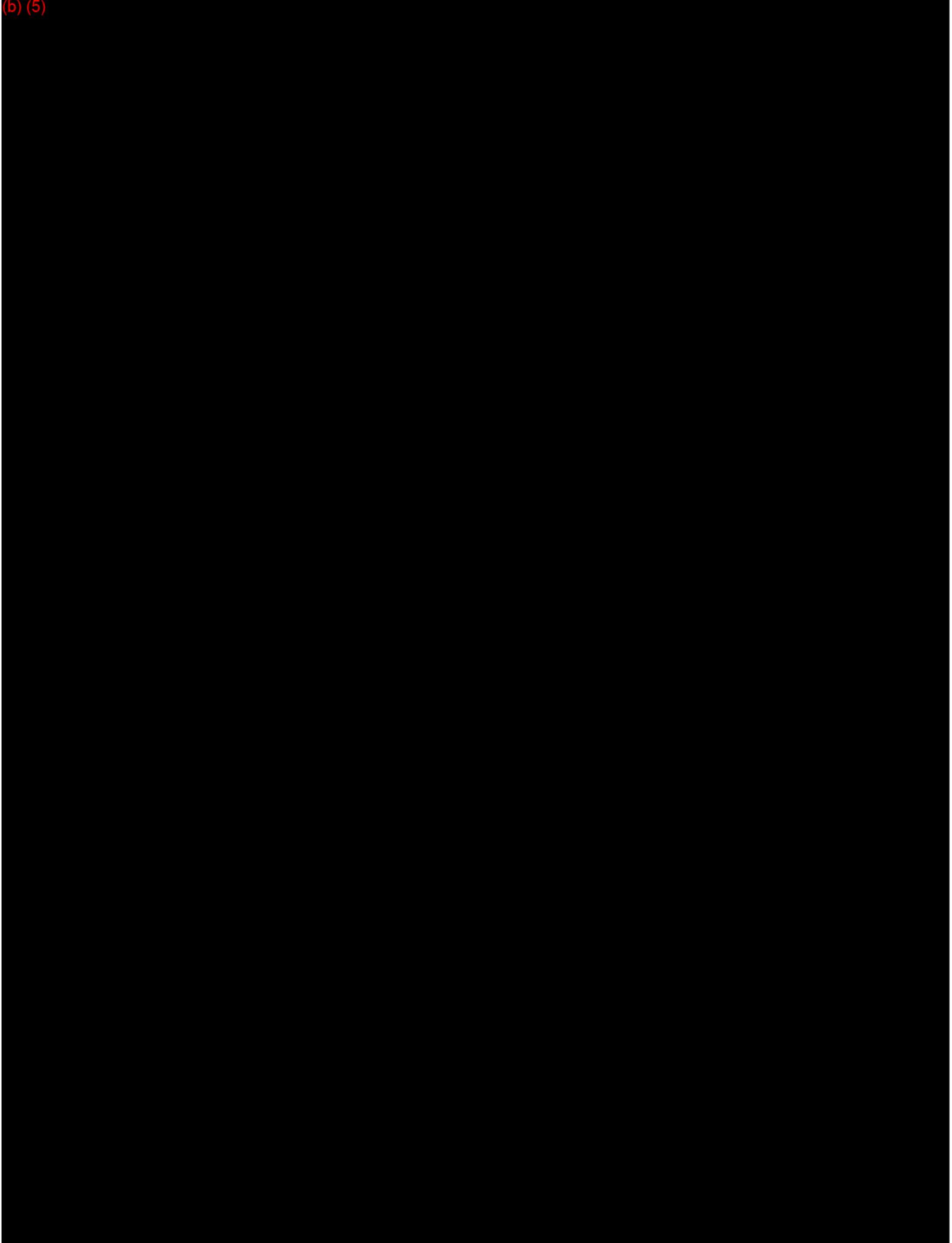
Dear Ted, Mike, and Yardena – (b) (5)

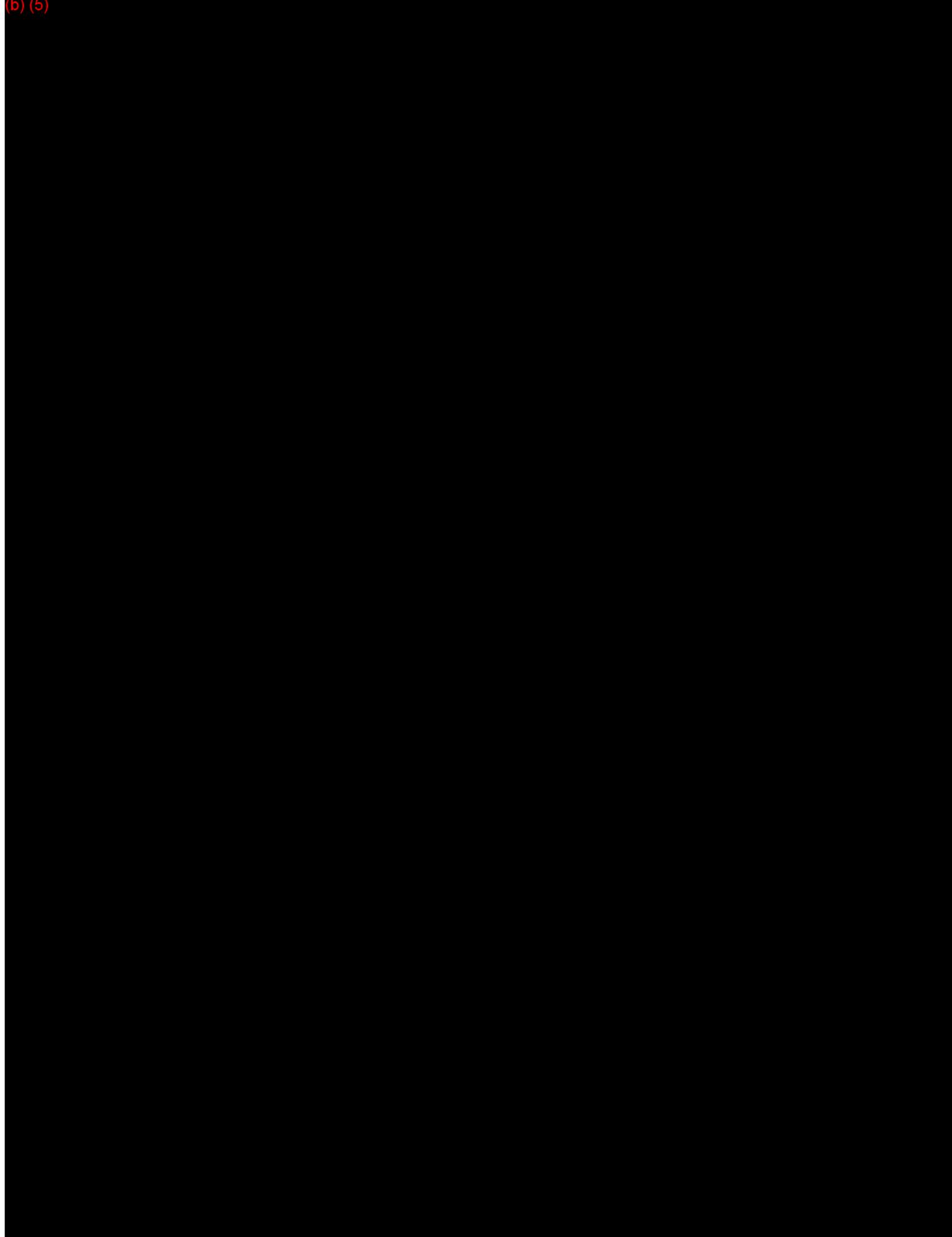
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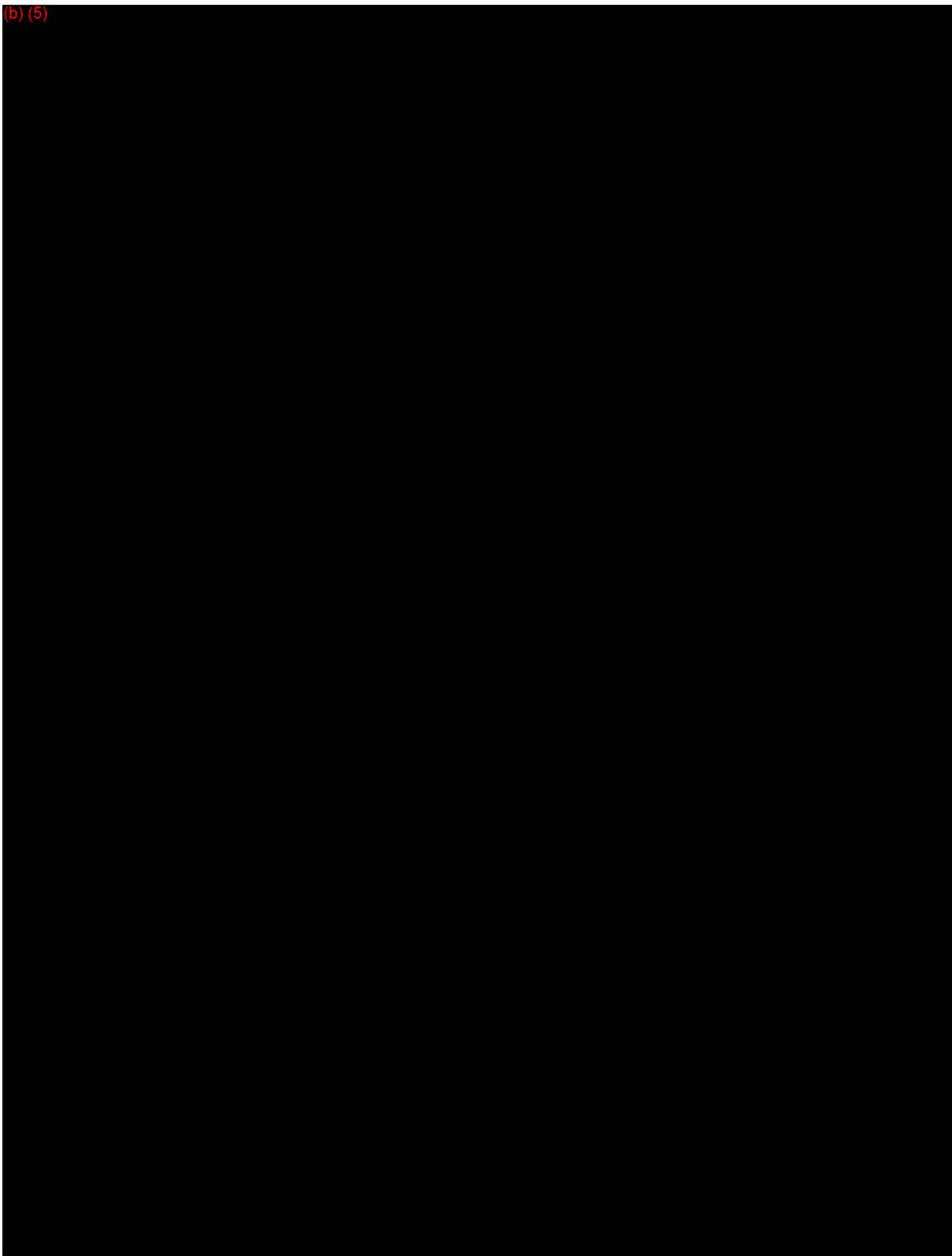
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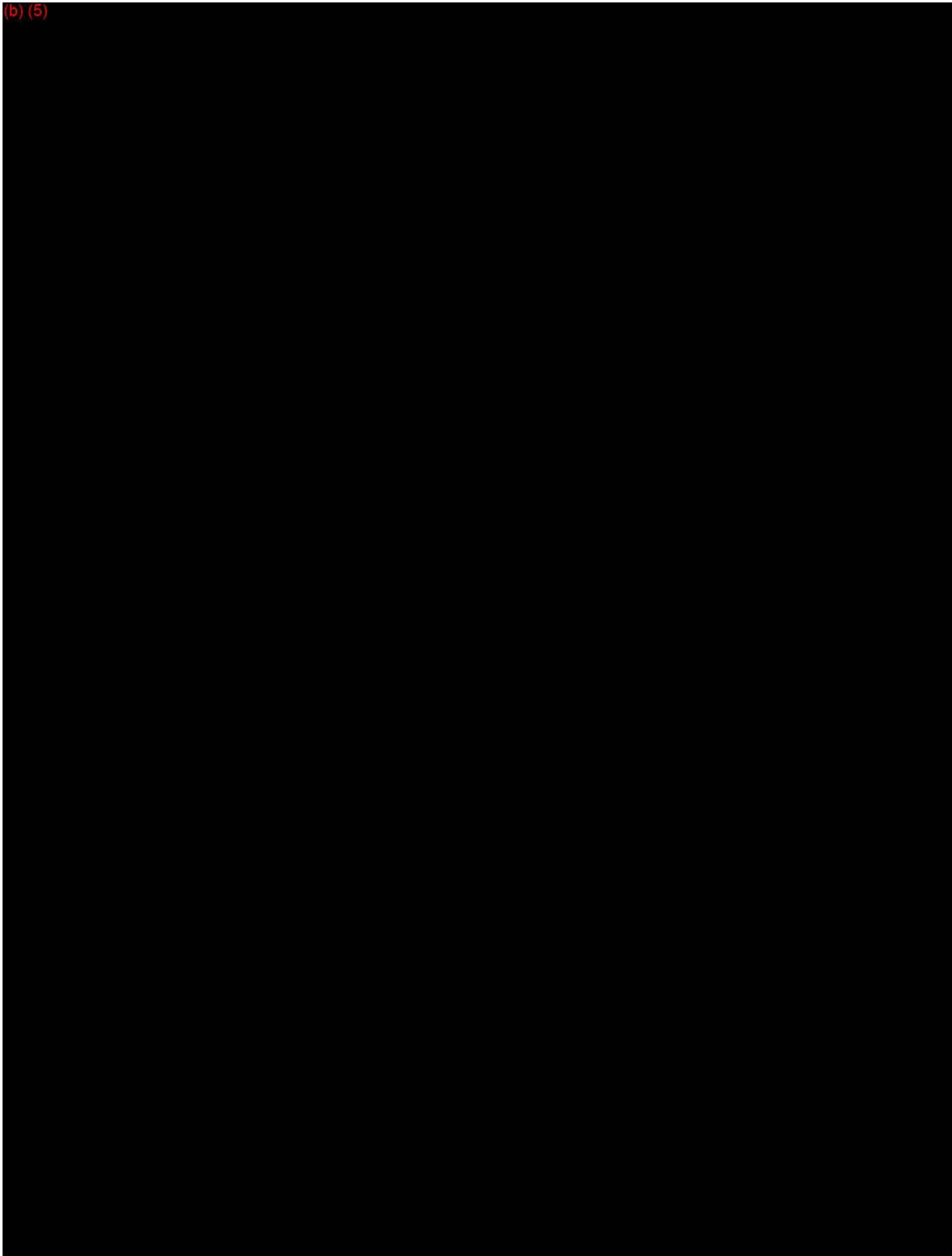
Mario Loyola
Associate Director, Regulatory Reform
White House Council on Environmental Quality
(o) (b) (6) | (c) (b) (6)

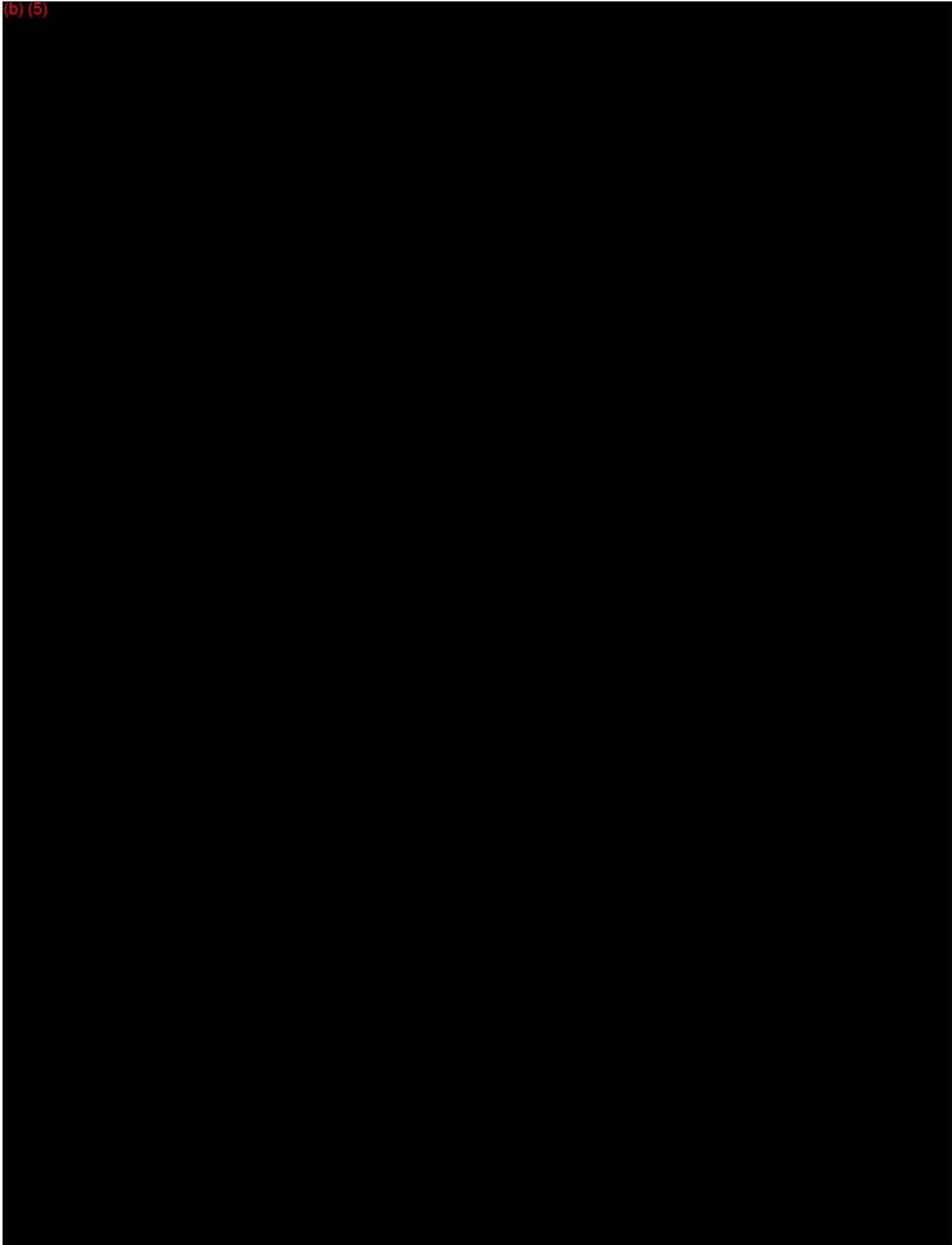


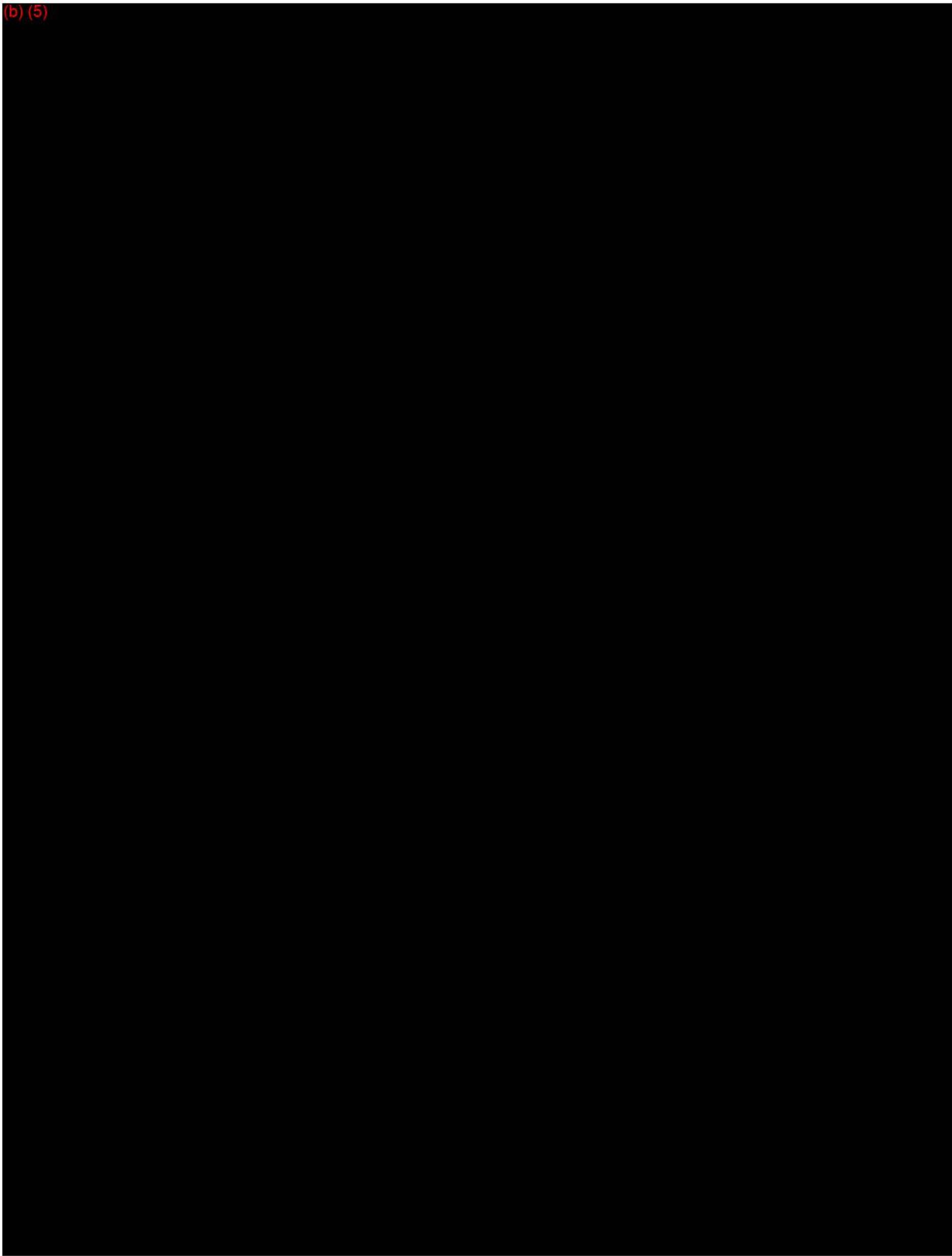


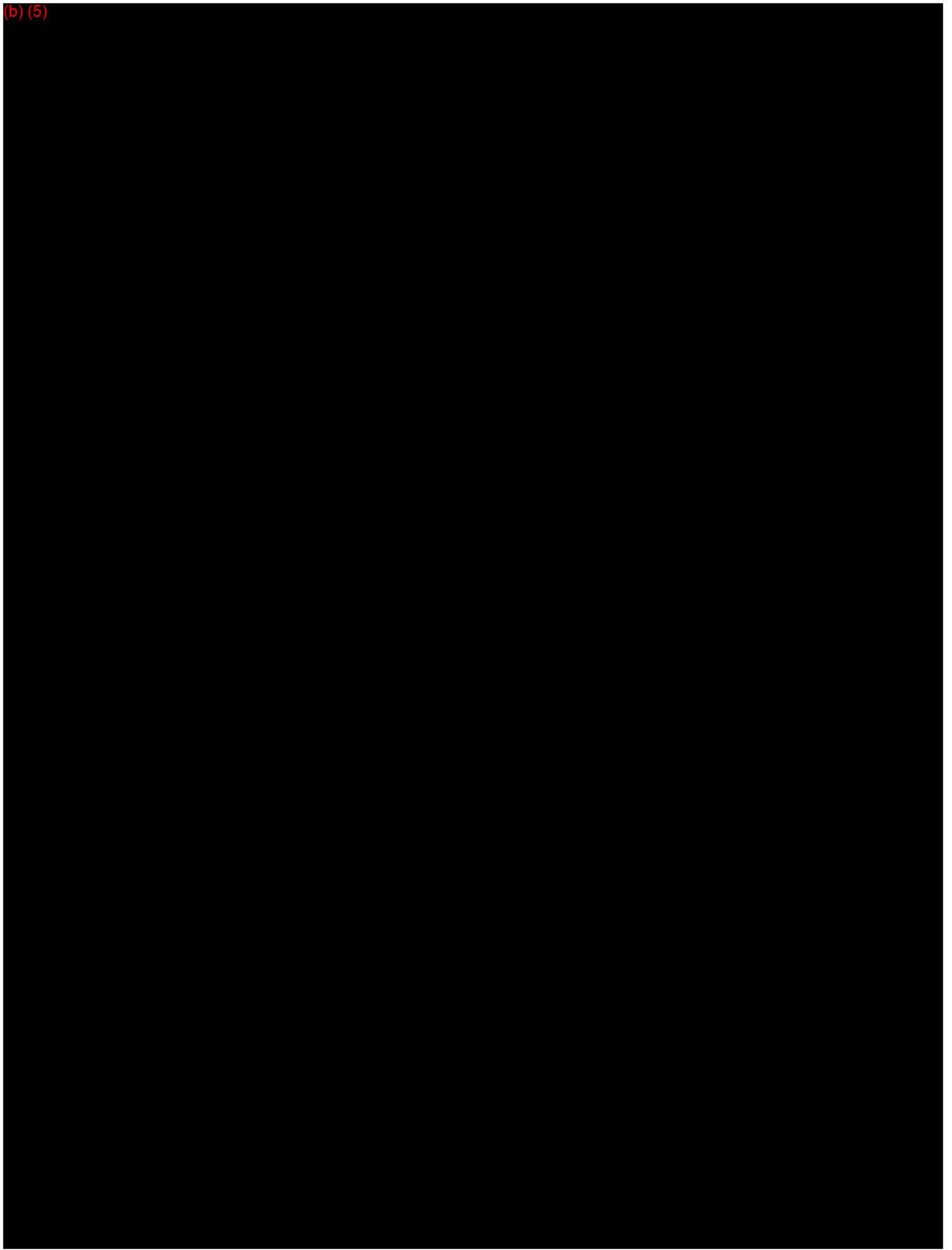


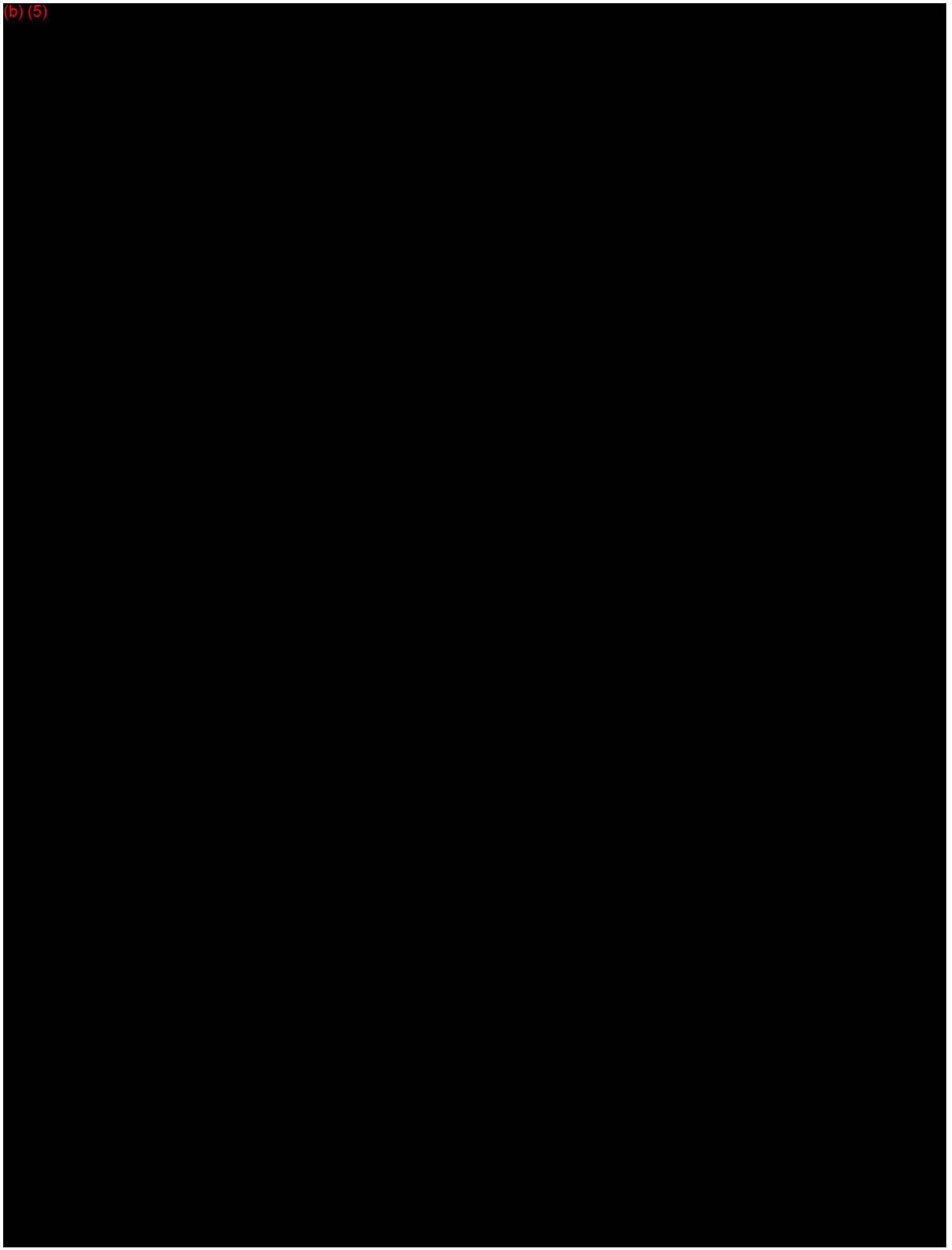


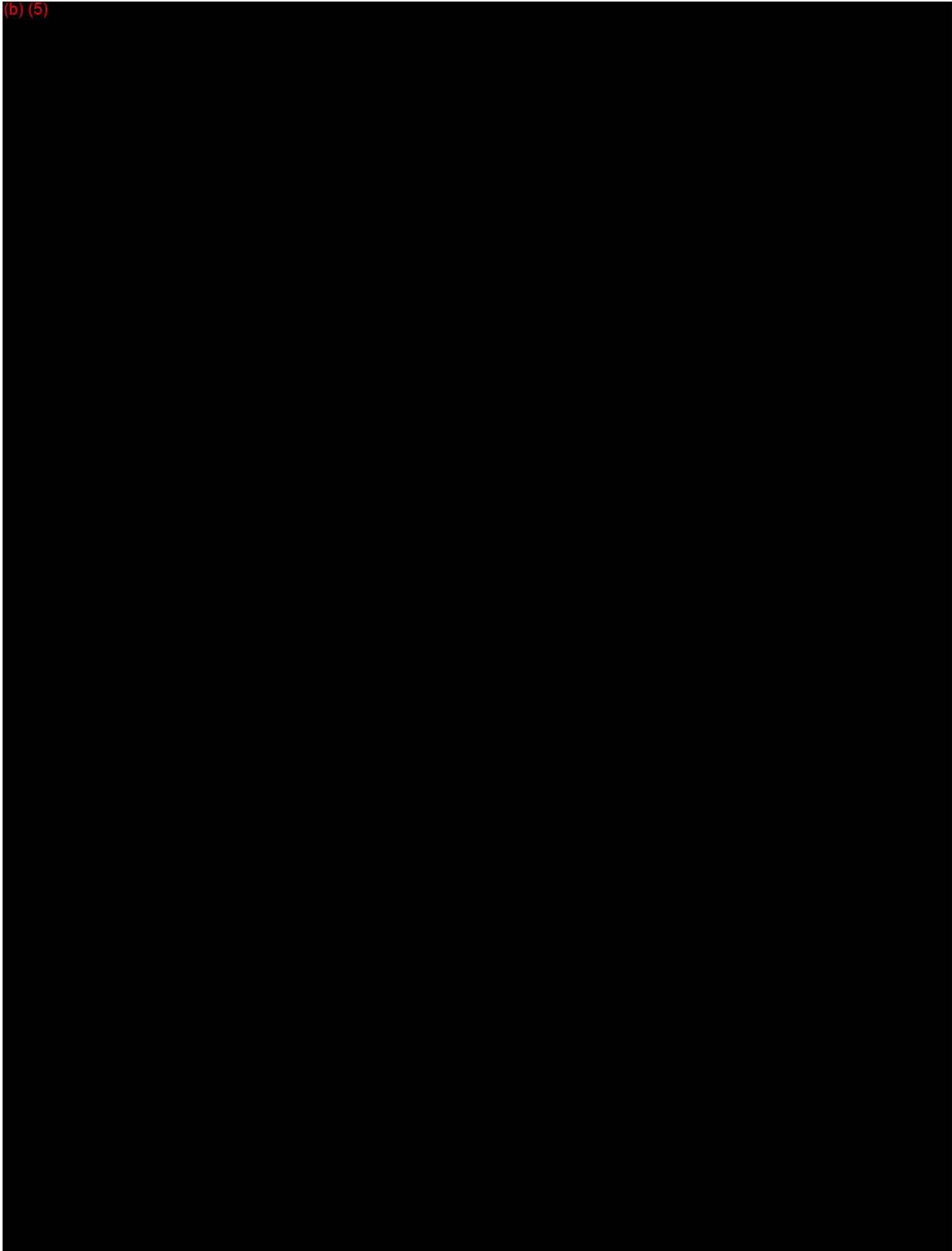


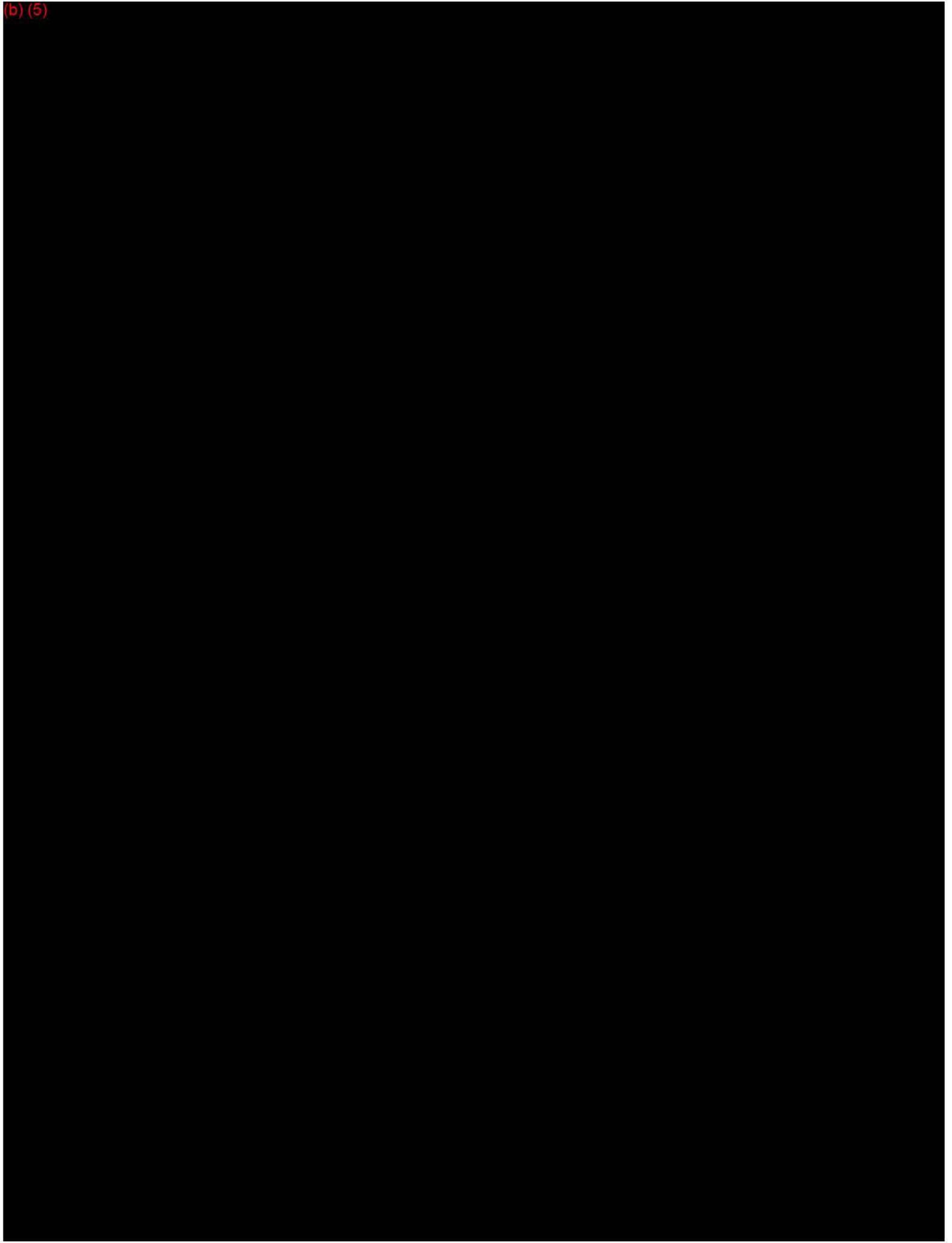


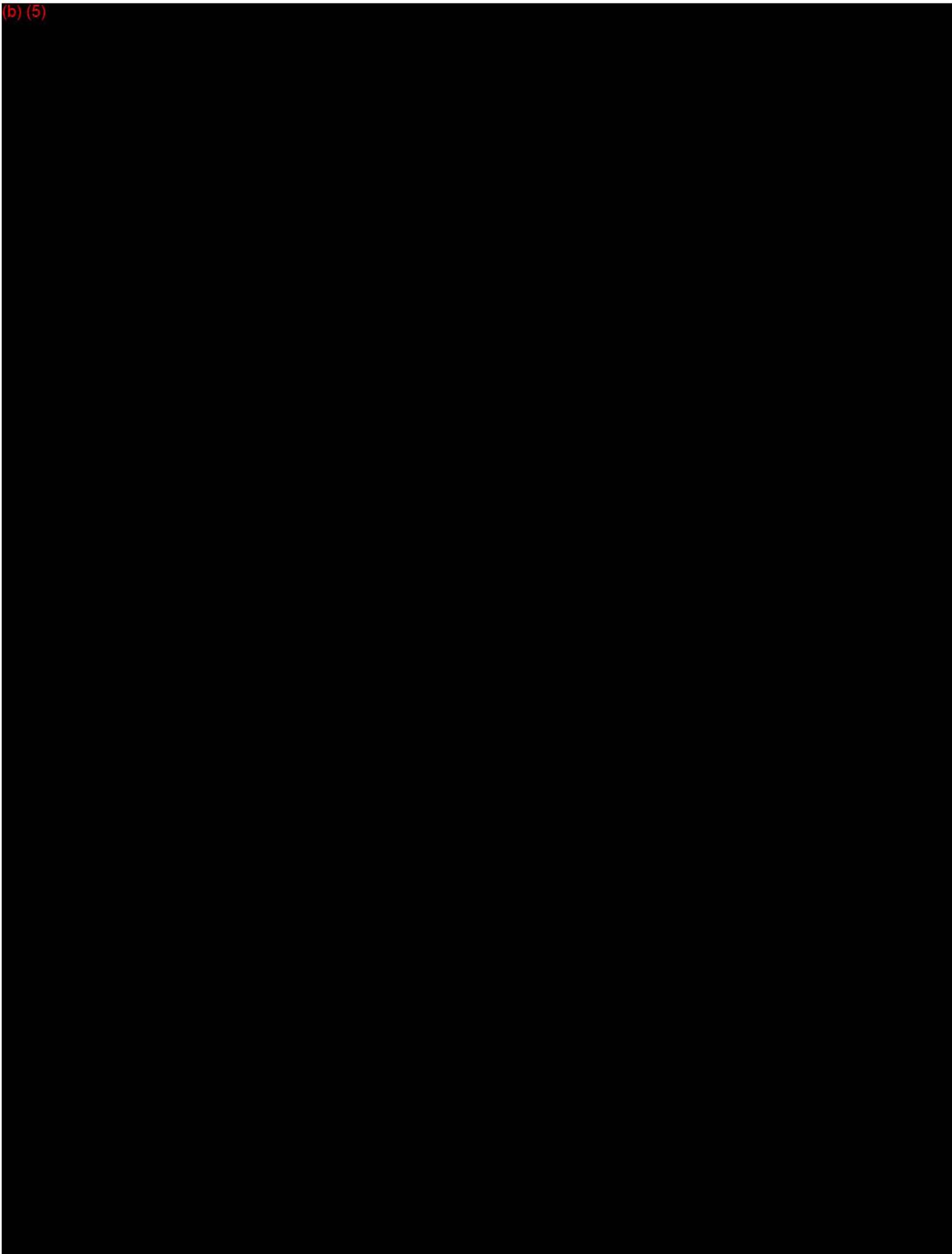


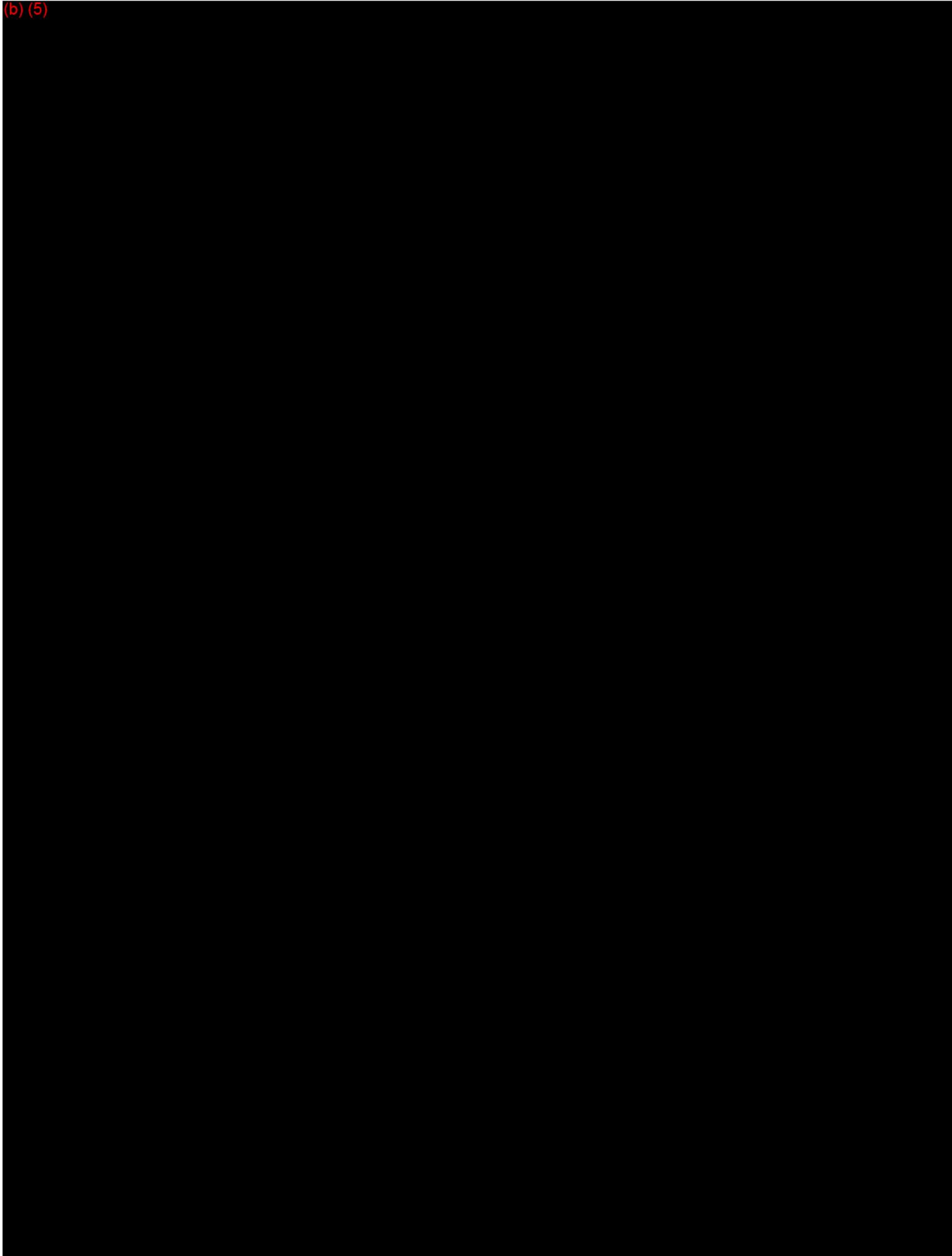


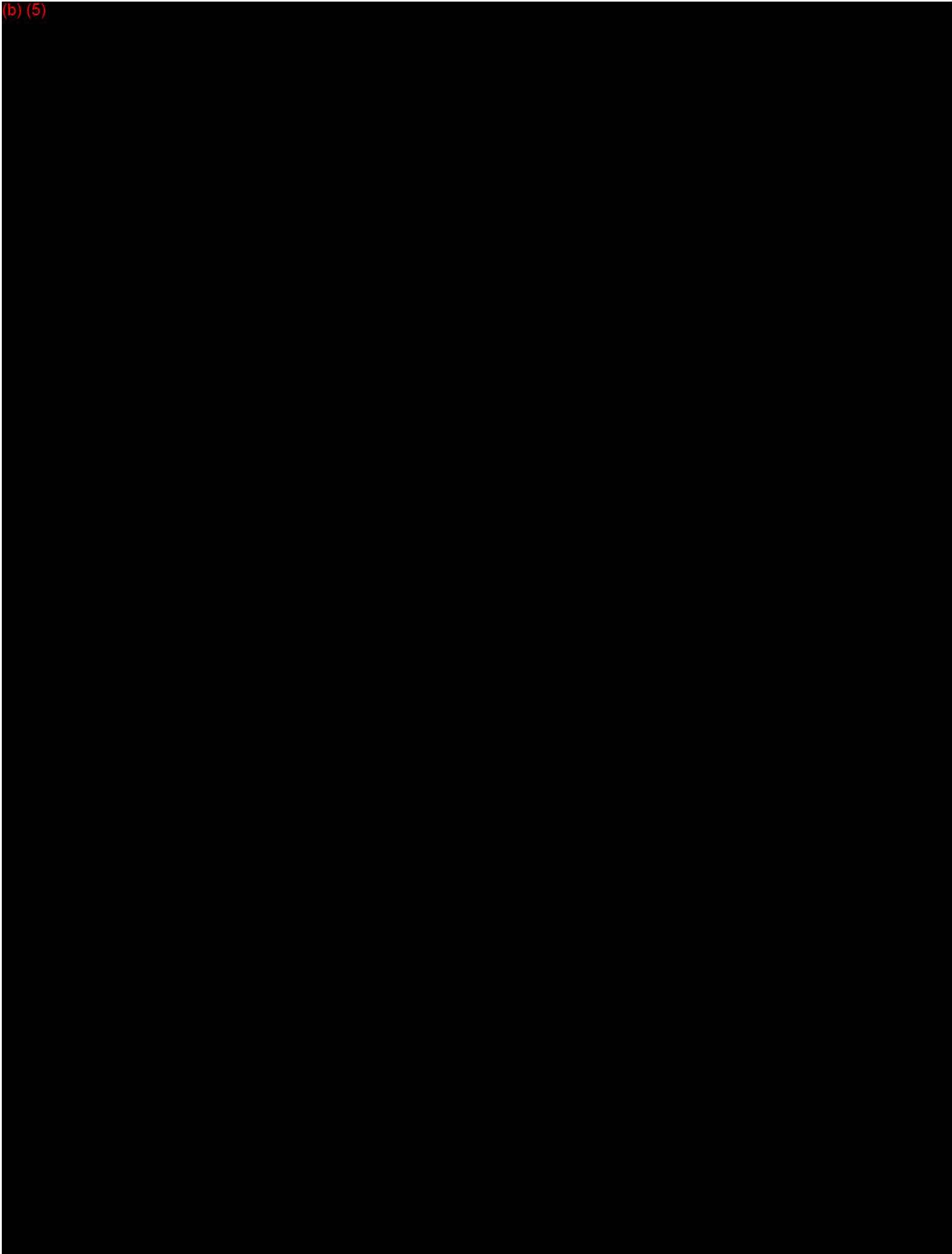


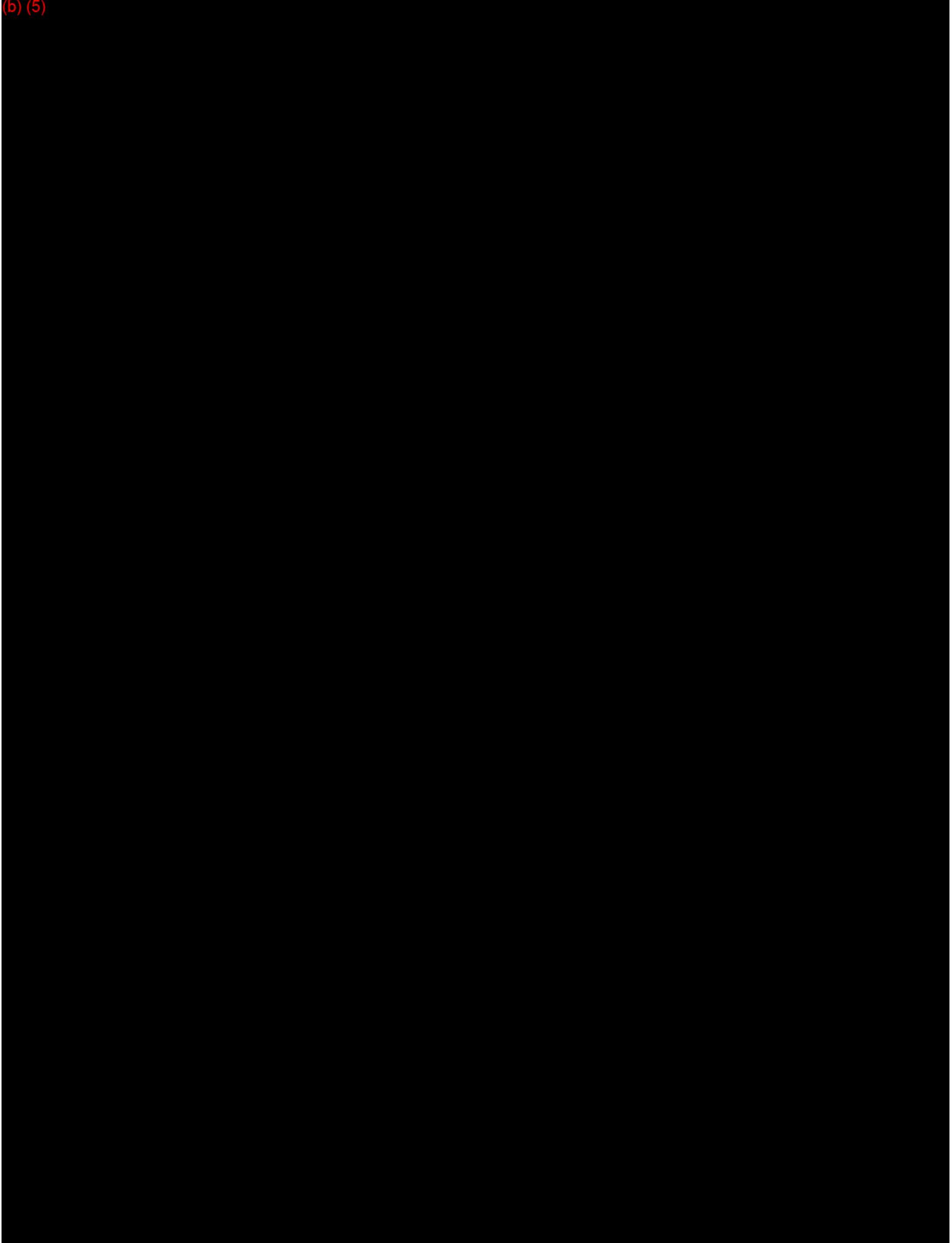


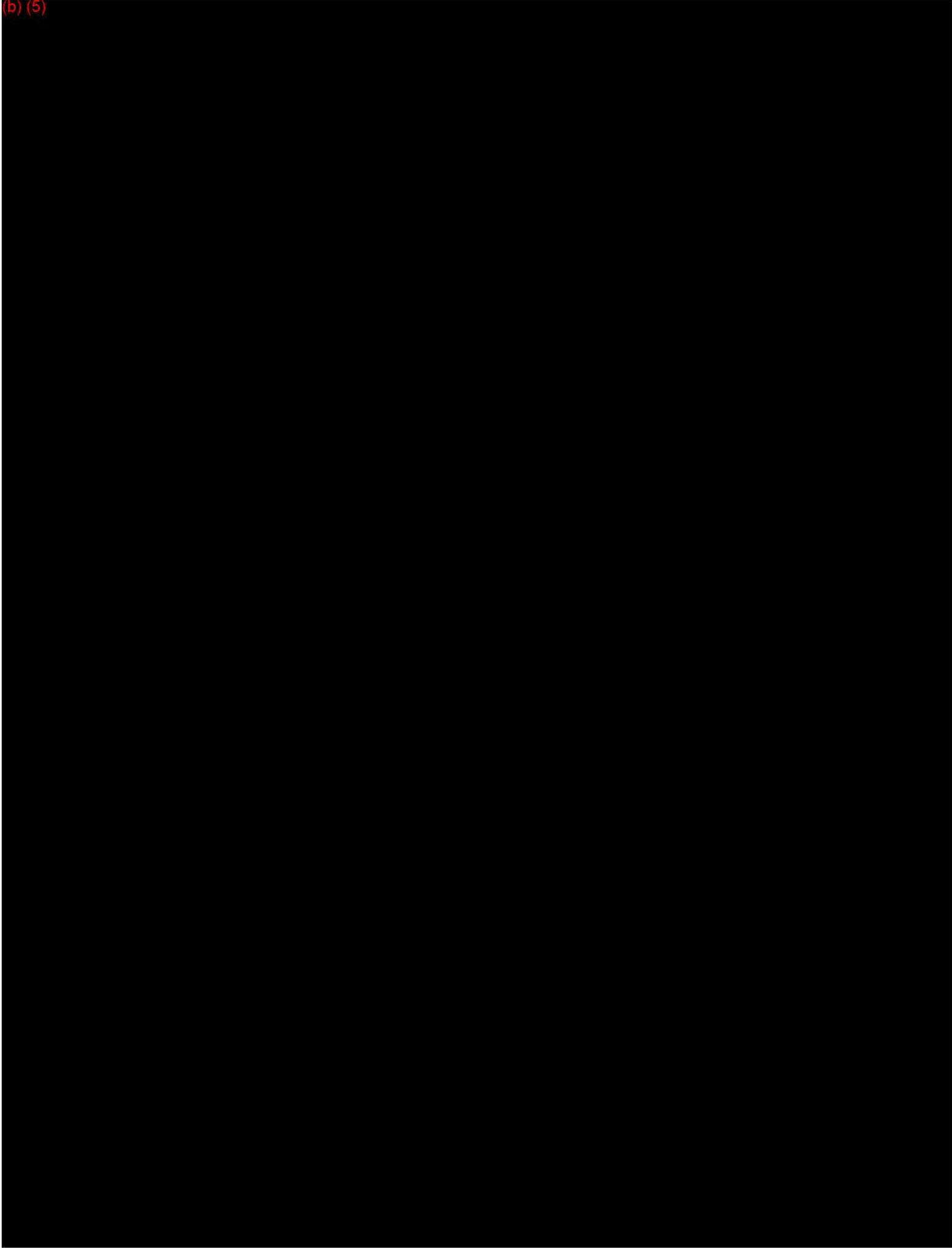




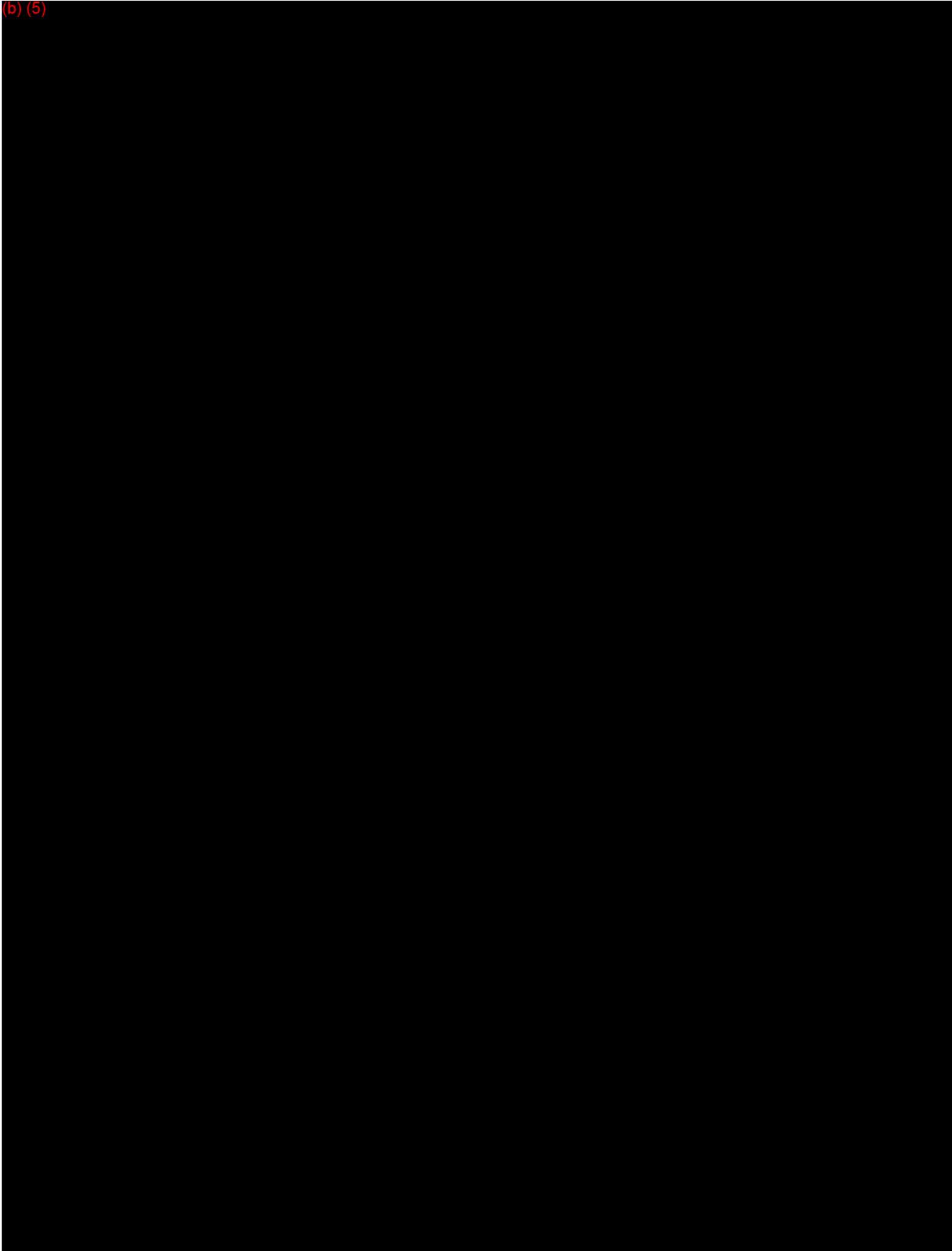


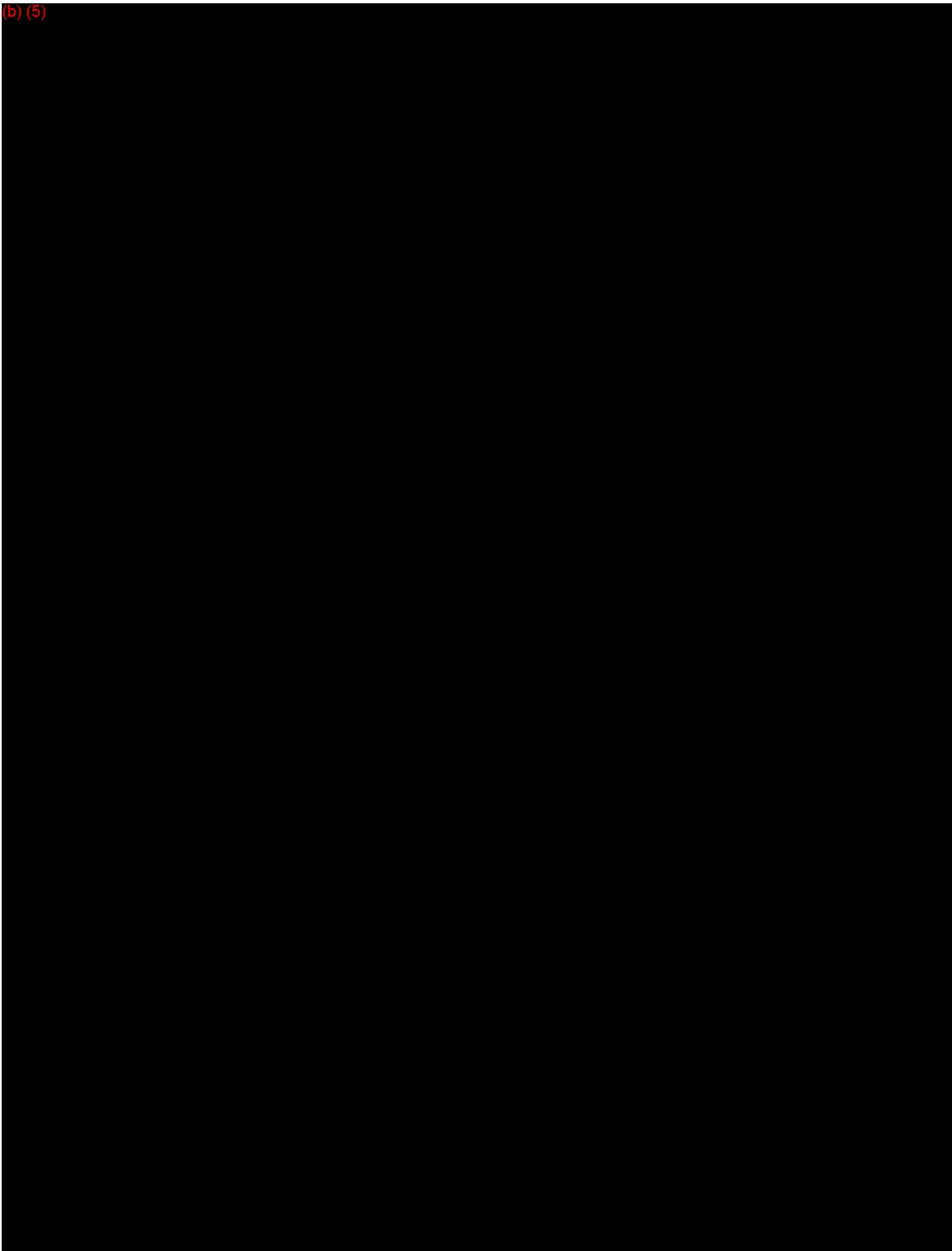


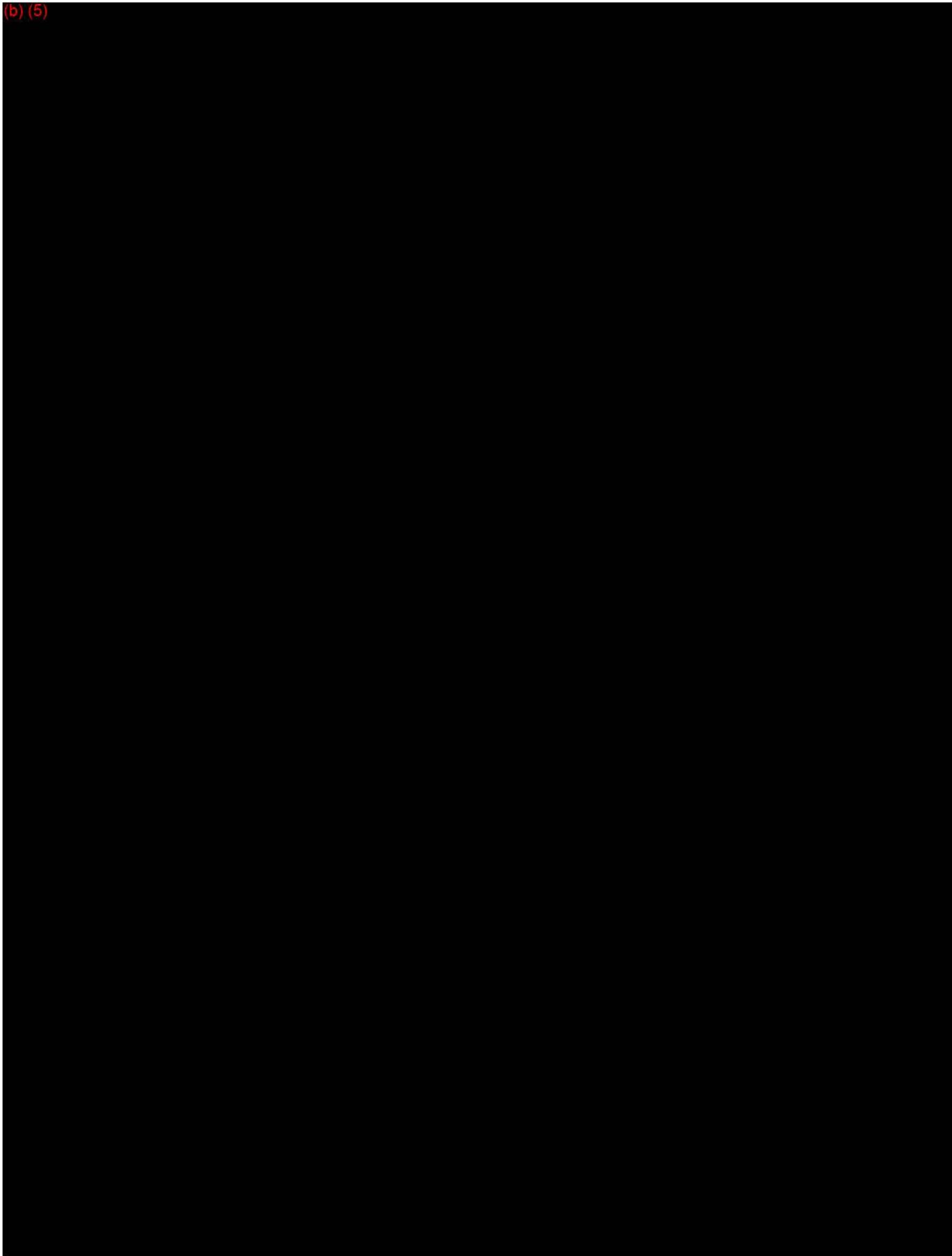












Draft background for NPRM

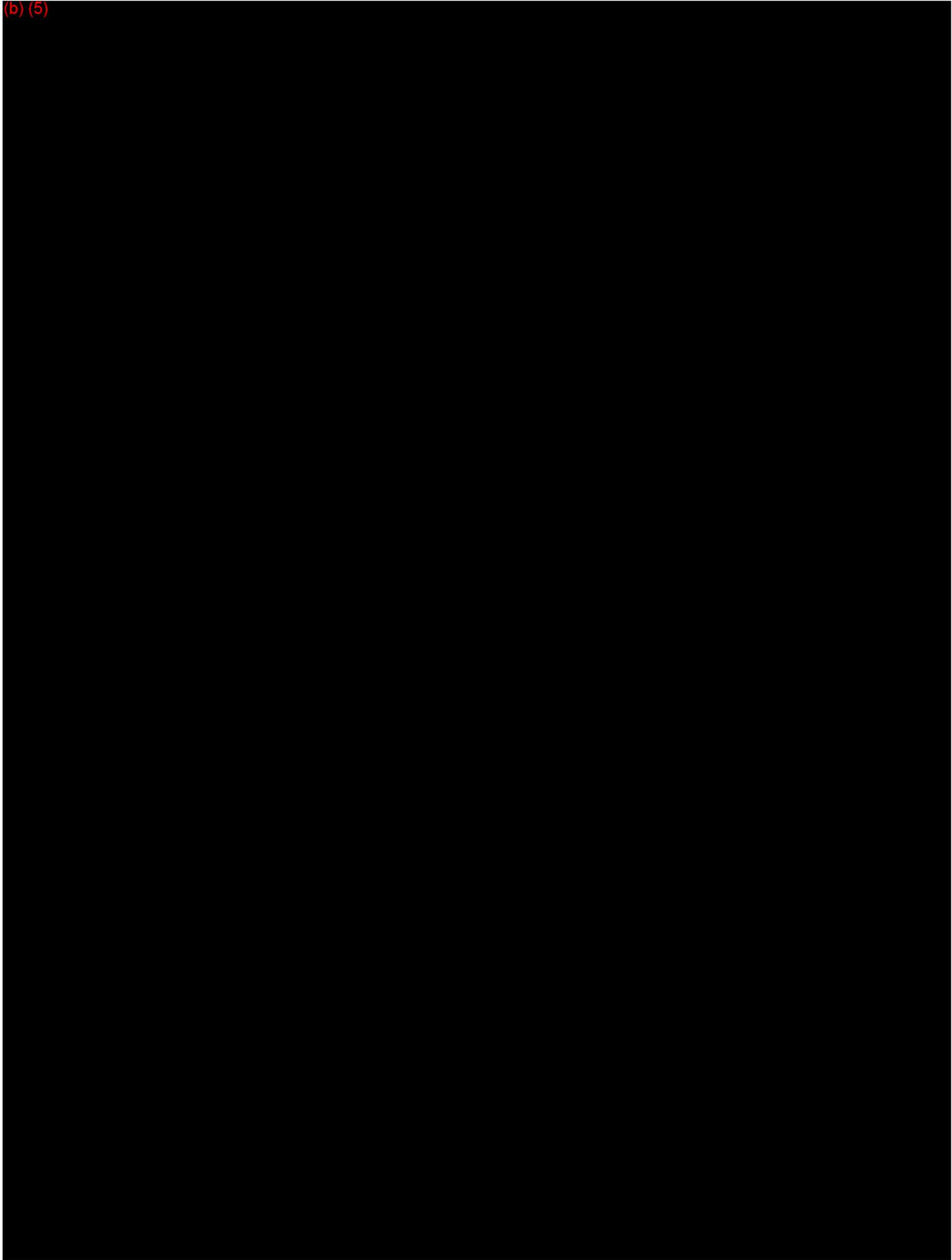
From: "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>
To: "Loyola, Mario A. EOP/CEQ" <(b) (6)>
Cc: "Drummond, Michael R. EOP/CEQ" <(b) (6)> "Boling, Ted A. EOP/CEQ" <(b) (6)>
Date: Tue, 04 Sep 2018 12:26:50 -0400
Attachments Draft NPRM Background-History 2018-09-04 YM.docx (53.08 kB); Draft NPRM Background-History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

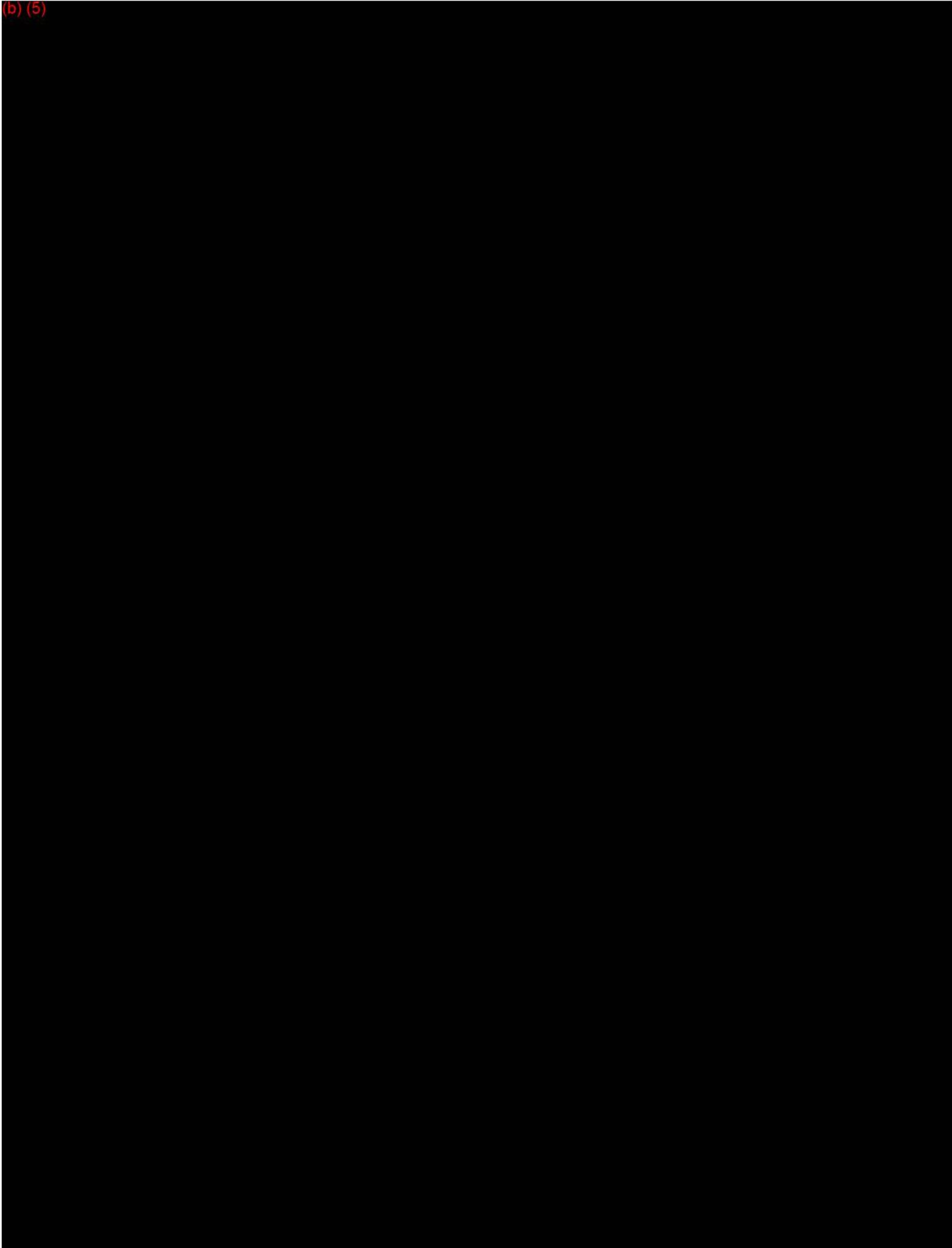
Here is the draft responding to the task list item due today, for your review.

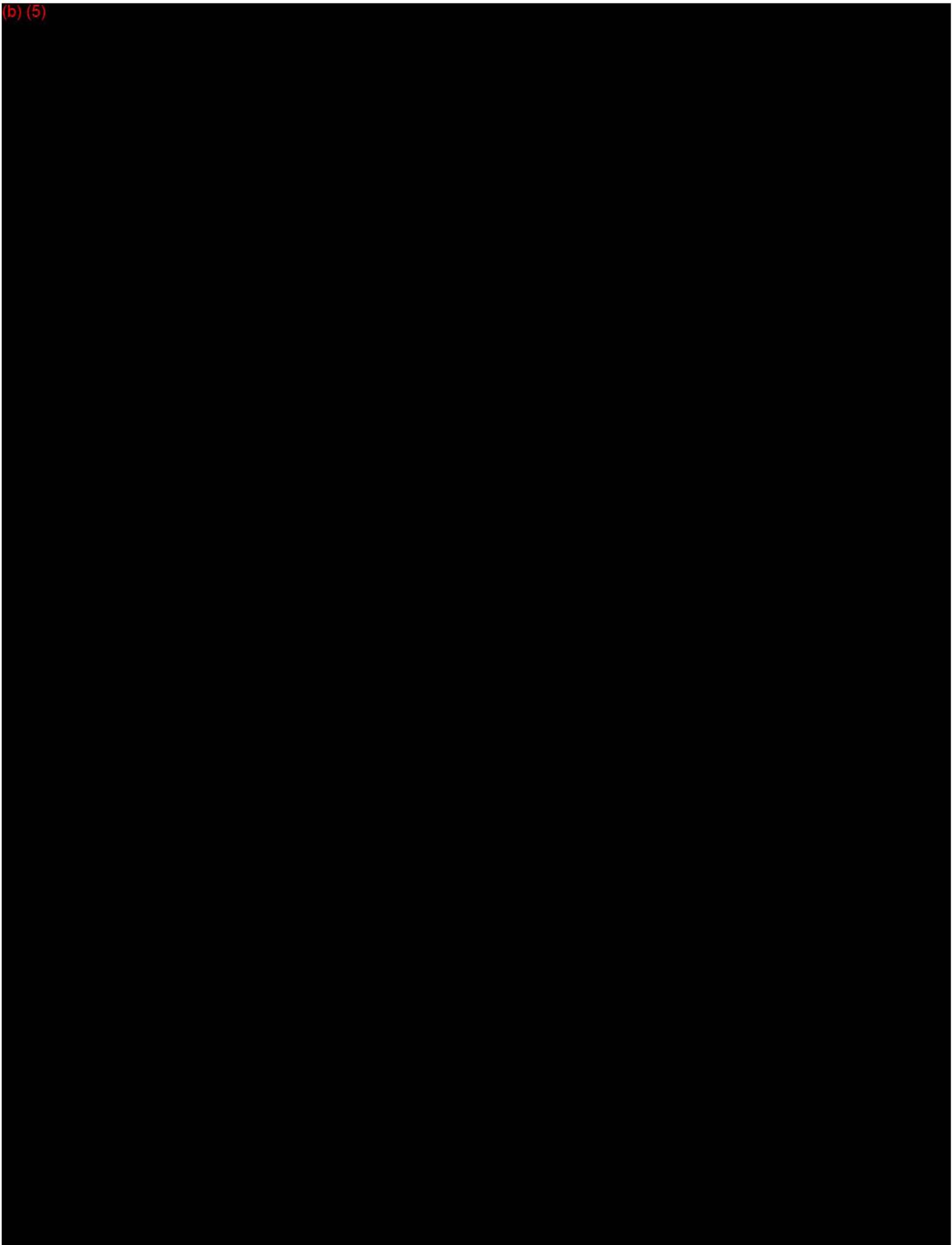
Some notes:

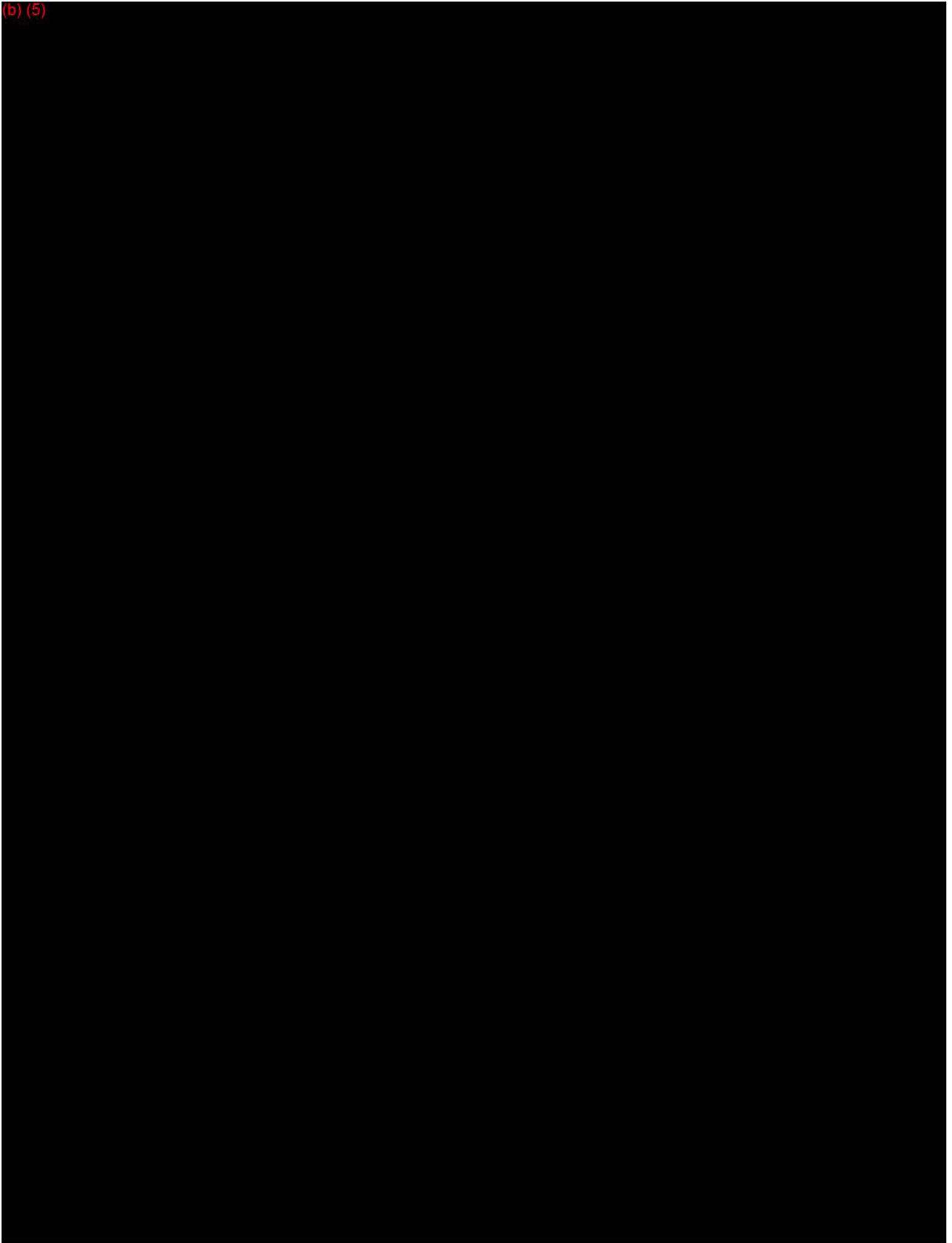
- (b) (5) [Redacted]
 - [Redacted]
-

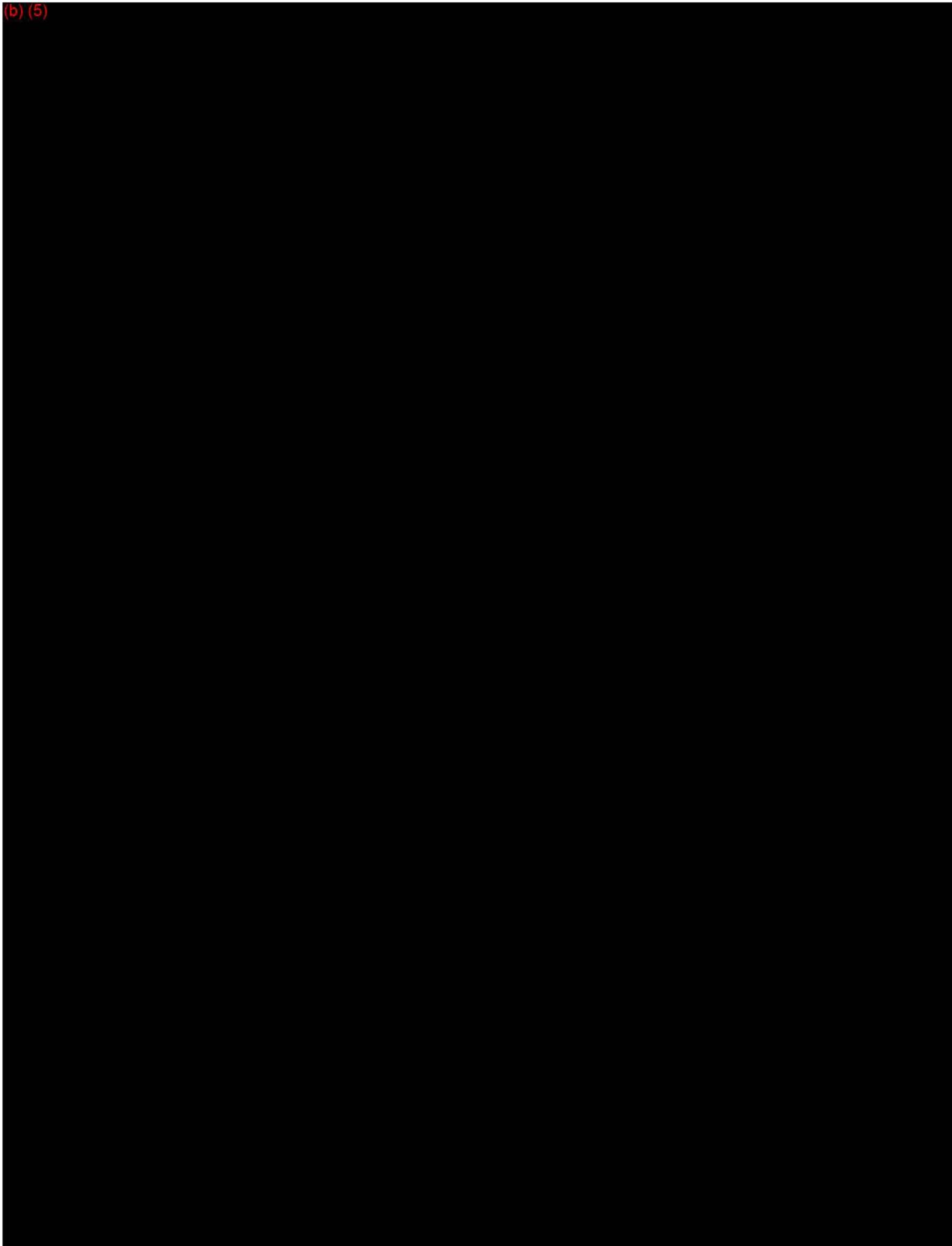
Yardena Mansoor
Deputy Associate Director for NEPA
Council on Environmental Quality
(b) (6) / (b) (6)

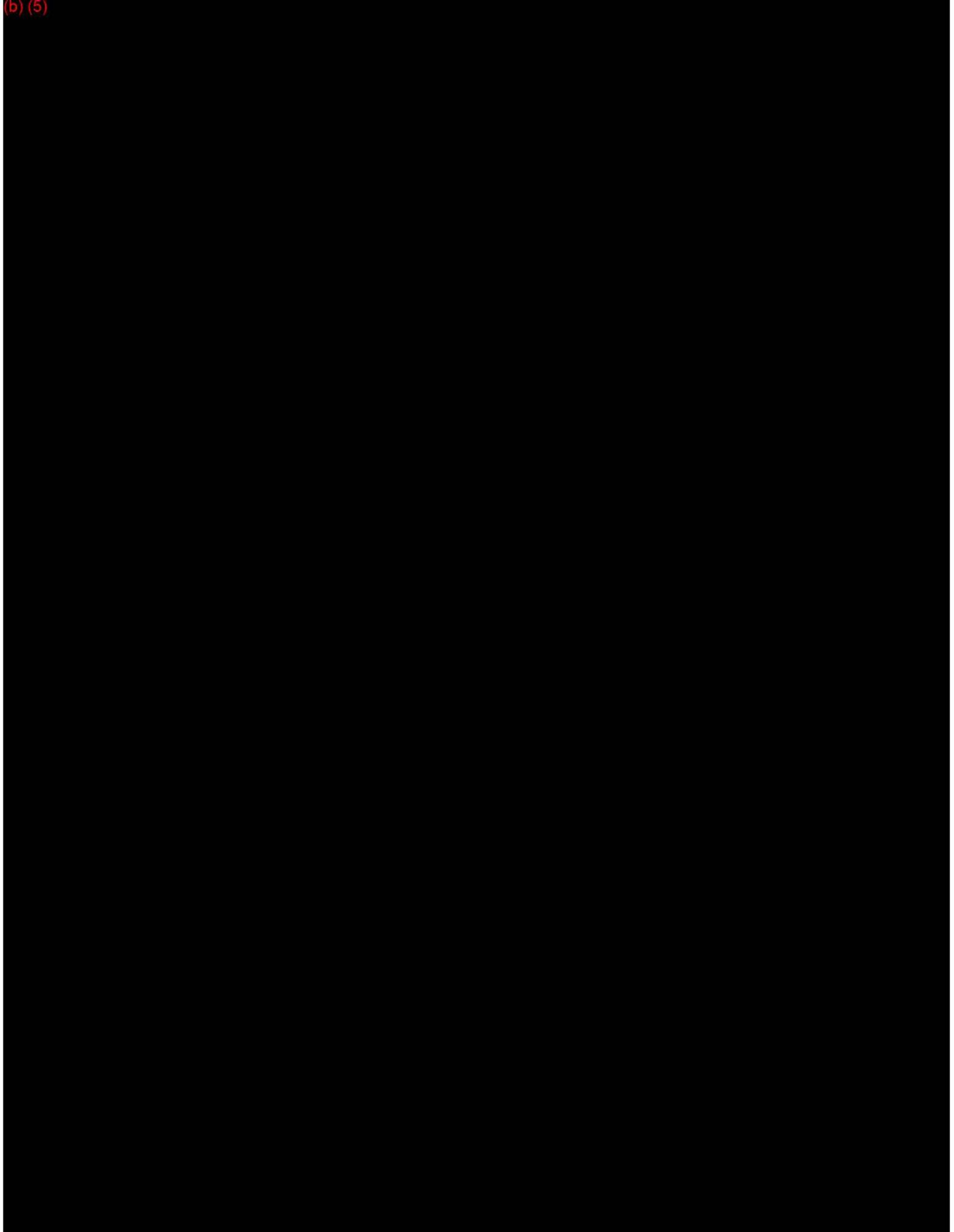


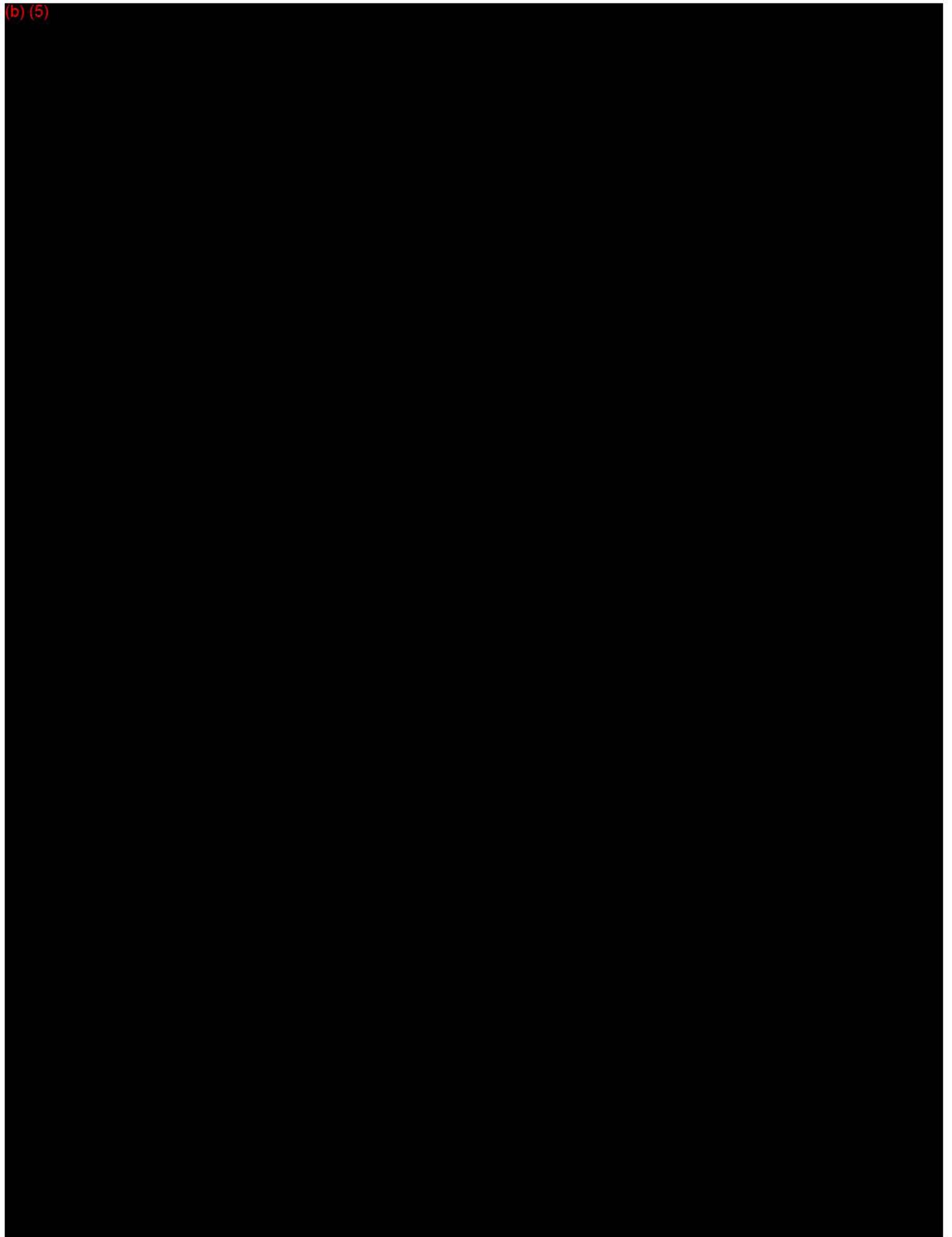


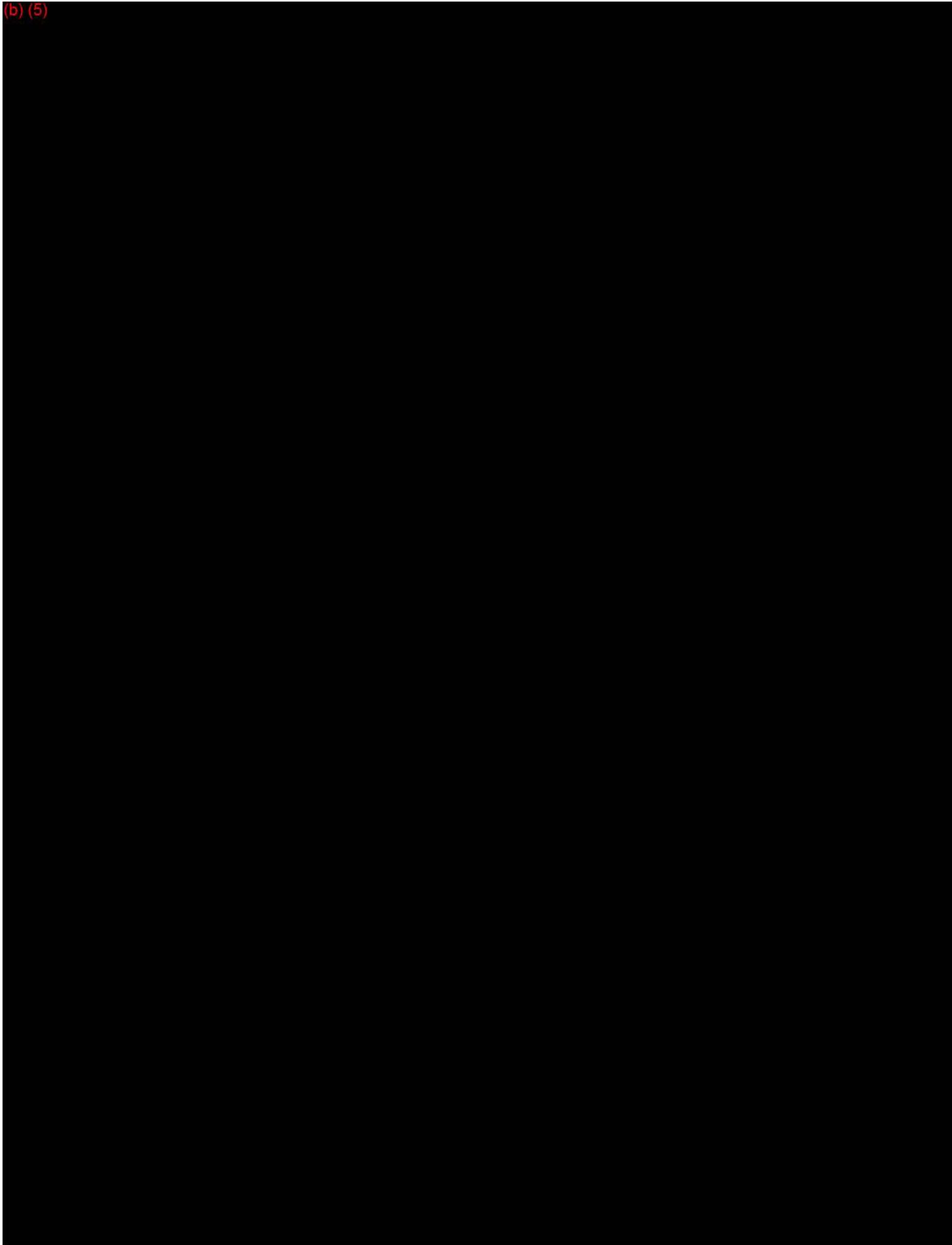


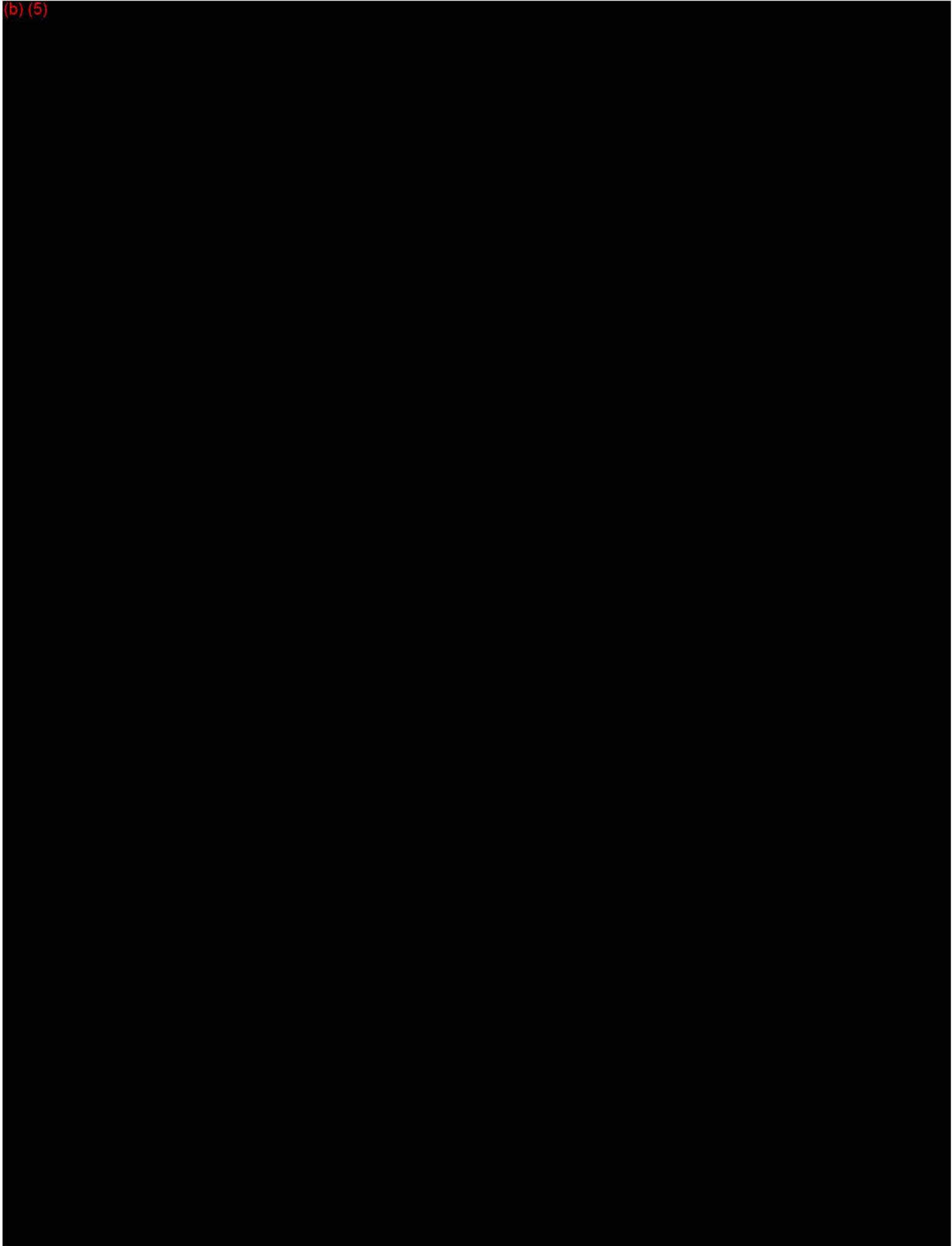


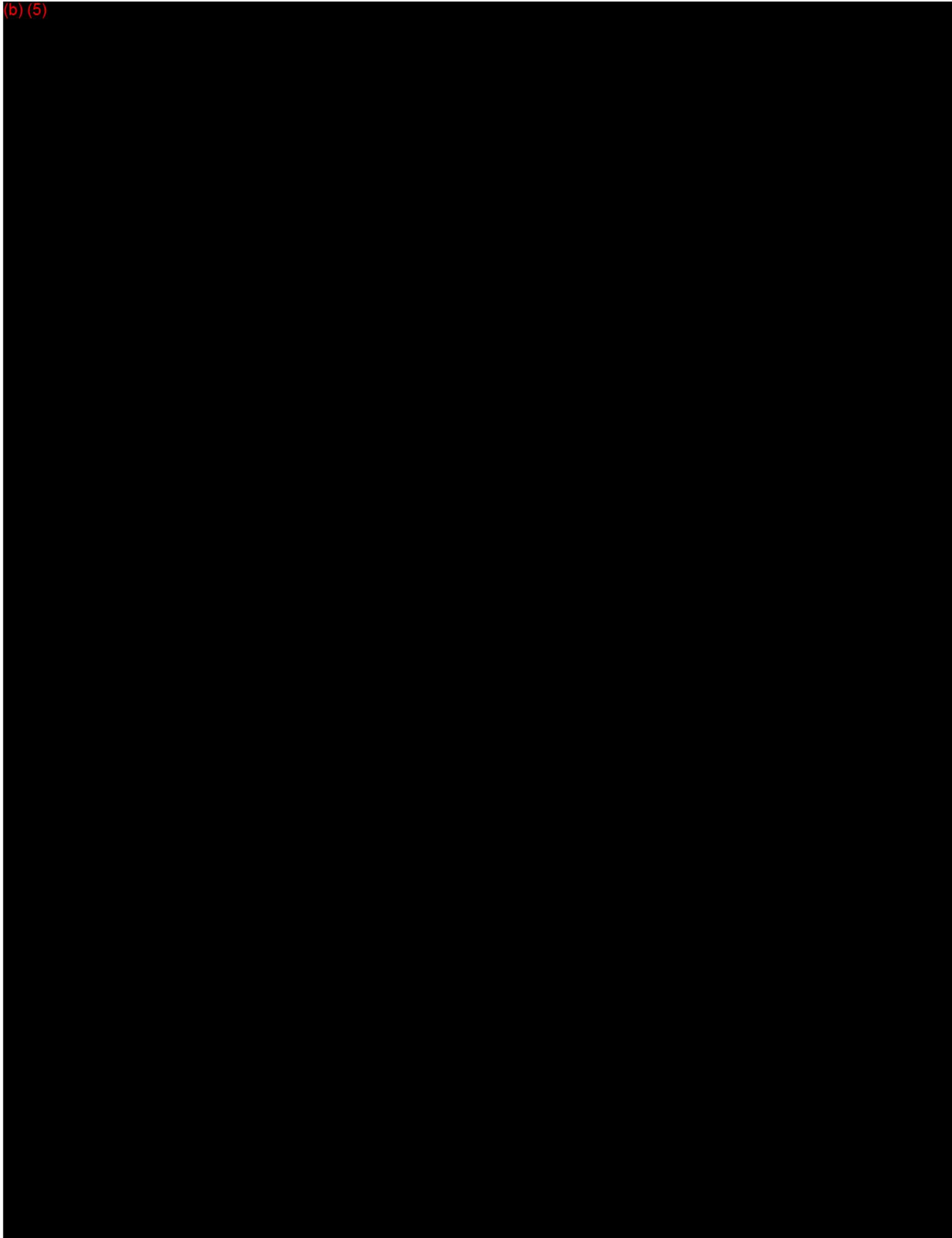


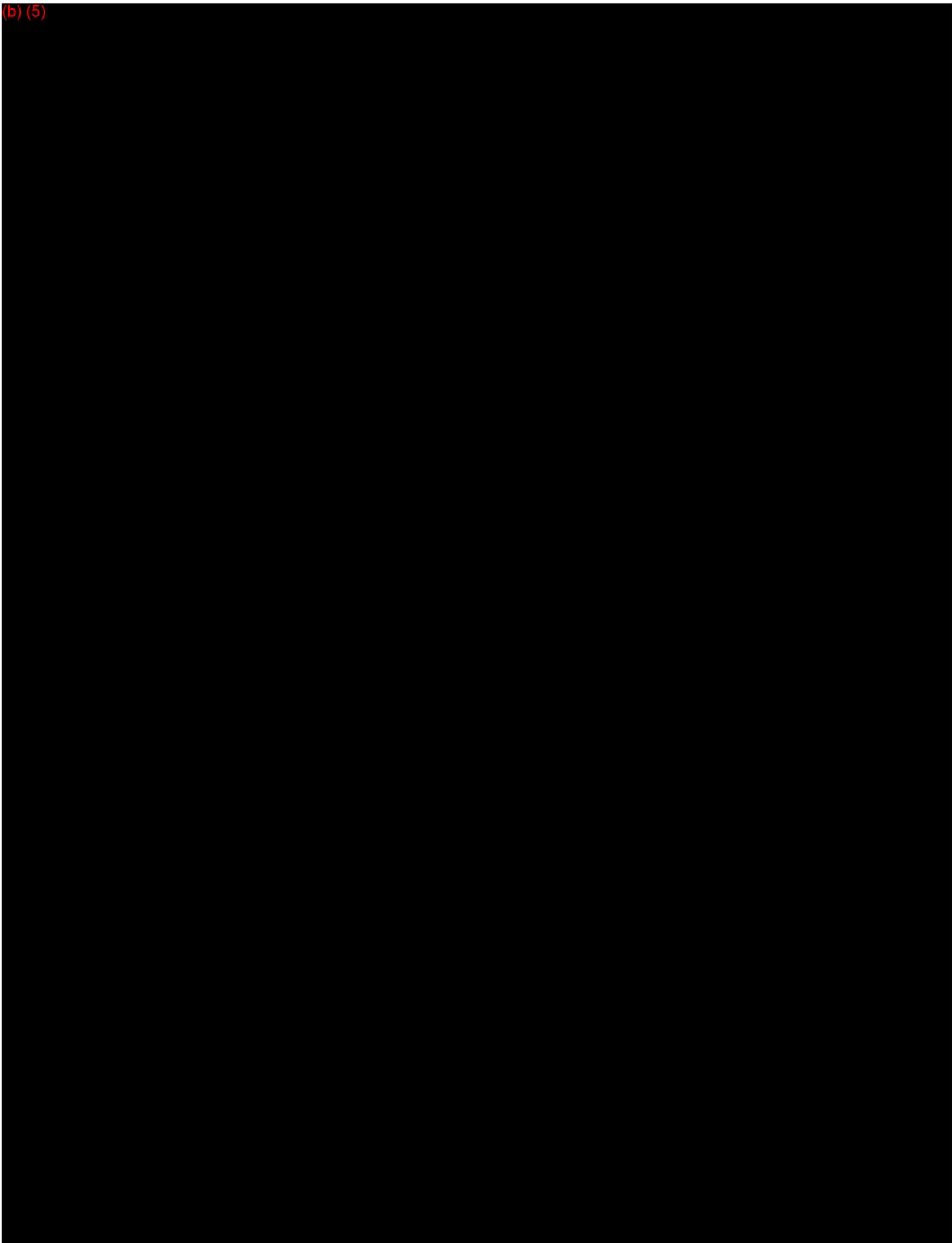


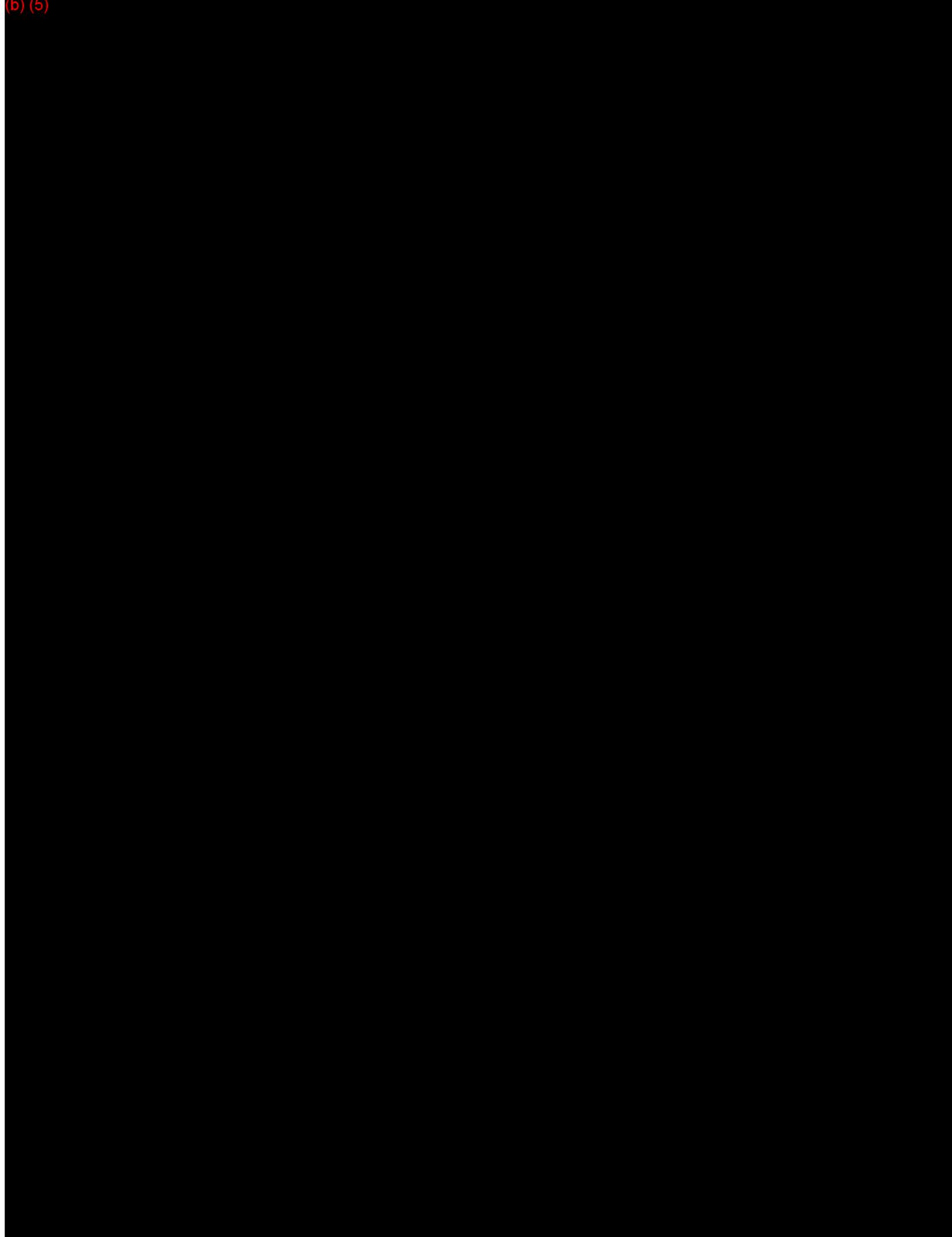


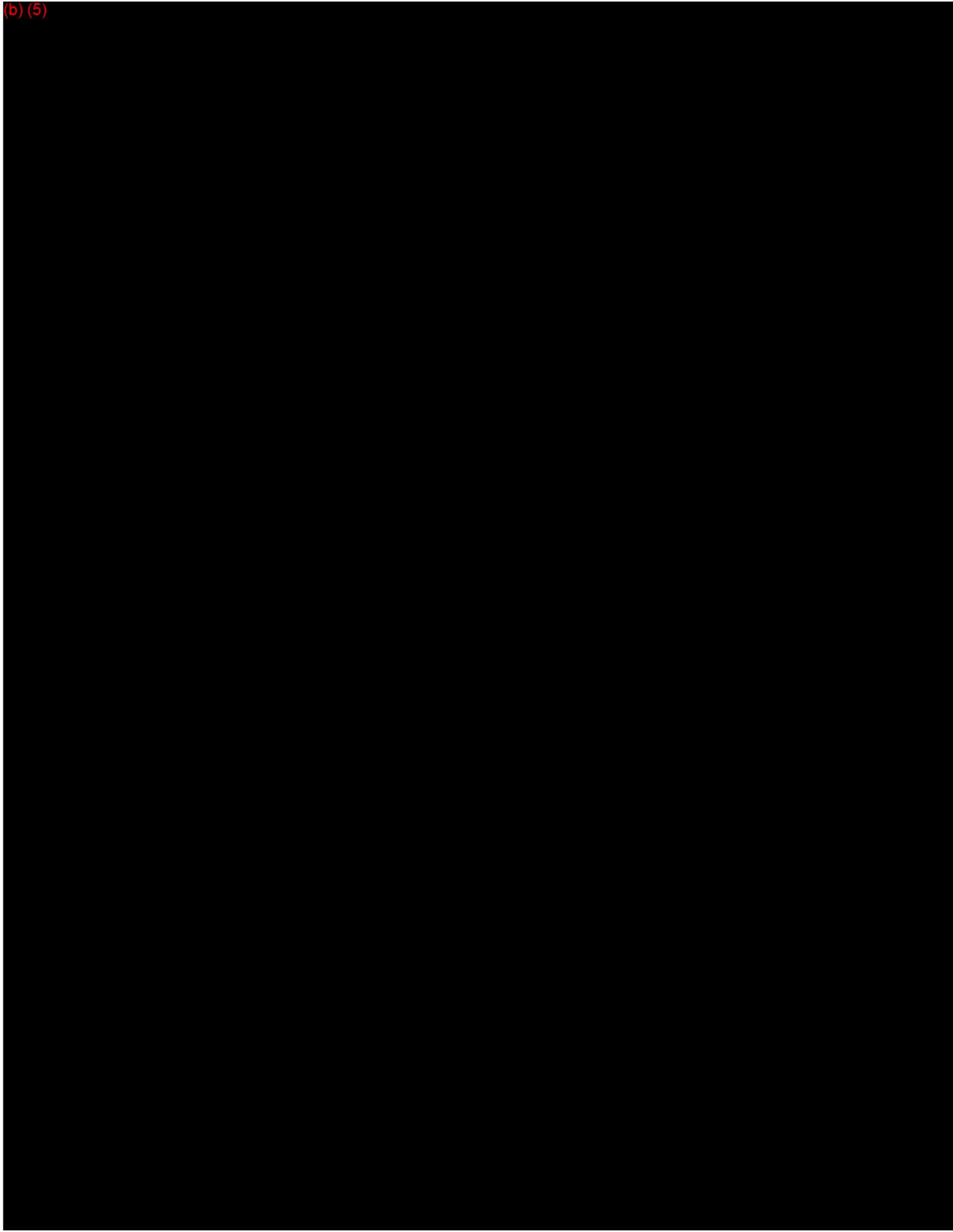


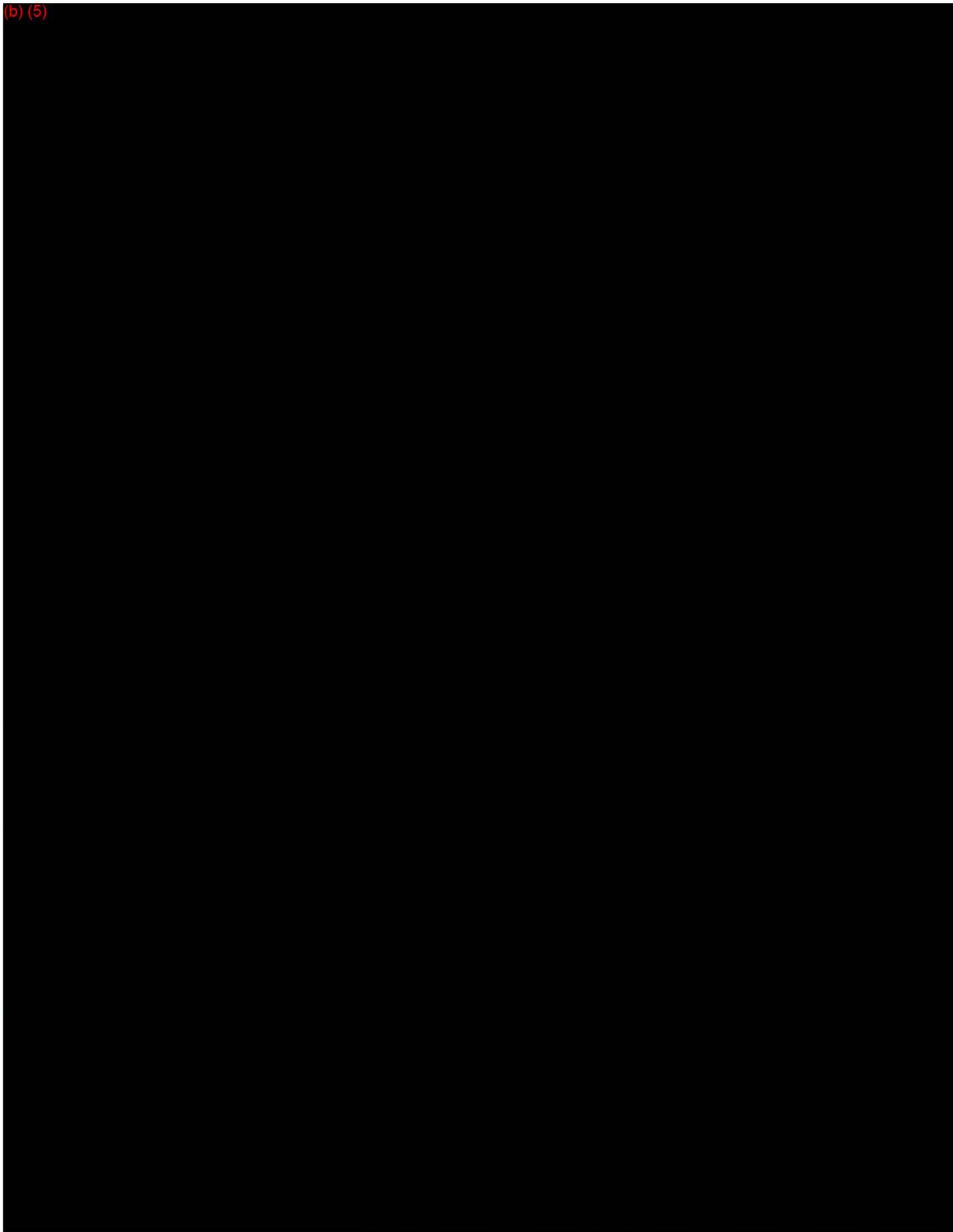


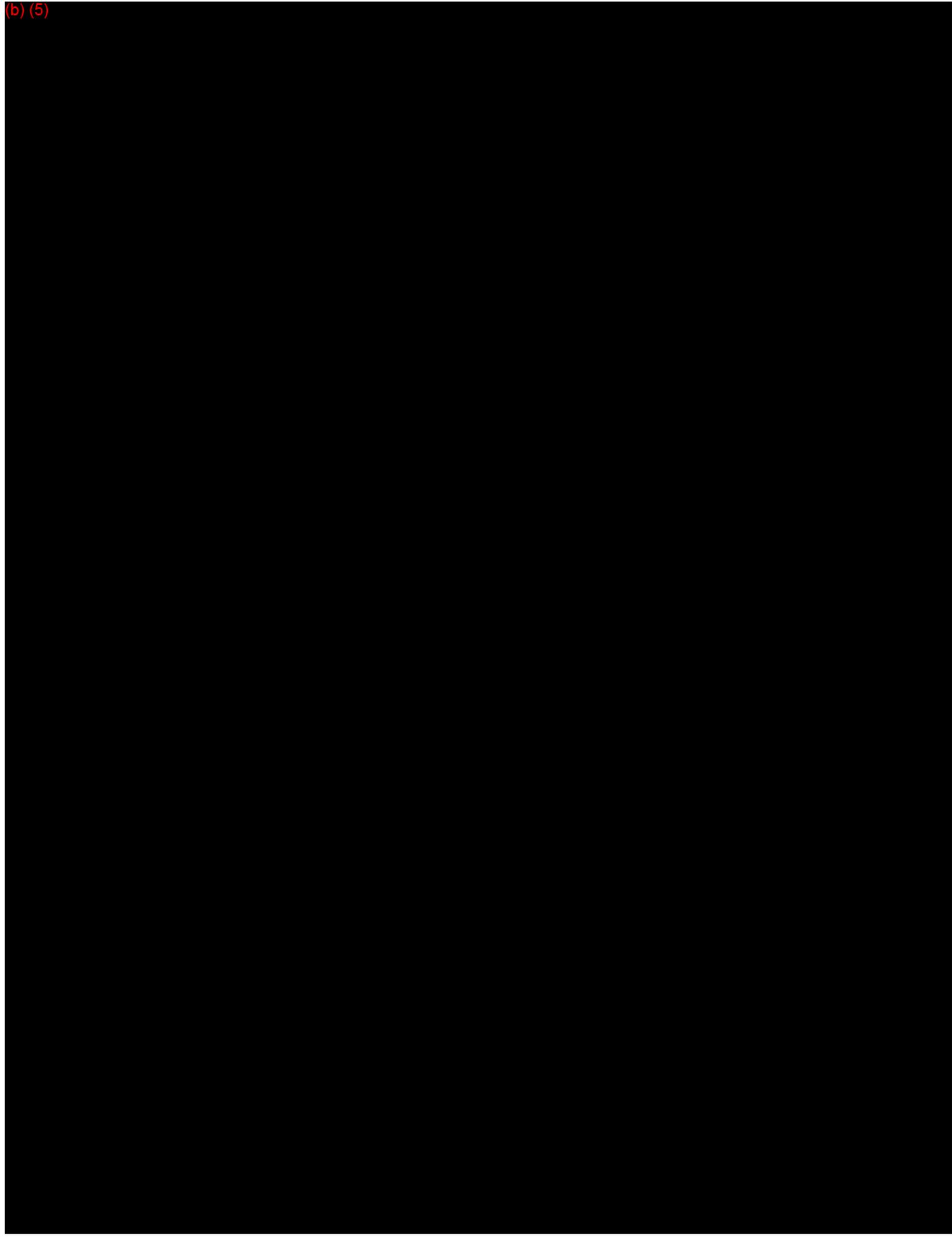


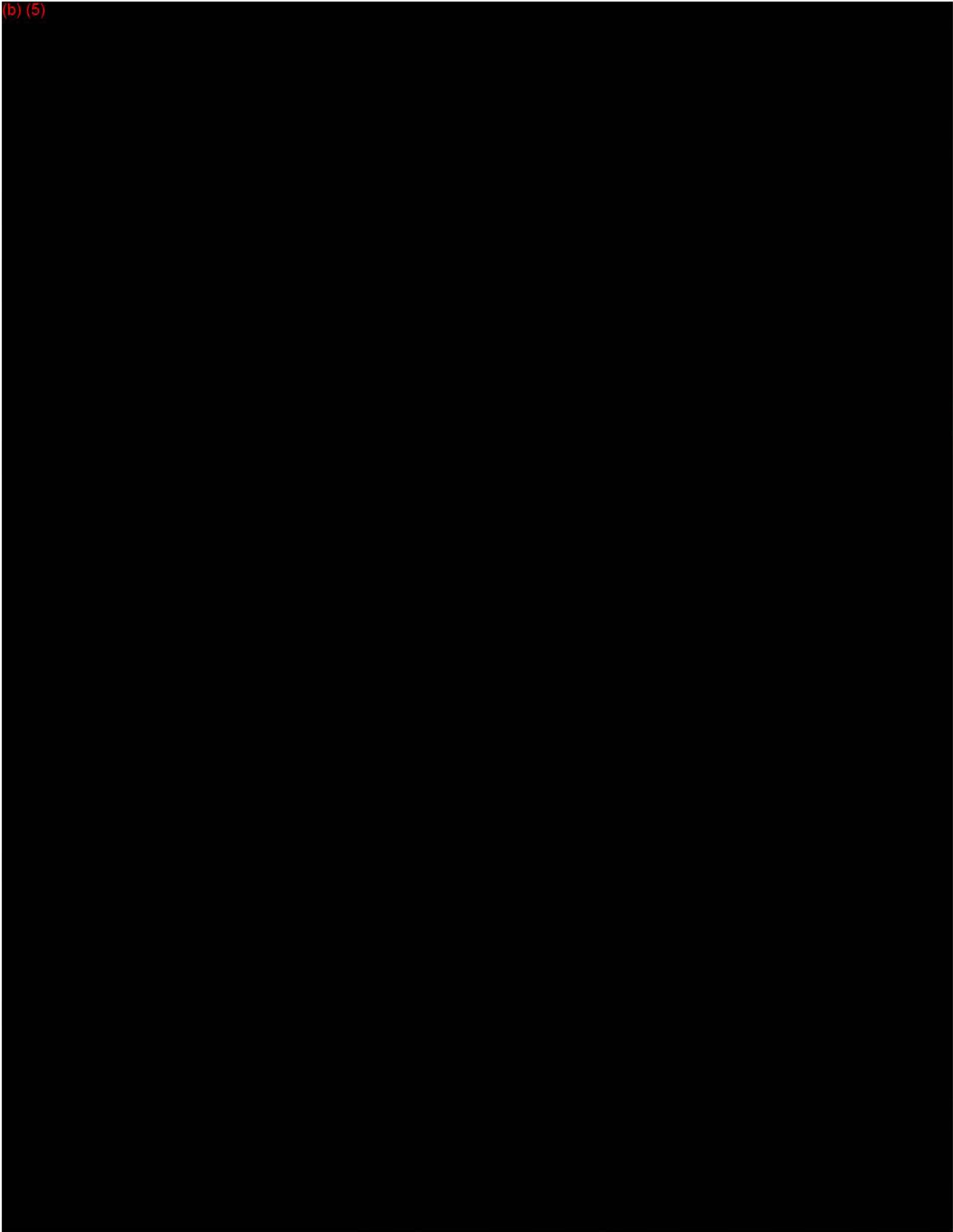


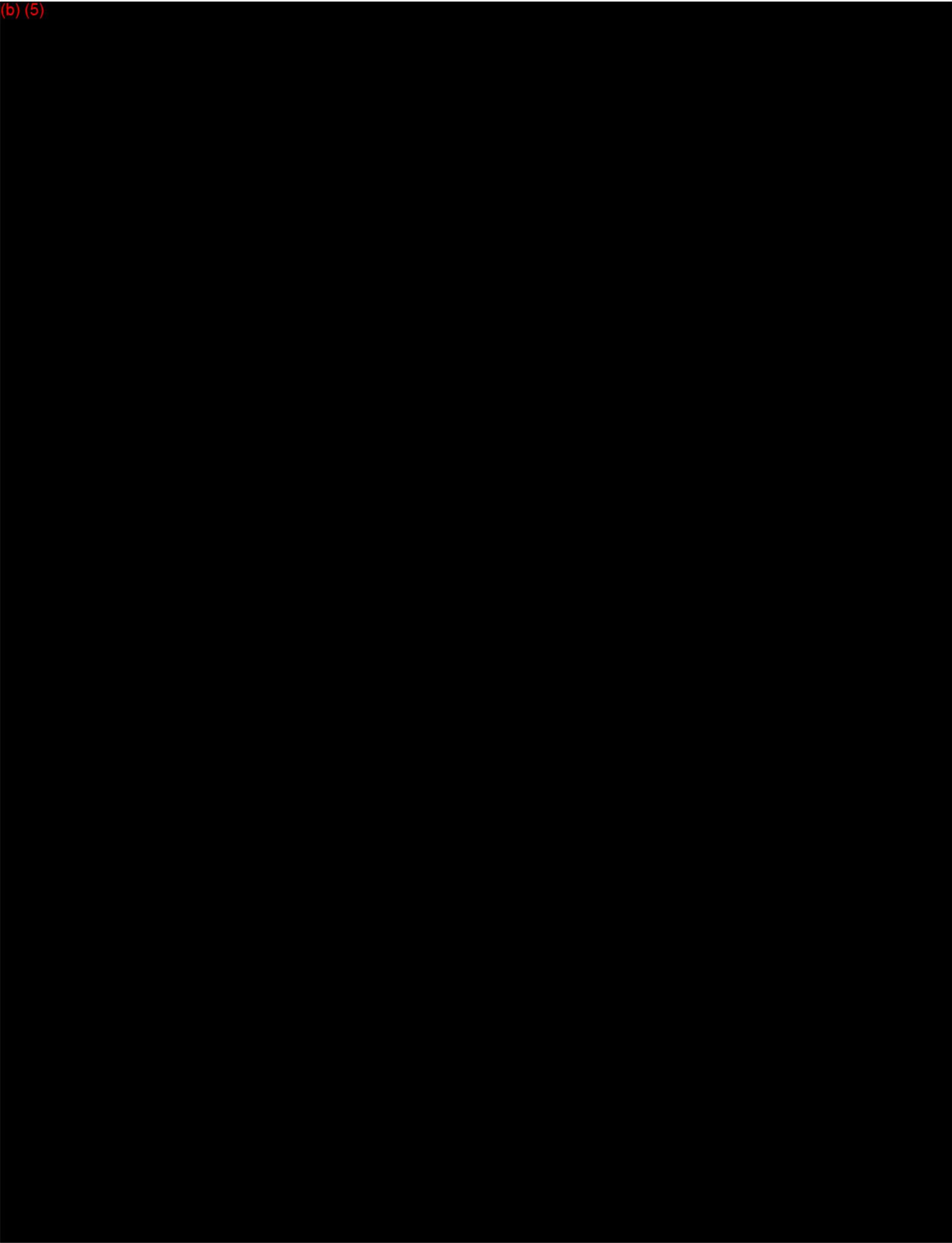


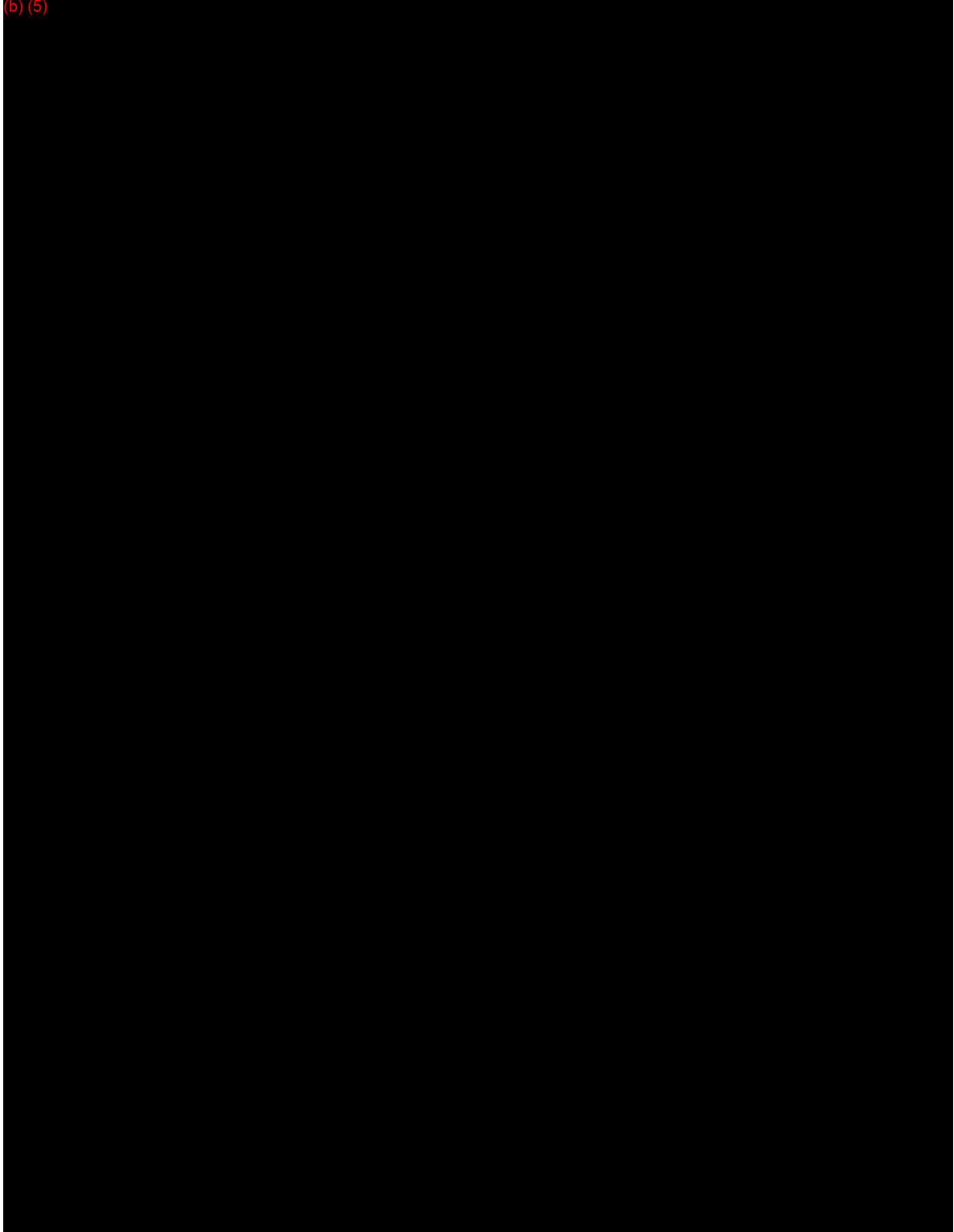


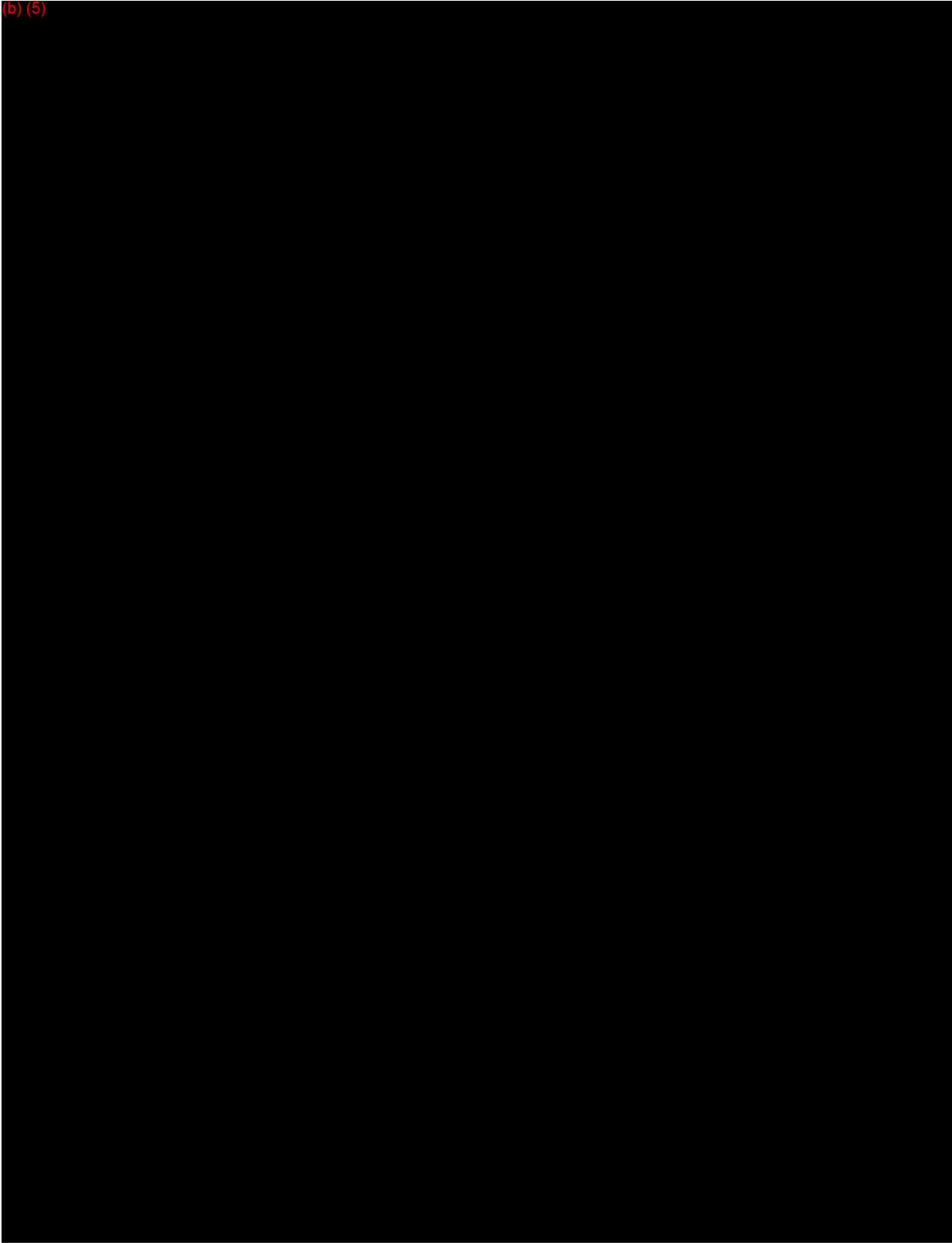


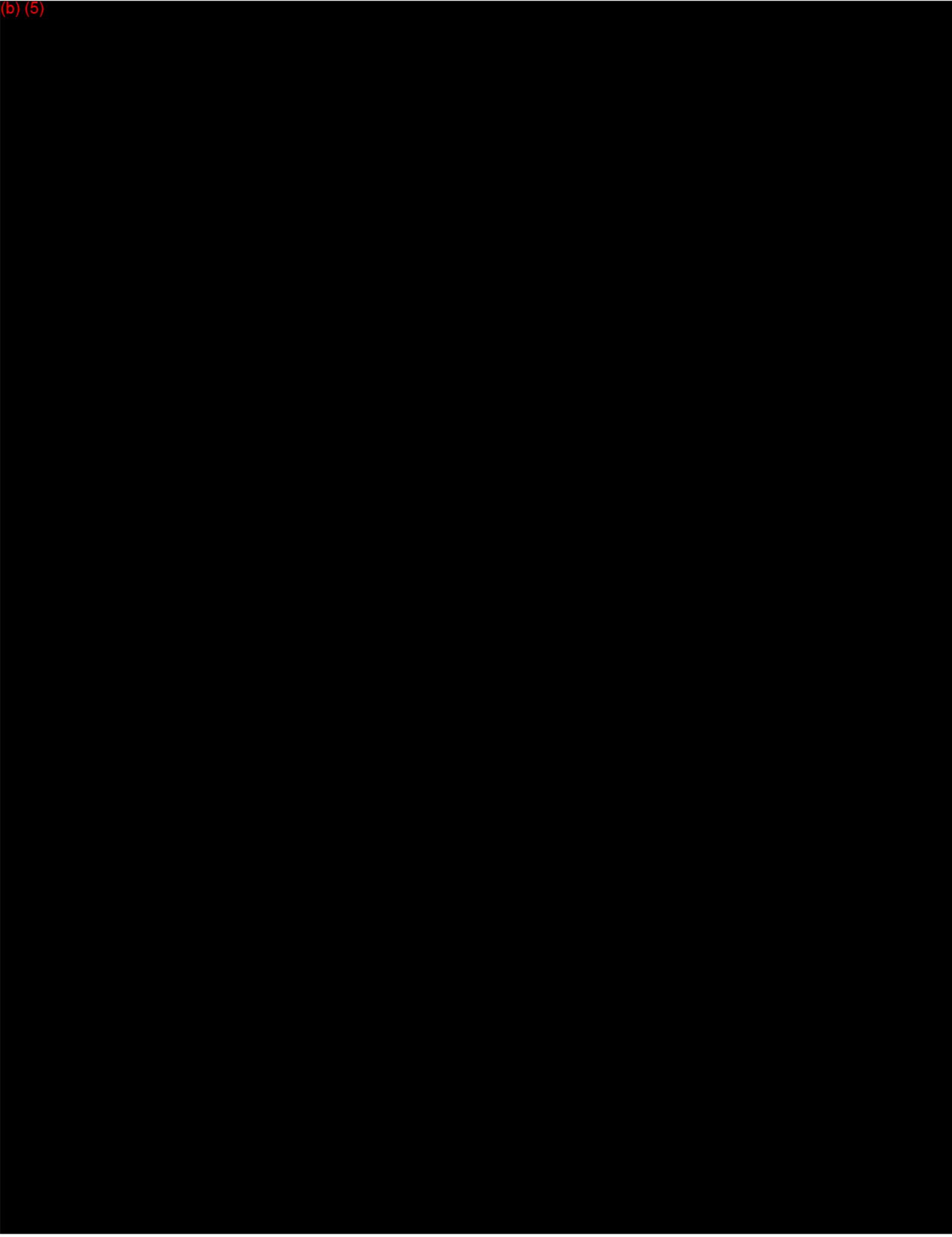


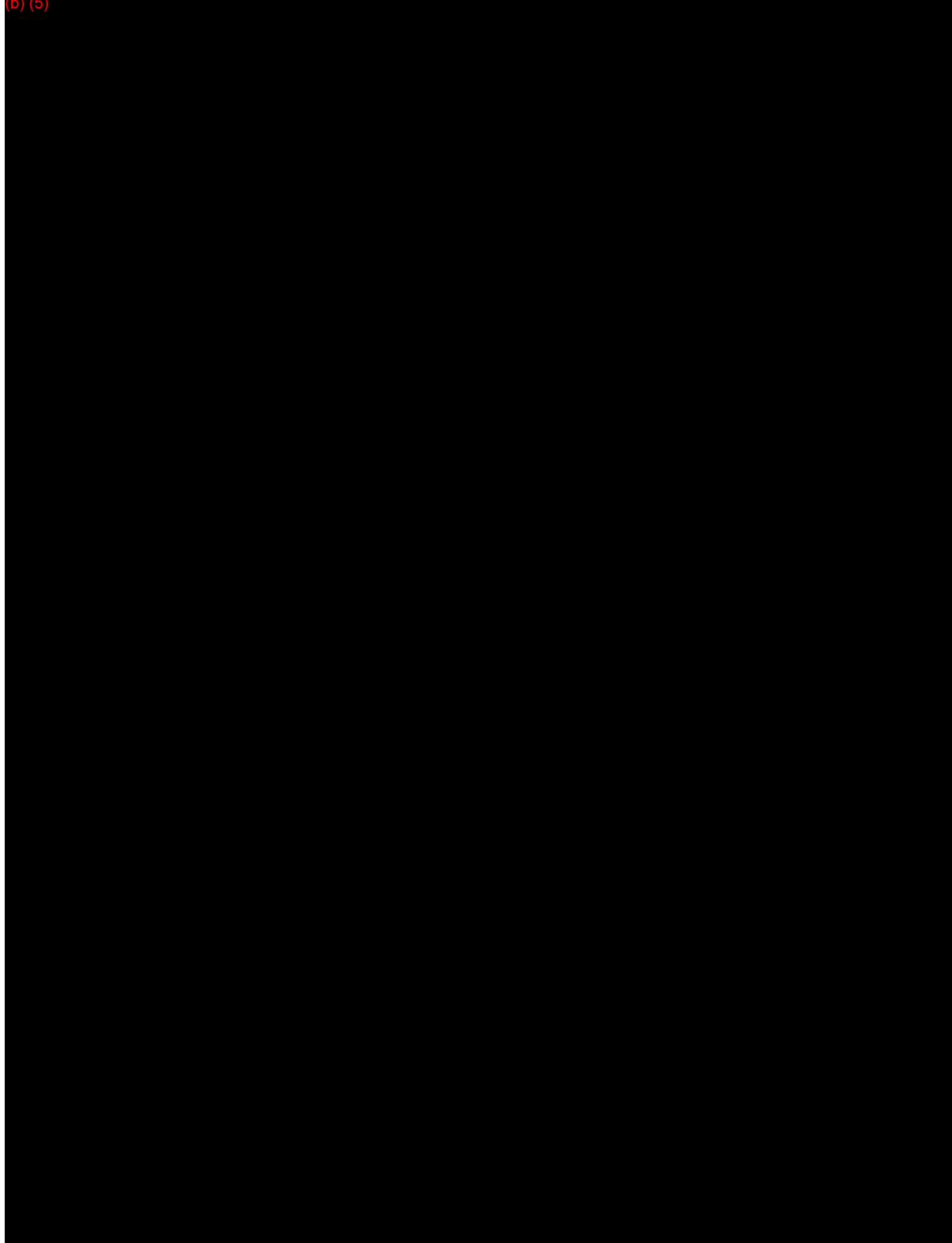


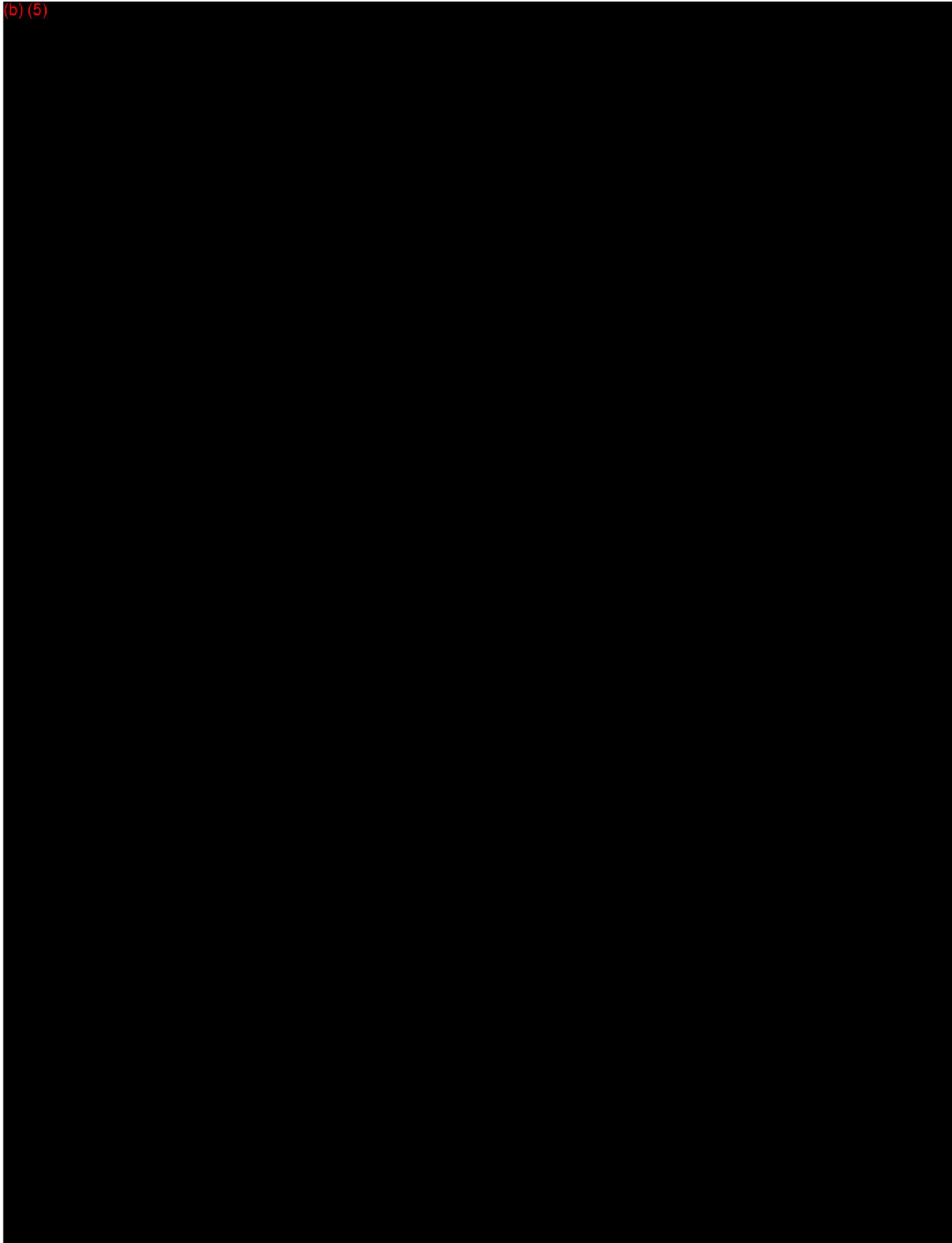


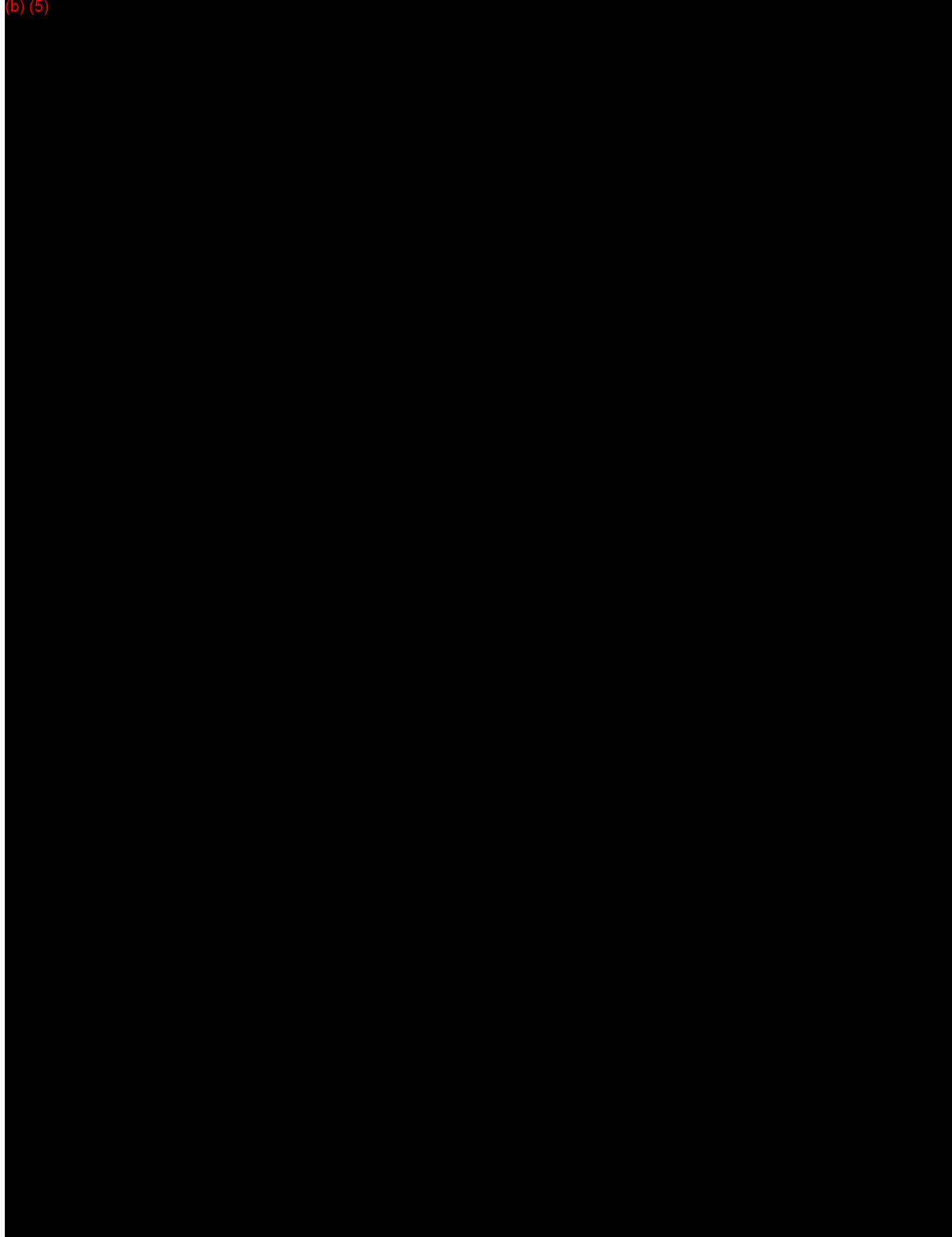












Federal NEPA Contacts Meeting

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 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)

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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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 50th 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

Website: >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

Website: >>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

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

Federal NEPA Contacts Meeting

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)>

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Audio Conference Details:

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Participant Code: (b) (6)

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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**
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- 1:30** **NEPA Timelines and One Federal Decision**
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- 1:45** **EPA Update**
- Rob Tomiak or Kelly Knight, EPA
- 2:00** **13807 Implementation Update**
- CEQ
- 2:10** **Looking Ahead: NEPA 50th Anniversary**
- Ted Boling, CEQ
- 2:20** **Questions / Discussion**

Federal NEPA Contacts Meeting

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)>

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"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

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

As a reminder, I am out for the rest of the week starting at noon tomorrow.

Best,

Michael

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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: 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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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

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Let me know if you have time today to chat.

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Michael Drummond
Deputy Associate Director for NEPA
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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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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)

[REDACTED]

[REDACTED]

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: "Szabo, Aaron L. 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)

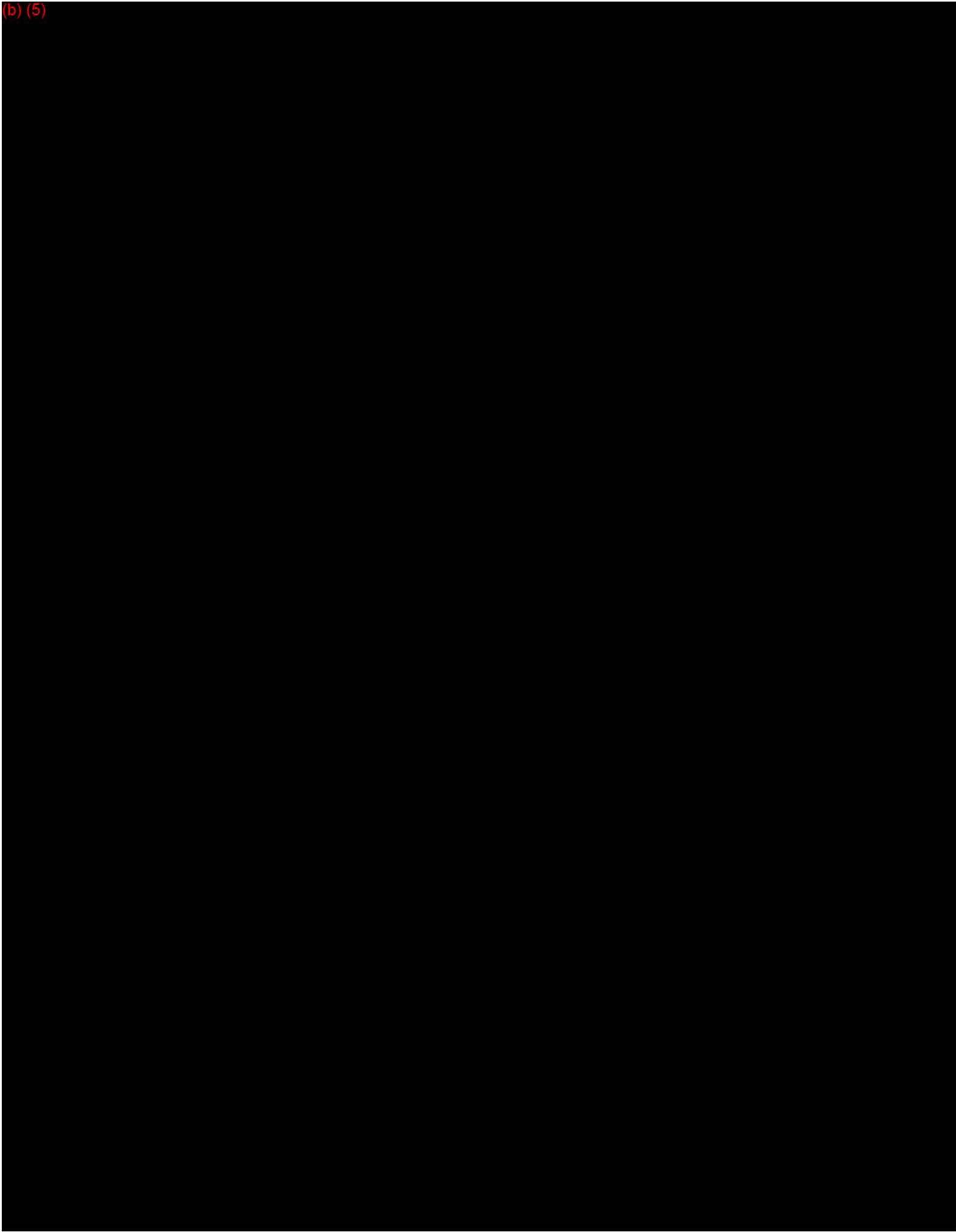
Ted & Michael,

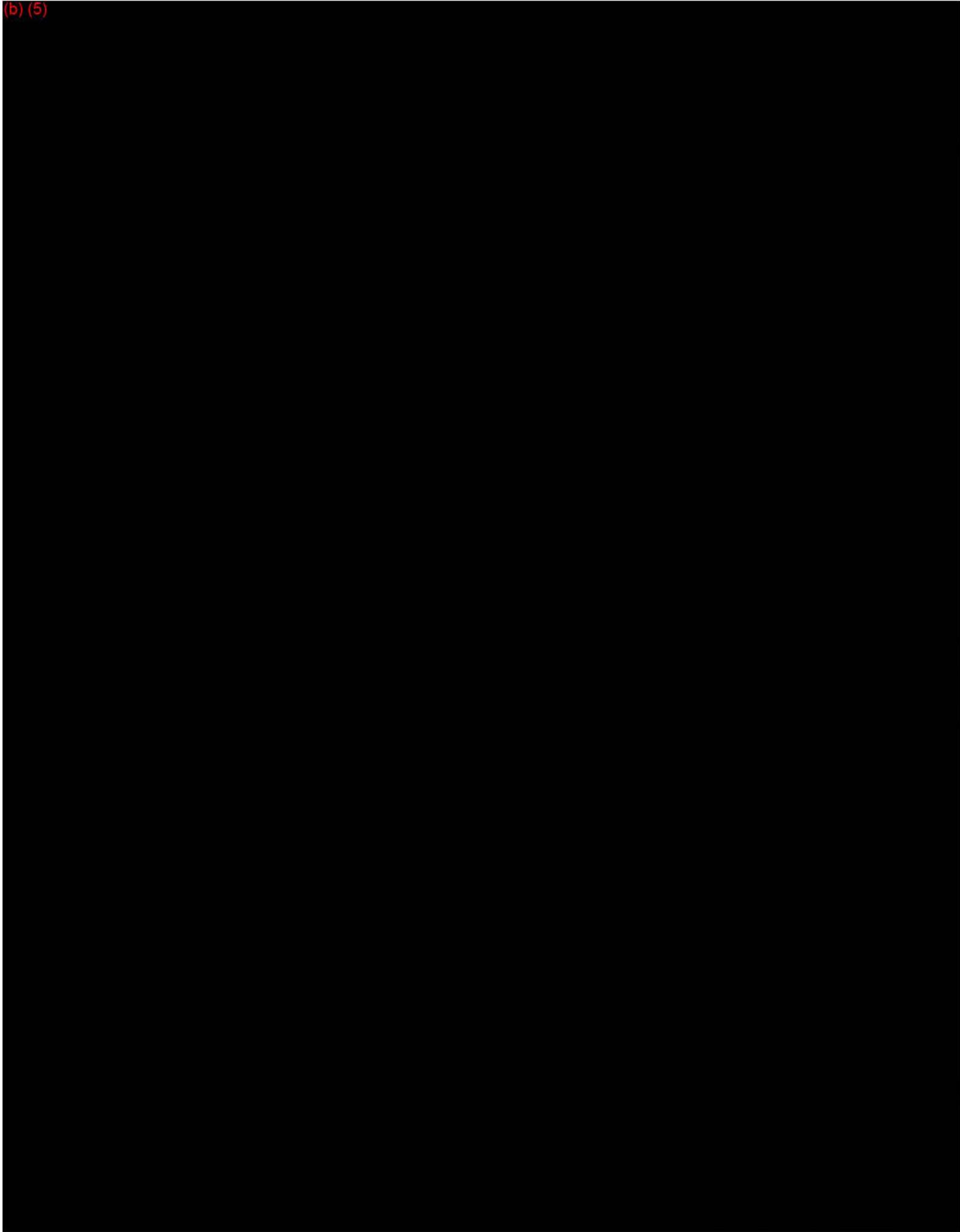
Mary is speaking at the DOI NEPA conference on September 26. She asked me to draft talking points, please see attached for review/edits.

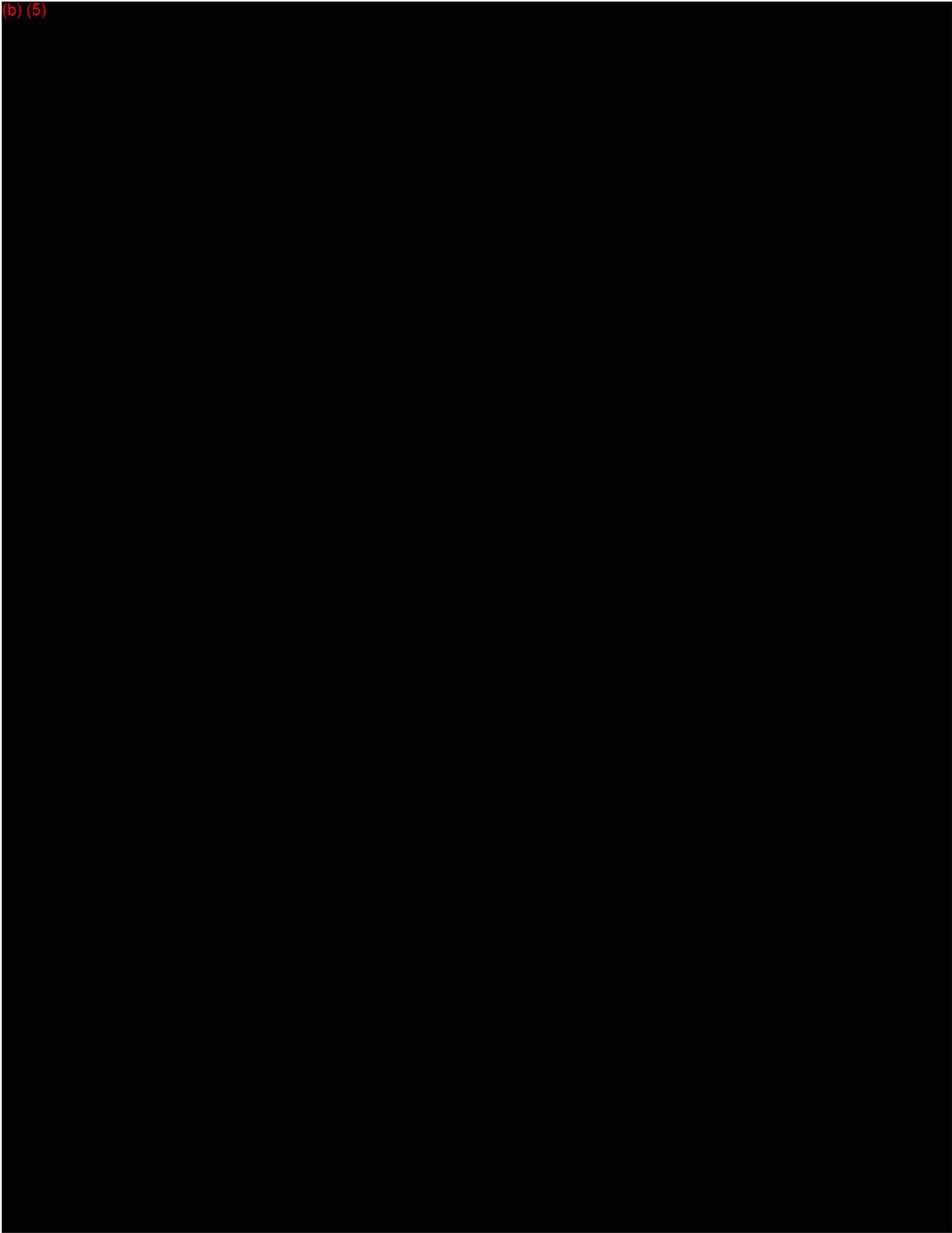
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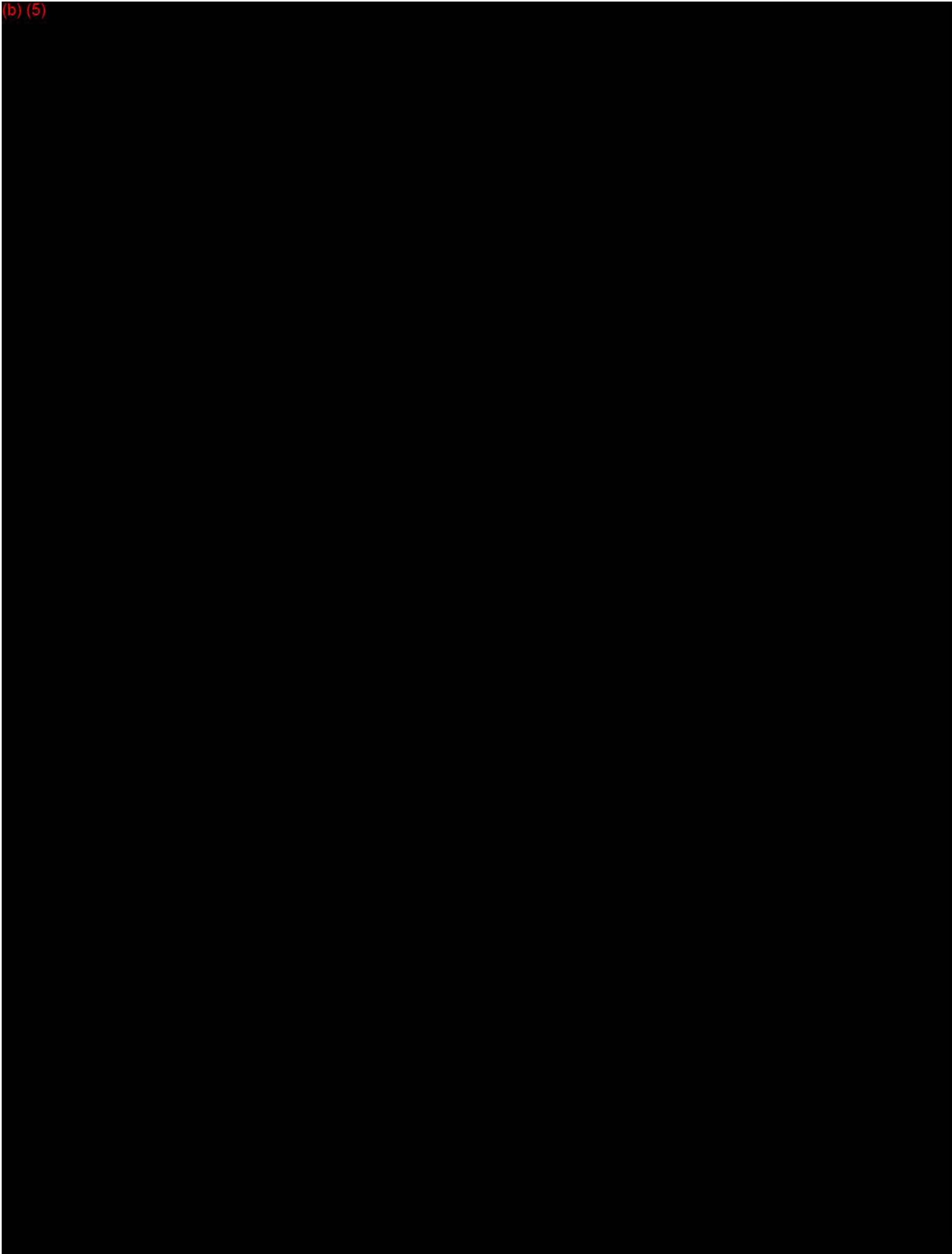
Dan

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

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

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?
- In your view, do agencies have sufficient resources necessary to implement NEPA? Please explain your response.
 - In your view, do agencies have sufficient staff necessary to implement NEPA? Please explain your response.
 - In your view, do agencies have sufficient training necessary to implement NEPA? Please explain your response.
 - 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.
 - 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?
 - 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.¹ 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

¹ 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 documented² 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

² <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.³ 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

³ 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.

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."⁴ Do you agree with these statements, if not, why not?

⁴https://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 2015.⁵ Do you agree with the courts that EPA has an obligation to address CO₂? 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."⁶

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

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

⁶ <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?

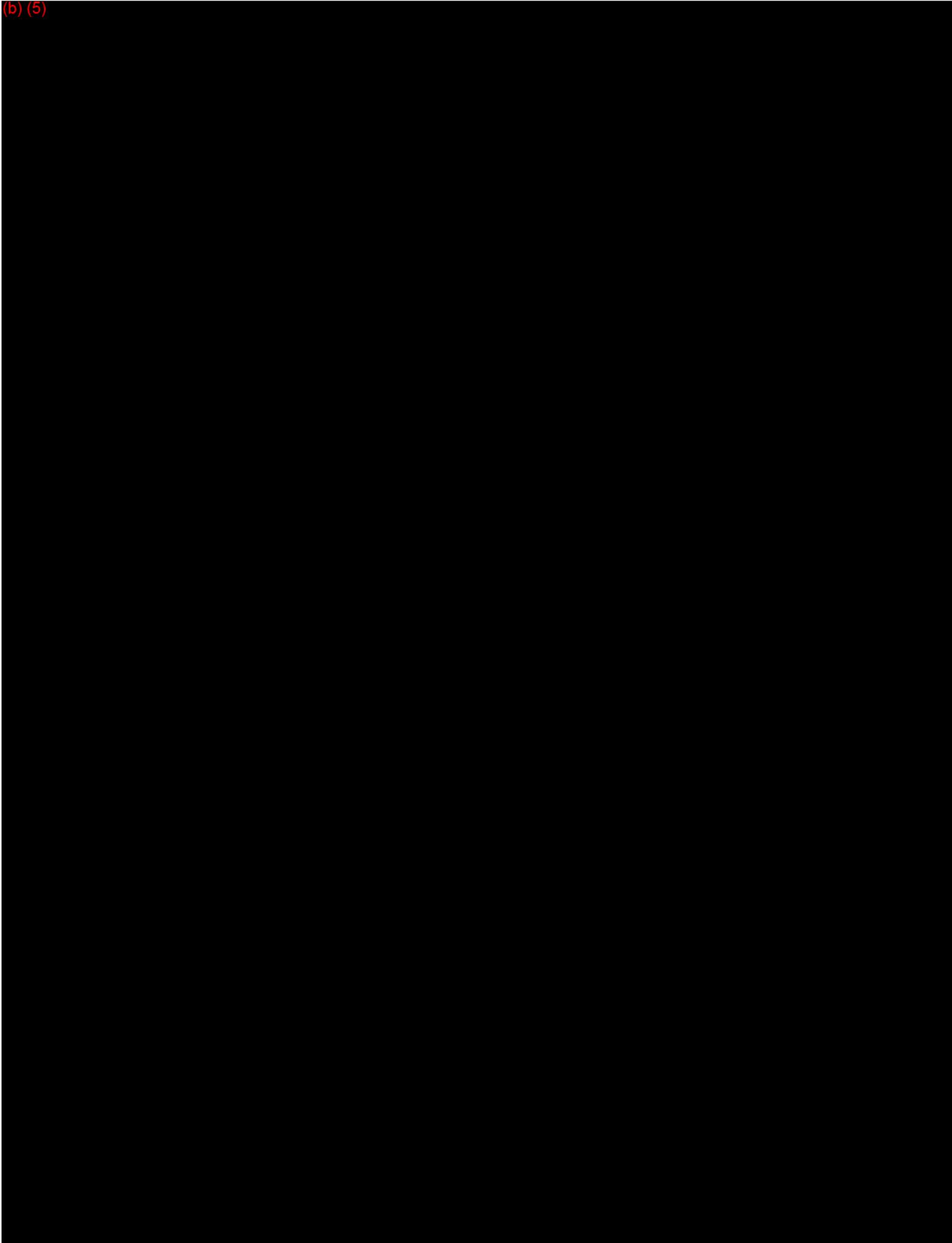
Very Respectfully,
Howard Sun
Attorney Advisor
Council on Environmental Quality
Executive Office of the President
Office: (b) (6)

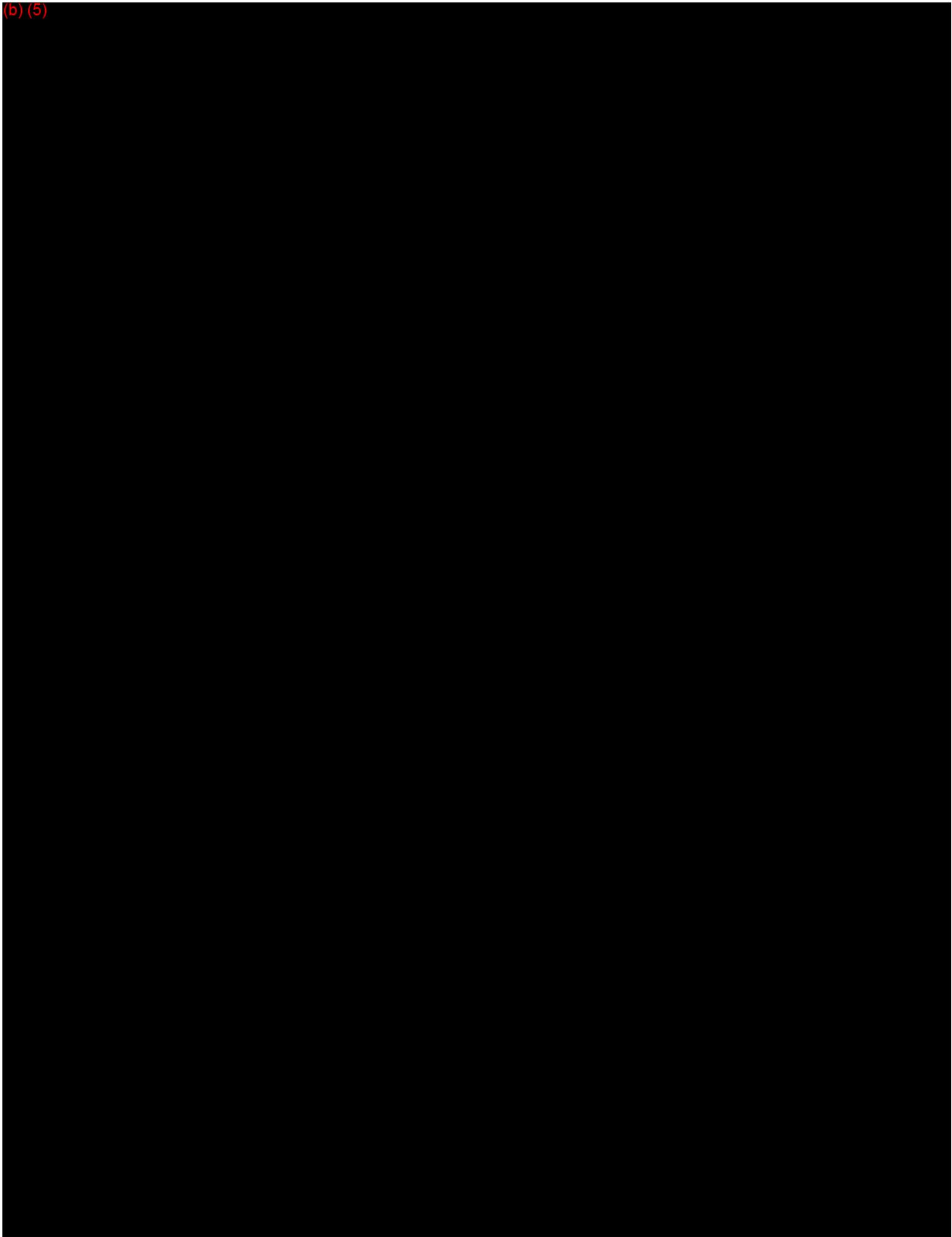
From: Reid, Chipp (OFR) <creid@gpo.gov>
Sent: Friday, June 15, 2018 3:39 PM
To: Sun, Howard C. EOP/CEQ <(b) (6)>
Subject: FR 2018-13246_1644312 (2).docx

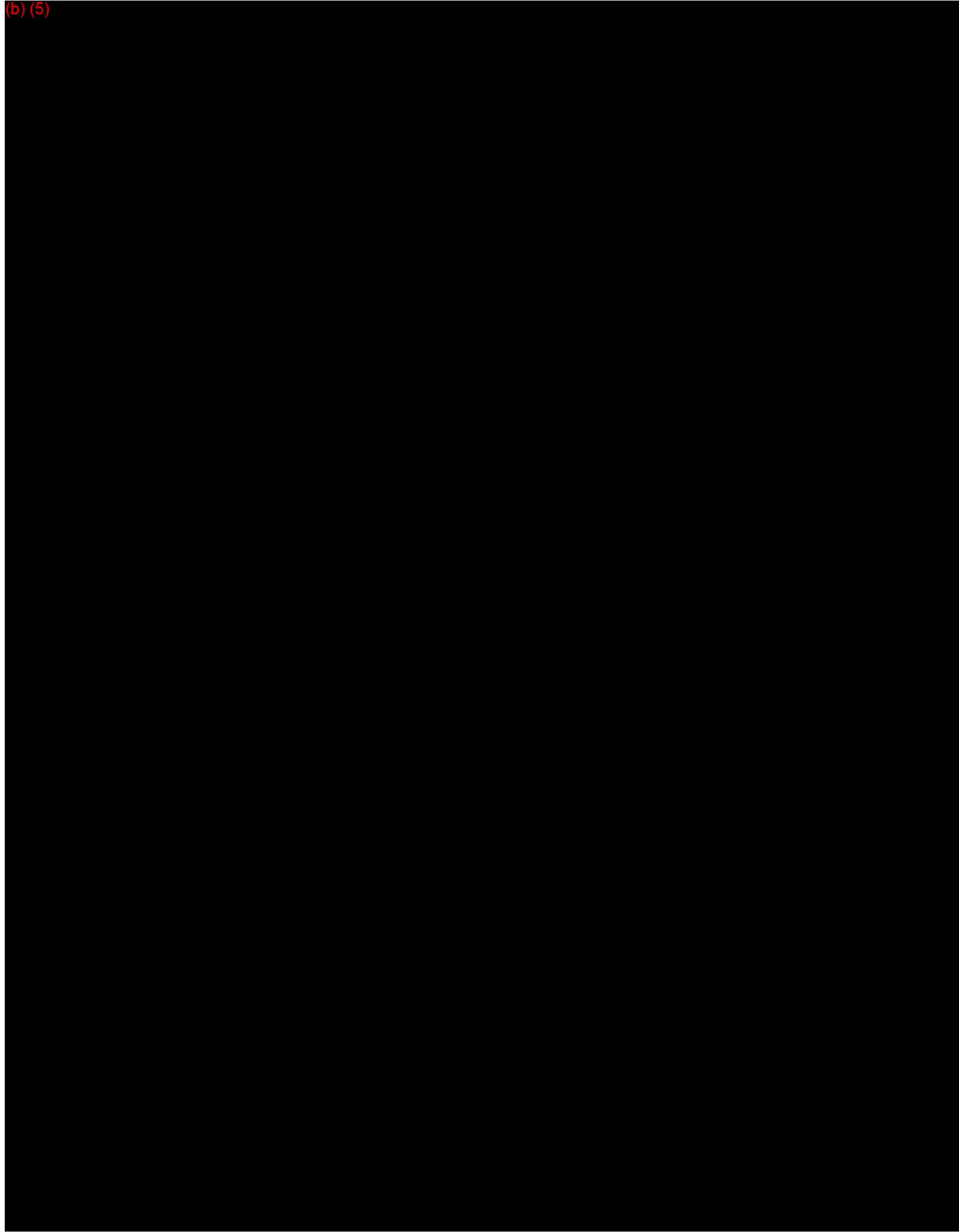
Howard

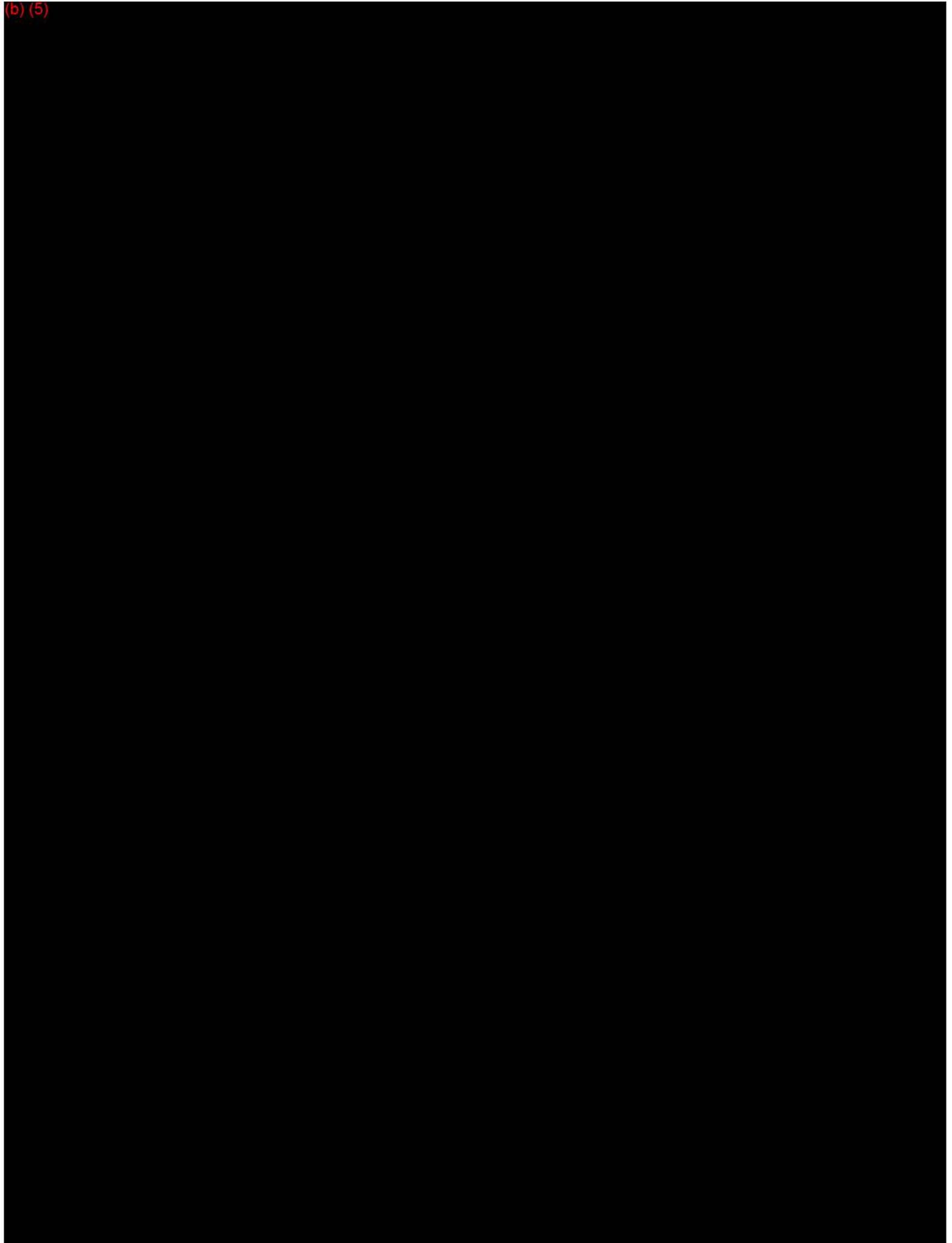
Attached is the new markup. If all looks good, please shoot me an email to that effect and I will schedule.

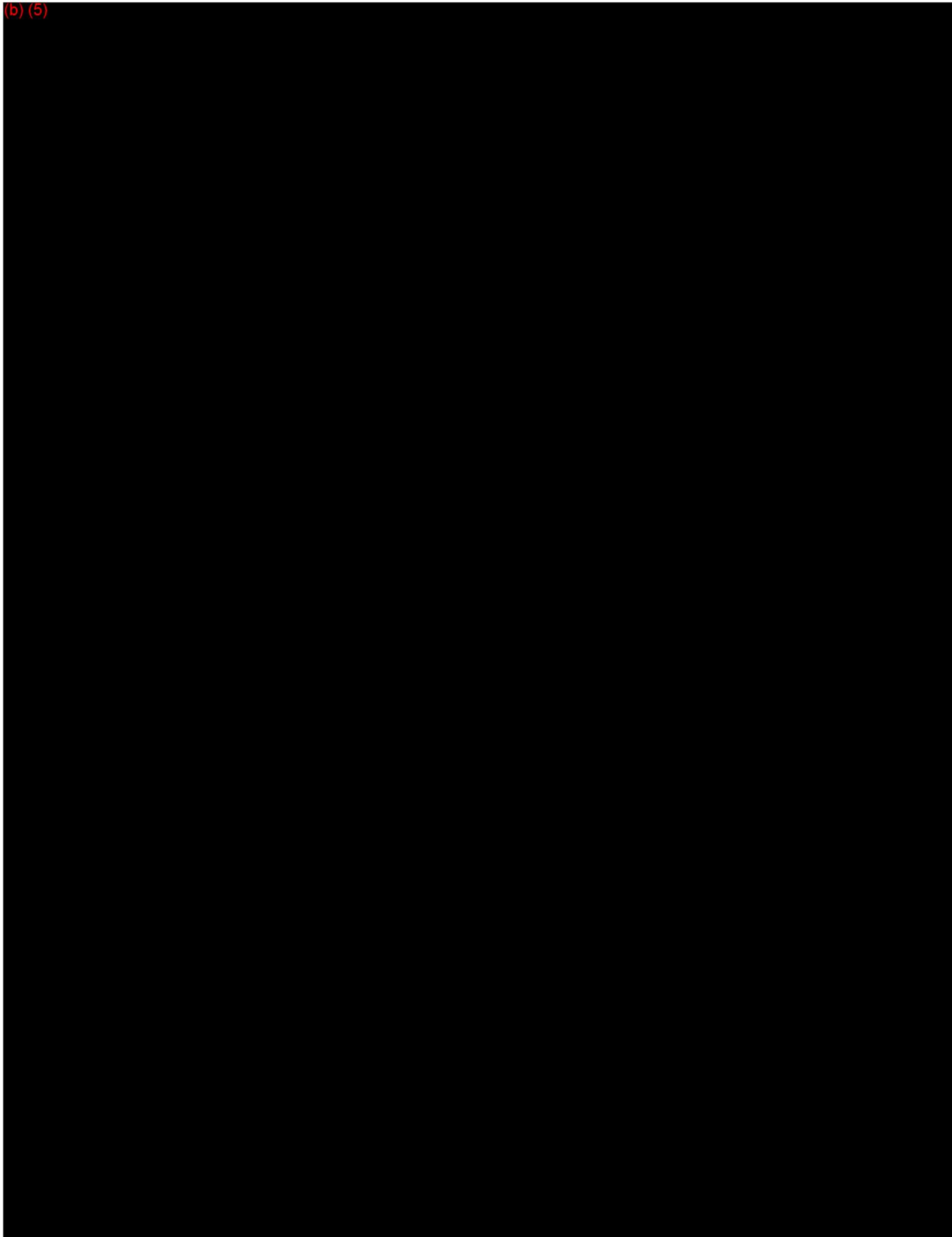
Chipp Reid
Writer/Editor
Office of the Federal Register
creid@gpo.gov
chipp.reid@nara.gov
202-741-6007

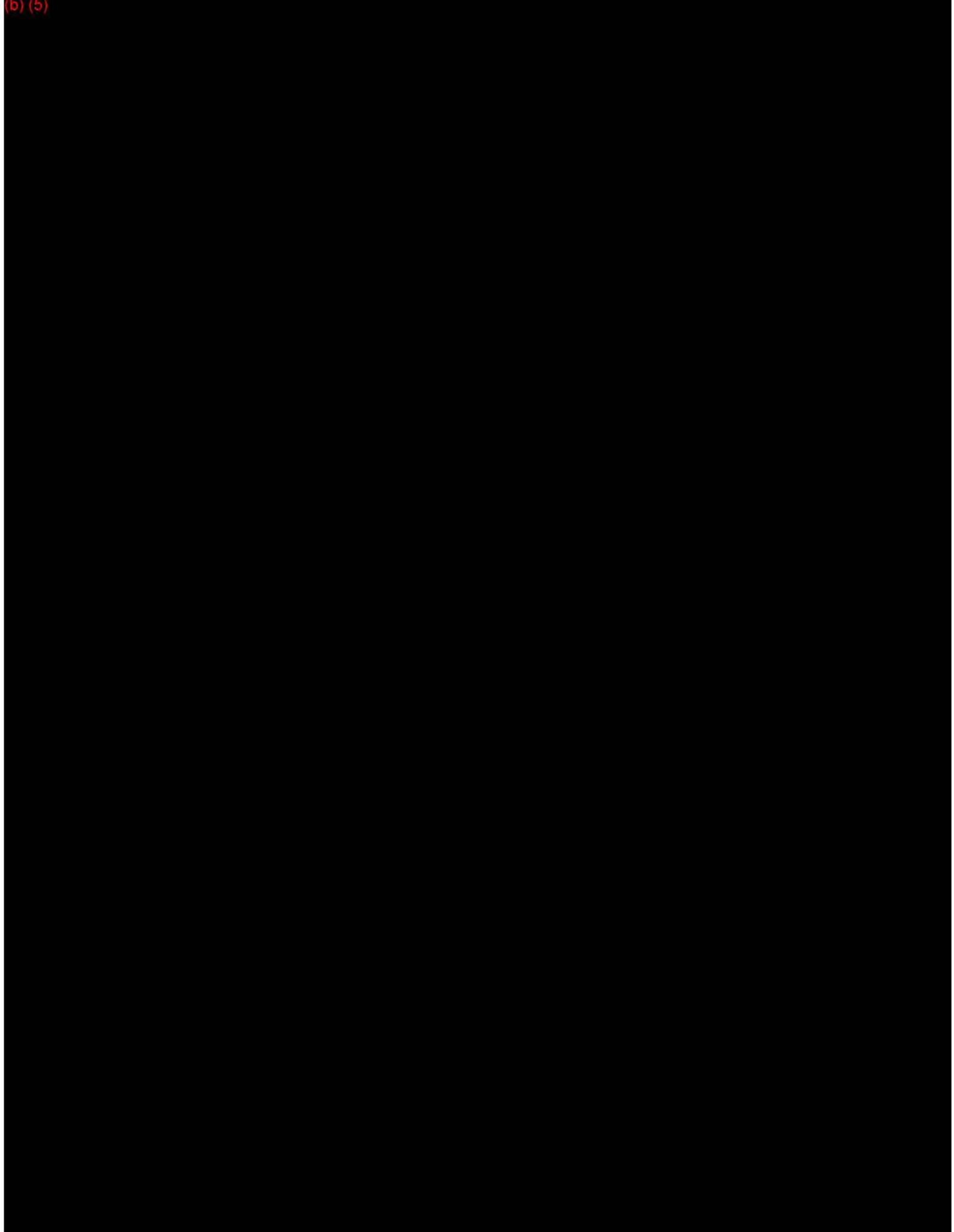


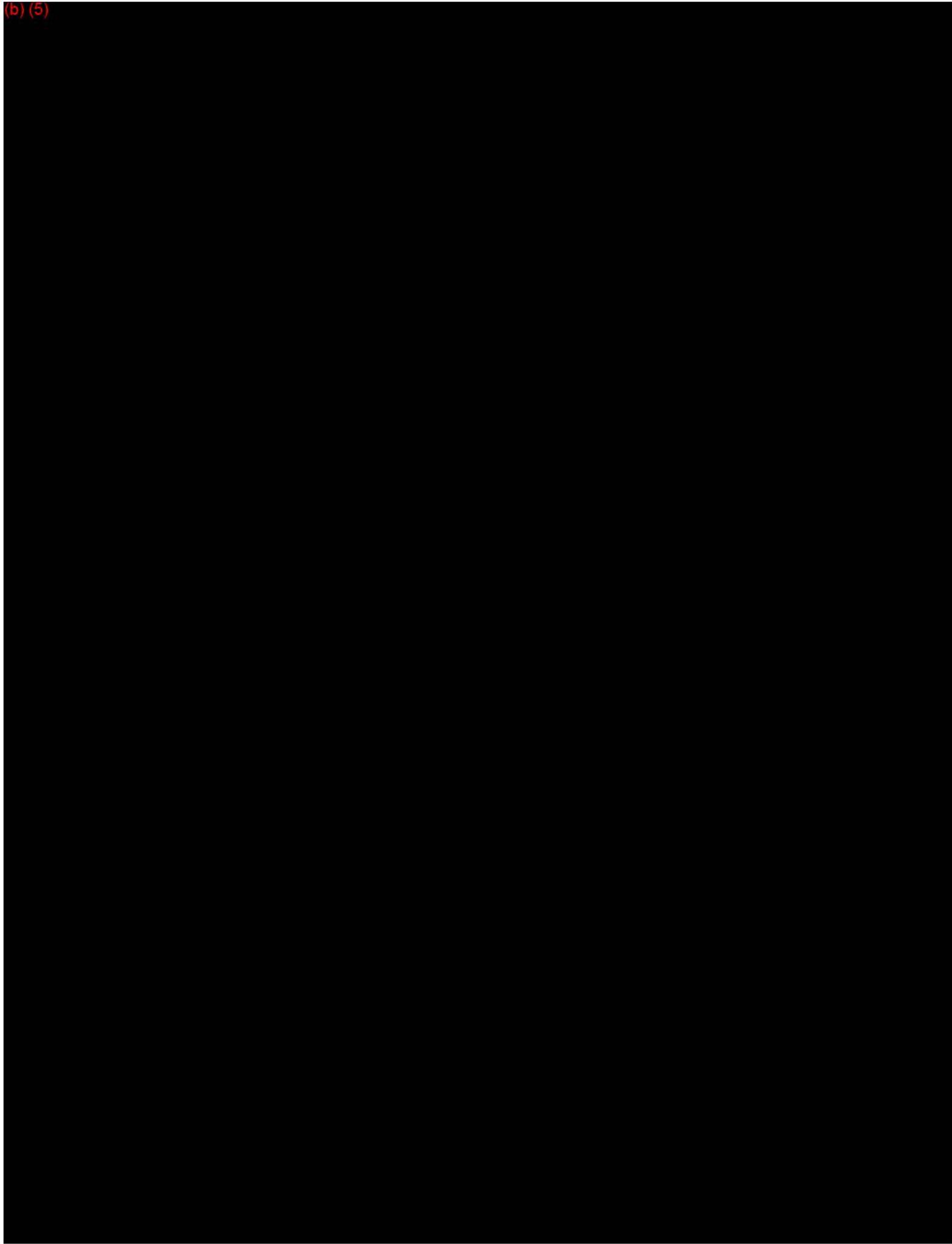












Edits to proposed rule on NEPA review

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)

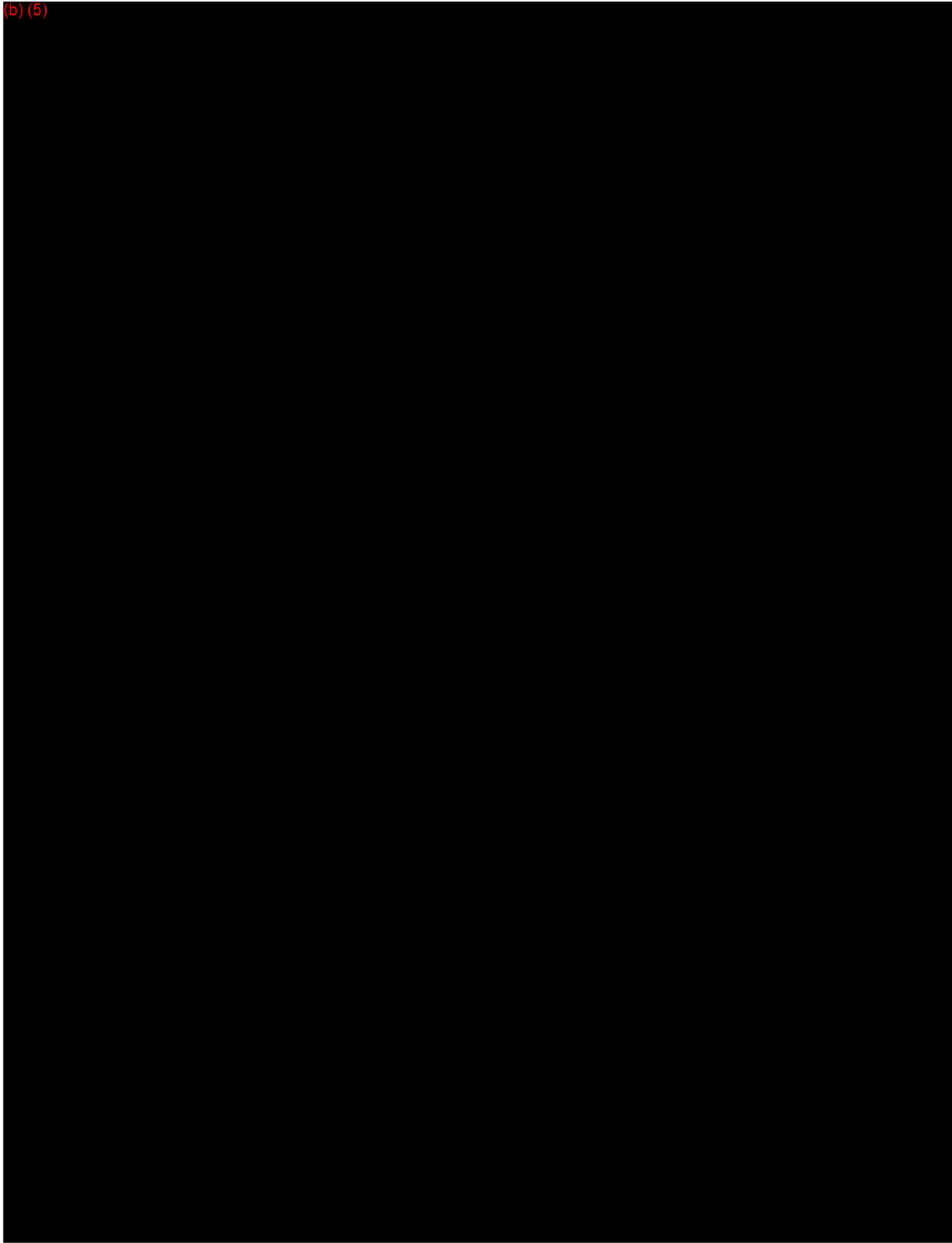
Please see the Document Drafting Handbook, page 2-15, which states:

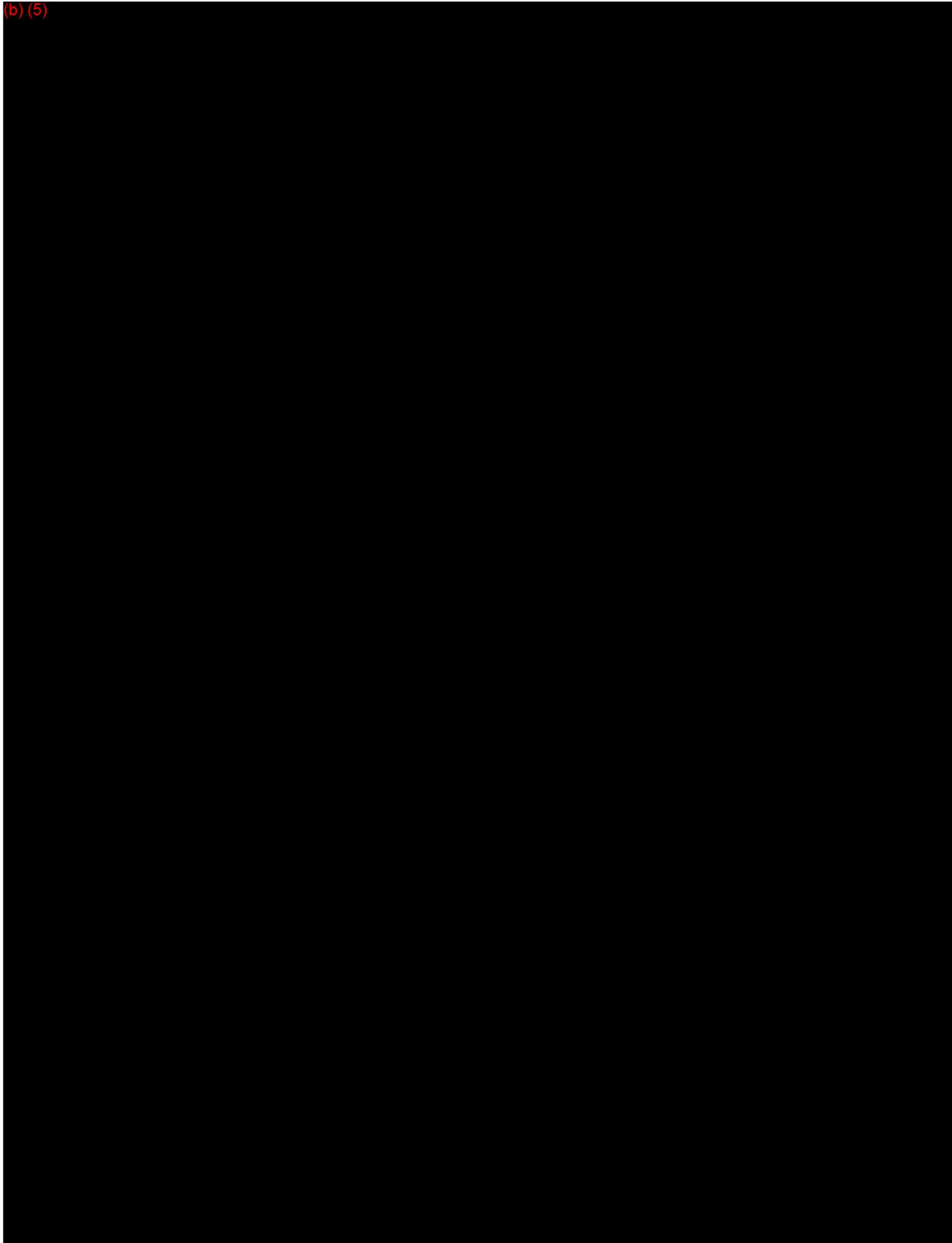
2.6 When can I use direct quotes? The OFR does not allow lengthy or excessive quotation from Federal regulations or Federal law. This includes text from regulatory documents published in the Federal Register. However, if your agency has a compelling legal reason to extensively quote this type of material,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

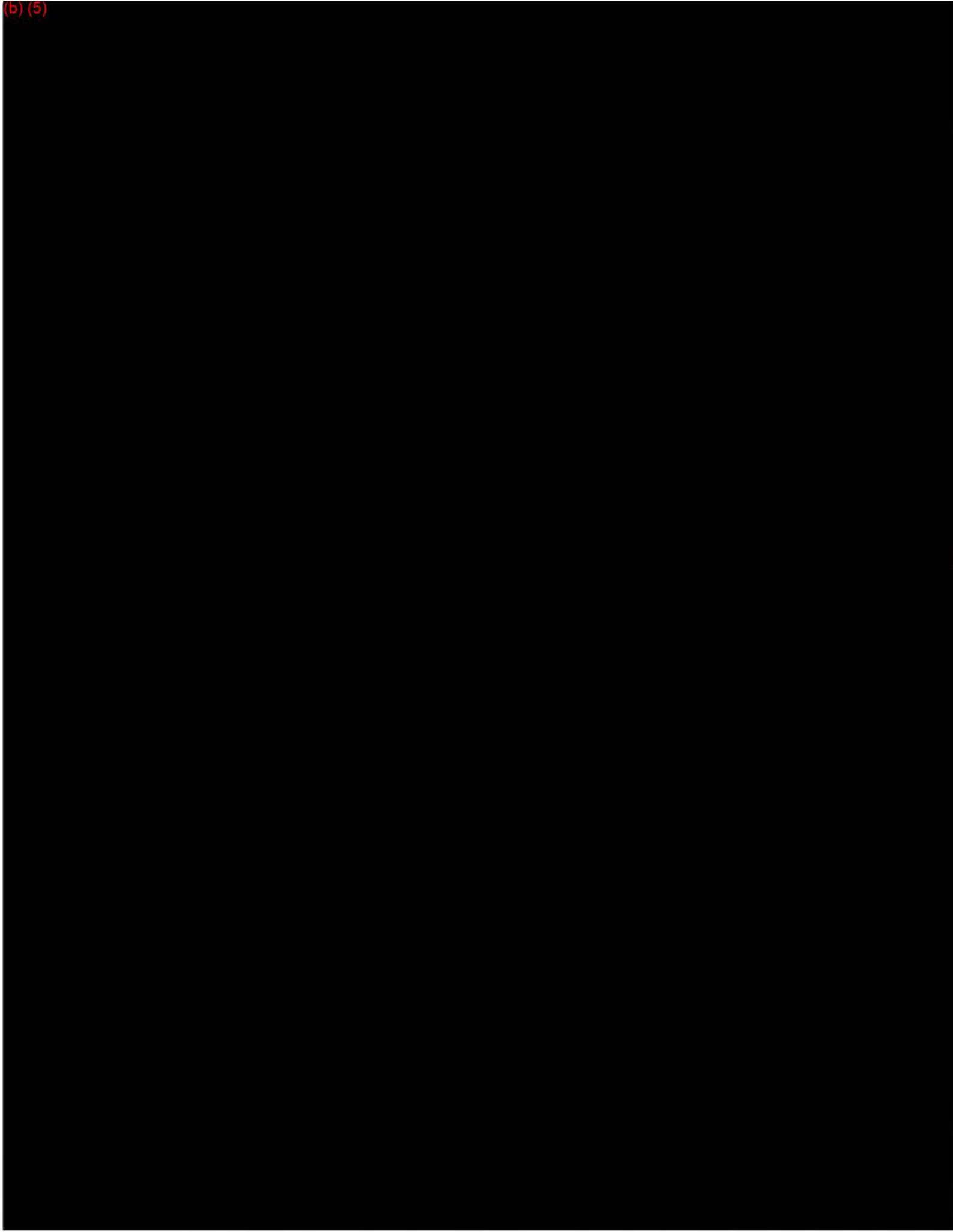
(b) (5)

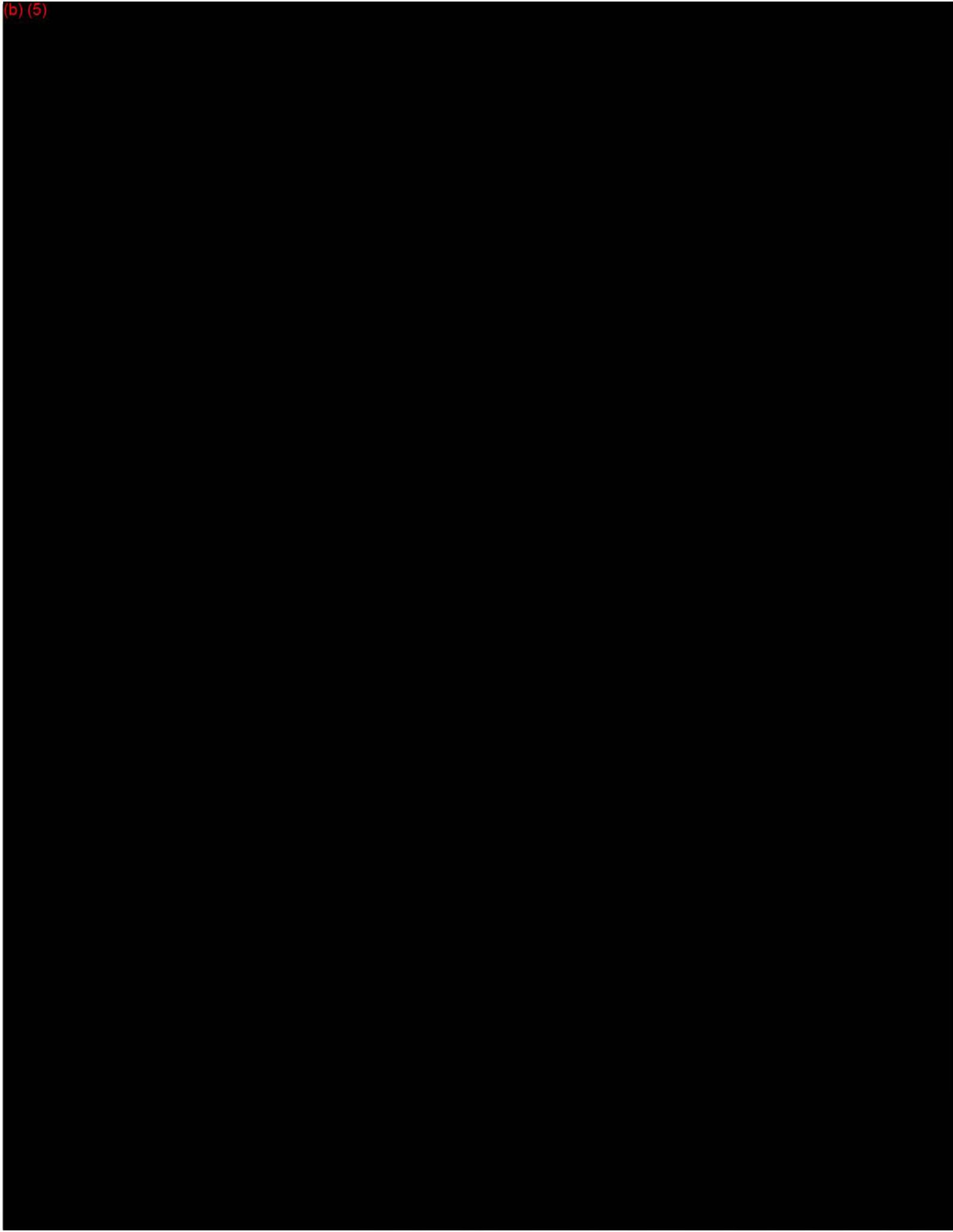
Please let me know if you have any questions.

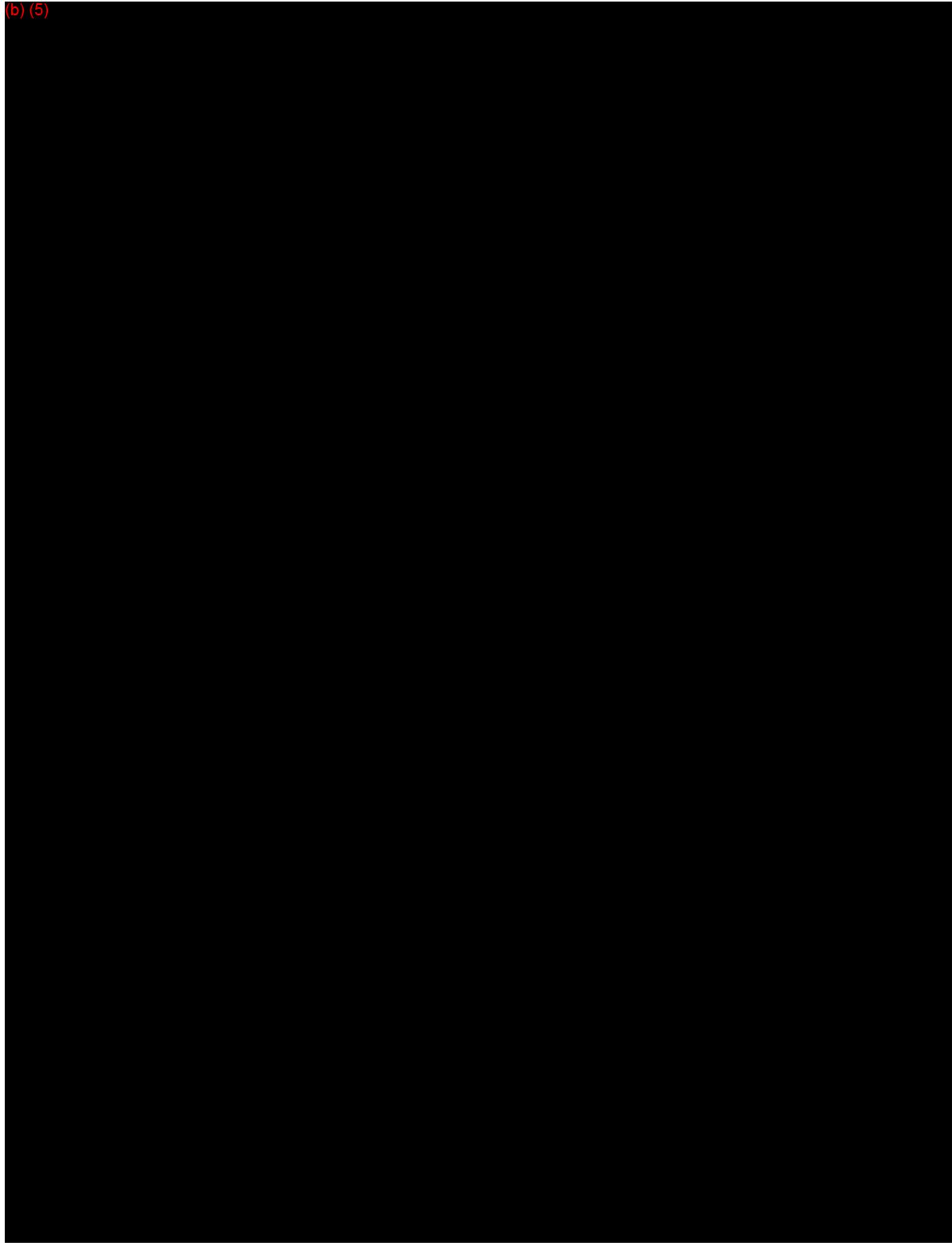
Chipp Reid
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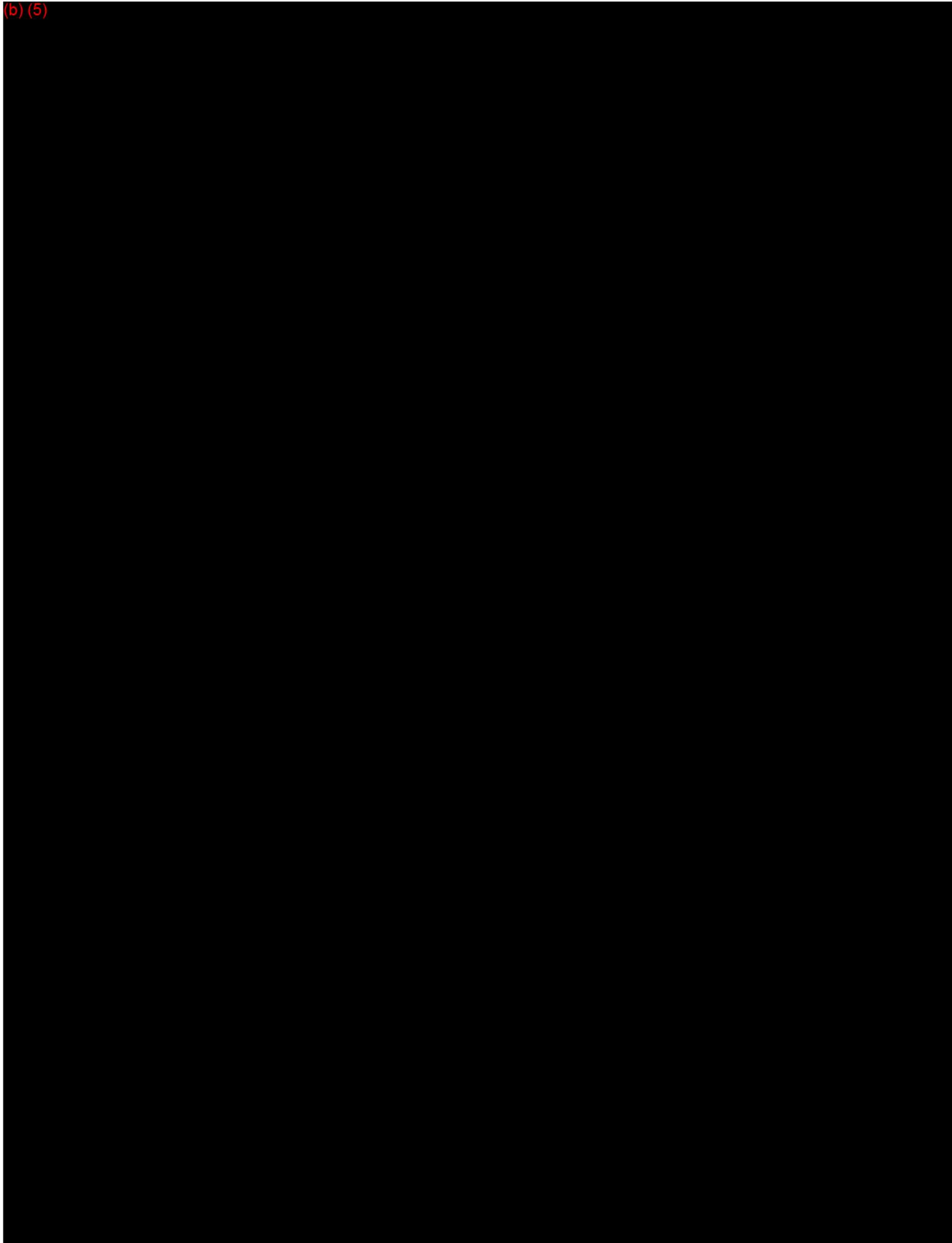


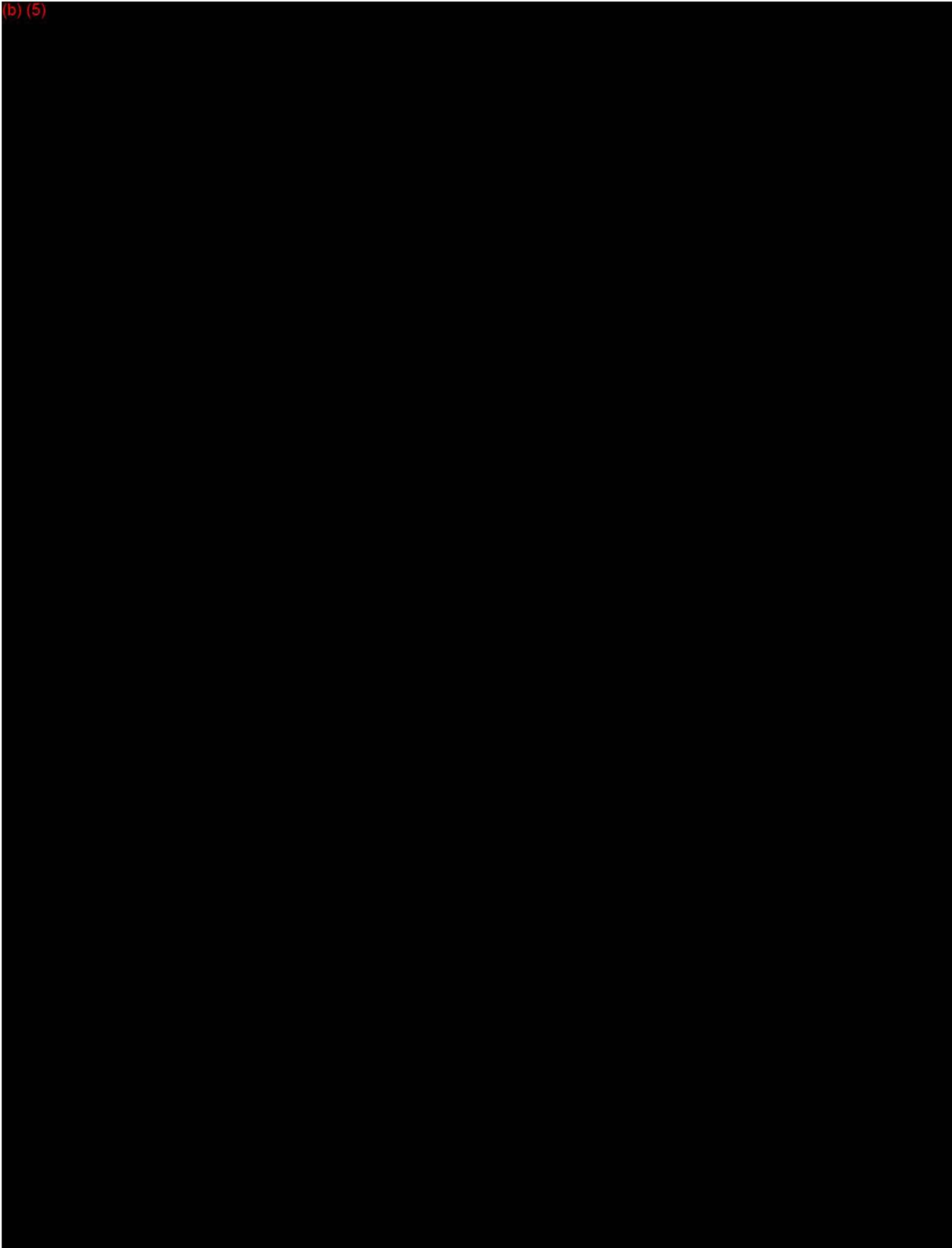


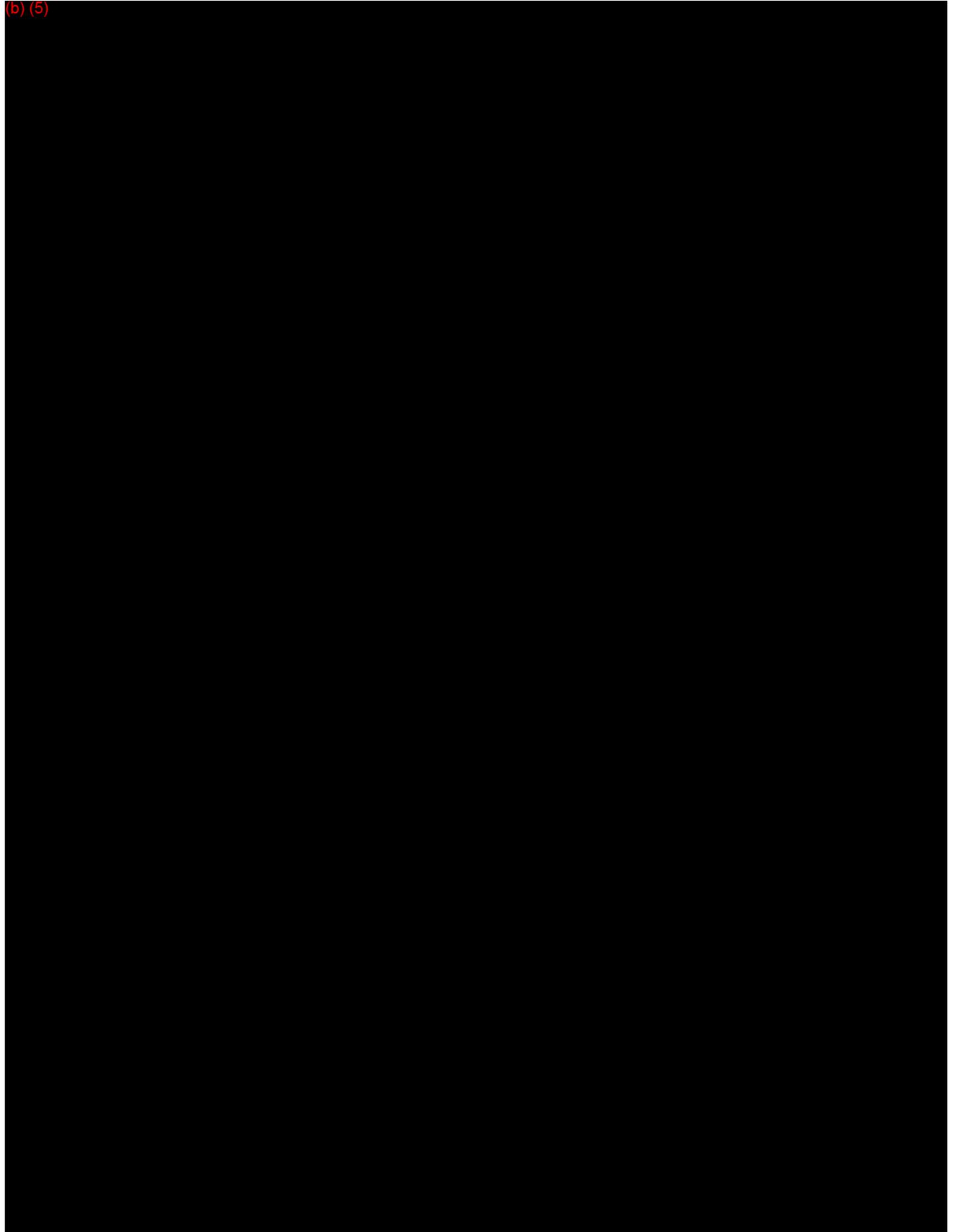












Re: FW: Edits to proposed rule on NEPA review

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,

(b) (5)

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>

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

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

Cc: fedreg.legal@nara.gov

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

Viktoria,

(b) (5)
[REDACTED]
[REDACTED]. 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,

(b) (5). Will that address your concerns?

Viktoria

Viktoria 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>
Sent: Friday, June 15, 2018 2:29 PM
To: Seale, Viktoria Z. EOP/CEQ <(b) (6)>
Cc: fedreg.legal@nara.gov; ofr-legal@gpo.gov
Subject: Re: FW: Edits to proposed rule on NEPA review

Viktoria,

(b) (5)

(b) (5)

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.

(b) (5)

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. (b) (5)

(b) (5)

(b) (5)

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>
Sent: Friday, June 15, 2018 12:23 PM
To: Sun, Howard C. EOP/CEQ <(b) (6)>
Subject: Edits to proposed rule on NEPA review

(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

chipp.reid@nara.gov

202-741-6007

--

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Office of the Federal Register
National Archives and Records Administration

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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 (fydibohf23spdl)/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 | [1.202.712.4634](tel:1.202.712.4634)

General inquiries: 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)

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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 : (fydibohf23spdlt)/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> 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

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,

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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.

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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 26th 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 27th 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 | [website bio](#)

ABU DHABI AUSTIN BEIJING DUBAI HONG KONG HOUSTON LONDON
LOS ANGELES MIAMI NASHVILLE NEW YORK NORTHERN VIRGINIA
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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 (fydibohf23spdlt)/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? (b) (5)
(b) (5) 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

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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 | [website bio](#)

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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)

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

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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:

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- 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 26th 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 27th 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 | [website bio](#)

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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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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

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

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

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Thank you,

Tricia Kealy

Legal Assistant 3/Lead

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TriciaK@atg.wa.gov

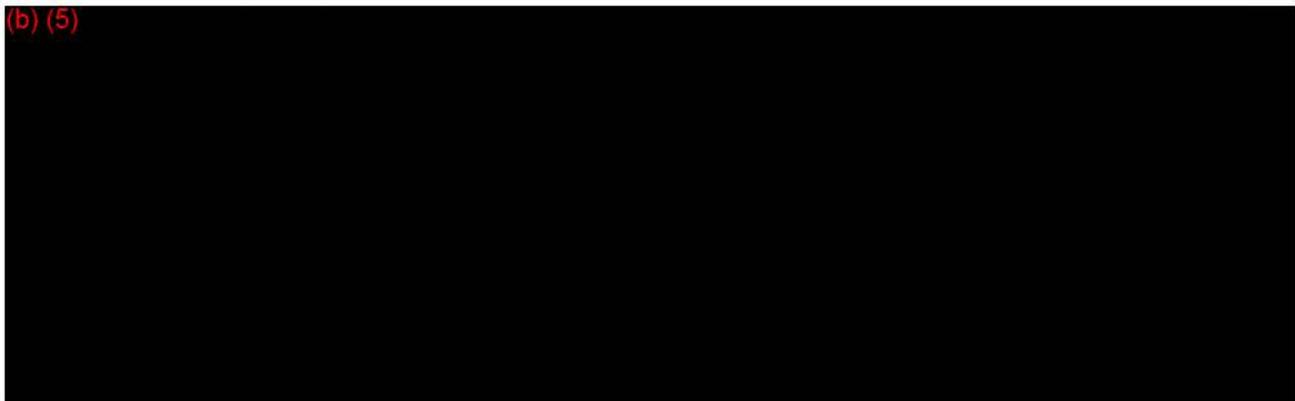
Website update expected on Monday, July 9

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>:

(b) (5)



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

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)

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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.

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Tricia Kealy

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**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: 

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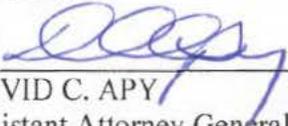
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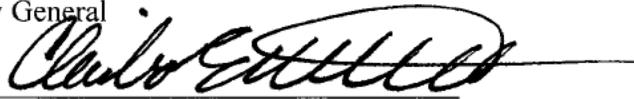
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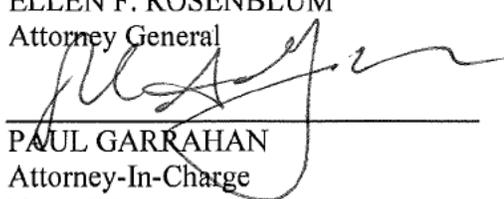


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FOR THE STATE OF OREGON

ELLEN F. ROSENBLUM
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By:



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Attorney-In-Charge
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Special Assistant Attorney General
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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

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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

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Attorney General

By:



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