

**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 (8<sup>th</sup> 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 [REDACTED] in order to ensure that all comments submitted would be publicly 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 [REDACTED] as well as comments by regular mail. CEQ has also posted the ANPRM on its website at [REDACTED]. 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 [REDACTED] so that stakeholders and the public will have timely access to all comments received.**

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

**Yes.**

17. NEPA is the primary way in which the federal government implements EO 12898 (“Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”) because NEPA is closely aligned with the principles of environmental justice. NEPA ensures that the environmental, health, and economic impacts of federal projects are disclosed and communities impacted by federal projects are given a meaningful voice.

- a. If confirmed as Chair, what specific actions would you take to increase meaningful public input, transparency, and disclosure of disproportionate impacts?
- b. It is widely known that the impacts of climate change will disproportionately impact low-income communities and communities of color. If confirmed as chair, will you commit to disclosing the impacts of climate change on such communities in NEPA analyses? If not, why not?

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

<sup>1</sup> 42 FR 10191 (March 2012). “EPA and the Economy: Seeing Green?” available at [REDACTED]

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

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

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

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

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

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

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

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

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

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

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

22. Recent guidance issued by the Bureau of Land Management (BLM) ( [REDACTED] ) 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.

- a. How is this consistent with NEPA’s direction to ensure that government decisions are subject to public scrutiny?
- b. How would you recommend agencies provide sufficient opportunities for public input prior to making final decisions to turn public lands over to third parties?

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

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

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<sup>3</sup> Final Report Summarizing Findings of the Review of Designations Under the Antiquities Act, available at: [REDACTED]

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 [REDACTED] CEQ plans to provide consolidated data and information relating to Federal agency performance on this website in the near future.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Senator Capito:**

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

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

**Senator Duckworth:**

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

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

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



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**



**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.**

## RE: anopr log

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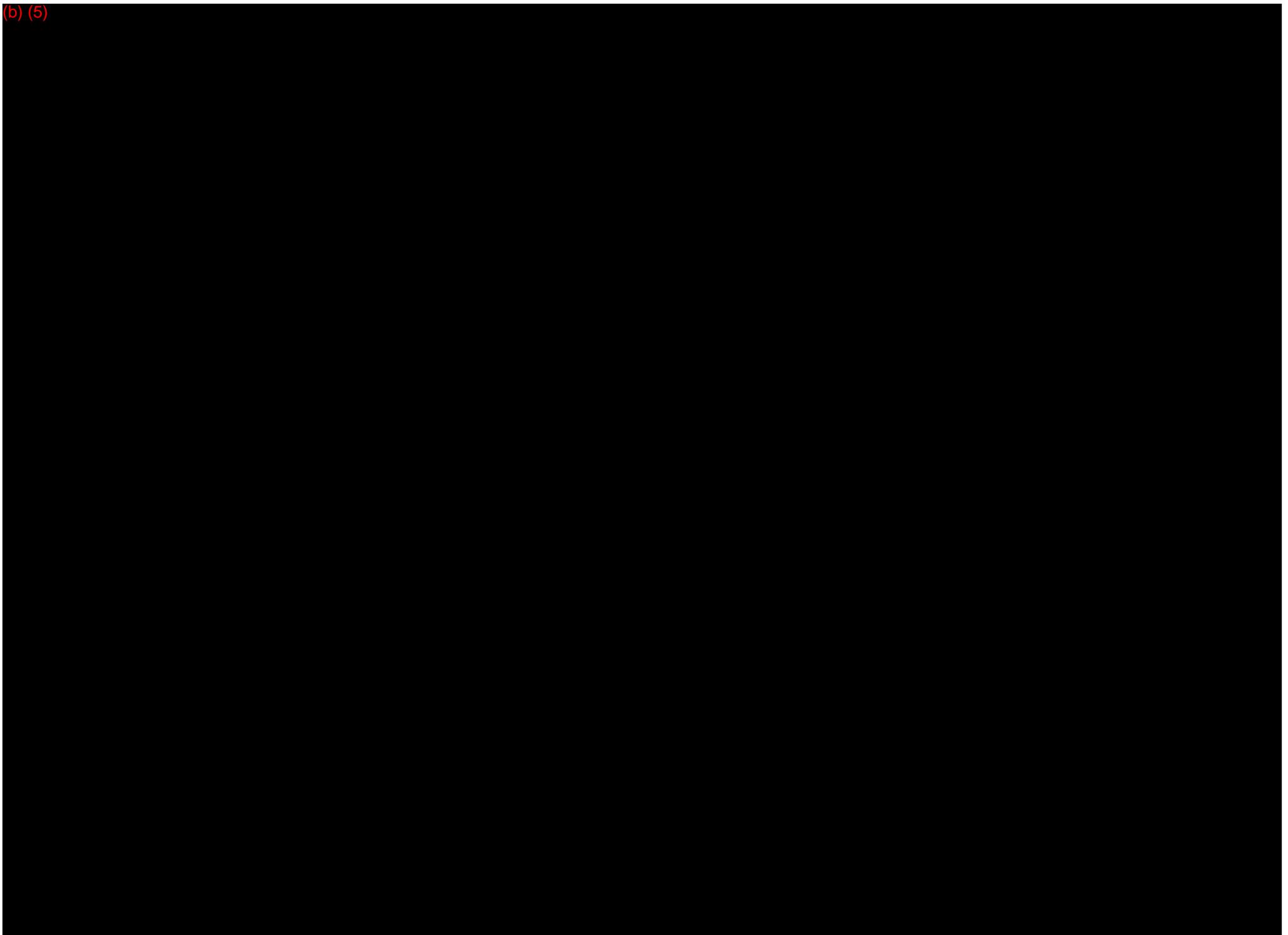
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**To:** "Carlin, Erin A. EOP/CEQ (Intern)" <(b) (6)>  
**Date:** Tue, 31 Jul 2018 11:30:56 -0400  
**Attachments:** ANOPR Comment Log.xlsx (89.29 kB)

Attached is my section of today's comments!

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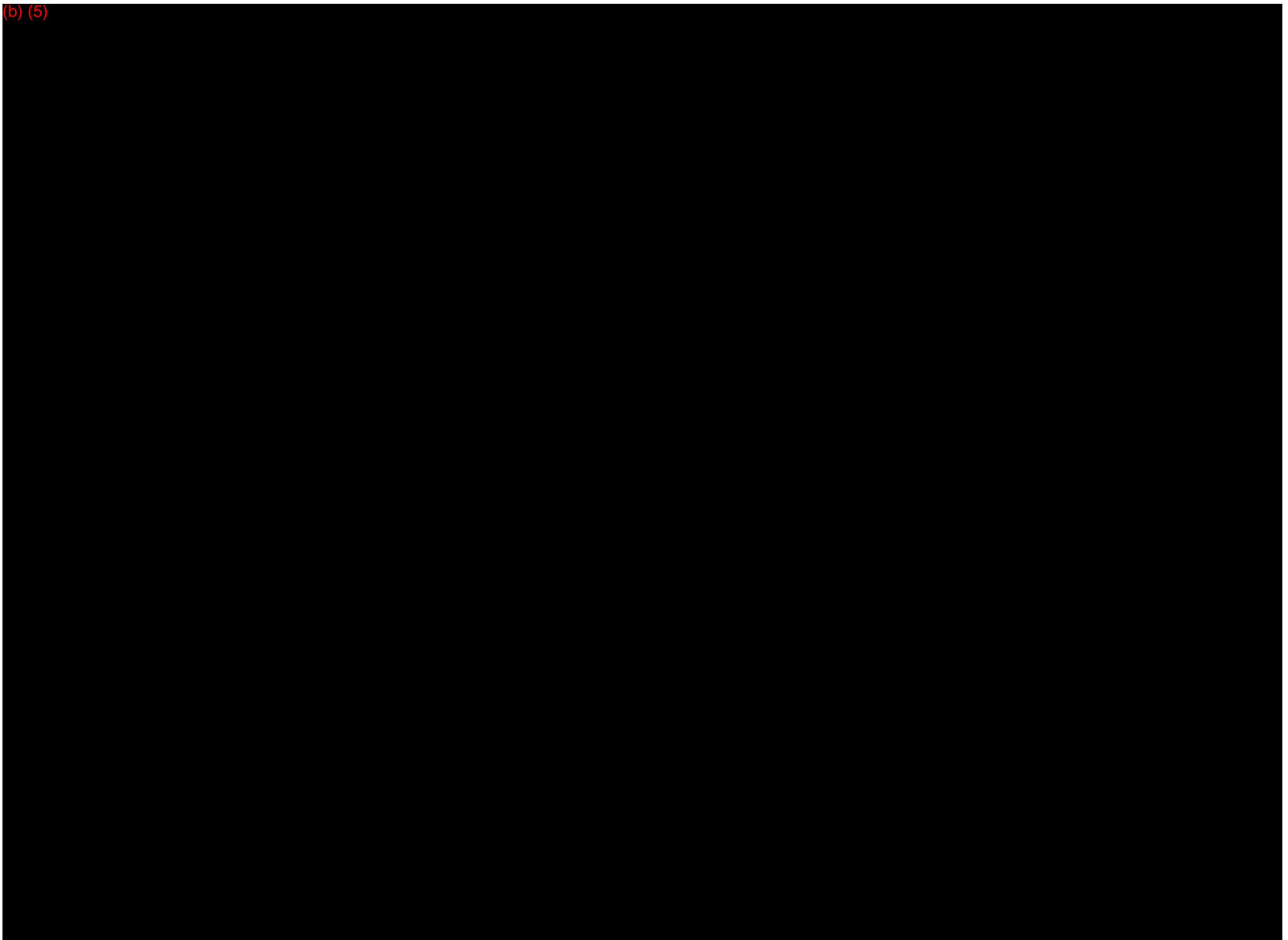
**From:** Carlin, Erin A. EOP/CEQ (Intern)  
**Sent:** Tuesday, July 31, 2018 10:22 AM  
**To:** Cook, Kearstyn N. EOP/CEQ (Intern) <(b) (6)>  
**Subject:** anopr log

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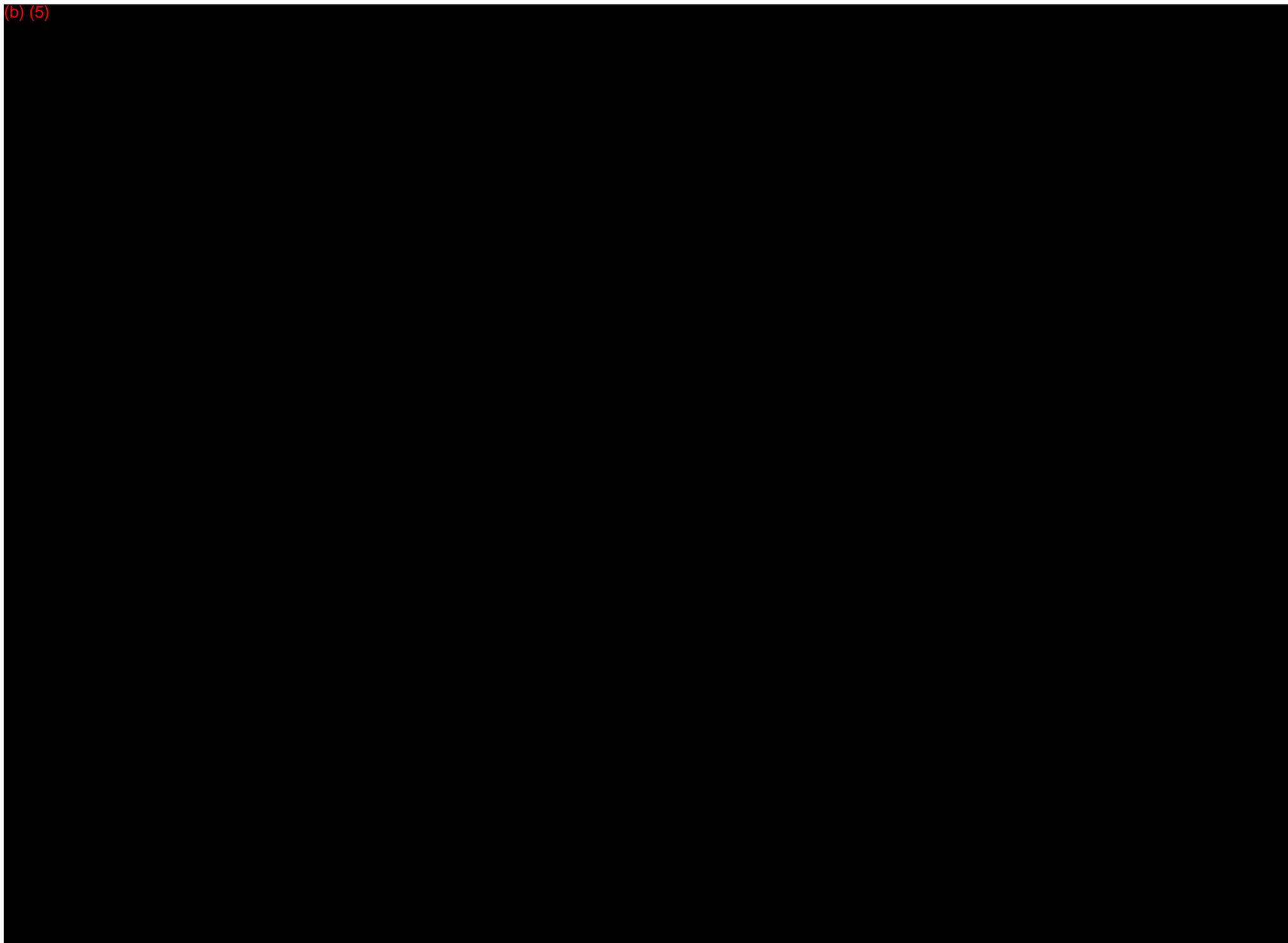


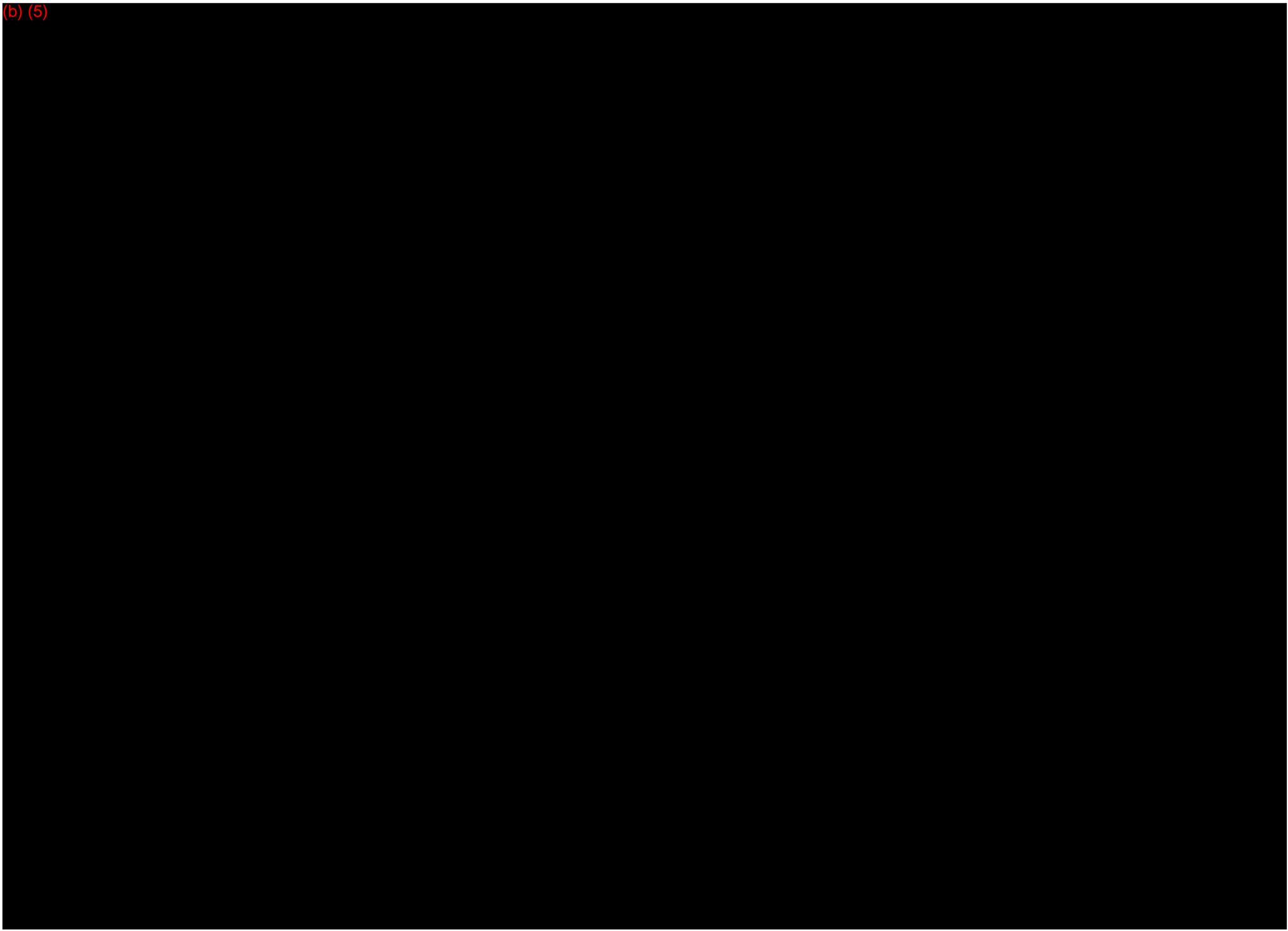
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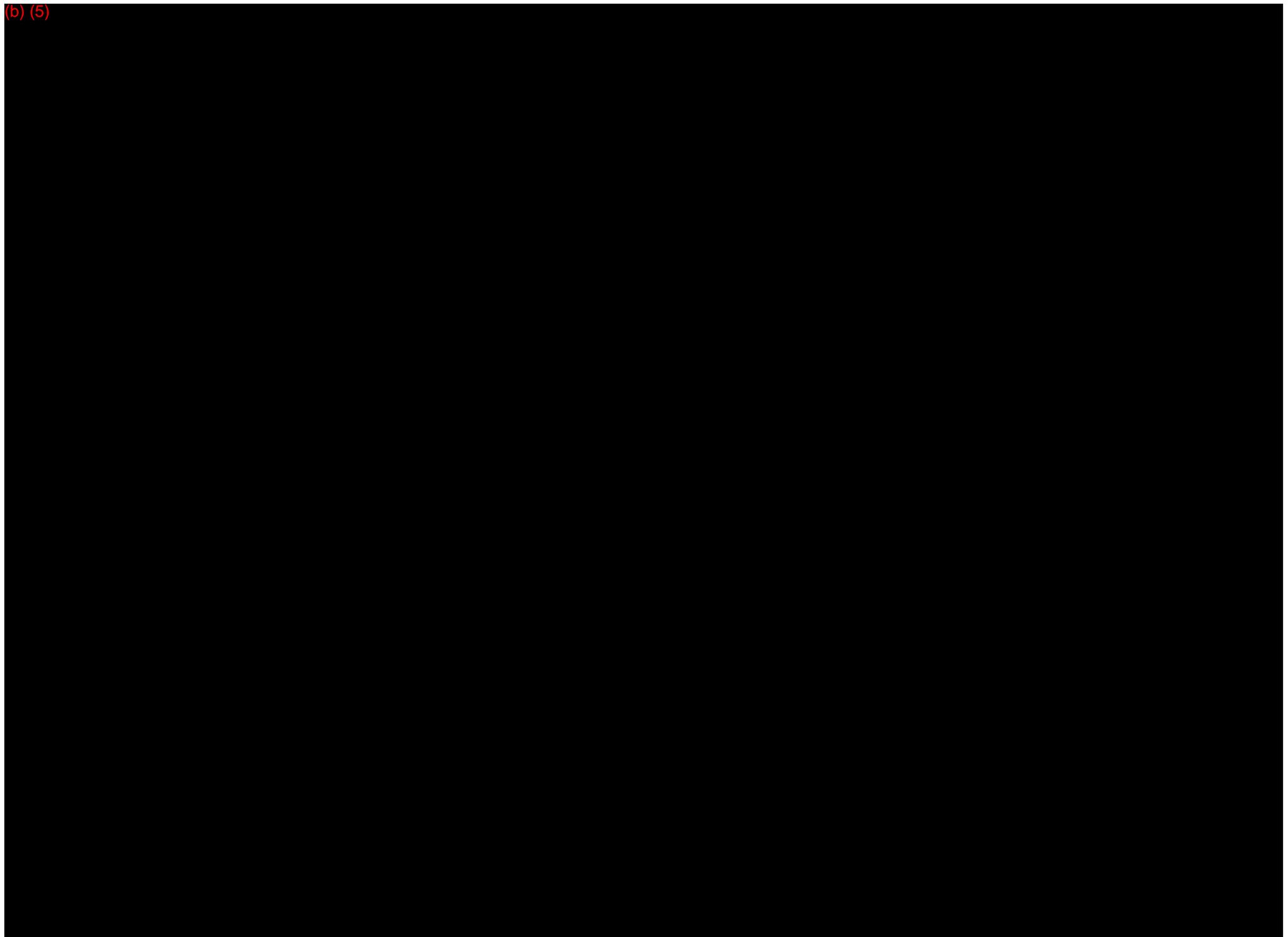
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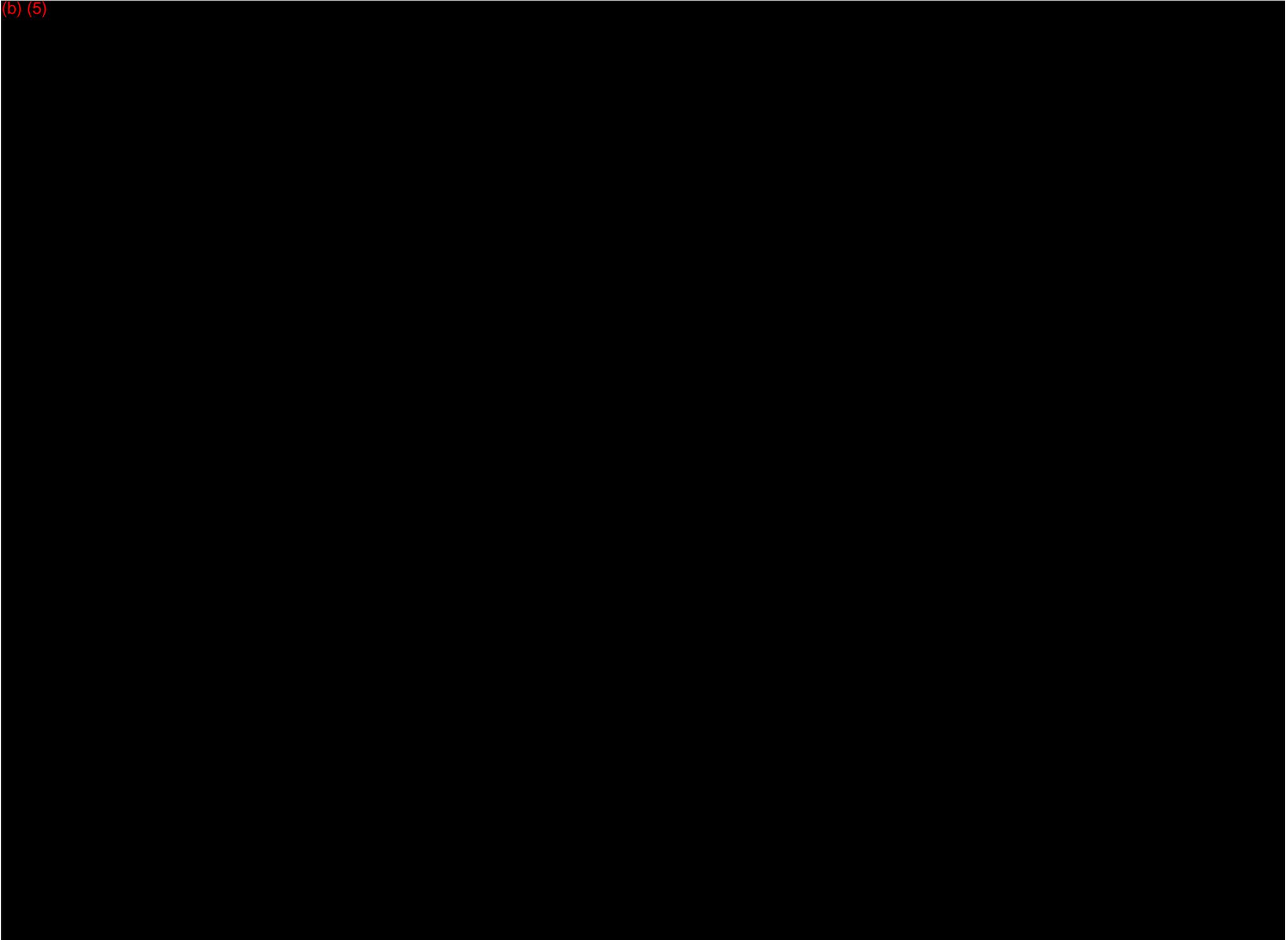


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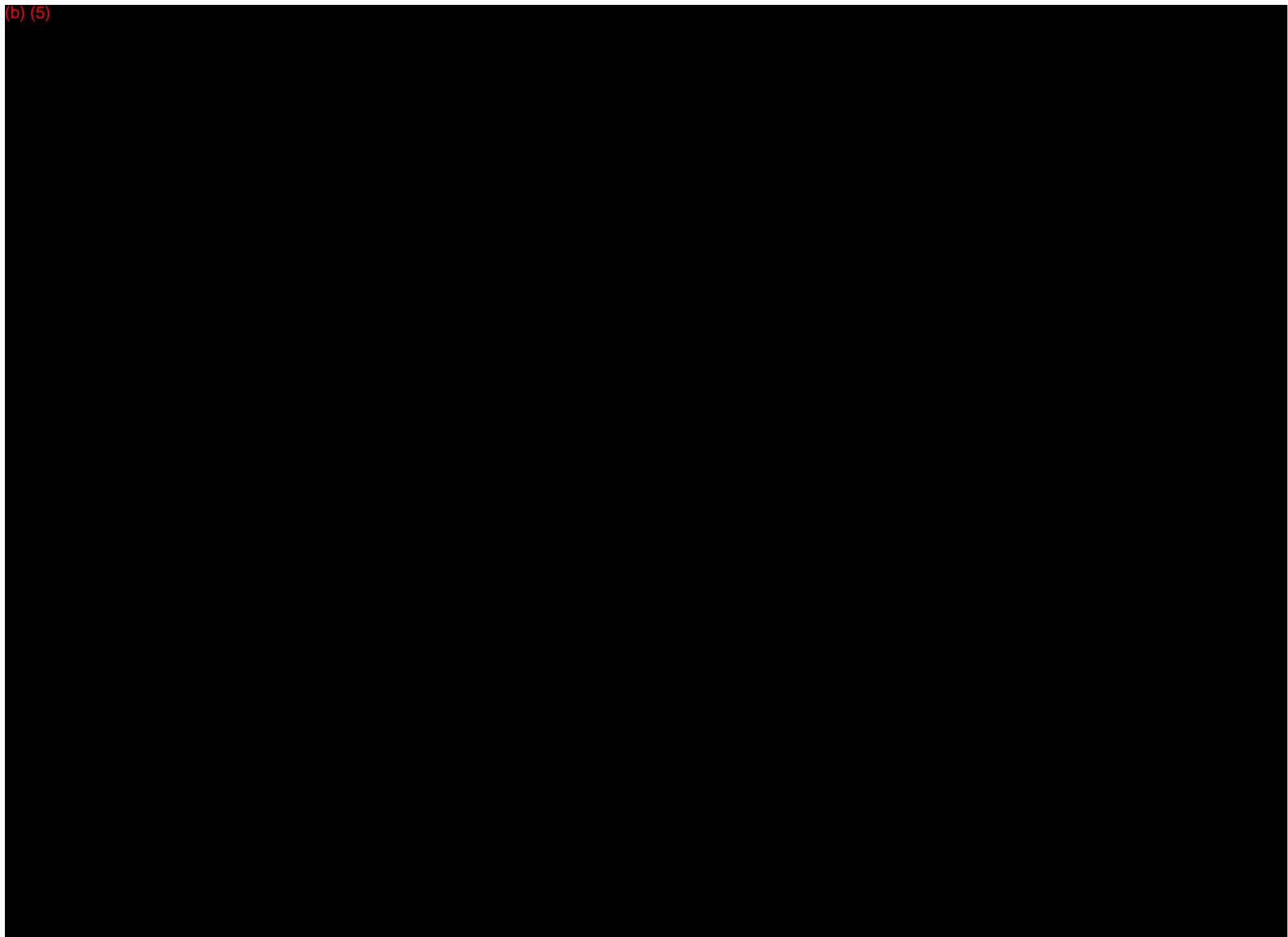




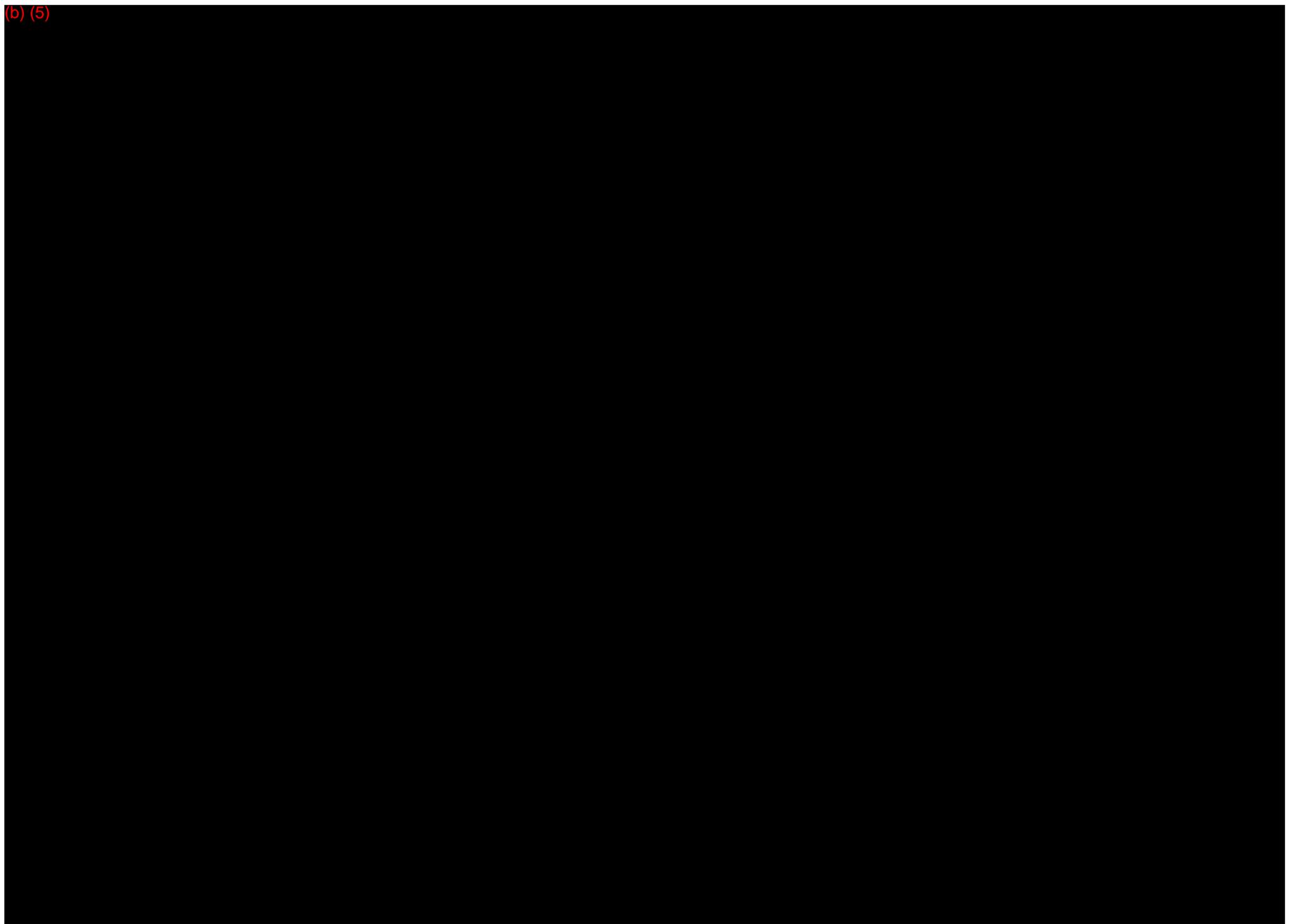
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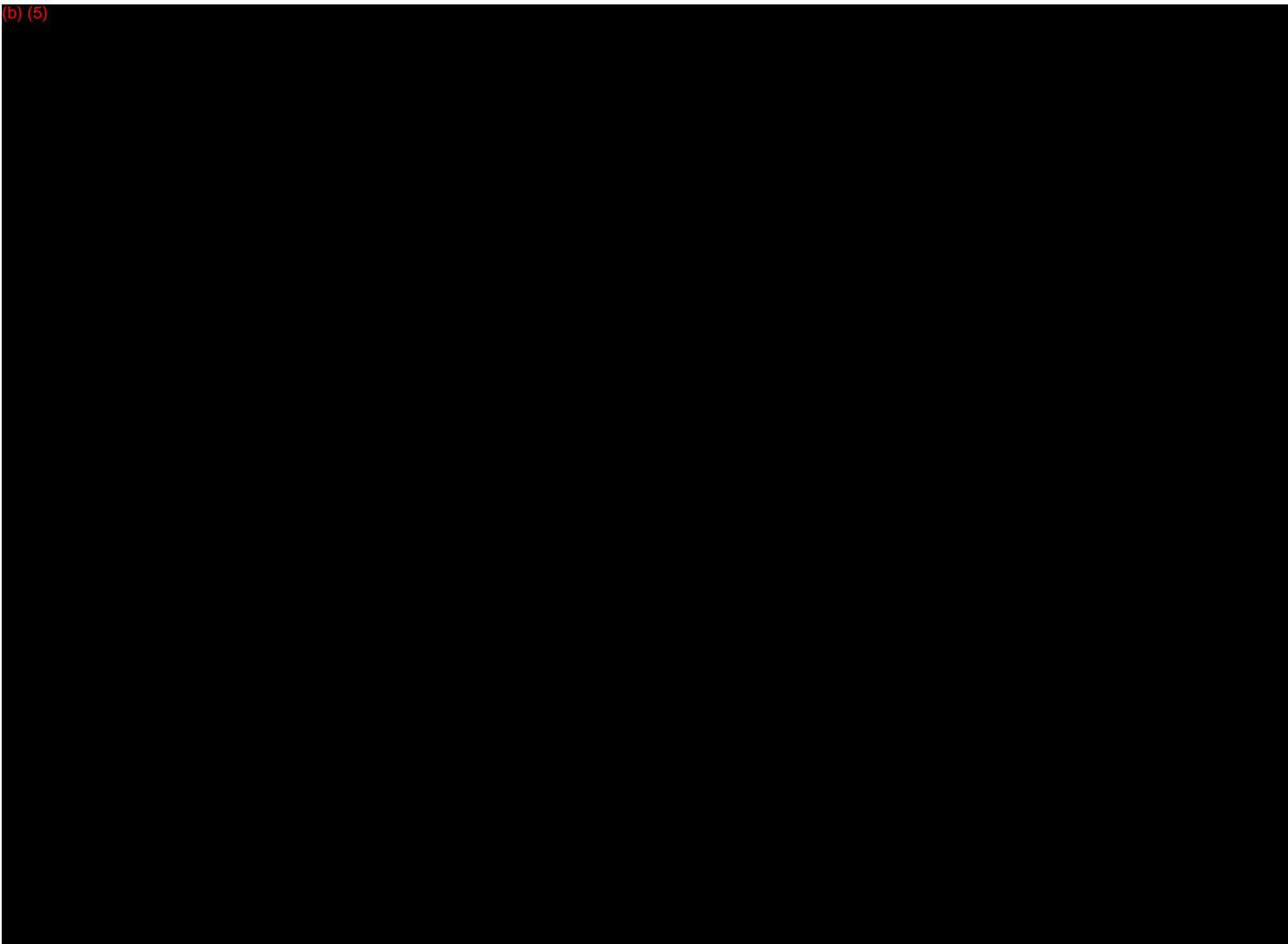
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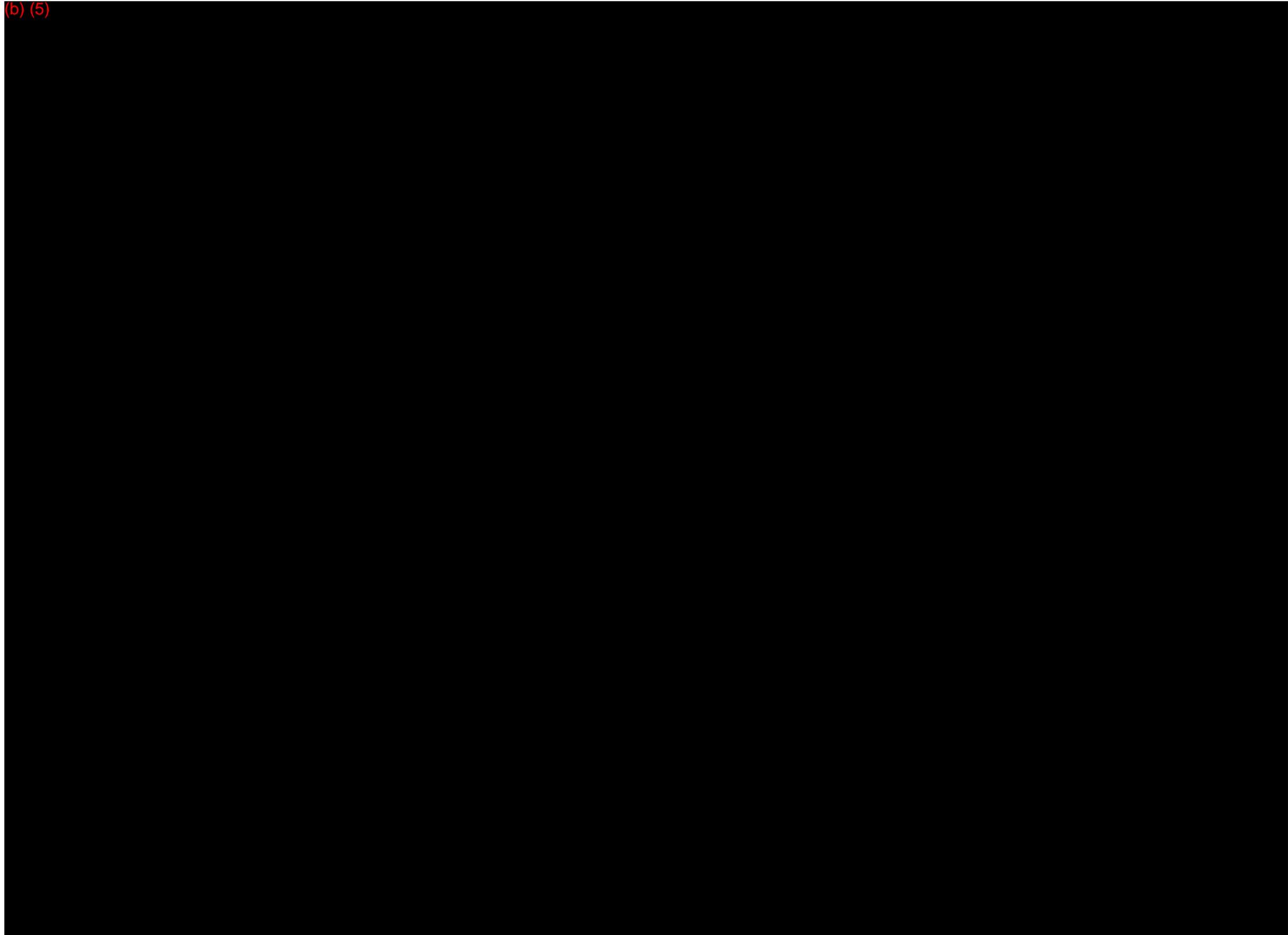




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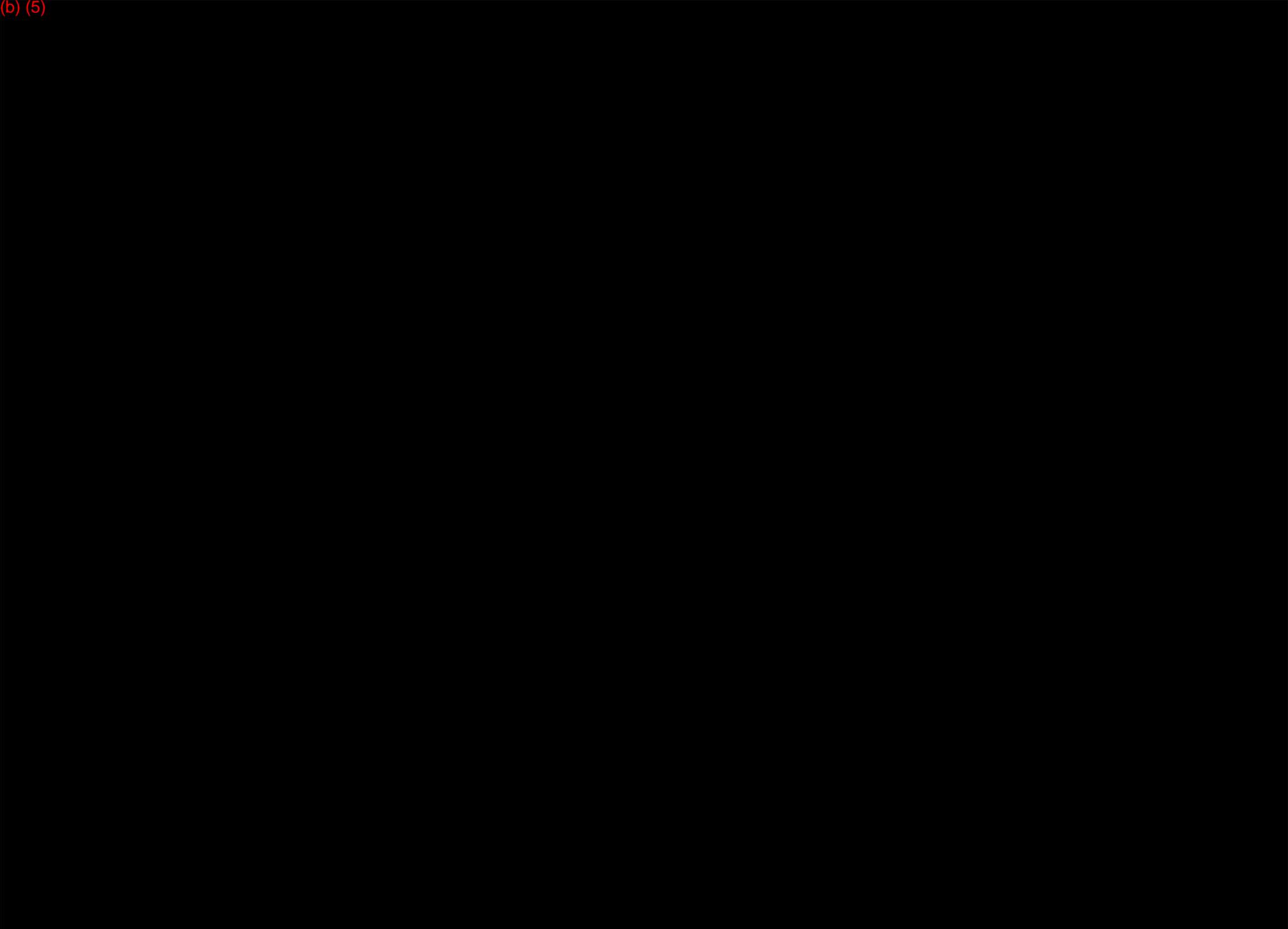
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## anopr log

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**From:** "Carlin, Erin A. EOP/CEQ (Intern)" <(b) (6)>  
**To:** "Cook, Kearstyn N. EOP/CEQ (Intern)" <(b) (6)>  
**Date:** Tue, 31 Jul 2018 10:21:48 -0400  
**Attachments:** ANPR (83 FR 28591) 2018-06-20.pdf (195.85 kB); 02 ANOPR Comment Log 07-23 to Erin.xlsx (87.89 kB)

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requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: May 30, 2018.

**Cosmo Servidio,**

*Regional Administrator, U.S. Environmental Protection Agency Region 3.*

[FR Doc. 2018–12709 Filed 6–19–18; 8:45 am]

**BILLING CODE 6560–50–P**

## COUNCIL ON ENVIRONMENTAL QUALITY

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

[Docket No. CEQ–2018–0001]

RIN: 0331–AA03

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

**AGENCY:** Council on Environmental Quality (CEQ).

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Council on Environmental Quality (CEQ) is considering updating its implementing regulations for the procedural provisions of the National Environmental Policy Act (NEPA). Over the past four decades, CEQ has issued numerous guidance documents but has amended its regulations substantively only once. Given the length of time since its NEPA implementing regulations were issued, CEQ solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process consistent with the national environmental policy stated in NEPA.

**DATES:** Comments should be submitted on or before July 20, 2018.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number CEQ–2018–0001 through the Federal eRulemaking portal at <https://www.regulations.gov>. Follow the online instructions for submitting comments.

**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.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, was enacted in 1970. NEPA states that “it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.” 42 U.S.C. 4331(a). NEPA also established CEQ as an agency within the Executive Office of the President. 42 U.S.C. 4342.

By Executive Order (E.O.) 11514, “Protection and Enhancement of Environmental Quality” (March 5, 1970), President Nixon directed CEQ in Section 3(h) to issue “guidelines to Federal agencies for the preparation of detailed statements on proposals for legislation and other Federal actions affecting the environment, as required by section 102(2)(C) of the Act.” CEQ published these guidelines in April of 1970 and revised them in 1973.

President Carter issued E.O. 11991 (May 24, 1977), “Relating to Protection and Enhancement of Environmental Quality,” which amended Section 3(h) of E.O. 11514 to direct CEQ to issue regulations providing uniform standards for the implementation of NEPA, and amended Section 2 of E.O. 11514 to require agency compliance with the CEQ regulations. CEQ promulgated its “Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act” (CEQ’s NEPA regulations) at 40 CFR parts 1500–1508. 43 FR 55978 (November 29, 1978). Since that time, CEQ has amended its NEPA regulations substantively only once, to eliminate the “worst case” analysis requirement of 40 CFR 1502.22. 51 FR 15618 (April 25, 1986).

On August 15, 2017, President Trump issued E.O. 13807, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects.” 82 FR 40463 (August 24, 2017). Section 5(e) of E.O. 13807 directed CEQ to develop an initial list of actions to enhance and modernize the Federal environmental review and authorization process. In response, CEQ published its initial list of actions pursuant to E.O. 13807 and stated that it intends to

review its existing NEPA regulations in order to identify changes needed to update and clarify these regulations. 82 FR 43226 (September 14, 2017).

#### II. Request for Comment

CEQ requests comments on potential revisions to update and clarify CEQ NEPA regulations. In particular, CEQ requests comments on the following specific aspects of these regulations, and requests that commenters include question numbers when providing responses. Where possible, please provide specific recommendations on additions, deletions, and modifications to the text of CEQ’s NEPA regulations and their justifications.

##### NEPA Process

1. Should CEQ’s NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?

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?

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

##### 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?

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

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?

7. Should definitions of any key NEPA terms in CEQ’s NEPA regulations, such as those listed below, be revised, and if so, how?

- a. Major Federal Action;
- b. Effects;
- c. Cumulative Impact;
- d. Significantly;
- e. Scope; and
- f. Other NEPA terms.

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

- a. Alternatives;
- b. Purpose and Need;
- c. Reasonably Foreseeable;
- d. Trivial Violation; and
- e. Other NEPA terms.

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

- a. Notice of Intent;
- b. Categorical Exclusions

Documentation;

- c. Environmental Assessments;
- d. Findings of No Significant Impact;
- e. Environmental Impact Statements;
- f. Records of Decision; and
- g. Supplements.

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

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?

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

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?

#### General

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

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?

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?

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?

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?

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?

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

(Authority: 42 U.S.C. 4332, 4342, 4344 and 40 CFR parts 1500, 1501, 1502, 1503, 1505, 1506, 1507, and 1508)

### III. Statutory and Executive Order Reviews

Under E.O. 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993), this is a "significant regulatory action." Accordingly, CEQ submitted this action to the Office of Management and Budget (OMB) for review under E.O. 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action. Because this action does not propose or impose any requirements, and instead seeks comments and suggestions for CEQ to consider in possibly developing a subsequent proposed rule, the various statutes and executive orders that normally apply to rulemaking do not apply in this case. If CEQ decides in the future to pursue a rulemaking, CEQ will address the statutes and executive orders applicable to that rulemaking at that time.

**Mary B. Neumayr,**

*Chief of Staff, Council on Environmental Quality.*

[FR Doc. 2018-13246 Filed 6-19-18; 8:45 am]

**BILLING CODE 3225-F8-P**

### GENERAL SERVICES ADMINISTRATION

#### 41 CFR Part 105-60

[GSPMR Case 2016-105-1; Docket No. 2016-0004, Sequence No. 1]

RIN 3090-AJ74

#### Public Availability of Agency Records and Informational Materials

**AGENCY:** Office of Administrative Services (OAS), General Services Administration (GSA).

**ACTION:** Proposed rule.

**SUMMARY:** The General Services Administration (GSA) is issuing a proposed rule to amend its regulations implementing the Freedom of Information Act (FOIA). The regulations are being revised to update and streamline the language of several procedural provisions and to incorporate certain changes brought about by the amendments to the FOIA under both statutory and nonstatutory authorities. This rule also amends the

GSA's regulations under the Freedom of Information Act (FOIA) to incorporate certain changes made to the FOIA by the FOIA Improvement Act of 2016.

Additionally, the regulations are being updated to reflect developments in case law, executive guidance from the Department of Justice—Office of Information Policy, technological advancements in how the FOIA is administered, and to include current cost figures to be used in calculating and charging fees. Finally, the revisions increase the amount of information that members of the public may receive from the Agency without being charged processing fees through proactive disclosures.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before August 20, 2018 to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to GSPMR case 2016-105-1 by any of the following methods:

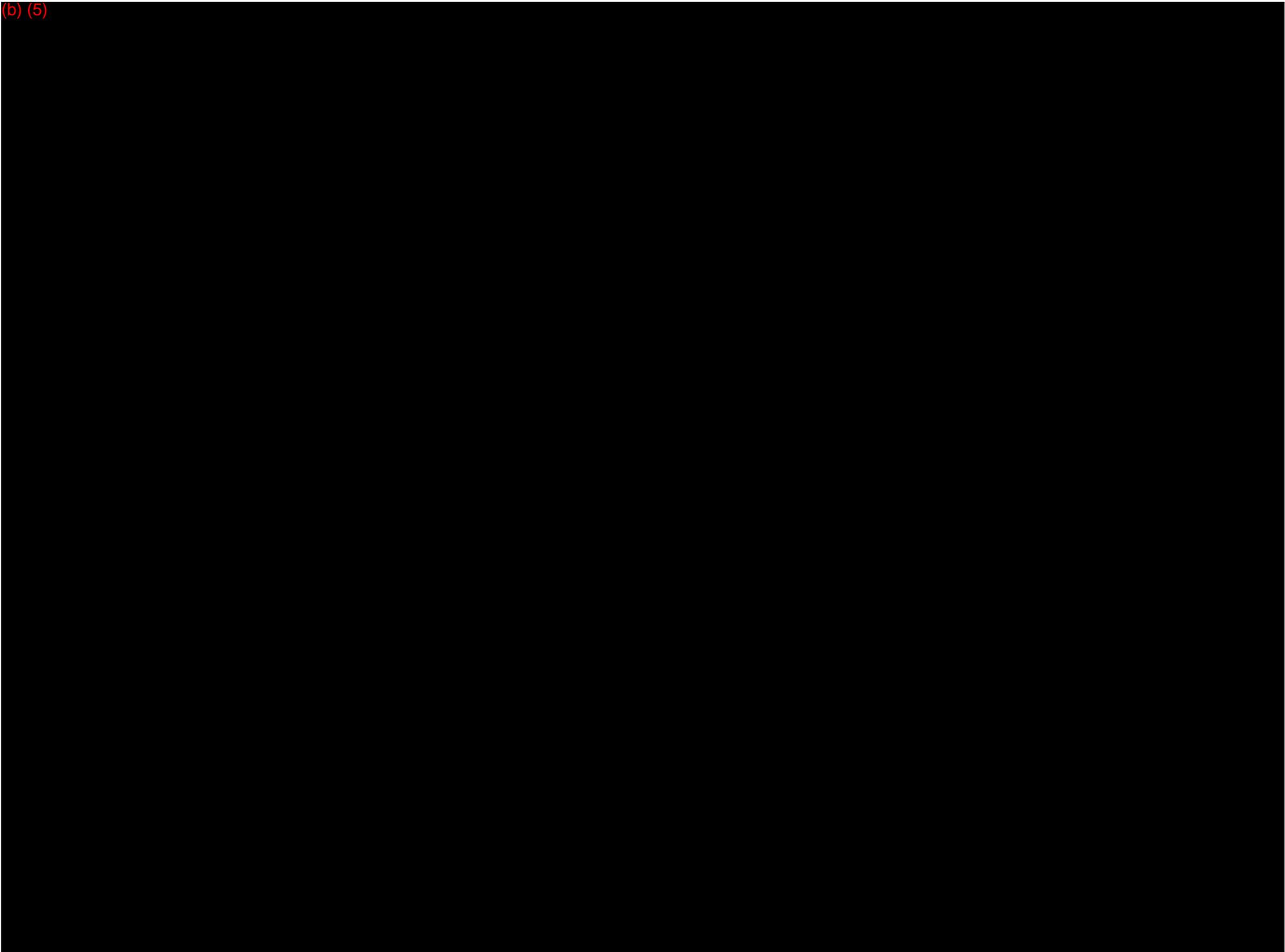
- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "GSPMR Case 2016-105-1". Select the link "Comment Now" that corresponds with "GSPMR Case 2016-105-1." Follow the instructions provided on the screen. Please include your name, company name (if any), and "GSPMR Case 2016-105-1" on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Lois Mandell, 1800 F Street NW, 2nd Floor, Washington, DC 20405.

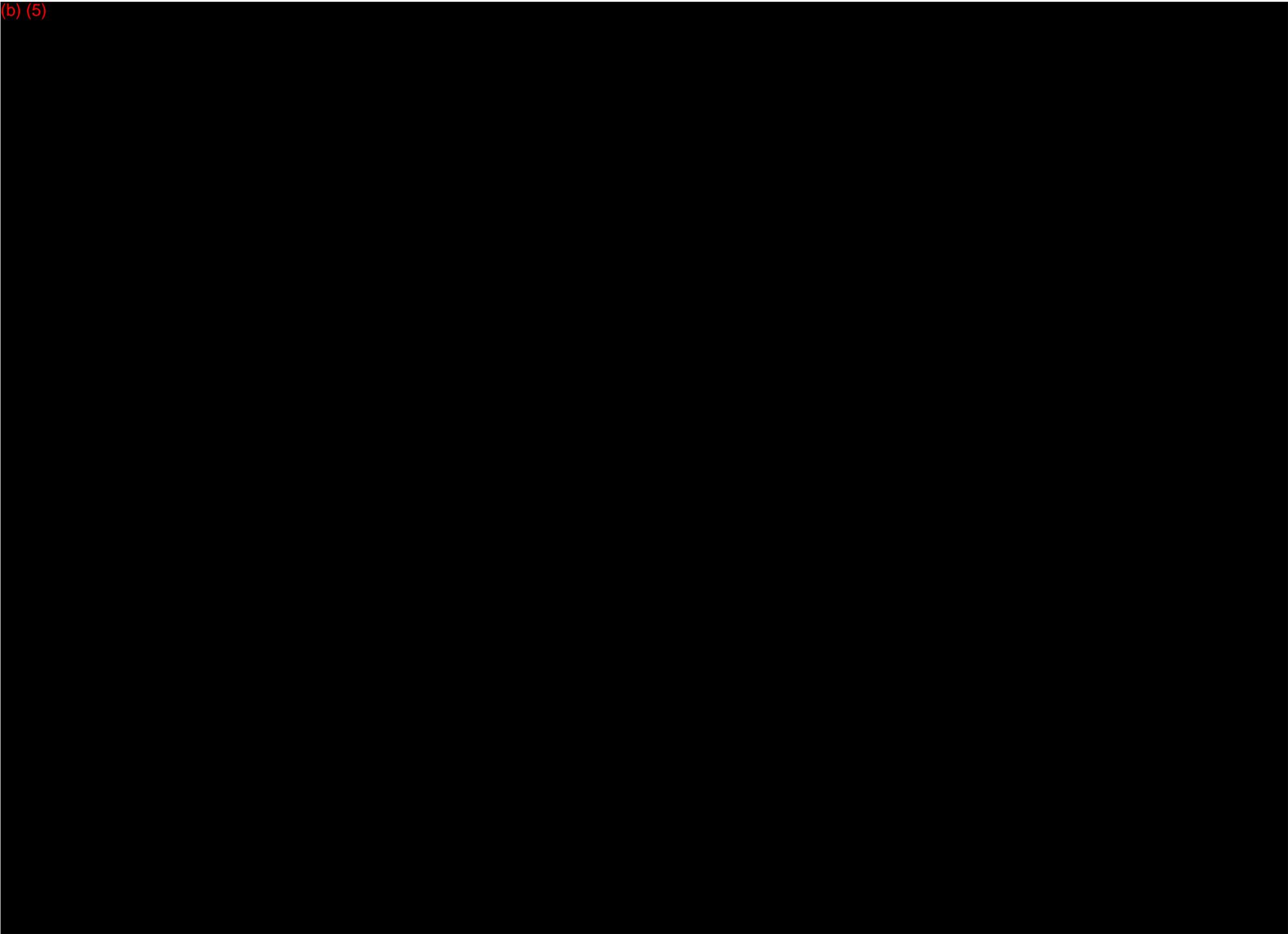
*Instructions:* Please submit comments only and cite GSPMR Case 2016-105-1, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Mr. Travis S. Lewis, Director of GSA, OAS, Freedom of Information Act and Records Management Division, at 202-219-3078 via email at [travis.lewis@gsa.gov](mailto:travis.lewis@gsa.gov) for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite GSPMR Case 2016-105-1.

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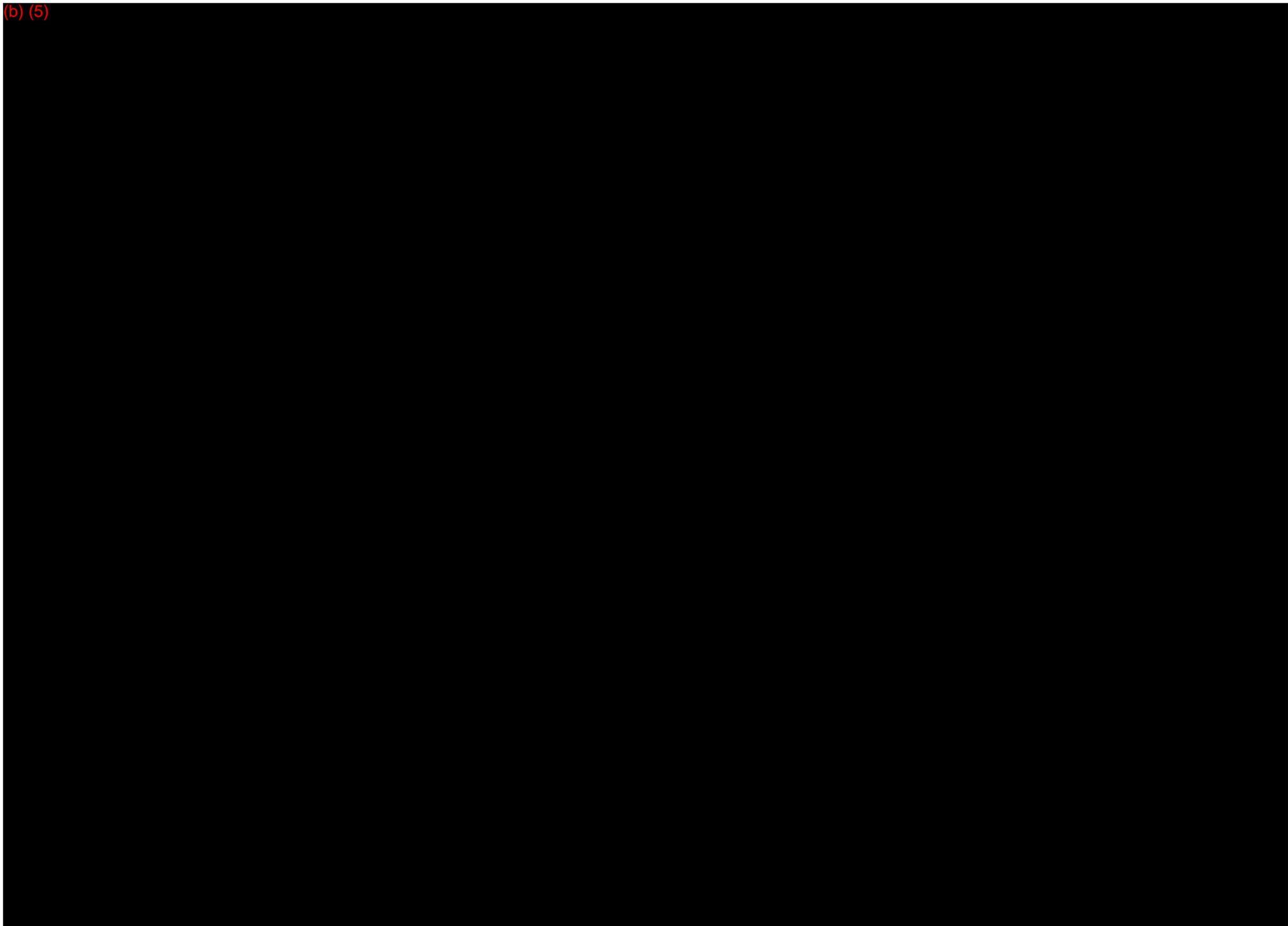


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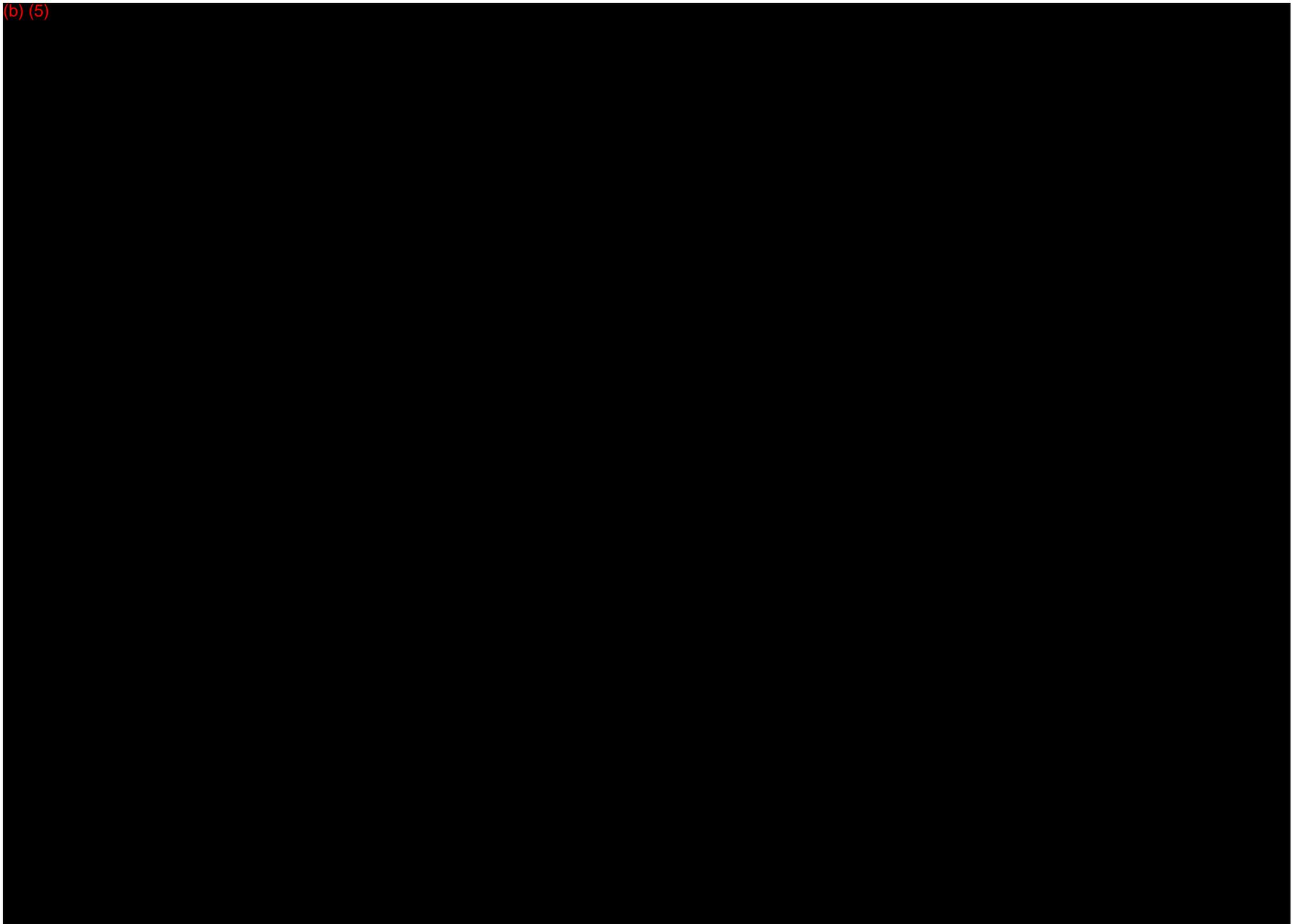


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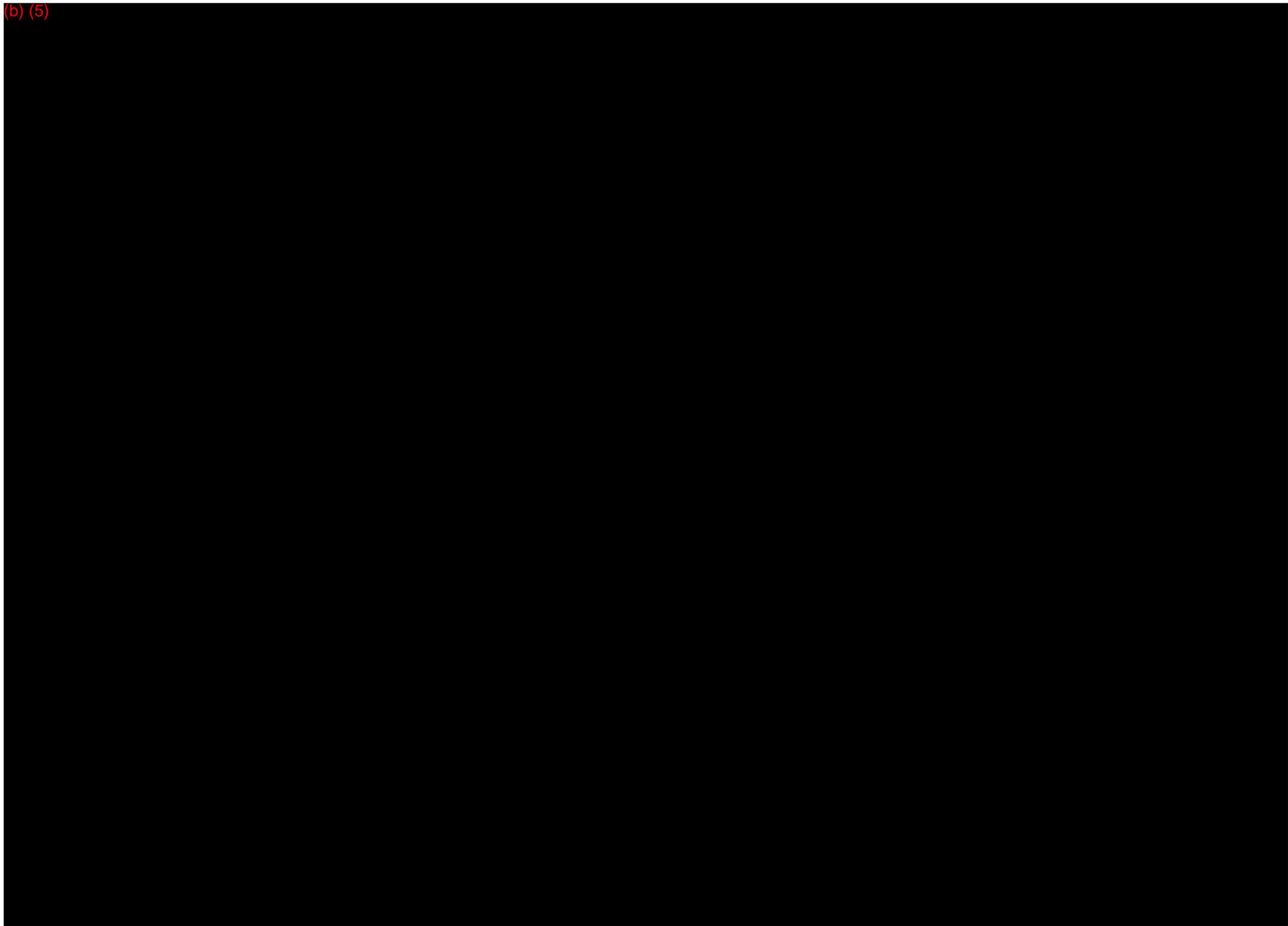
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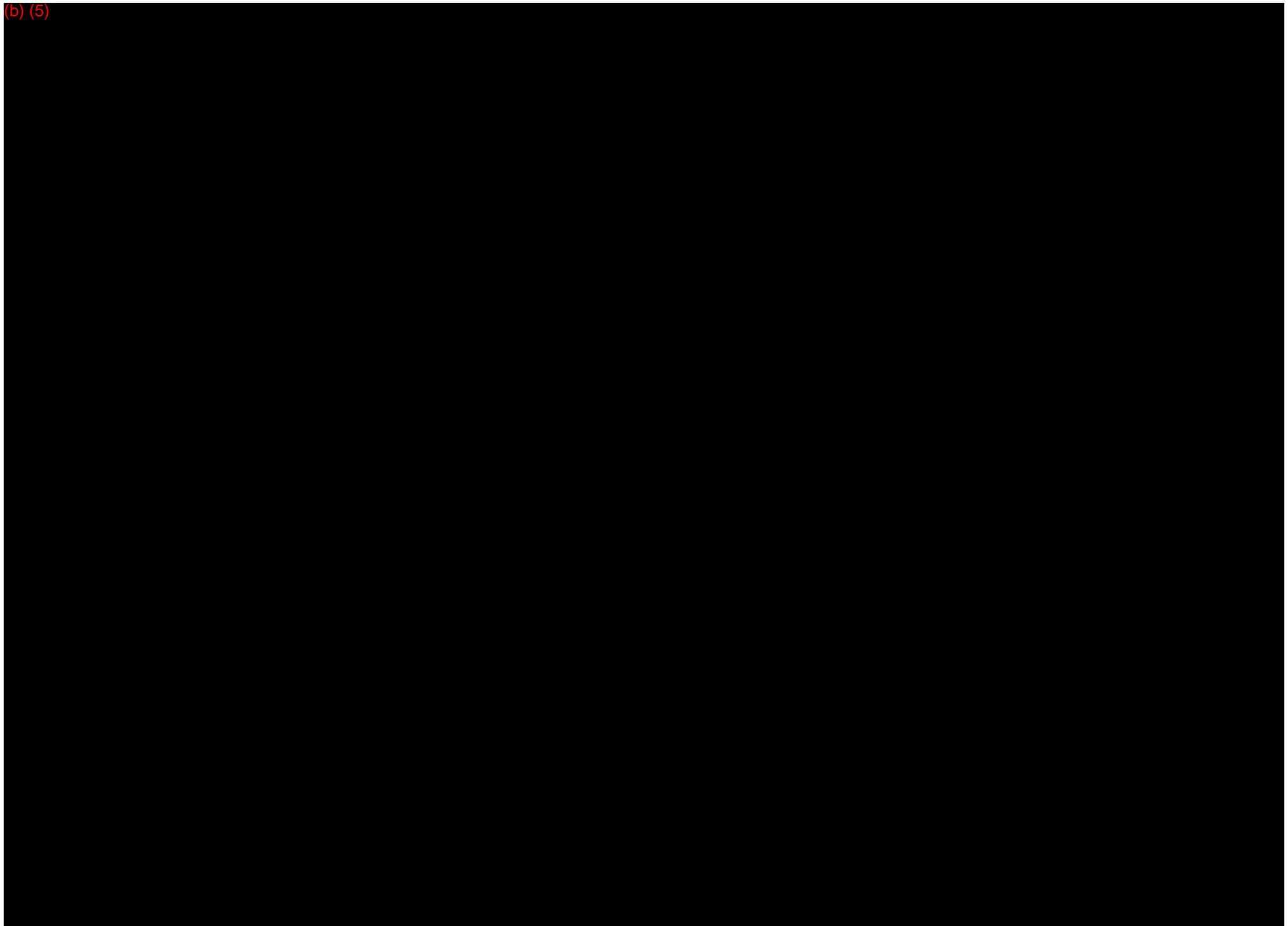
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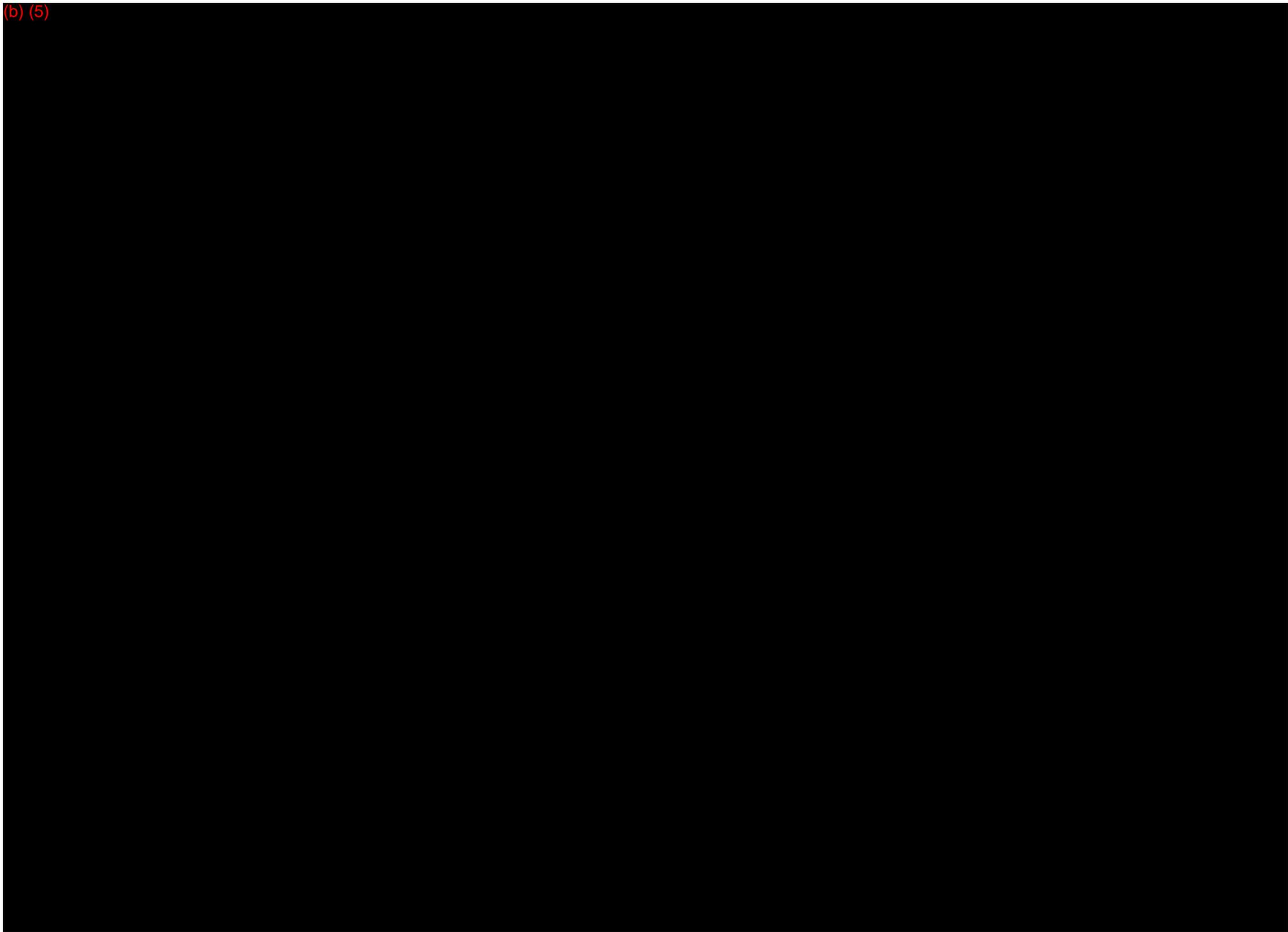
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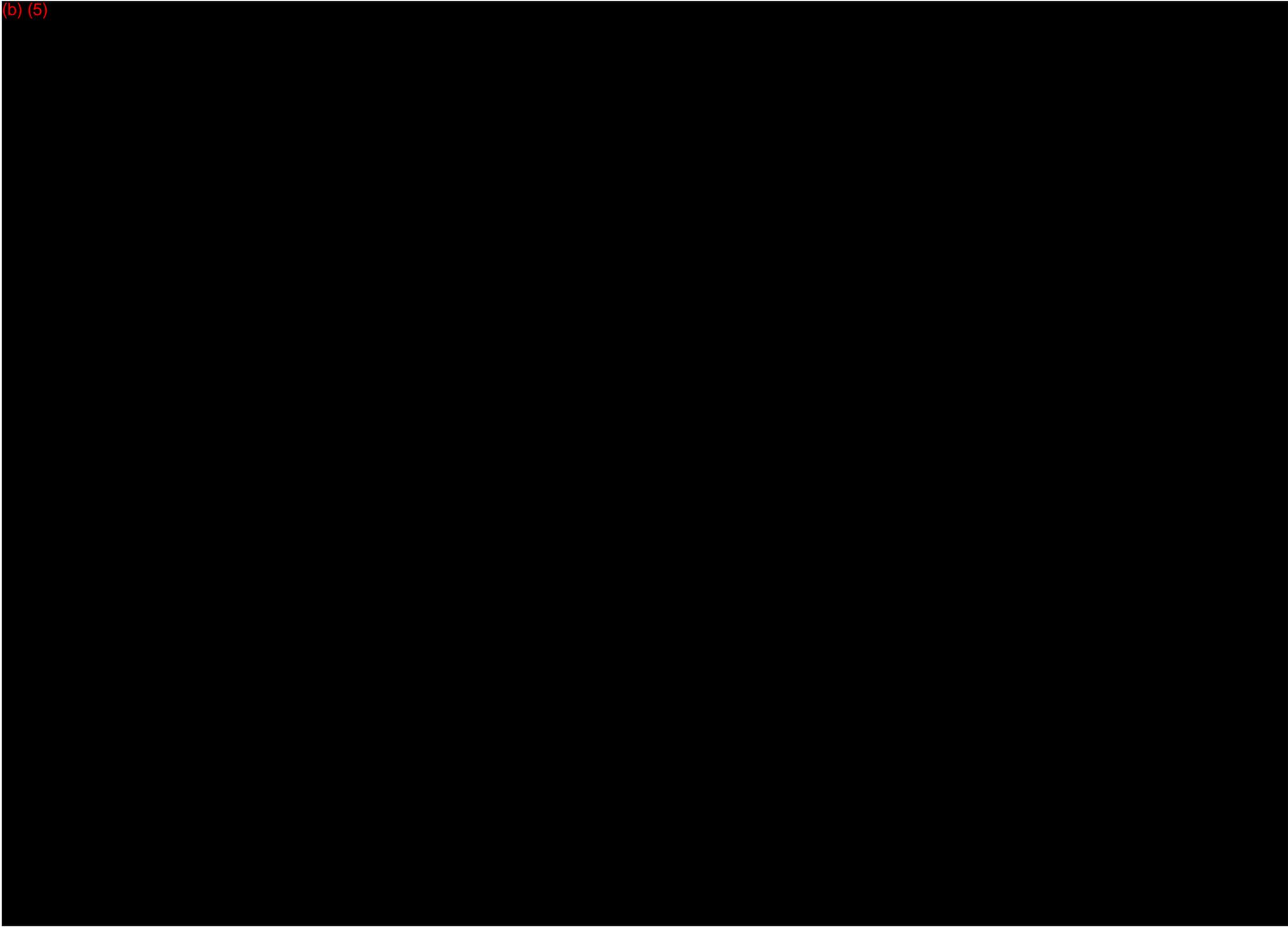
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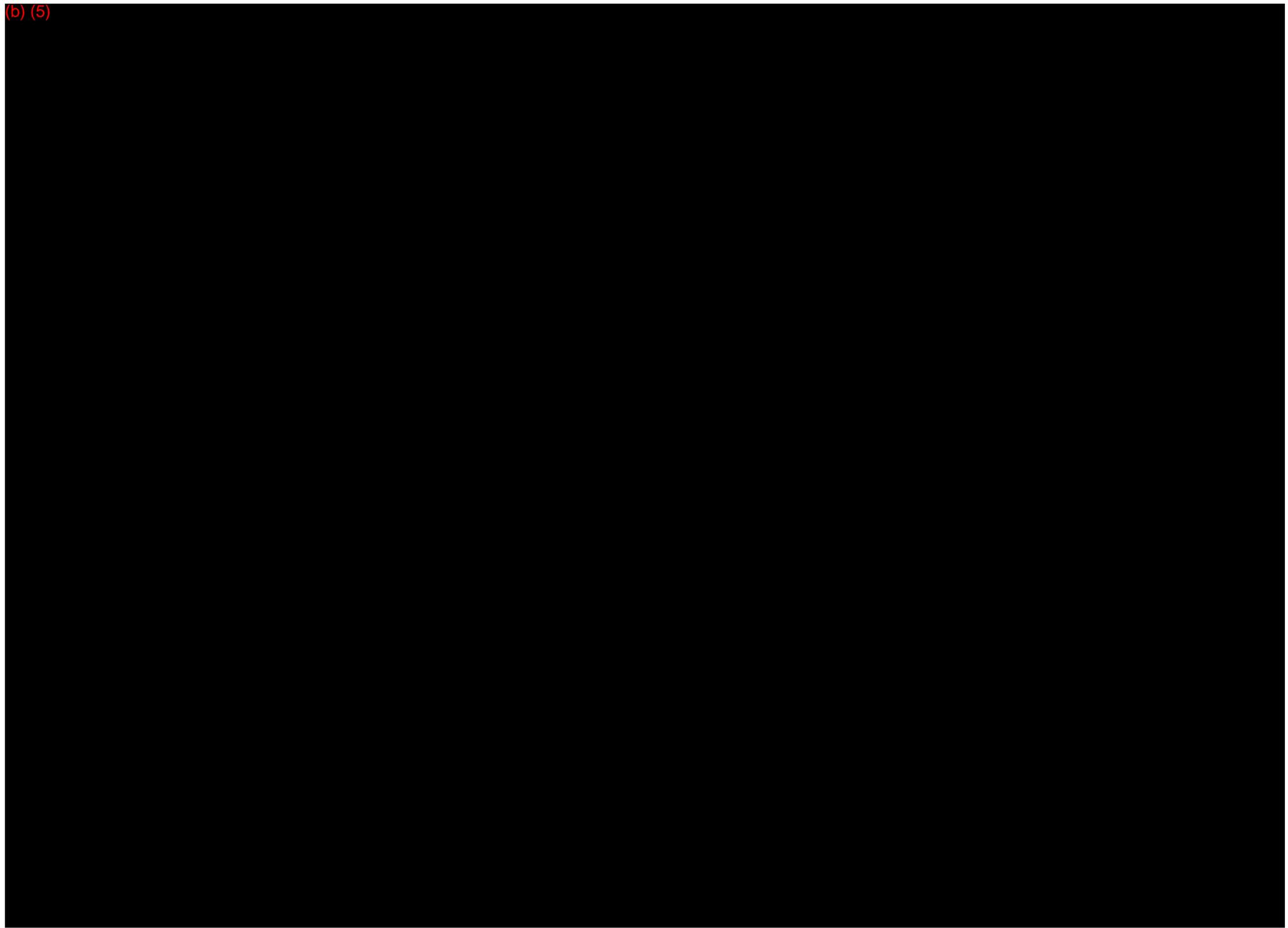
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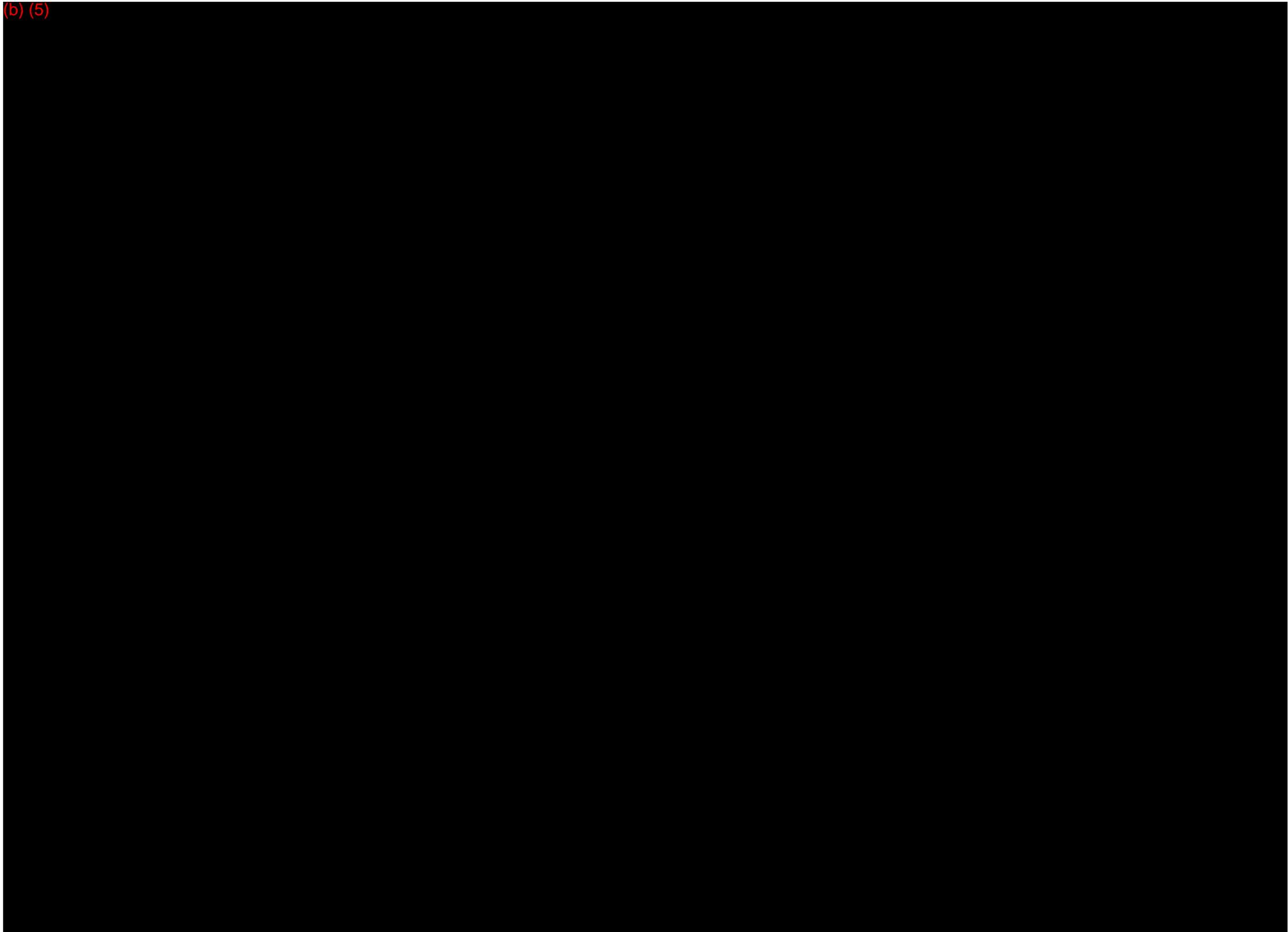
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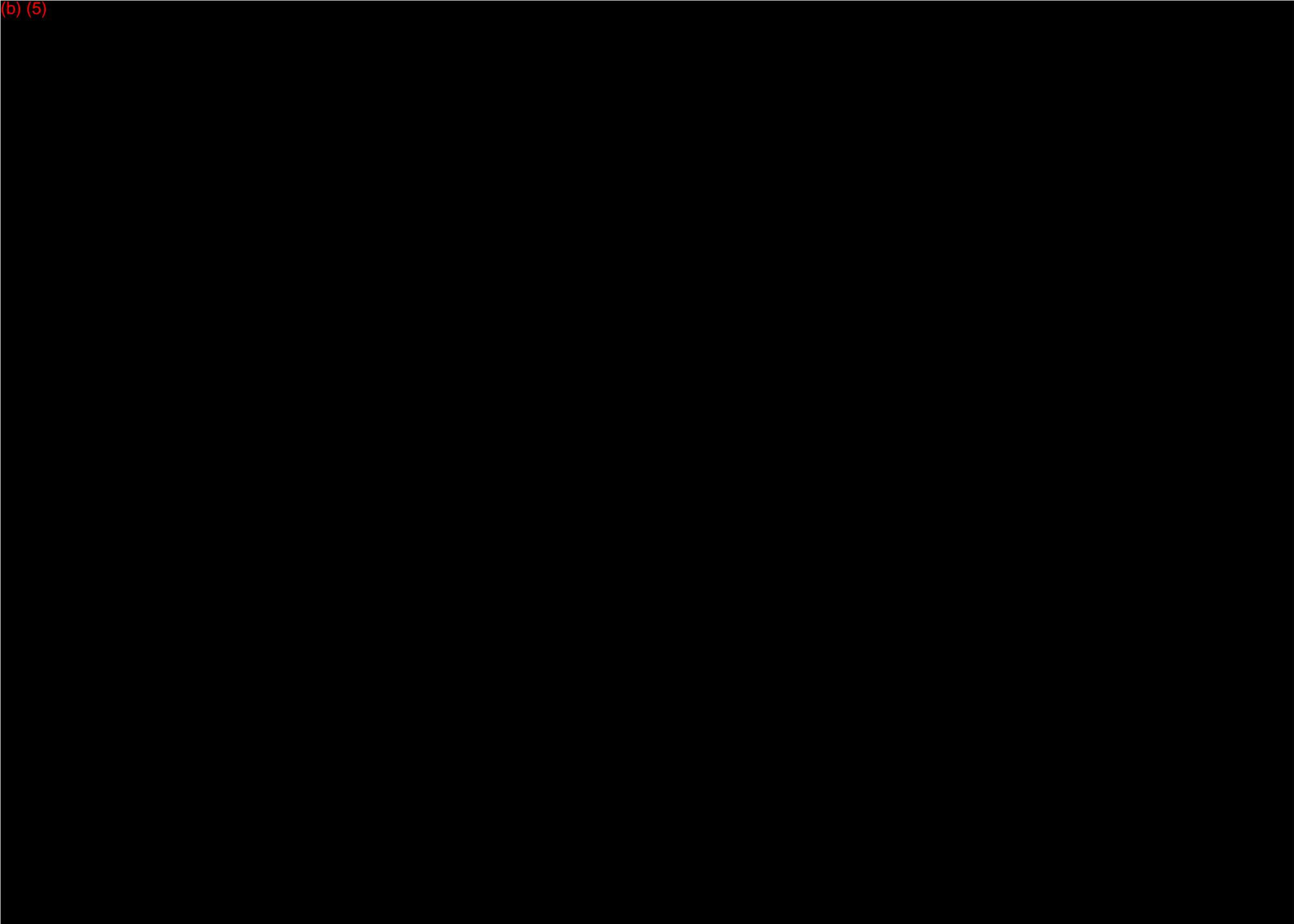


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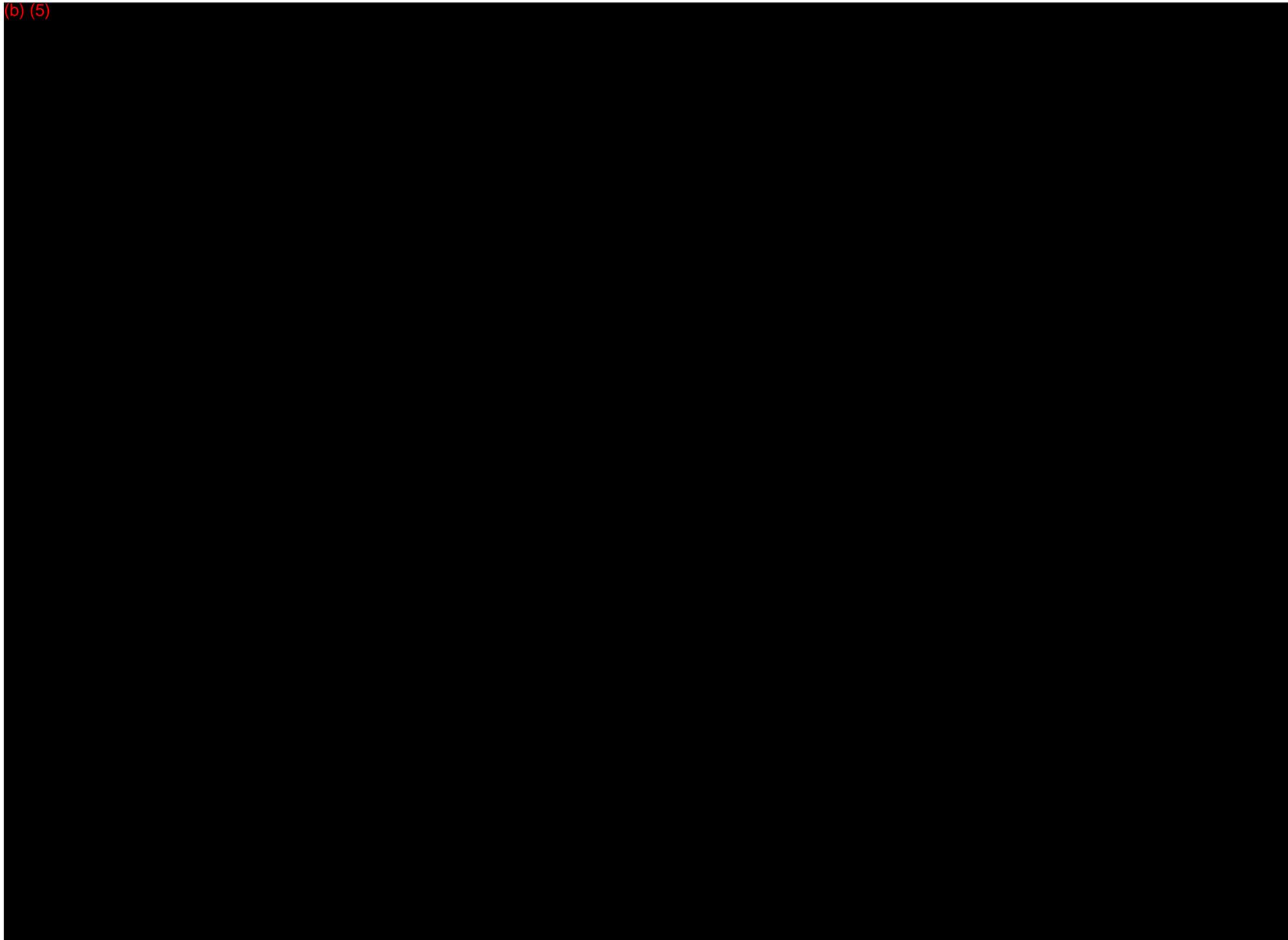
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## ECCR Forum Meeting Summary - July 2018

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**From:** Courtney Owen <owen@udall.gov>

james.g.vanness.civ@mail.mil, leila.afzal@noaa.gov, felicia.alexander@dot.gov, lbaker@blm.gov, krystyna.bednarczyk@dot.gov, elisabeth.blaug@ferc.gov, a1bobo@blm.gov, "Boling, Ted A. EOP/CEQ" (b) (6), terry.l.bowers14.civ@mail.mil, william.bresnick@dhs.gov, briskin.jeanne@epa.gov, matilda.brodnax@fema.gov, hal.e.cardwell@usace.army.mil, andrea.l.carson@usace.army.mil, fclark@fs.fed.us, patricia.r.collins6.civ@mail.mil, amy.coyle@dot.gov, michelle.degrandi@va.gov, jeff.dillen@noaa.gov, bdigiaco@doc.gov, "Drummond, Michael R. EOP/CEQ" (b) (6), katrina.a.durbak@hud.gov, david.emmerson@ios.doi.gov, aerwin@usaid.gov, myles.flint@usdoj.gov, "Gamache, Christopher D. EOP/OMB" (b) (6), jgartlan@fmc.gov, james.gavin@dot.gov, andrea.geiger@navy.mil, shahram.ghasemian@hq.doe.gov, gilbert.susan.j@dol.gov, victoria.c.gilner.civ@mail.mil, agoldhor@fs.fed.us, elena\_gonzalez@ios.doi.gov, aegoode@fs.fed.us, susan\_goodwin@ios.doi.gov, carrie.greco@us.army.mil, courtney.l.greenley@usace.army.mil, william\_e\_hall@ios.doi.gov, karen.hanley@gsa.gov, jennifer.hass@hq.dhs.gov, "Hathaway, Kyle W. EOP/OMB" (b) (6), "Hickey, Mike J. EOP/OMB" (b) (6), jacqueline.holmes@ferc.gov, chumphre@blm.gov, chumphre@blm.gov, joshua.hurwitz@ferc.gov, saman\_hussain@ios.doi.gov, cyan.r.james.ctr@mail.mil, craig.jensen@navy.mil, catherine.johnson7@va.gov, garima.joshi@fema.dhs.gov, judy.kaleta@ost.dot.gov, alexander.kass@ferc.gov, holden.keijer@hq.doe.gov, steve.kokkinakis@noaa.gov, maria.t.lantz@usace.army.mil, james.m.lawton@usace.army.mil, steve.leathery@noaa.gov, melissa.leibman2@usdoj.gov, alosasso@blm.gov, mackinnk@osdgc.osd.mil, jfleuret@blm.gov, patricia.mckenna@usdoj.gov, peter.mcveigh@usdoj.gov, steven.miller@hq.doe.gov, amanda.myers@navy.mil, Lauren Nutter <nutter@udall.gov>, matthew.oakes@usdoj.gov, rebecca.odell@gsa.gov, joan.olmstead@nrc.gov, "Bussow, Mark A. EOP/OMB" (b) (6), deborah.osborne@ferc.gov, marlys.osterhues@dot.gov, sarah\_palmer@ios.doi.gov, (b) (6), janet.pfleeger@gsa.gov, robert.a.pietrowsky@usace.army.mil, kprentic@blm.gov, kerry.m.redican@usace.army.mil, deirdre.remley@dot.gov, katherine.renshaw@noaa.gov, michael.j.saffran@usace.army.mil, jschaefers@fs.fed.us, shari.schafflein@dot.gov, donald.schregardus@navy.mil, helen.serassio@dot.gov, thomas.sharp@ferc.gov, nathan.smith@gsa.gov, gerald.solomon@dot.gov, frank.sptel@noaa.gov, stacy.stoller@usdoj.gov, strickler.jacob@epa.gov, maureen.sullivan@osd.mil, tracey.therit@va.gov, trice.jessica@epa.gov, marc.vannuys@us.army.mil, mezameyo@gmail.com, colleen.vaughn@dot.gov, karen.a.white54.civ@mail.mil, beverly.whitehead@hq.doe.gov, cynthia.j.wood@usace.army.mil

**Cc:** Institute Staff <institutestaff@udall.gov>

**Date:** Thu, 02 Aug 2018 17:29:27 -0400

**Attachments:** 2018-14821.pdf (212.33 kB); CEQ NEPA Regulations ANPRM (pre-publication).pdf (161.5 kB); MOU-One-Federal-Decision-m-18-13-Part-2-1.pdf (1.85 MB); CPCX-The Story-Very Brief2b.pdf (127.59 kB); ECCR Forum Meeting Summary\_July 2018.docx (30.17 kB)

Hello ECCR Forum,

Please find the attached ECCR Forum Meeting Summary from July 24, 2018 for your review. Additionally, the following documents referenced in the notes are attached:

- The CEQ ANPRM
- The ANPRM comment extension
- The One Federal Decision MOU
- USACE's Internal ECCR Document

Let us know if you have any concerns or comments. Thank you!

Best,  
Courtney

**Courtney Owen**

Program Associate

U.S. Institute for Environmental Conflict Resolution

MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

1825 K Street NW, Suite 701, Washington, DC 20006

Tel: 202.540.1040 ~ Fax: 202.540.1044

Email: [owen@udall.gov](mailto:owen@udall.gov) Website: [www.udall.gov](http://www.udall.gov)



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[3225-F8-P]

**COUNCIL ON ENVIRONMENTAL QUALITY**

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

**[Docket No. CEQ-2018-0001]**

**RIN: 0331-AA03**

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

**AGENCY:** Council on Environmental Quality (CEQ).

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

**SUMMARY:** On June 20, 2018, the Council on Environmental Quality (CEQ) published an advance notice of proposed rulemaking (ANPRM) titled “Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act.” The CEQ is extending the comment period on the ANPRM, which was scheduled to close on July 20, 2018, for 31 days until August 20, 2018. The CEQ is making this change in response to public requests for an extension of the comment period.

**DATES:** Comments should be submitted on or before August 20, 2018.

**ADDRESSES:** Submit your comments, identified by docket identification number CEQ-2018-0001 through the Federal eRulemaking portal at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments

cannot be edited or removed from <https://www.regulations.gov>. CEQ may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (e.g., audio, video) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make.

Comments may also be submitted by mail. Send your comments to: Council on Environmental Quality, 730 Jackson Place, N.W., Washington, DC 20503, Attn: Docket No. CEQ-2018-0001.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Boling, Associate Director for the National Environmental Policy Act, Council on Environmental Quality, 730 Jackson Place, N.W., Washington, DC 20503. Telephone: (202) 395-5750.

**SUPPLEMENTARY INFORMATION:** On June 20, 2018, CEQ published an ANPRM titled “Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act” in the *Federal Register* (83 FR 28591). The original deadline to submit comments was July 20, 2018. This action extends the comment period for 31 days to ensure the public has sufficient time to review and comment on the ANPRM. Written comments should be submitted on or before August 20, 2018.

Mary B. Neumayr,

*Chief of Staff, Council on Environmental Quality.*

[FR Doc. 2018-14821 Filed: 7/10/2018 8:45 am; Publication Date: 7/11/2018]



[3225-F8]

**COUNCIL ON ENVIRONMENTAL QUALITY**

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

**[Docket No. CEQ-2018-0001]**

**RIN: 0331-AA03**

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

**AGENCY:** Council on Environmental Quality (CEQ).

**ACTION:** Advance Notice of Proposed Rulemaking.

**SUMMARY:** The Council on Environmental Quality (CEQ) is considering updating its implementing regulations for the procedural provisions of the National Environmental Policy Act (NEPA). Over the past four decades, CEQ has issued numerous guidance documents but has amended its regulations substantively only once. Given the length of time since its NEPA implementing regulations were issued, CEQ solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process consistent with the national environmental policy stated in NEPA.

**DATES:** Comments should be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number CEQ-2018-0001 through the Federal eRulemaking portal at <https://www.regulations.gov>.

Follow the online instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Boling, Associate  
Director for the National Environmental Policy Act, Council on Environmental Quality,  
730 Jackson Place, N.W., Washington, DC 20503. Telephone: (202) 395-5750.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 et seq., was enacted in 1970. NEPA states that “it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.” 42 U.S.C. § 4331(a). NEPA also established CEQ as an agency within the Executive Office of the President. 42 U.S.C. § 4342.

By Executive Order (E.O.) 11514, “Protection and Enhancement of Environmental Quality” (March 5, 1970), President Nixon directed CEQ in Section 3(h) to issue “guidelines to Federal agencies for the preparation of detailed statements on proposals for legislation and other Federal actions affecting the environment, as required by section 102(2)(C) of the Act.” CEQ published these guidelines in April of 1970 and revised them in 1973.

President Carter issued E.O. 11991 (May 24, 1977), “Relating to Protection and Enhancement of Environmental Quality,” which amended Section 3(h) of E.O. 11514 to direct CEQ to issue regulations providing uniform standards for the implementation of

NEPA, and amended Section 2 of E.O. 11514 to require agency compliance with the CEQ regulations. CEQ promulgated its “Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act” (CEQ’s NEPA regulations) at 40 CFR parts 1500-1508. 43 FR 55978 (November 29, 1978). Since that time, CEQ has amended its NEPA regulations substantively only once, to eliminate the “worst case” analysis requirement of 40 CFR 1502.22. 51 FR 15618 (April 25, 1986).

On August 15, 2017, President Trump issued E.O. 13807, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects.” 82 FR 40463 (August 24, 2017). Section 5(e) of E.O. 13807 directed CEQ to develop an initial list of actions to enhance and modernize the Federal environmental review and authorization process. In response, CEQ published its initial list of actions pursuant to E.O. 13807 and stated that it intends to review its existing NEPA regulations in order to identify changes needed to update and clarify these regulations. 82 FR 43226 (September 14, 2017).

## **II. Request for Comment**

CEQ requests comments on potential revisions to update and clarify CEQ NEPA regulations. In particular, CEQ requests comments on the following specific aspects of these regulations, and requests that commenters include question numbers when providing responses. Where possible, please provide specific recommendations on additions, deletions, and modifications to the text of CEQ’s NEPA regulations and their justifications.

### ***NEPA Process:***

1. Should CEQ's NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?
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?
3. Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?

***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?
5. Should CEQ's NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decisionmakers and the public, and if so, how?
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?
7. Should definitions of any key NEPA terms in CEQ's NEPA regulations, such as those listed below, be revised, and if so, how?
  - a. Major Federal Action;
  - b. Effects;

- c. Cumulative Impact;
  - d. Significantly;
  - e. Scope; and
  - f. Other NEPA terms.
8. Should any new definitions of key NEPA terms, such as those noted below, be added, and if so, which terms?
- a. Alternatives;
  - b. Purpose and Need;
  - c. Reasonably Foreseeable;
  - d. Trivial Violation; and
  - e. Other NEPA terms.
9. Should the provisions in CEQ's NEPA regulations relating to any of the types of documents listed below be revised, and if so, how?
- a. Notice of Intent;
  - b. Categorical Exclusions Documentation;
  - c. Environmental Assessments;
  - d. Findings of No Significant Impact;
  - e. Environmental Impact Statements;
  - f. Records of Decision; and
  - g. Supplements.
10. Should the provisions in CEQ's NEPA regulations relating to the timing of agency action be revised, and if so, how?

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

***General:***

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

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?

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

(Authority: 42 U.S.C. 4332, 4342, 4344 and 40 CFR Parts 1500, 1501, 1502, 1503, 1505, 1506, 1507, and 1508)

### **III. Statutory and Executive Order Reviews**

Under E.O. 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993), this is a "significant regulatory action." Accordingly, CEQ submitted this action to the Office of Management and Budget (OMB) for review under E.O. 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action. Because this action does not propose or impose any requirements, and instead seeks comments and suggestions for CEQ to consider in possibly developing a subsequent proposed rule, the various statutes and executive orders that normally apply to rulemaking do not apply in this case. If CEQ decides in the future to pursue a rulemaking, CEQ will address the statutes and executive orders applicable to that rulemaking at that time.

Mary B. Neumayr,

*Chief of Staff, Council on Environmental Quality.*

[FR Doc. 2018-13246 Filed: 6/19/2018 8:45 am; Publication Date: 6/20/2018]

## RE: Yesterday's OFD meeting

---

**From** : "Knight, Kelly" <knight.kelly@epa.gov>

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

**Date**: Thu, 02 Aug 2018 10:20:59 -0400

I plan to be on the call. (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

---

**From**: Boling, Ted A. EOP/CEQ [mailto:(b) (6)]  
**Sent**: Thursday, August 2, 2018 10:04 AM  
**To**: Knight, Kelly <knight.kelly@epa.gov>; Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject**: RE: Yesterday's OFD meeting

(b) (5)

[REDACTED]

[REDACTED]

Let's discuss this next Monday. Are you going to be available?

---

**From**: Knight, Kelly <knight.kelly@epa.gov>  
**Sent**: Thursday, August 2, 2018 9:44 AM  
**To**: Boling, Ted A. EOP/CEQ <(b) (6)> Drummond, Michael R. EOP/CEQ <(b) (6)>  
**Subject**: Yesterday's OFD meeting

Ted/Michael,

(b) (5)

[REDACTED]

Thanks

Kelly Knight  
Director, NEPA Compliance Division  
Environmental Protection Agency  
202-564-2141 (office)  
(b) (6) (cell)

## RE: Yesterday's OFD meeting

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

**To:** "Knight, Kelly" <knight.kelly@epa.gov>, "Drummond, Michael R. EOP/CEQ" <(b) (6)>

**Date:** Thu, 02 Aug 2018 10:03:31 -0400

(b) (5)

Let's discuss this next Monday. Are you going to be available?

---

**From:** Knight, Kelly <knight.kelly@epa.gov>

**Sent:** Thursday, August 2, 2018 9:44 AM

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

**Subject:** Yesterday's OFD meeting

Ted/Michael,

(b) (5)

Thanks

Kelly Knight  
Director, NEPA Compliance Division  
Environmental Protection Agency  
202-564-2141 (office)  
(b) (6) (cell)

## NEPA Task Force Summaries

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**From:** "Upchurch, Sara H. EOP/CEQ" <(b) (6)>  
**To:** "Boling, Ted A. EOP/CEQ" (b) (6) "Drummond, Michael R. EOP/CEQ" <(b) (6)> "Mansoor, Yardena M. EOP/CEQ" <(b) (6)>  
**Date:** Mon, 06 Aug 2018 15:04:01 -0400  
**Attachments:** Summary - NEPA Task Forces.docx (17.16 kB)

---

All – I took a little time to flesh out the summary Yardena produced of the CEQ NEPA Task Force recommendations, as well as to summarize the recommendations produced by the House Resources Committee a few years later (see attached). Thought this could serve as a quick reference on these two major NEPA review efforts from the not-so-distant past as the way-forward on ANPRM comments are discussed. (b) (5)

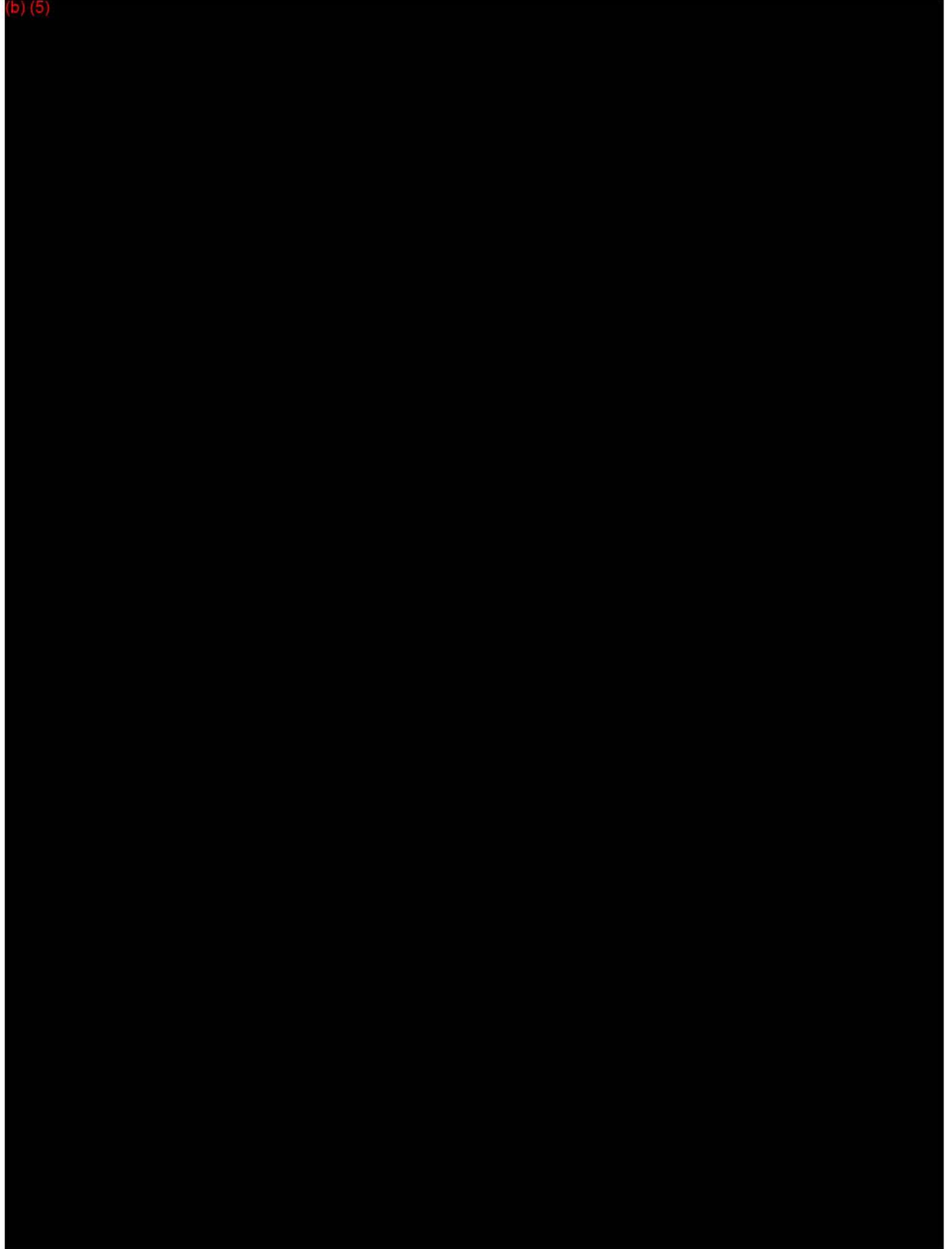
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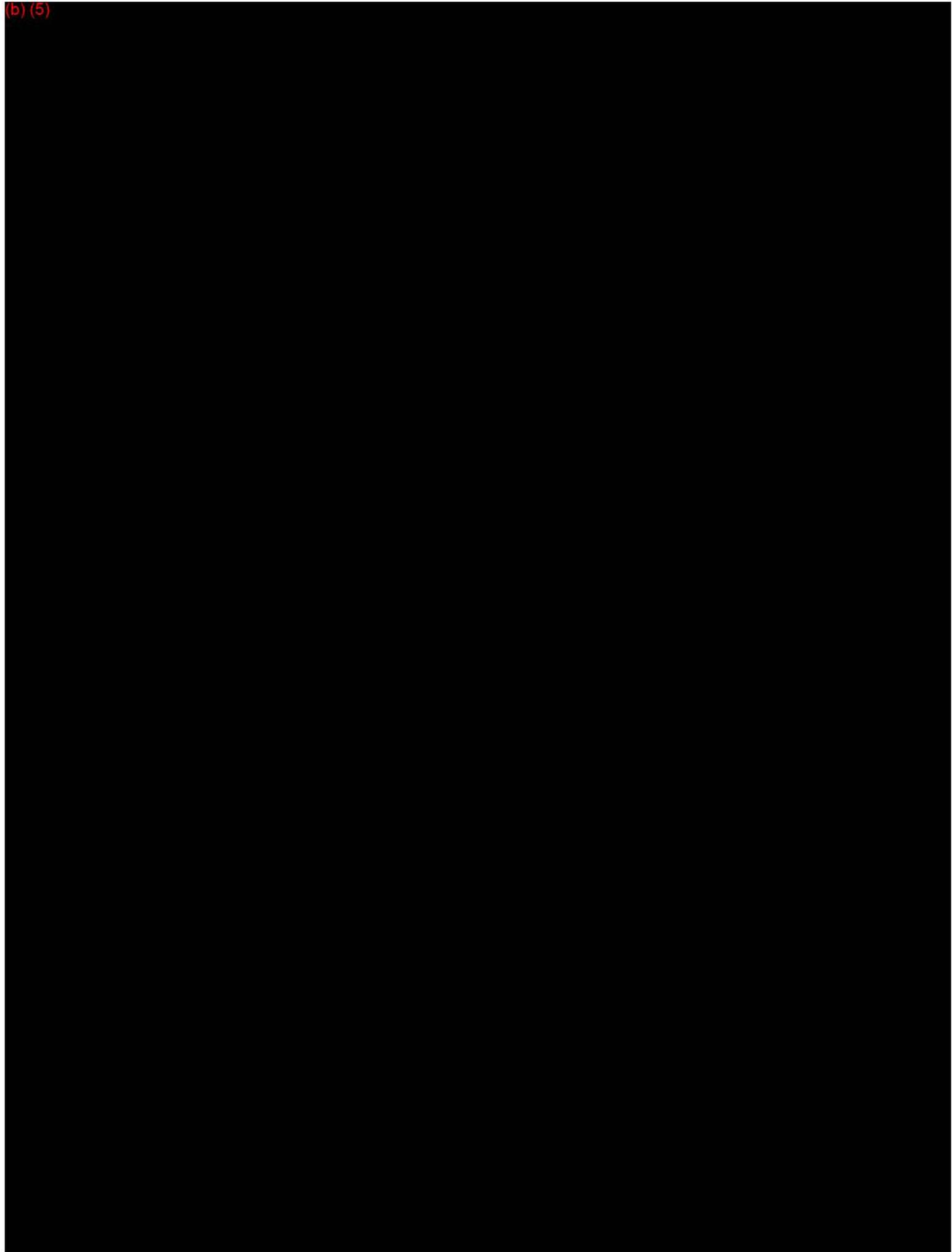
(b) (5)

I didn't cross-reference these recommendations with the 20 questions in the ANPRM, but could dig into that if that would be helpful or do some additional historical research. Please let me know if there is another need I could address for this effort.

~ Sara

Sara Upchurch  
Deputy Associate Director for NEPA  
Executive Office of the President  
Council on Environmental Quality  
(b) (6) [CEQ cell]





## Two rough drafts

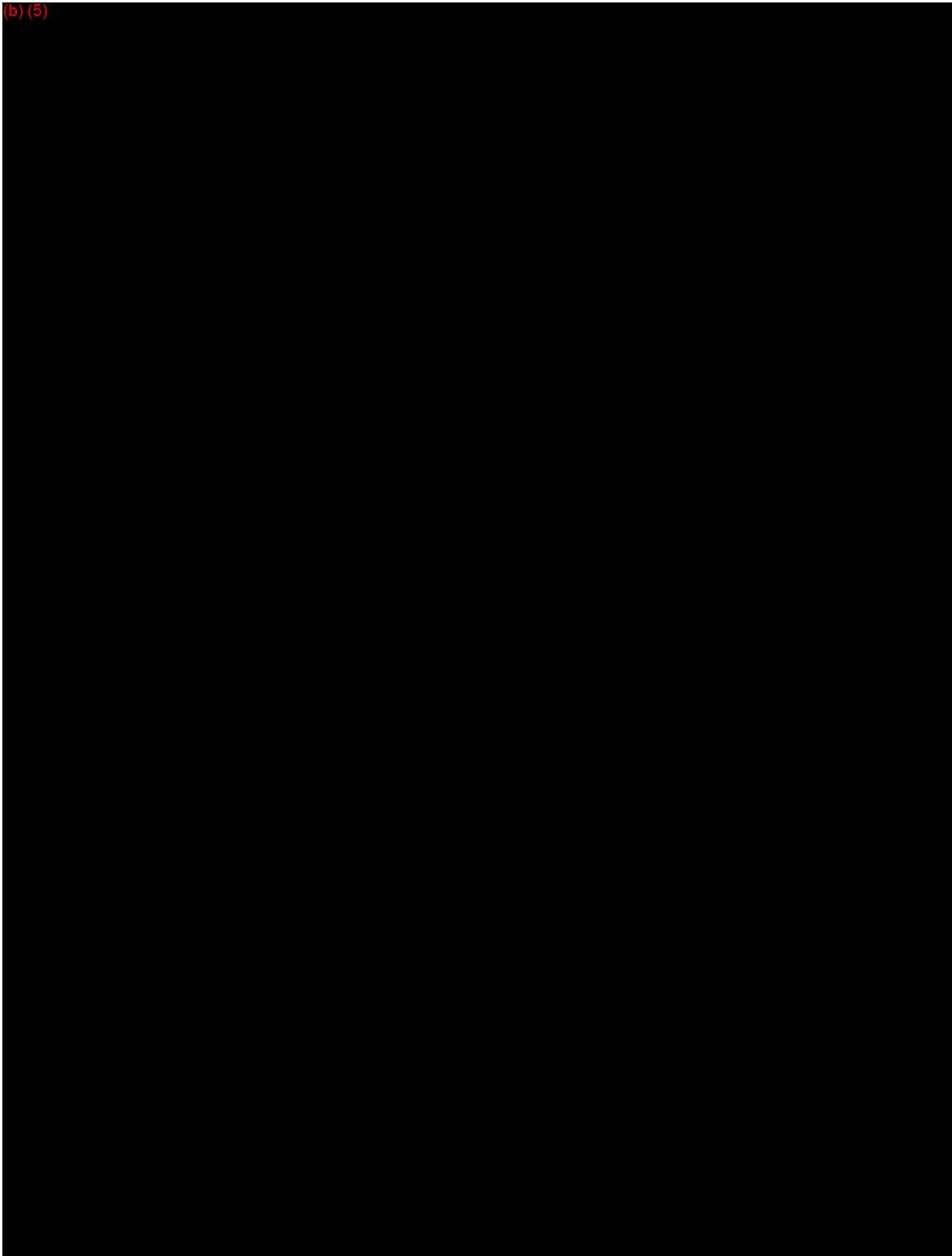
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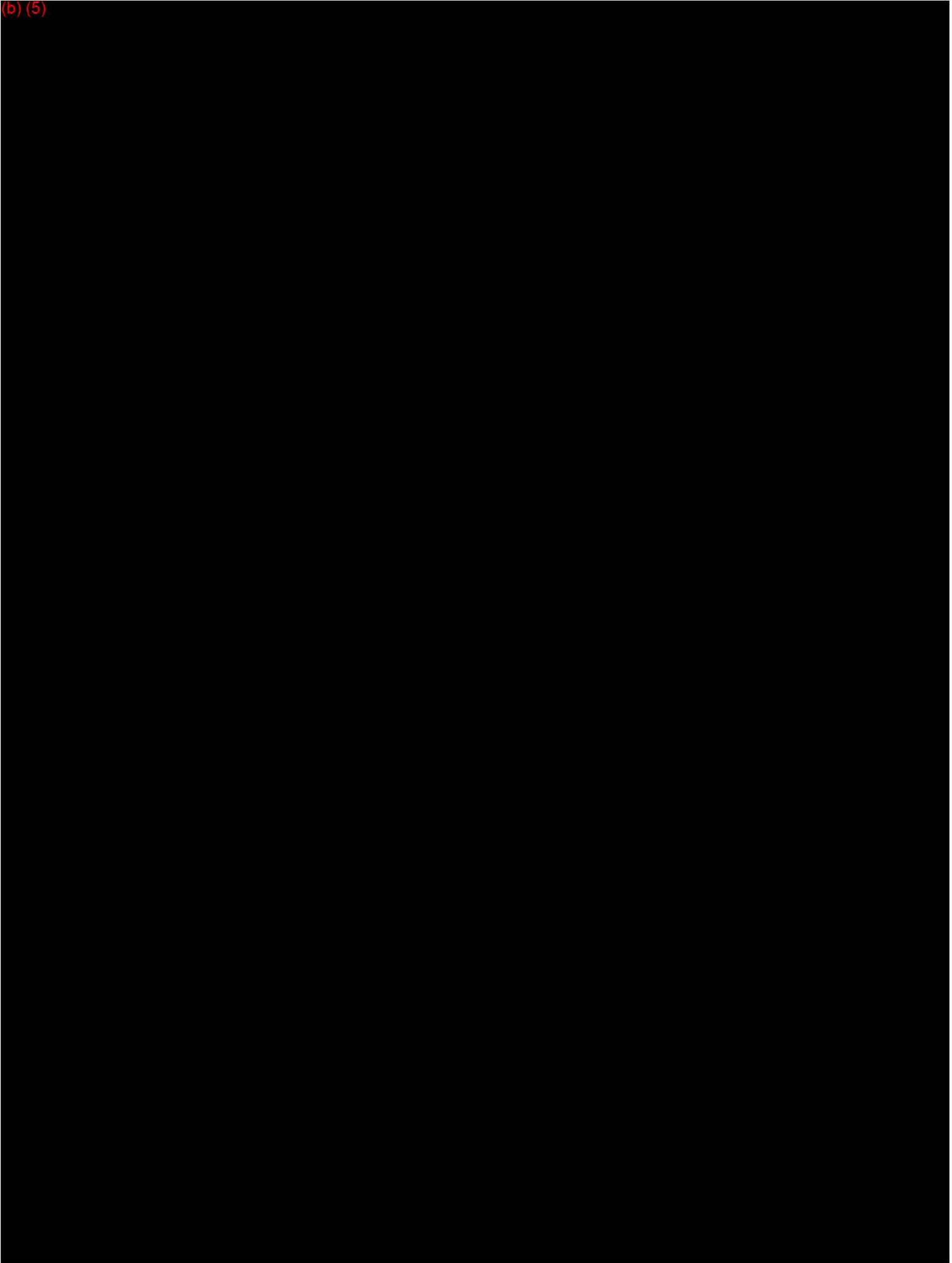
**From:** "Loyola, Mario A. EOP/CEQ" (b) (6)  
**To:** "Boling, Ted A. EOP/CEQ" <(b) (6)>  
**Date:** Wed, 08 Aug 2018 13:21:00 -0400  
**Attachments:** Preamble Skeleton - Proposed Rule - CEQ Regulation Amendment v3.docx (55.39 kB); Big items.docx (13.9 kB)

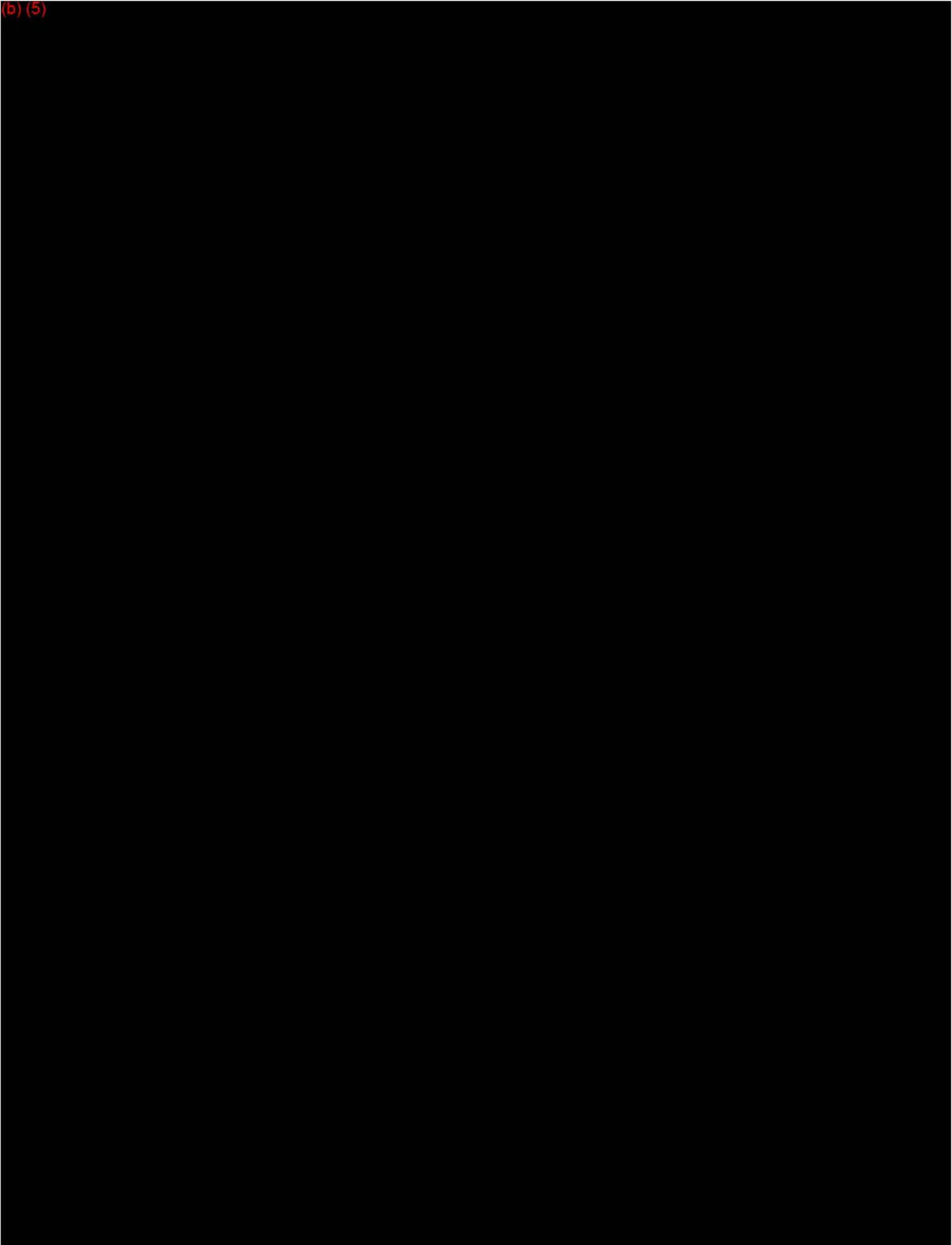
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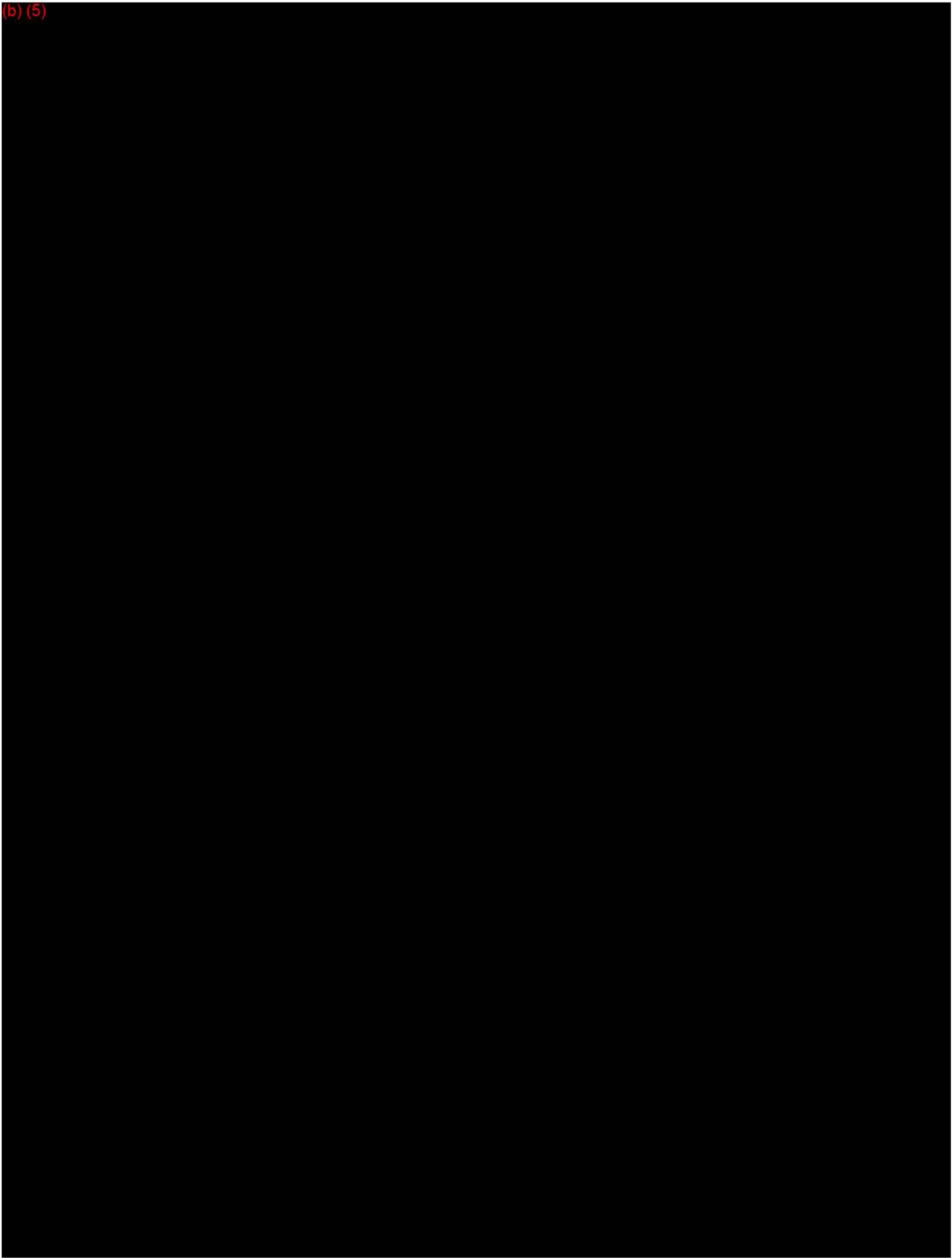
Looking forward to comments!

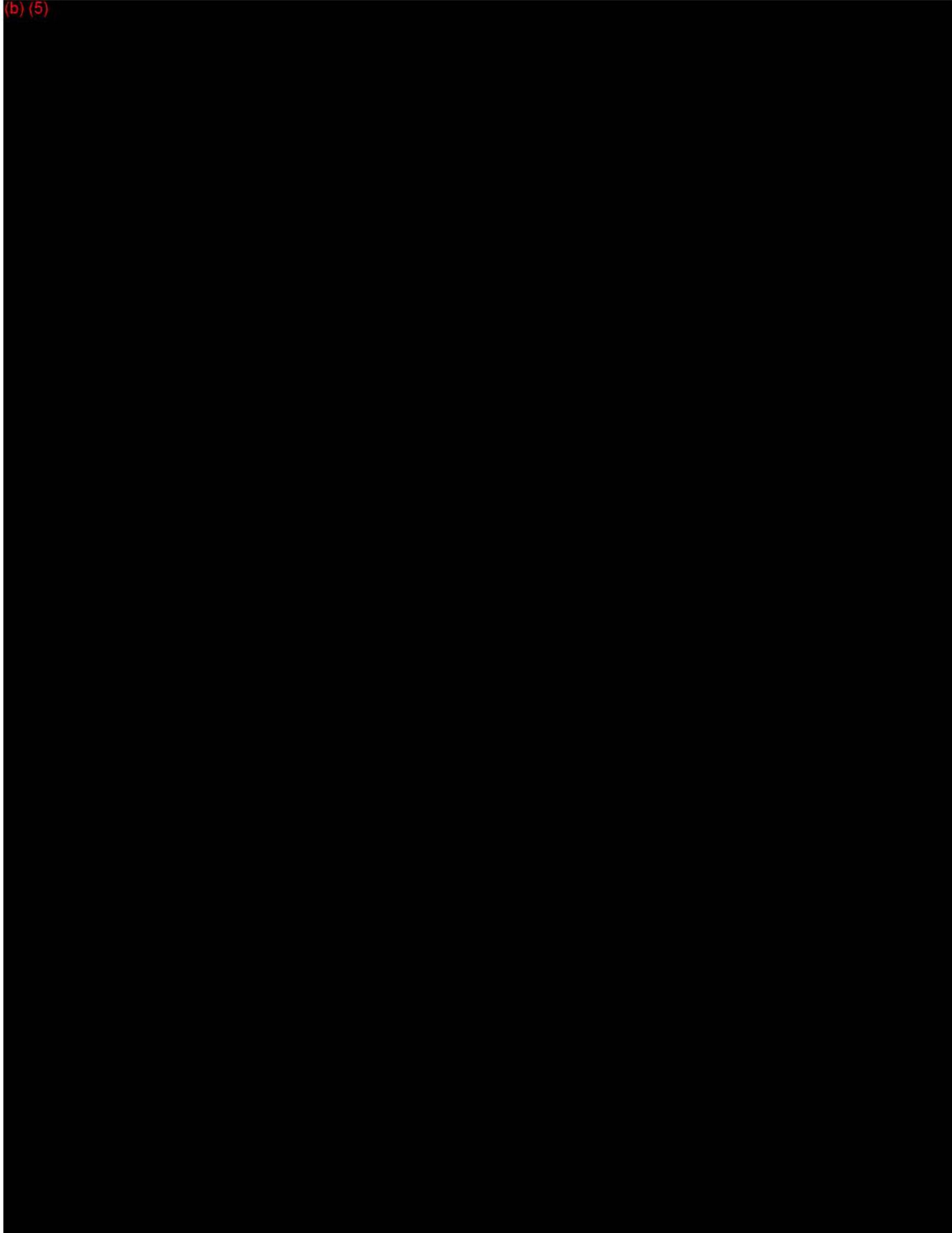
Mario Loyola  
Associate Director, Regulatory Reform  
White House Council on Environmental Quality  
(o) (b) (6) | (c) (b) (6)

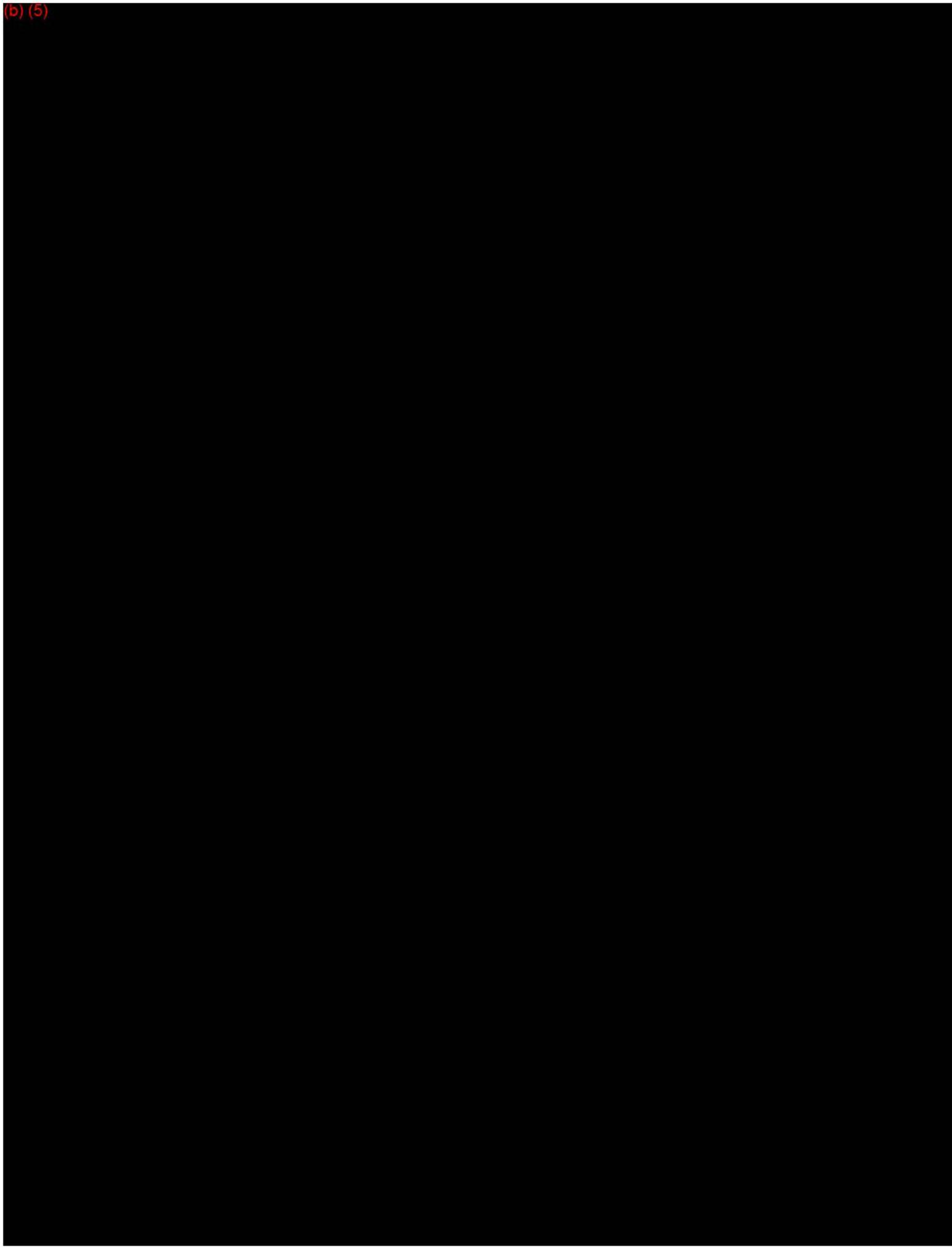


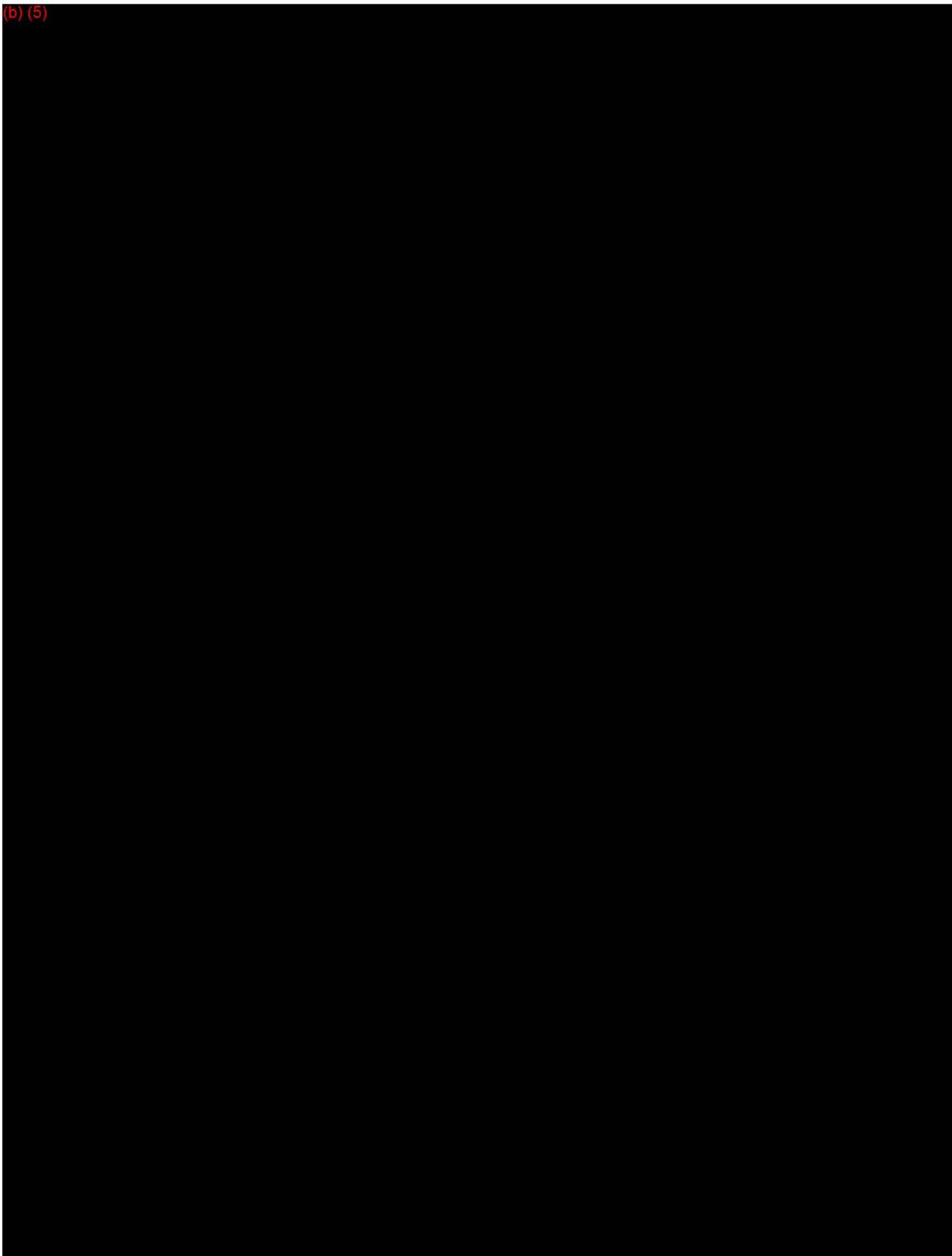


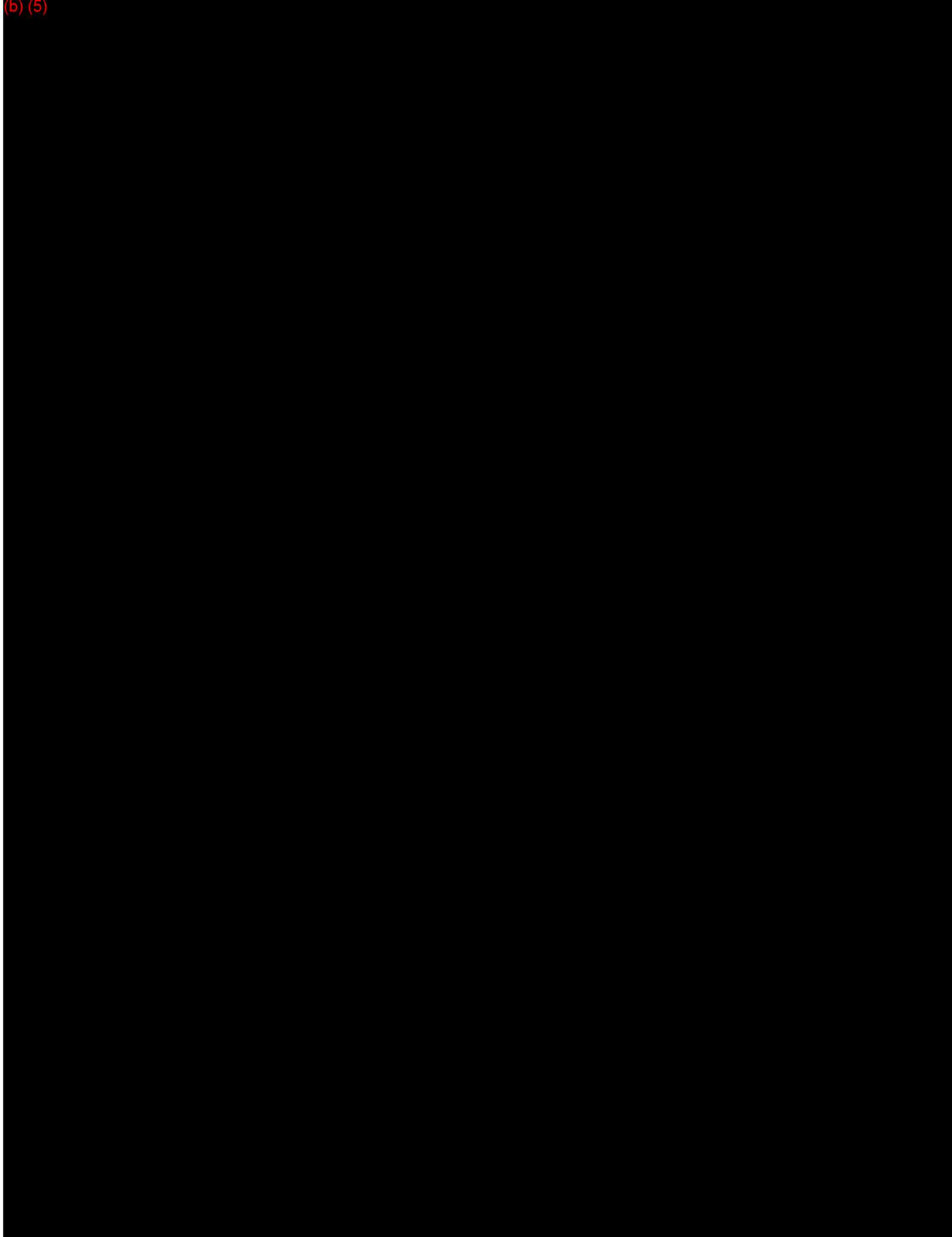


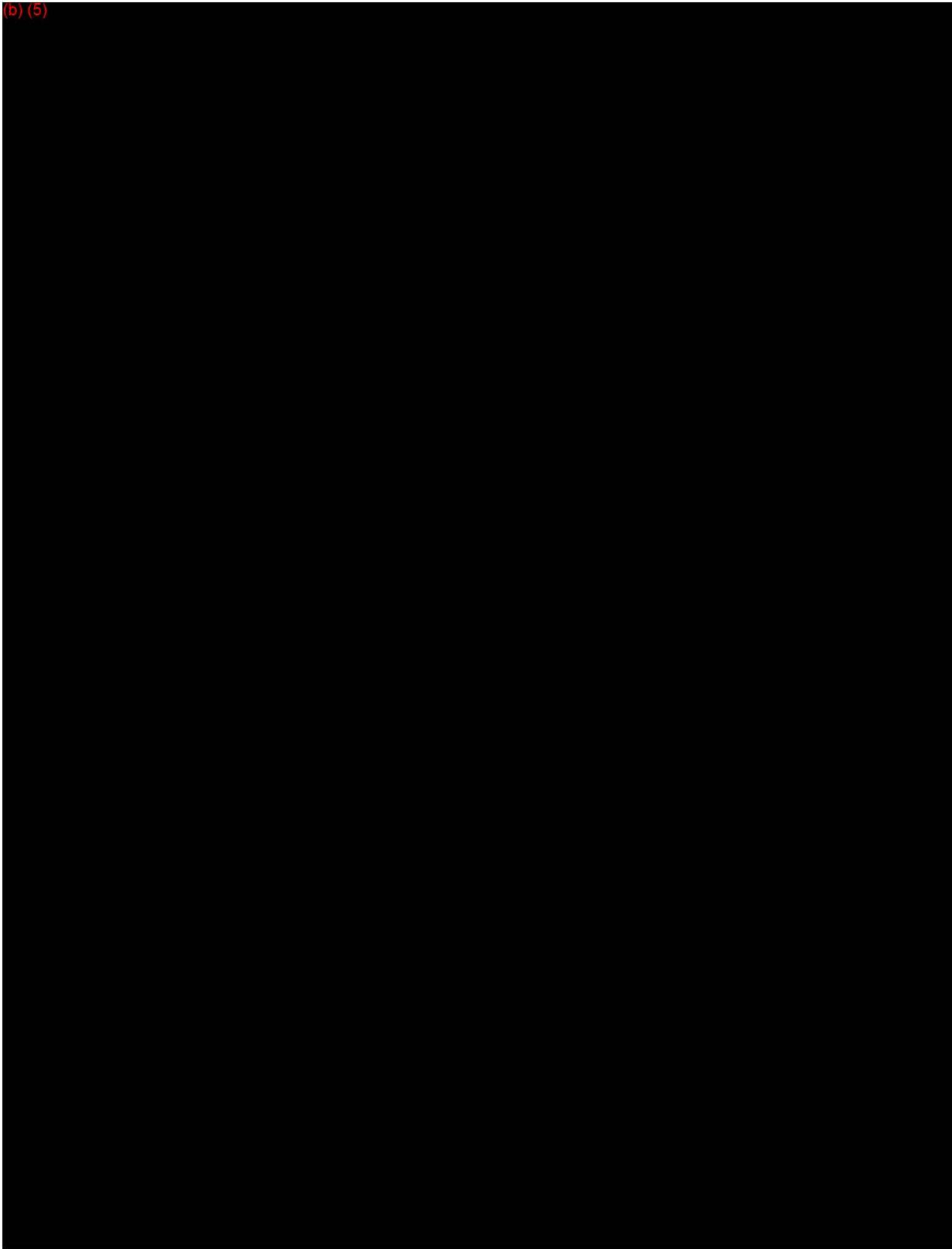


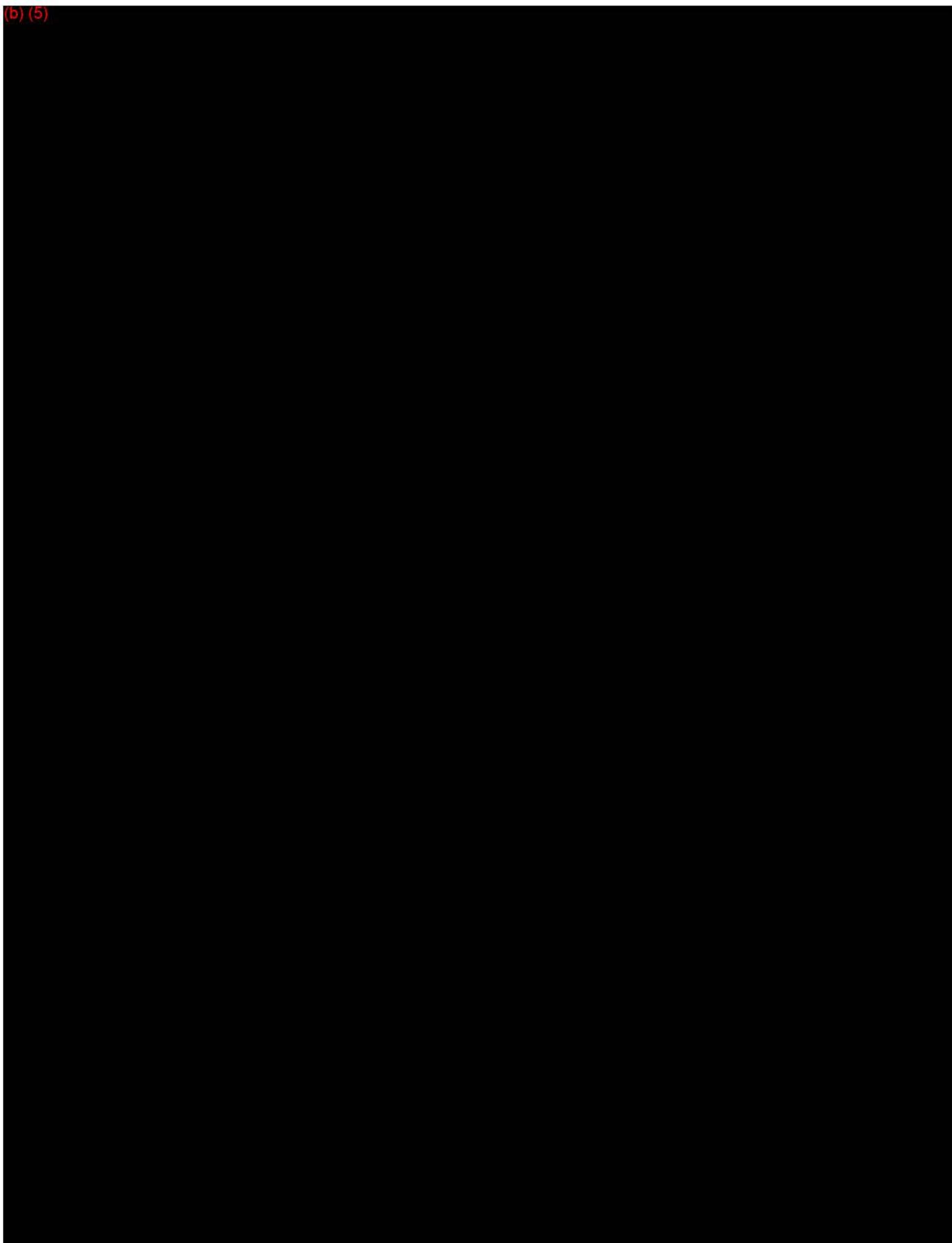




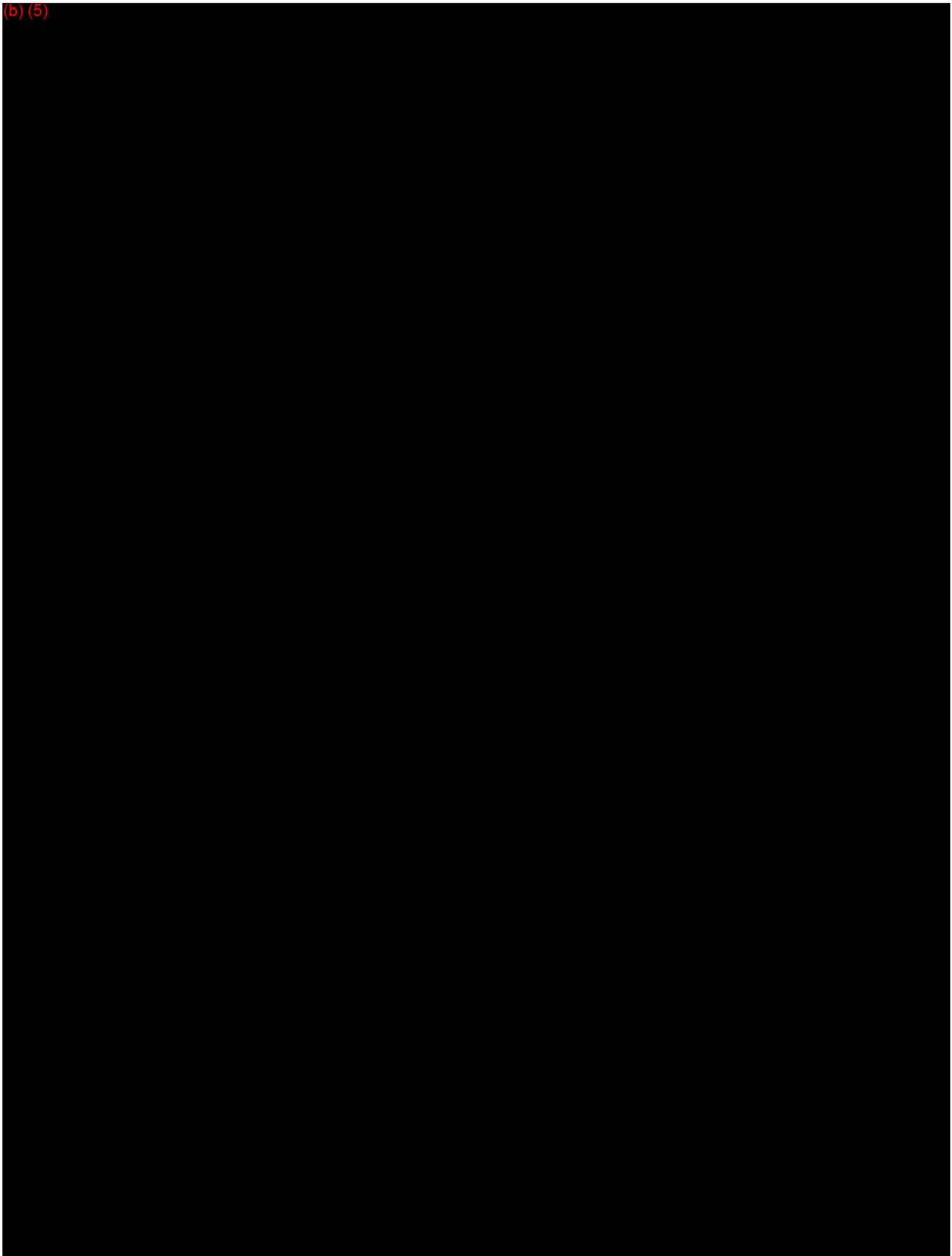


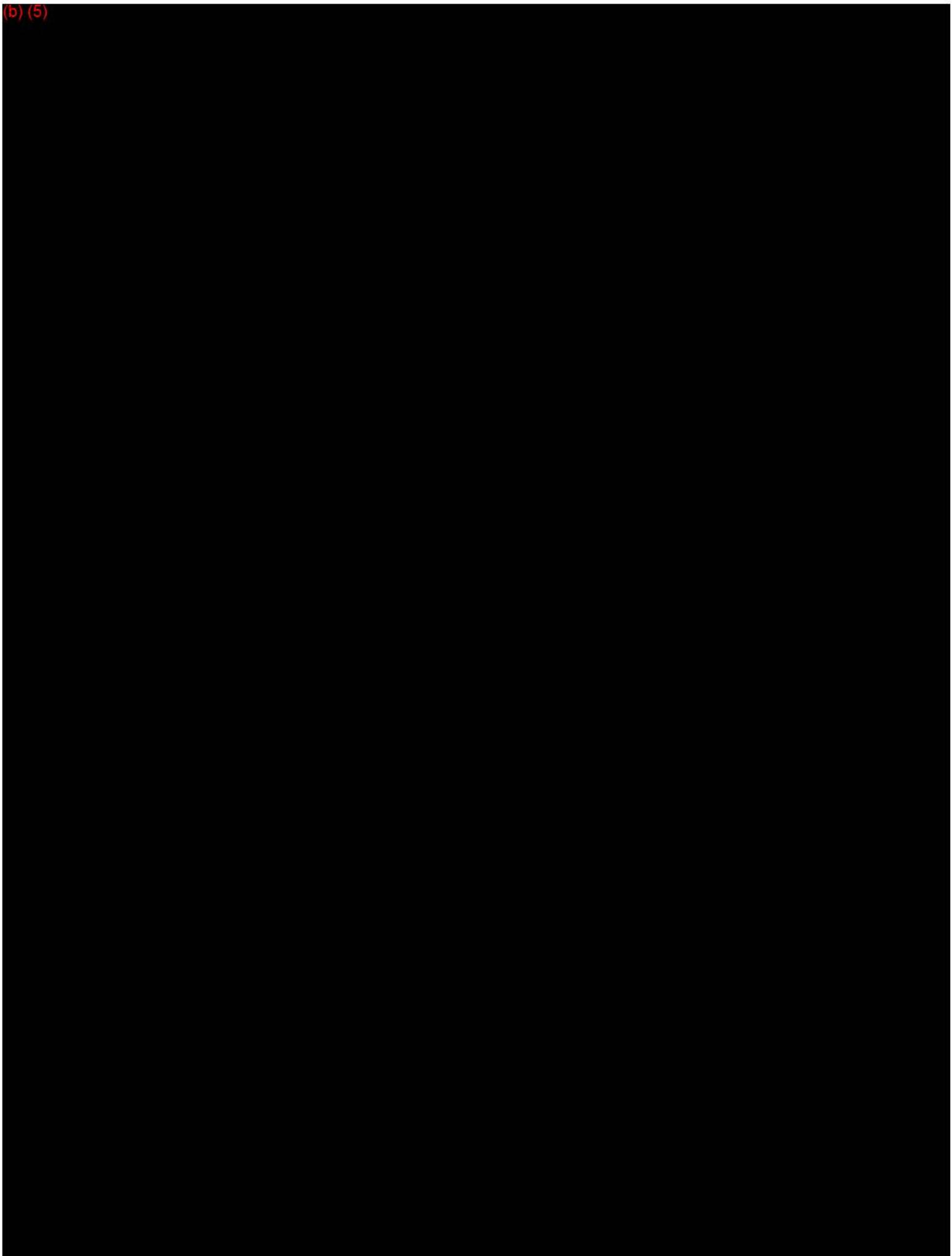












## RE: Minutes

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**From:** "Barnett, Steven W. EOP/CEQ" <(b) (6)>  
**To:** "Szabo, Aaron L. EOP/CEQ" <(b) (6)>  
**Date:** Fri, 10 Aug 2018 12:42:34 -0400  
**Attachments:** CEQ NEPA Implementing Regulation Working Group 8.7.2018\_CLEAN COPY.docx (26.01 kB)

Sure. See attached.

---

**From:** Szabo, Aaron L. EOP/CEQ  
**Sent:** Friday, August 10, 2018 12:36 PM  
**To:** Barnett, Steven W. EOP/CEQ <(b) (6)>  
**Subject:** RE: Minutes

Let's hold off on that. Can you send me back a clean version first?

---

**From:** Barnett, Steven W. EOP/CEQ  
**Sent:** Friday, August 10, 2018 12:35 PM  
**To:** Szabo, Aaron L. EOP/CEQ <(b) (6)>  
**Subject:** RE: Minutes

Thanks for the edits. All makes sense to me. Shall I circulate to the Working Group?

---

**From:** Szabo, Aaron L. EOP/CEQ  
**Sent:** Friday, August 10, 2018 12:31 PM  
**To:** Barnett, Steven W. EOP/CEQ <(b) (6)>  
**Subject:** RE: Minutes

Looks good. My suggestions in RLSO. Let me know if you would like to chat about it.

---

**From:** Barnett, Steven W. EOP/CEQ  
**Sent:** Friday, August 10, 2018 10:38 AM  
**To:** Szabo, Aaron L. EOP/CEQ <(b) (6)>  
**Subject:** Minutes

Sorry about the delay on these—in the future, I'll shoot for EOB Wednesday.

In the Do Outs, I have in my notes that Mario and Ted will present a list of ideas, but on the next page I wrote that the entire team will come with a list. Do you recall what we decided there?

After your review, let me know if there's changes you'd like me to make to format or content going forward. Thanks.

Steven

**CEQ NEPA Implementing Regulation Working Group**

**Meeting Minutes**

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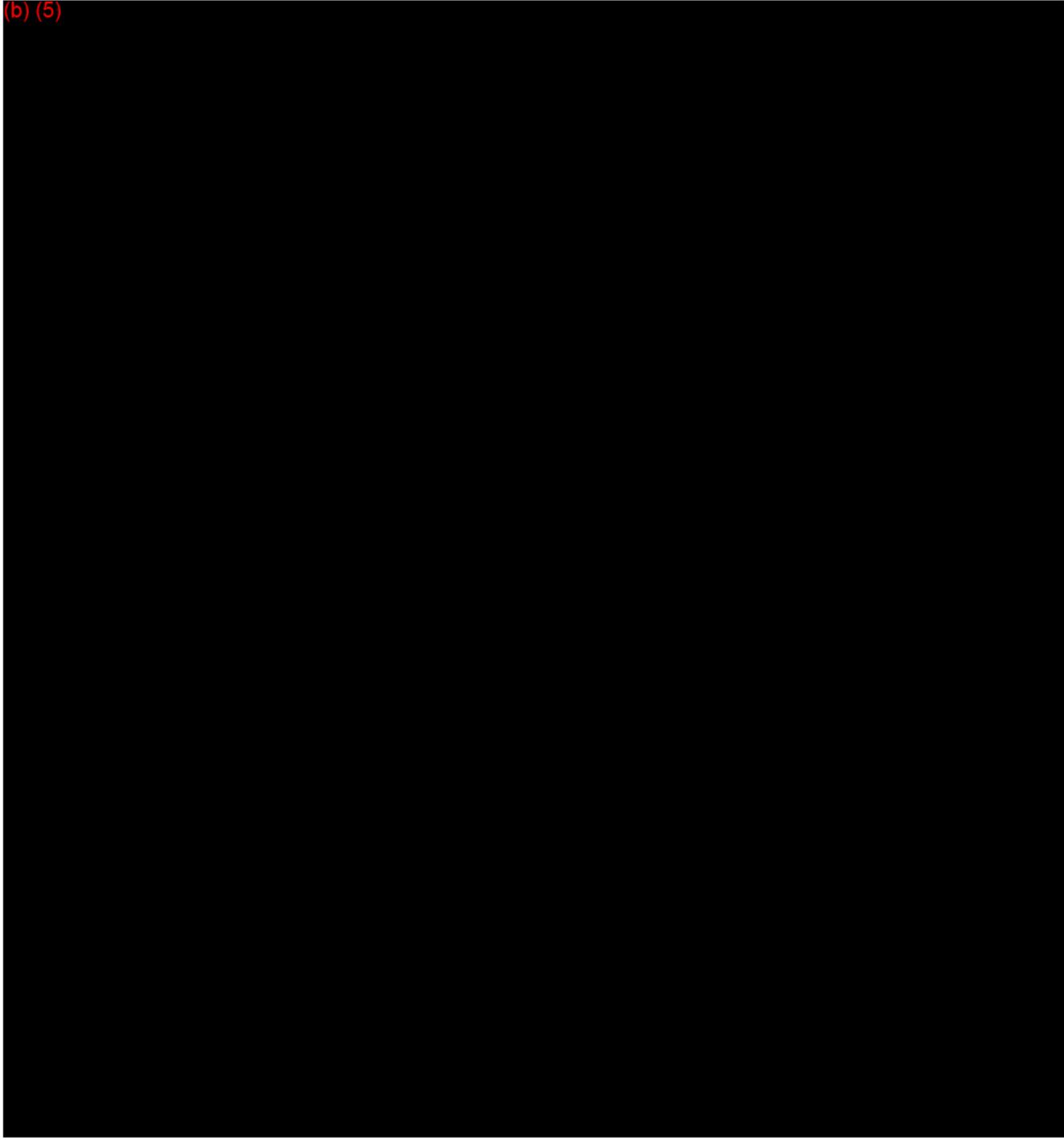
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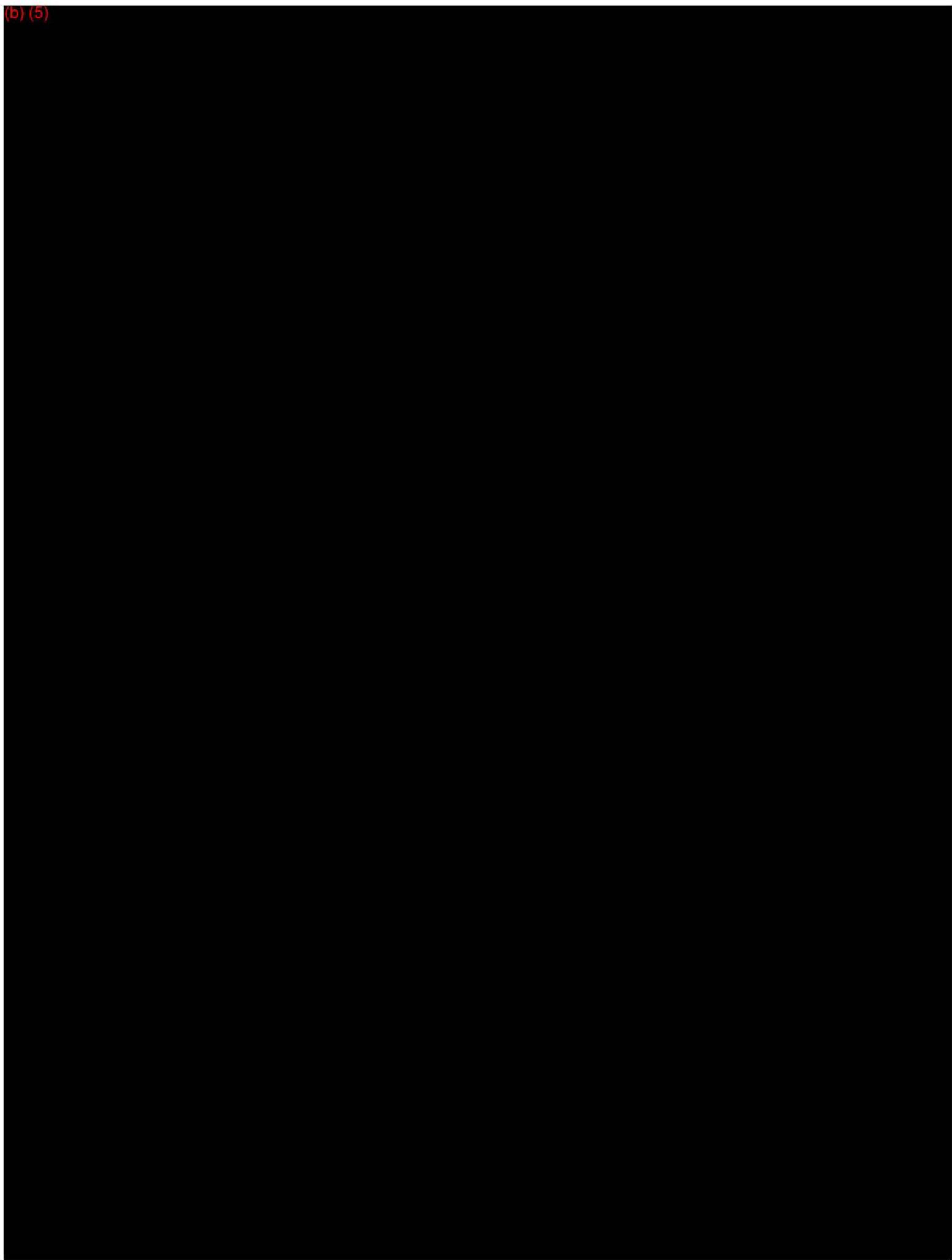
**Time:** 4:00 PM

**Present:** Aaron Szabo, Ted Boling, Viktoria Seale, Dan Schneider, Mario Loyola, Michael Drummond, Katherine Smith, Yardena Mansoor, Steven Barnett, Tom Sharp

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(b) (5)





## RE: CEQ NEPA ANPRM - Update to the Regulations and for Implementing the Procedural Provisions of NEPA

---

**From:** "Owen, Gib A CIV USARMY HQDA ASA CW (US)" <gib.a.owen.civ@mail.mil>  
**To:** "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**Cc:** "Boling, Ted A. EOP/CEQ" <(b) (6)>  
**Date:** Mon, 13 Aug 2018 16:38:06 -0400  
**Attachments:** smime.p7m (120.91 kB)

---

Mike

I will be in the office tomorrow until ~1000. I need to head to the airport around 1000. Glad to have a call before that time. I can set up a few of the HQ folks to be on the call if you all want to pick a time.

Gib

Gib Owen  
Water Resources Policy & Legislation  
Office of the Assistant Secretary of the Army for Civil Works Pentagon  
Washington DC  
gib.a.owen.civ@mail.mil  
703 695 4641 - Office  
(b) (6) - Cell

><(((^>...>(((^>...>(((^>...>(((^>

-----Original Message-----

**From:** Drummond, Michael R. EOP/CEQ [mailto:(b) (6)]  
**Sent:** Monday, August 13, 2018 4:21 PM  
**To:** Owen, Gib A CIV USARMY HQDA ASA CW (US) <gib.a.owen.civ@mail.mil>  
**Cc:** Boling, Ted A. EOP/CEQ <(b) (6)>  
**Subject:** RE: CEQ NEPA ANPRM - Update to the Regulations and for Implementing the Procedural Provisions of NEPA

Gib,

Thanks for your note. Since CEQ has not yet developed a proposed rule (and may choose not to develop one at all), I can't answer your question as to what CEQ is intending to do. That said, you and your colleagues raise some interesting points that are worth discussing. Do you have time tomorrow morning for me and Ted to give you a ring?

Thanks,

Michael

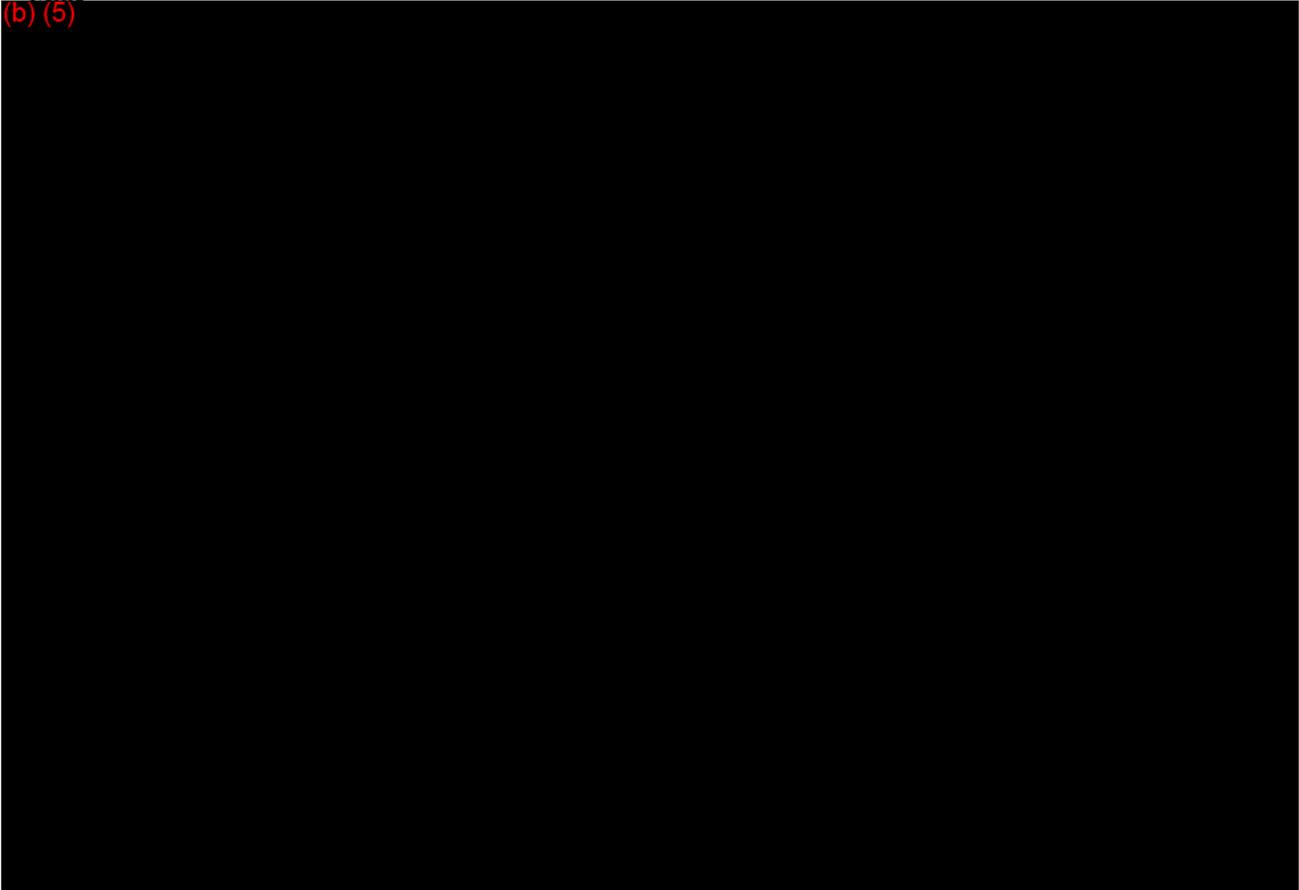
Michael Drummond  
Deputy Associate Director for NEPA  
Council on Environmental Quality  
(b) (6)

-----Original Message-----

From: Owen, Gib A CIV USARMY HQDA ASA CW (US) <gib.a.owen.civ@mail.mil>  
Sent: Thursday, August 9, 2018 3:49 PM  
To: Drummond, Michael R. EOP/CEQ <(b) (6)>  
Cc: Boling, Ted A. EOP/CEQ <(b) (6)>  
Subject: CEQ NEPA ANPRM - Update to the Regulations and for Implementing the Procedural Provisions of NEPA

Mike

(b) (5)

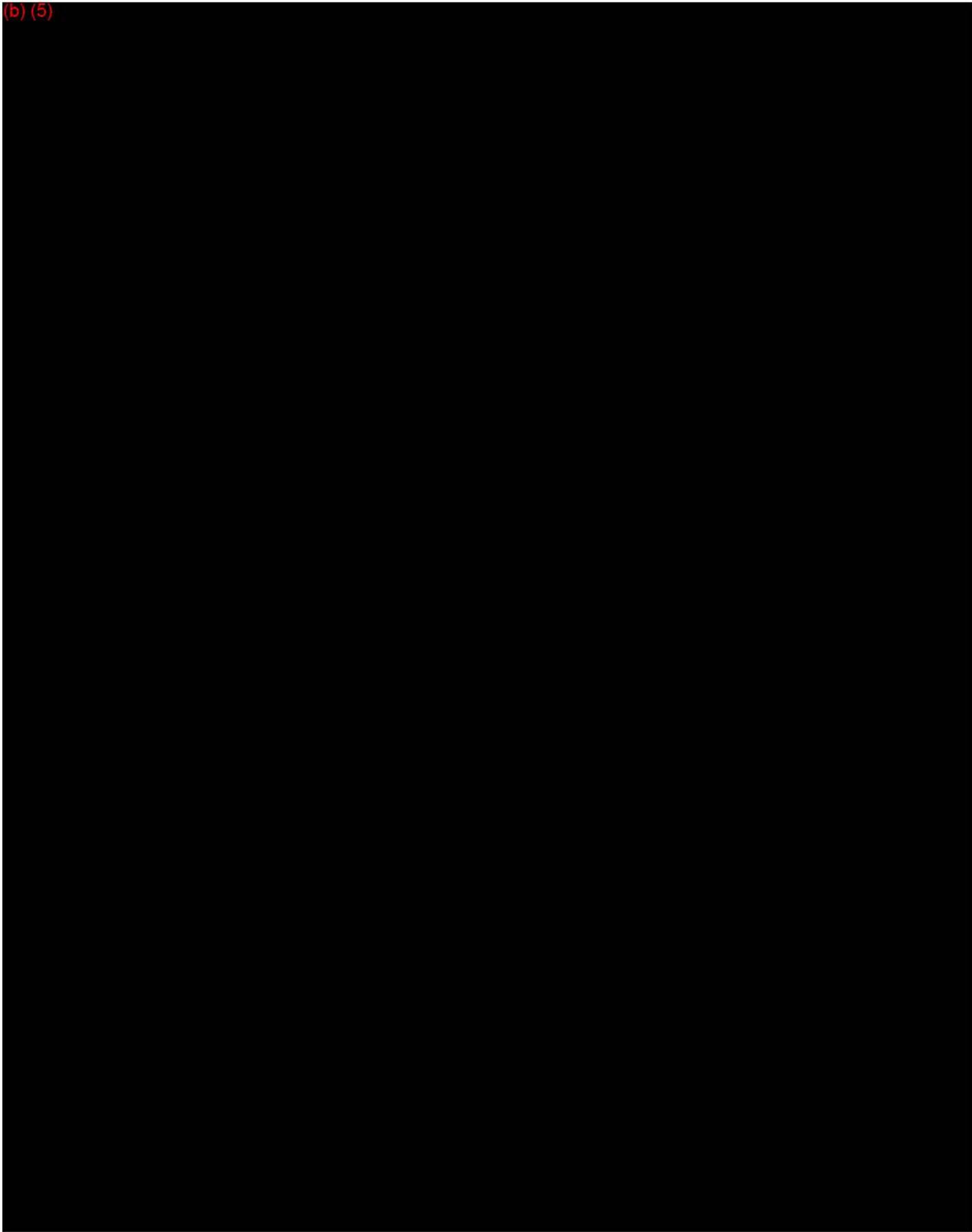


Gib

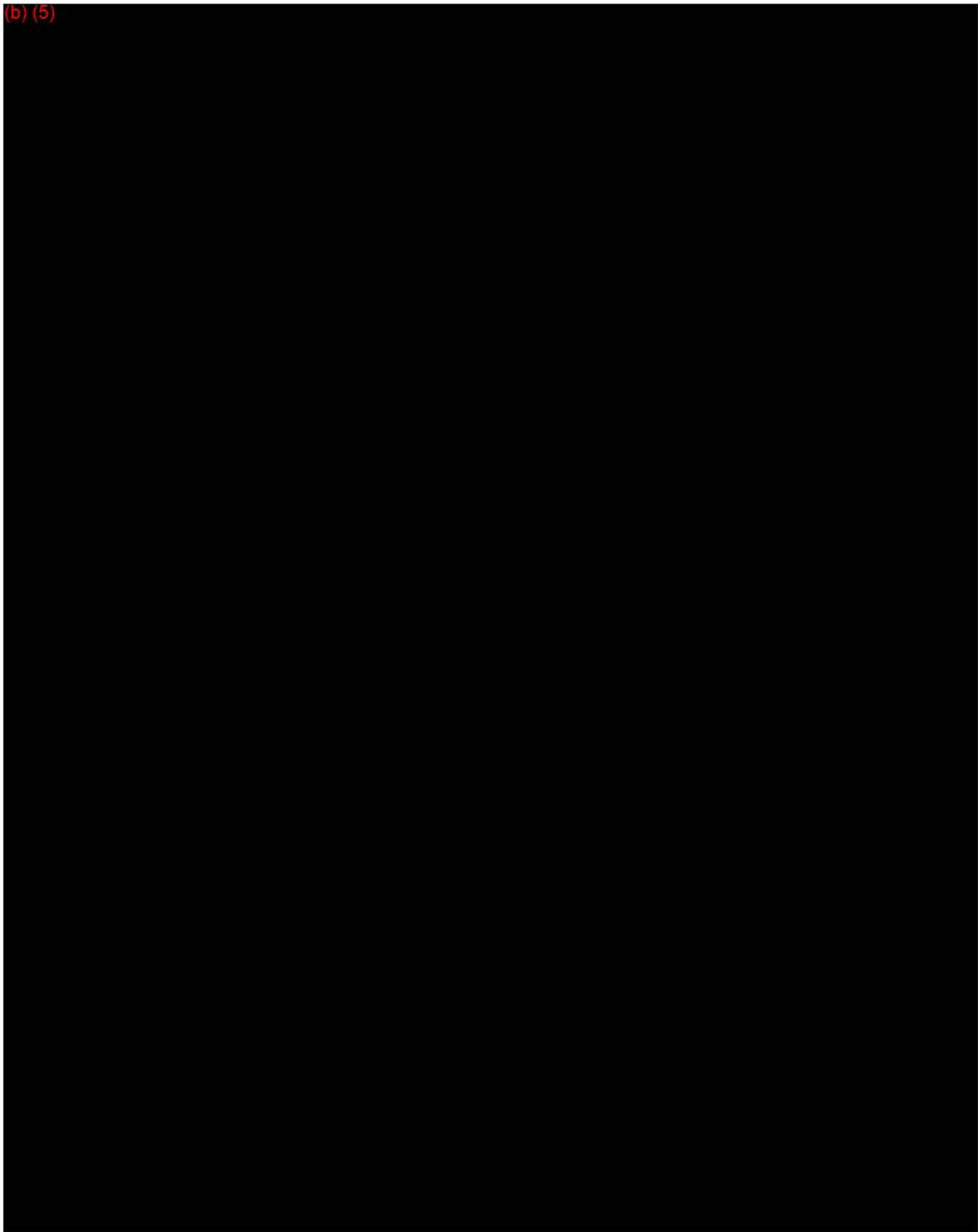
Gib Owen  
Water Resources Policy & Legislation  
Office of the Assistant Secretary of the Army for Civil Works Pentagon Washington DC gib.a.owen.civ@mail.mil  
703 695 4641 - Office  
(b) (6) - Cell

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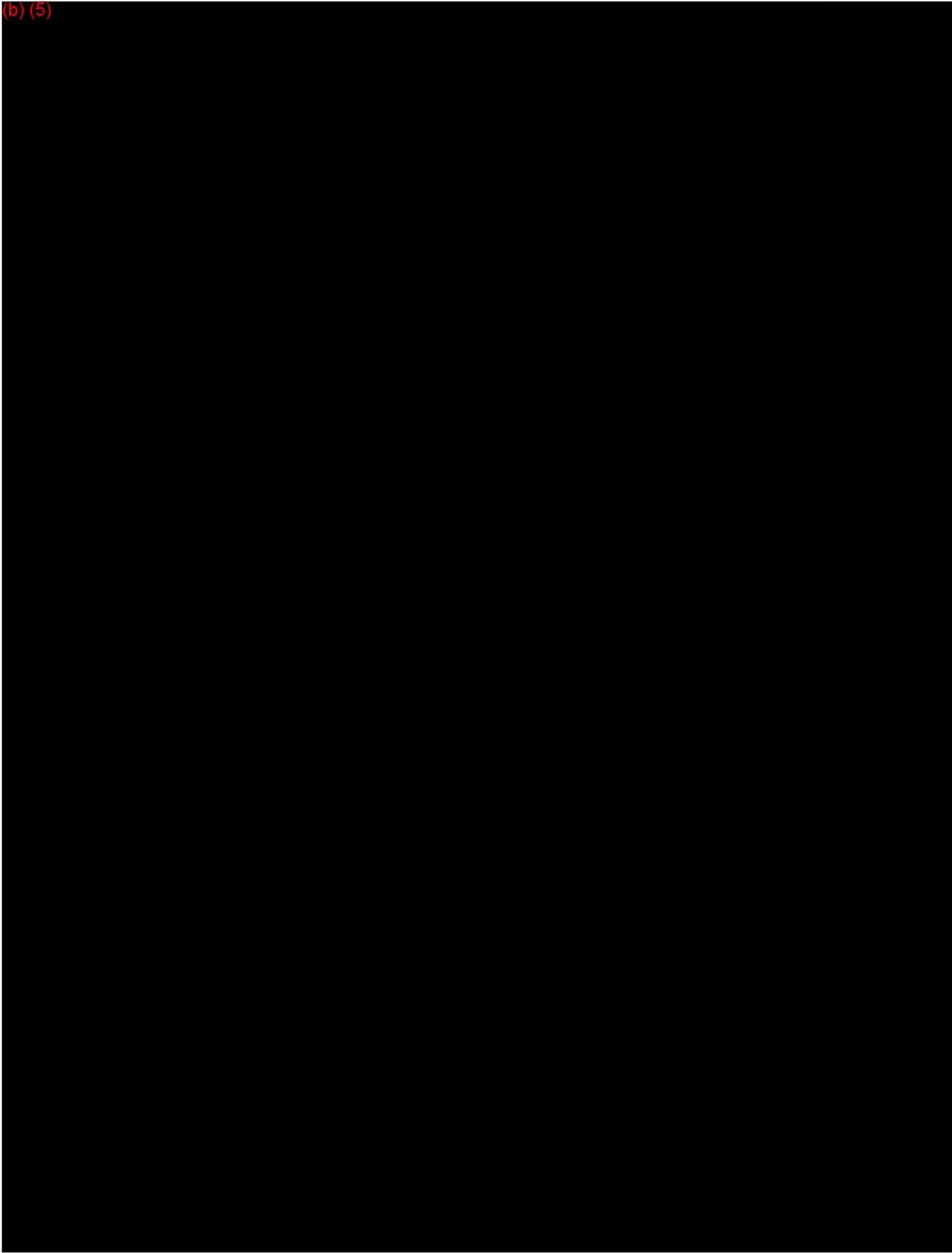
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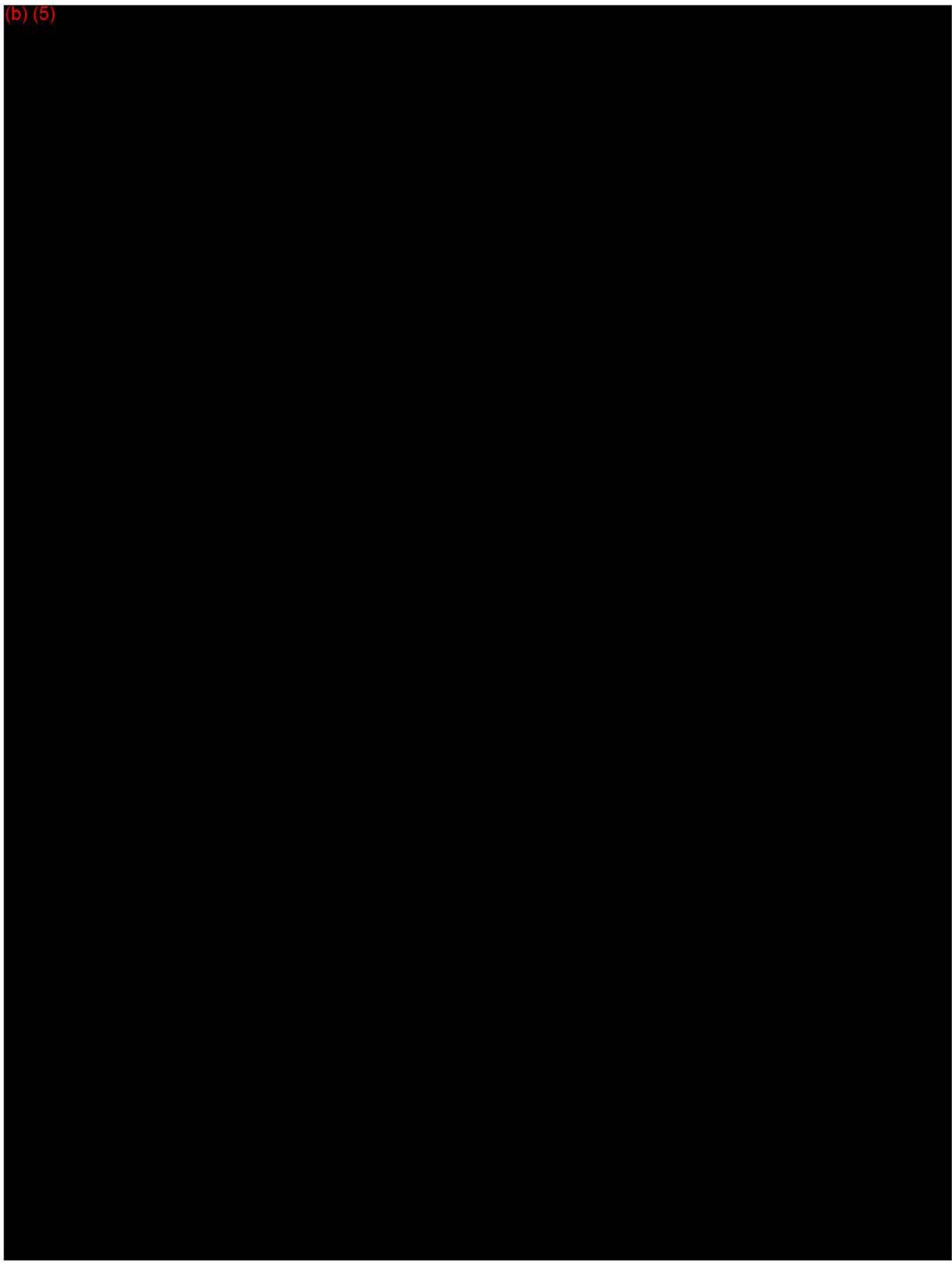
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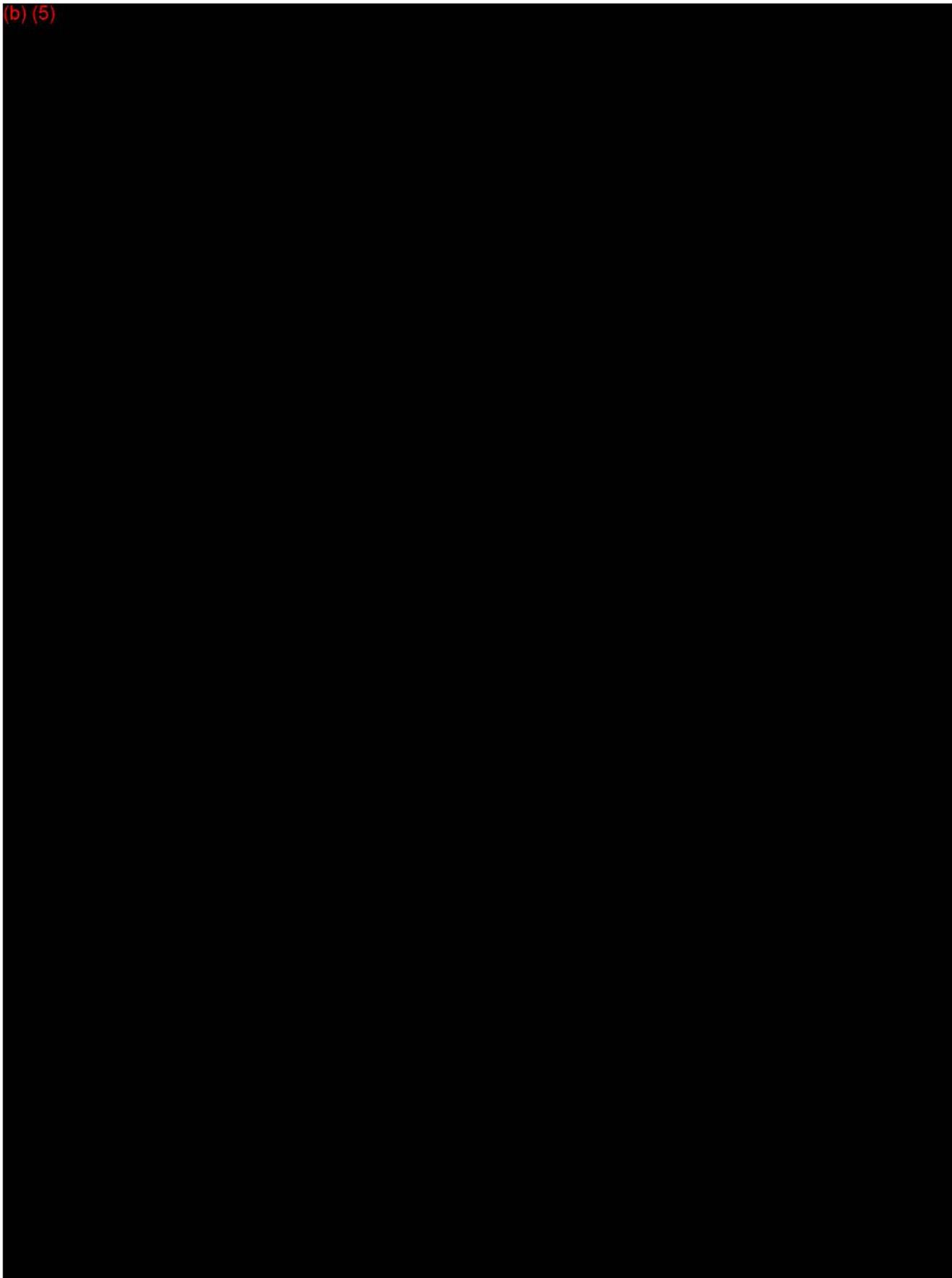
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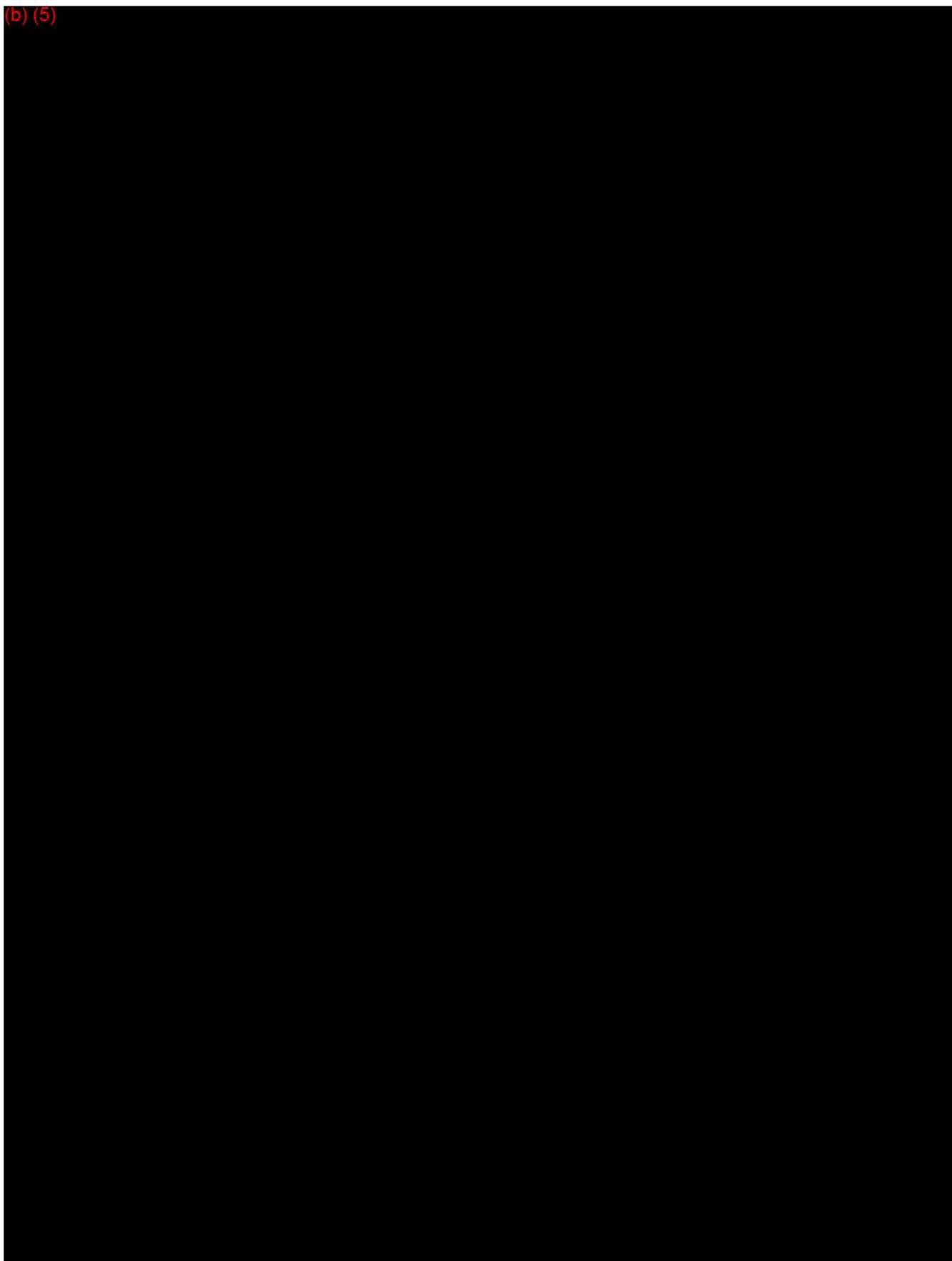
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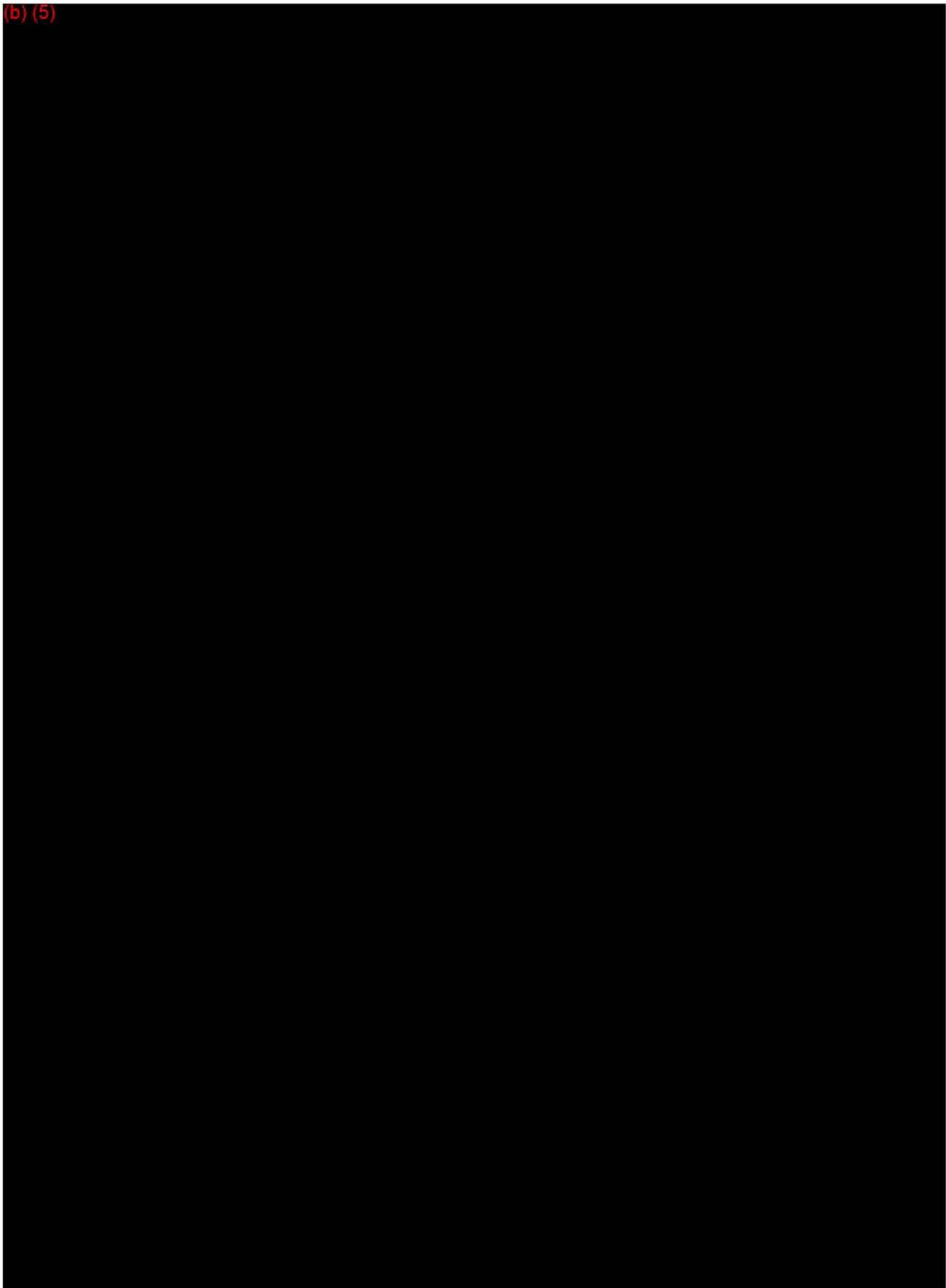
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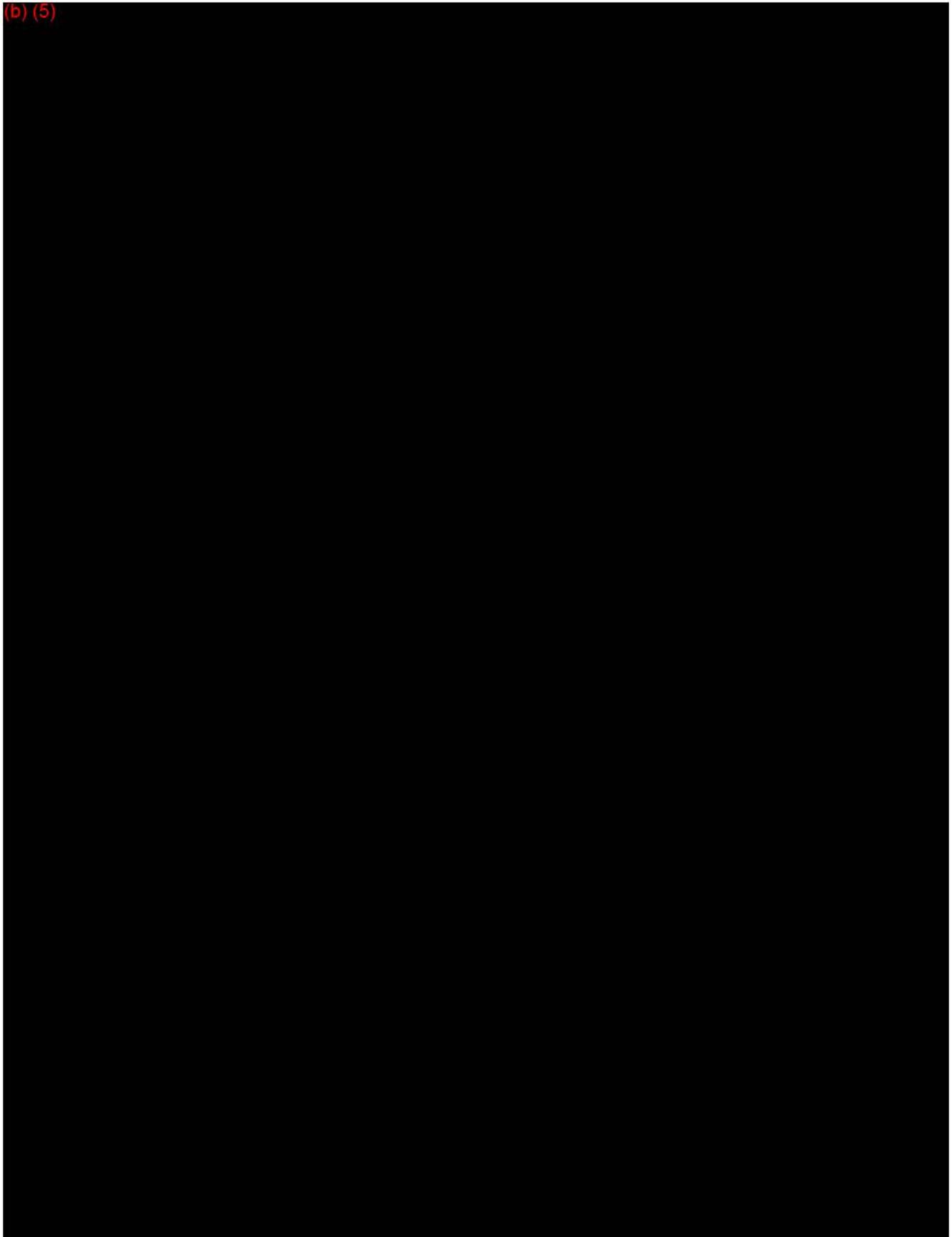
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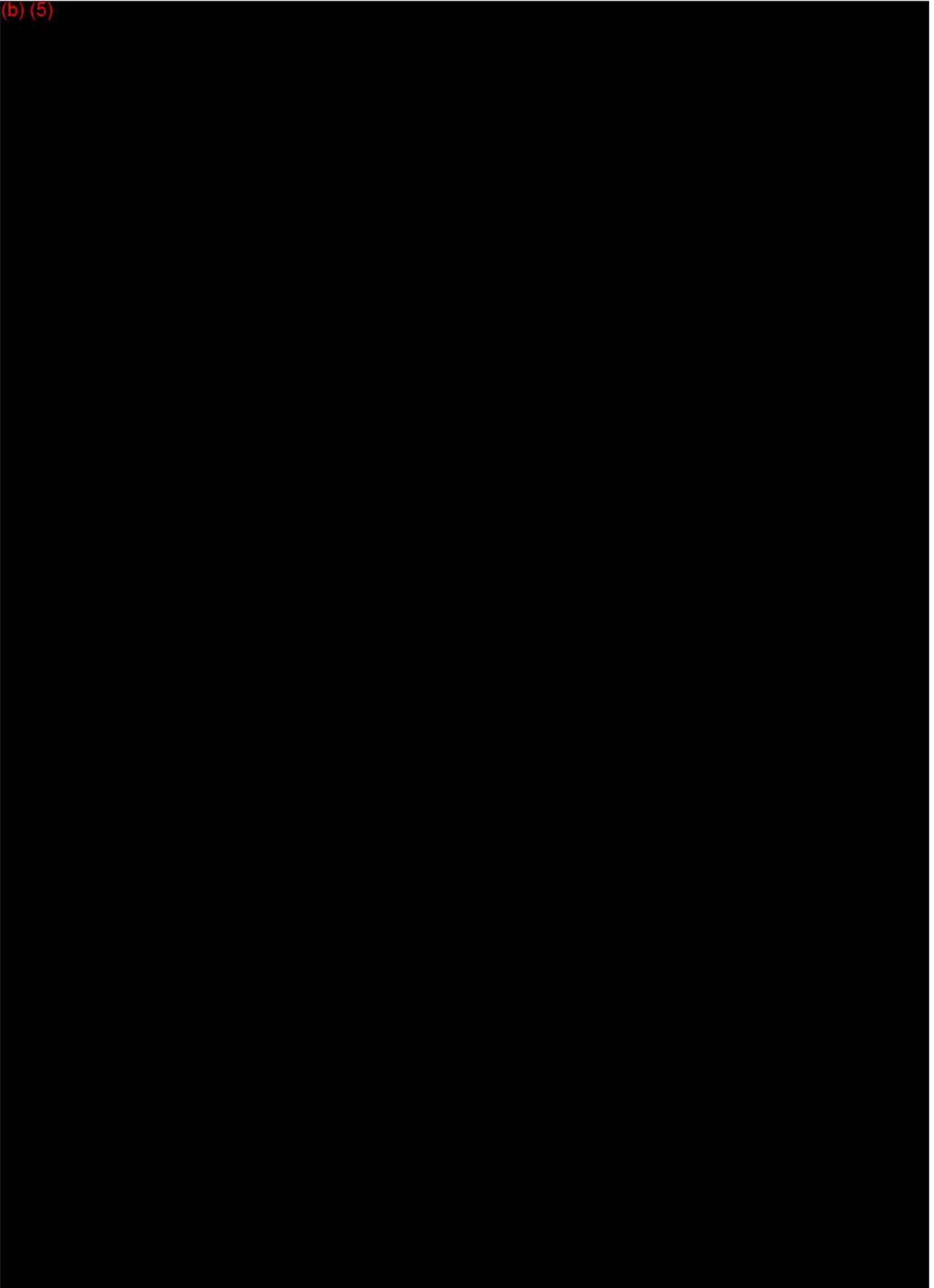
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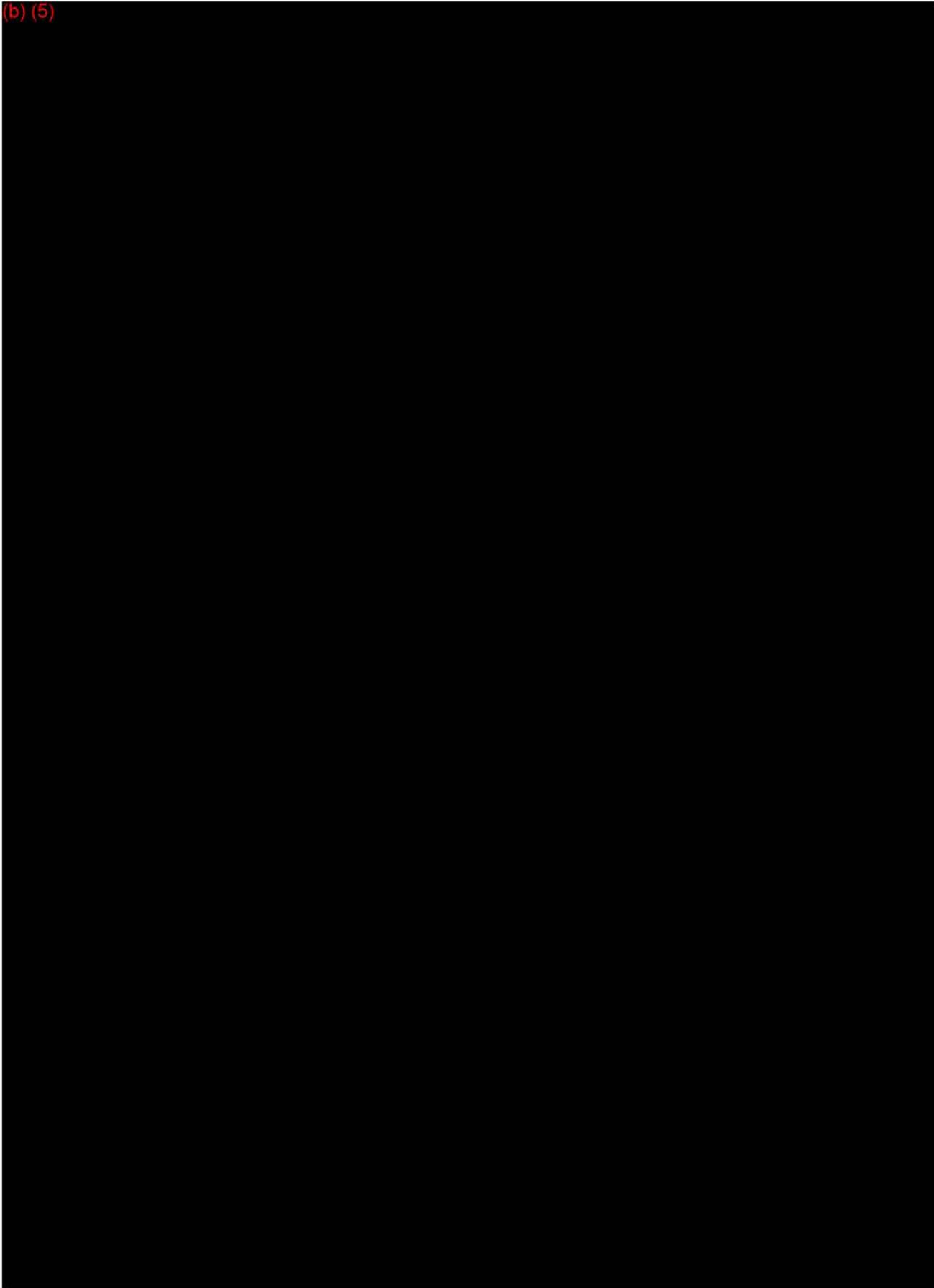
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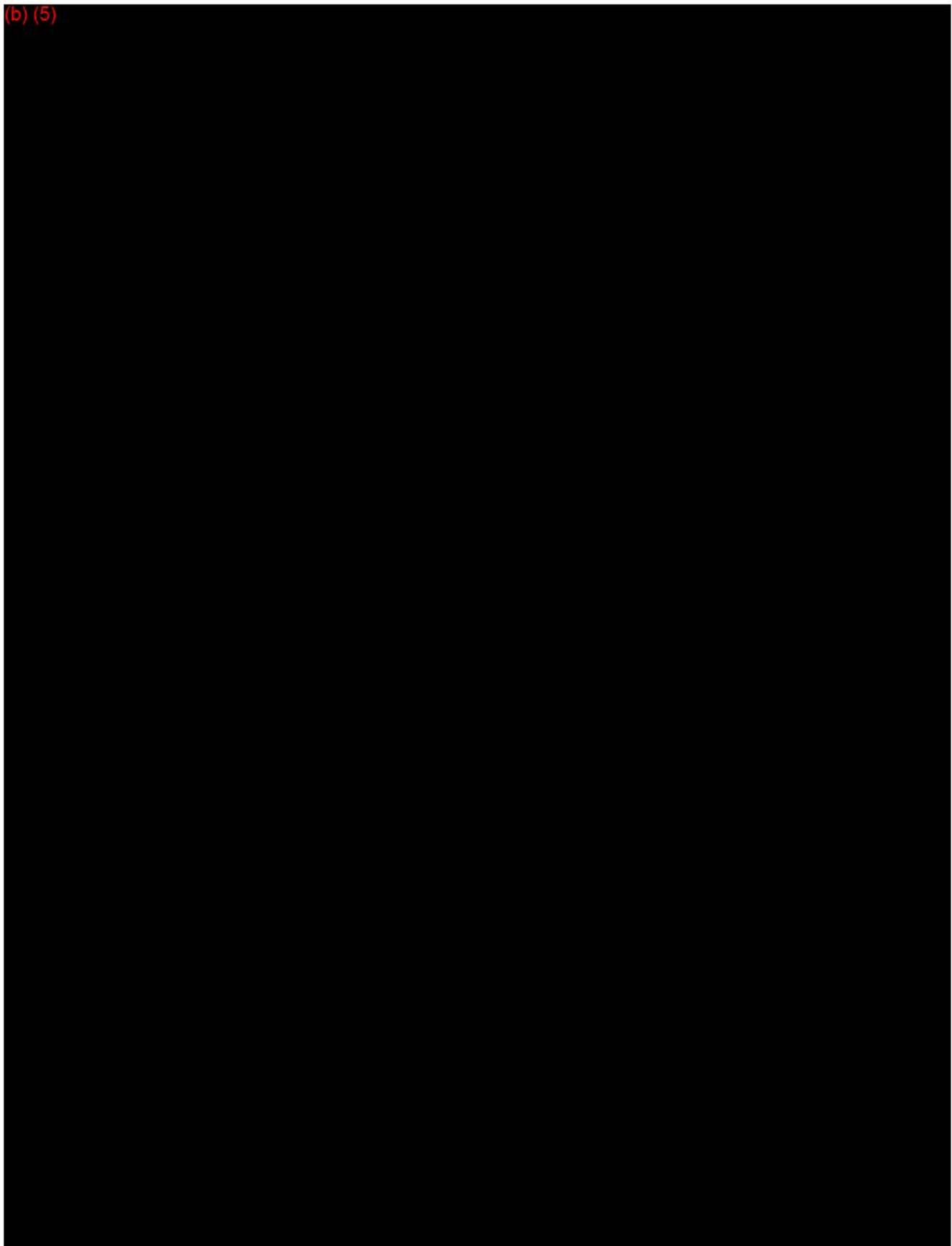
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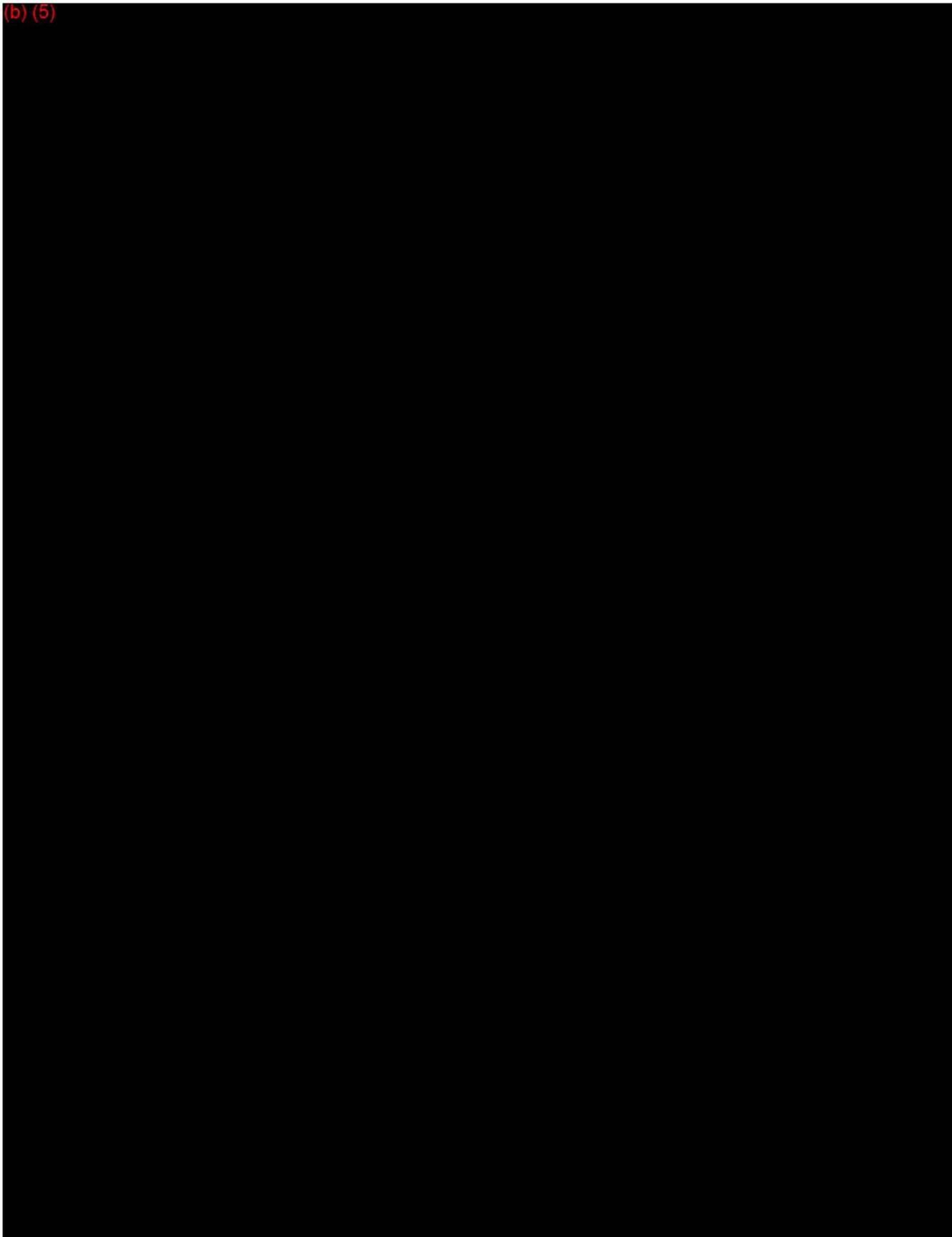
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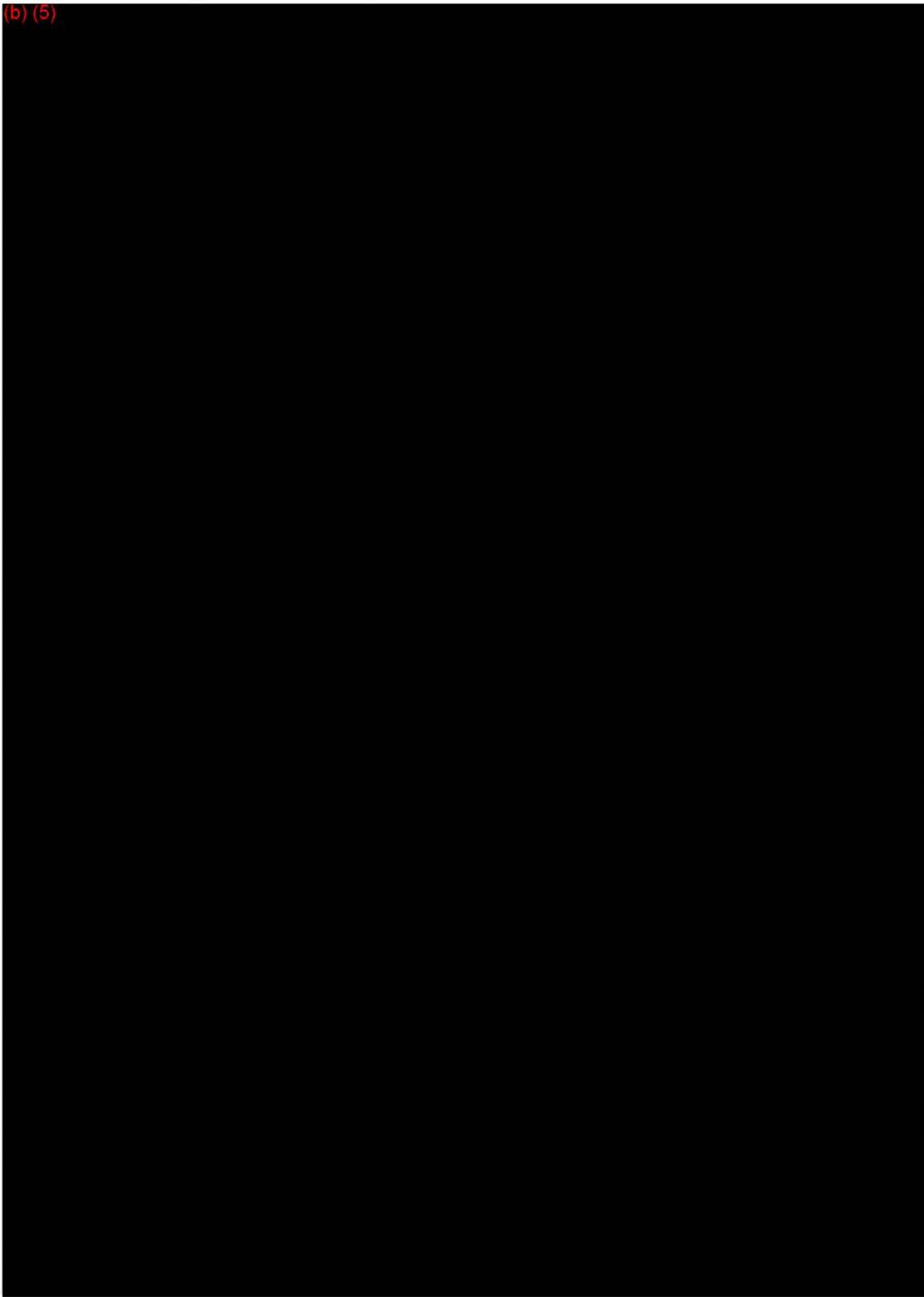
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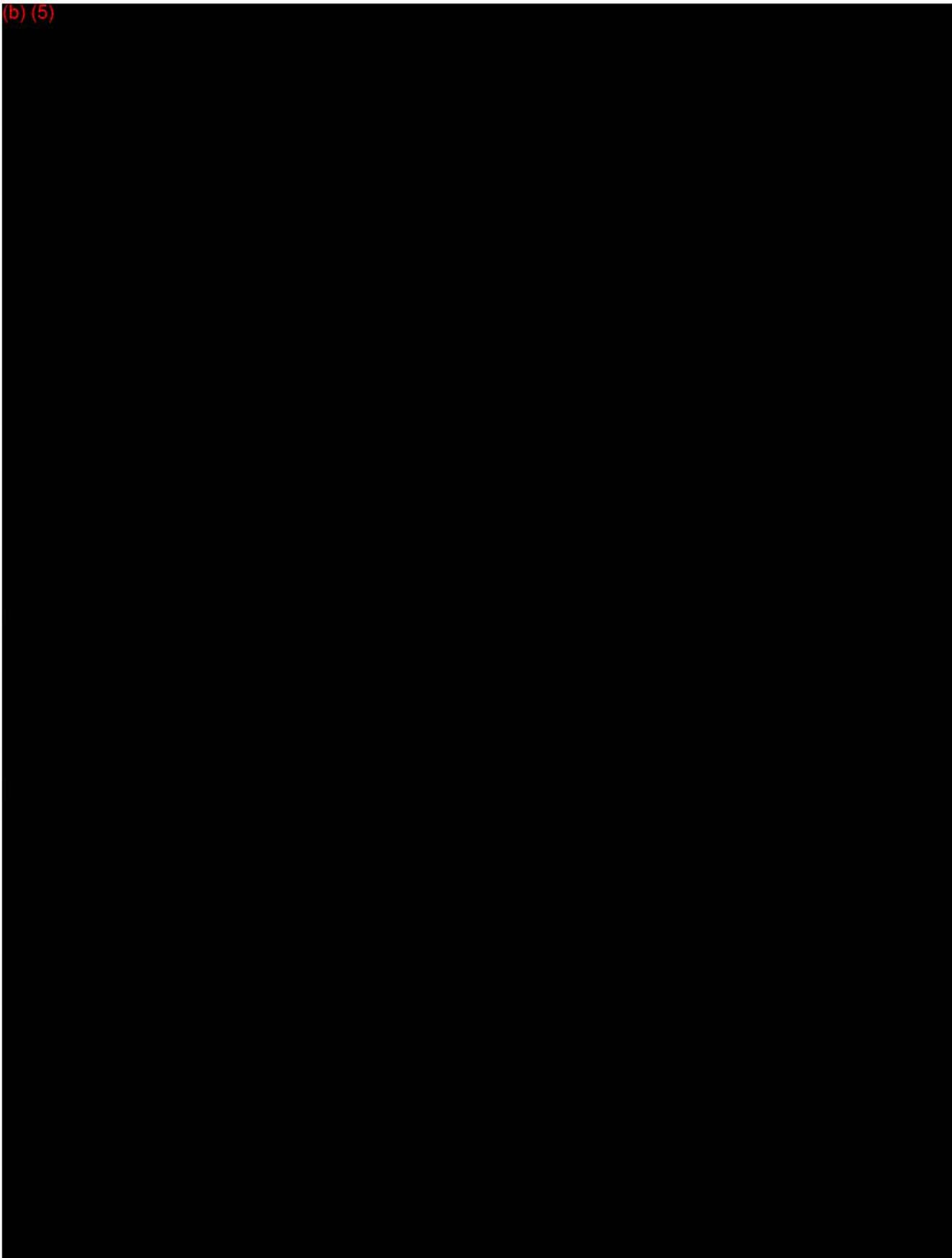
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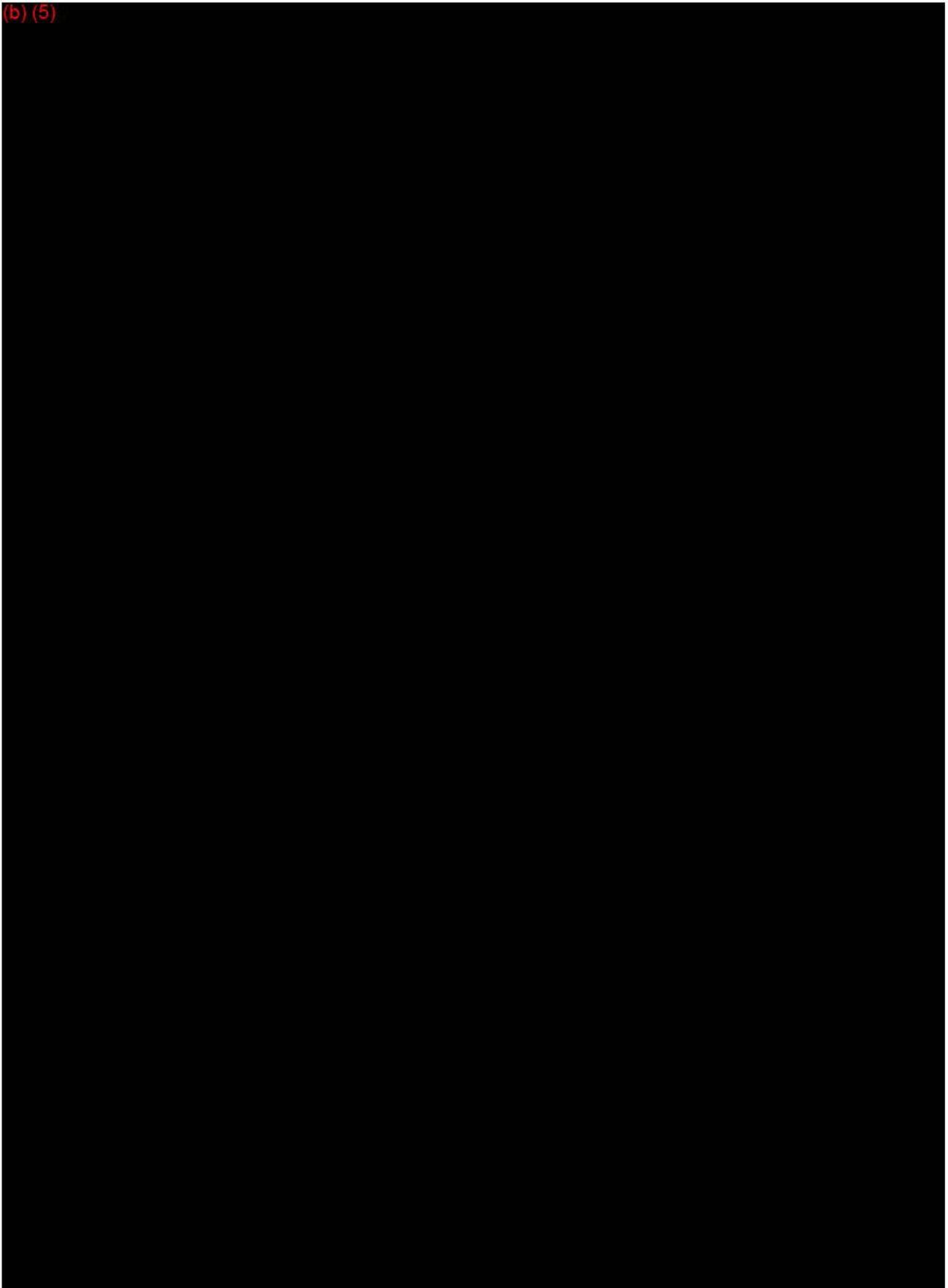
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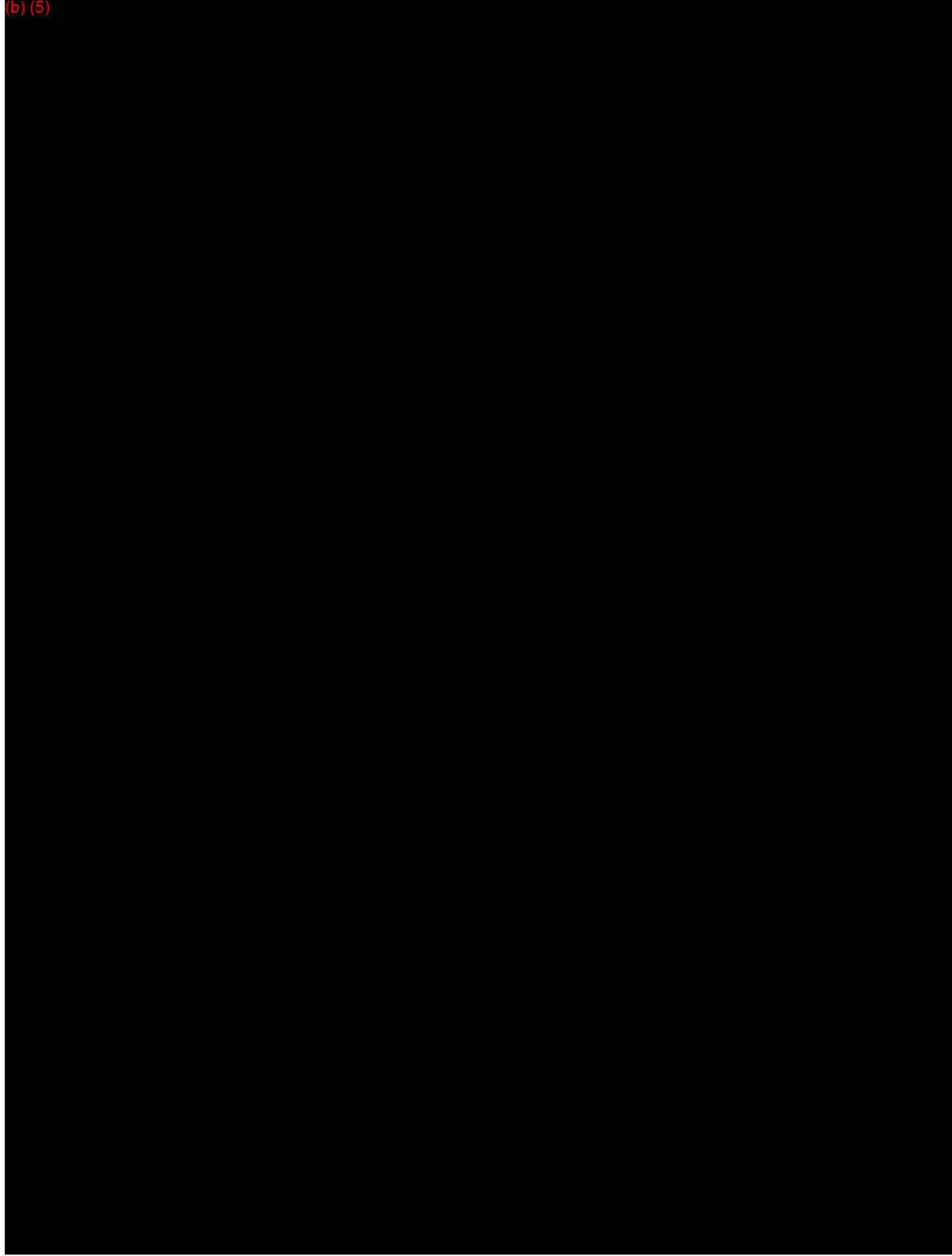


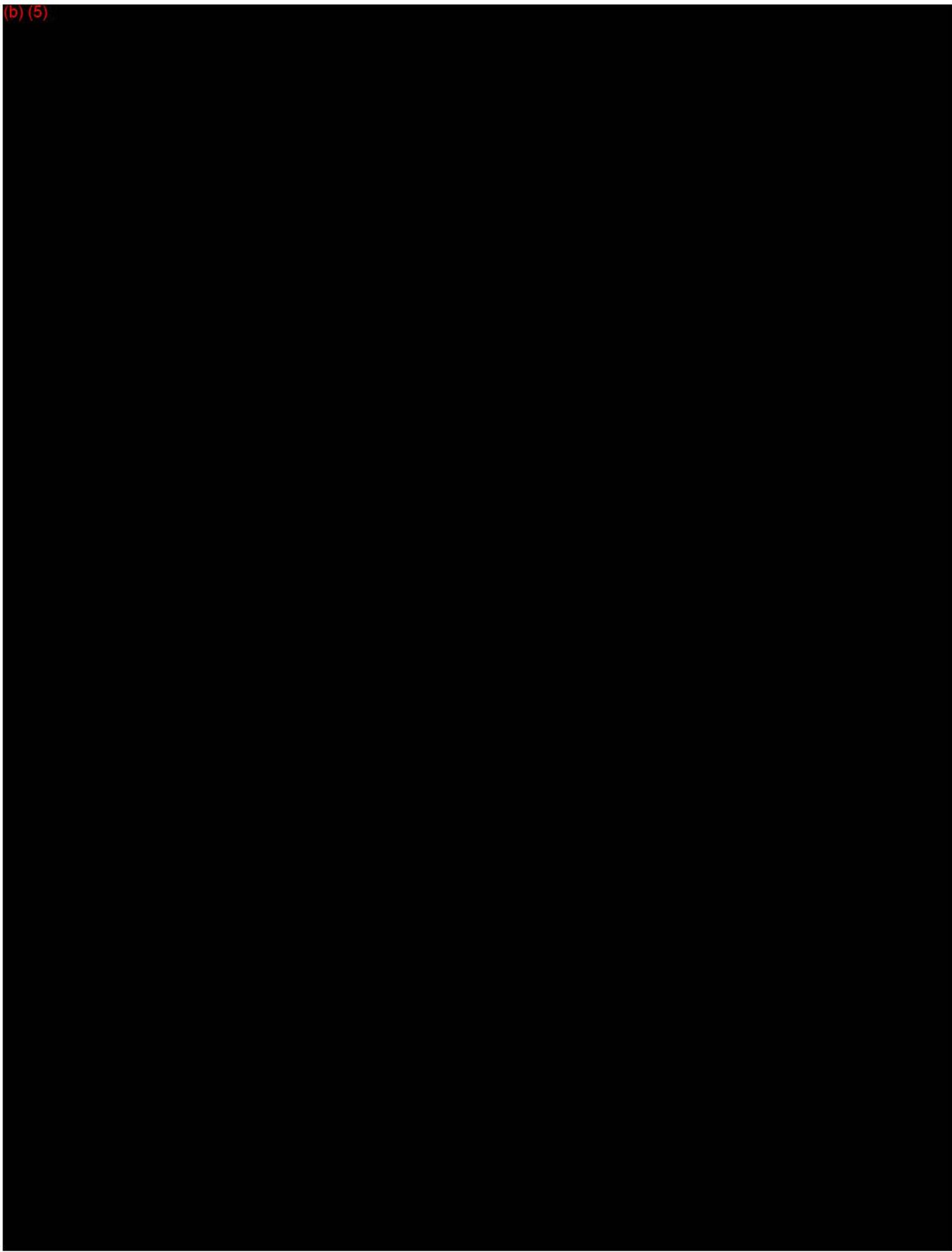
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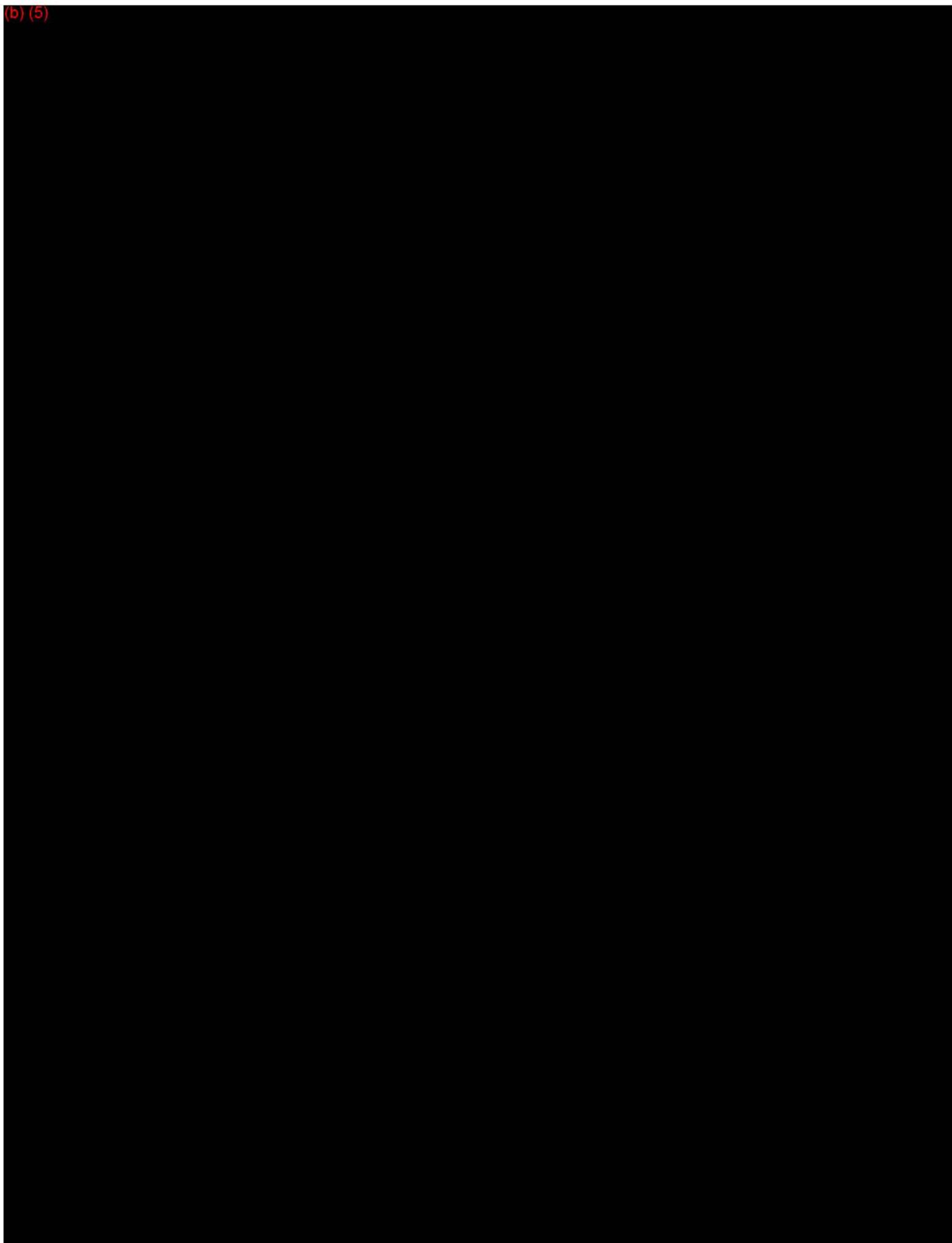


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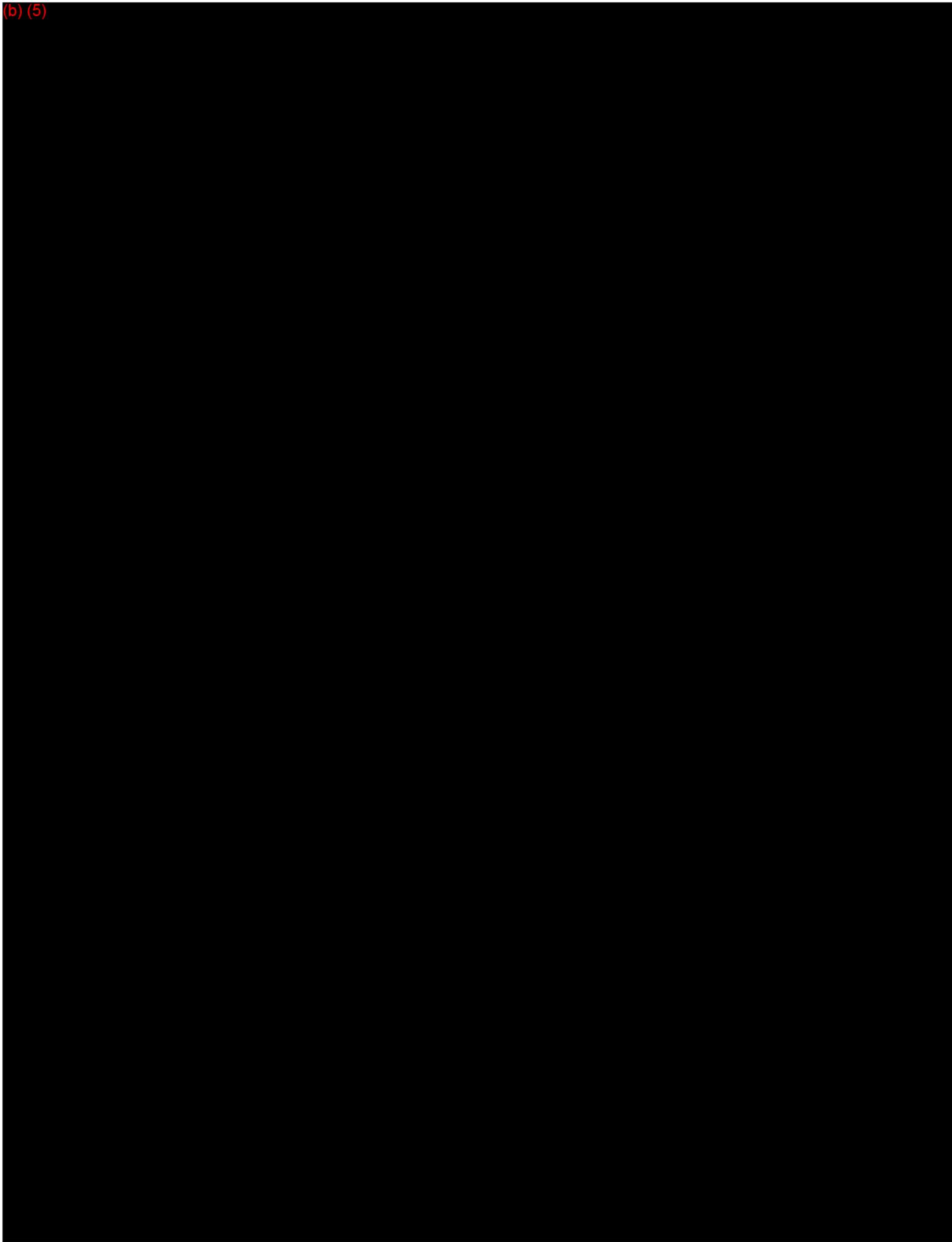


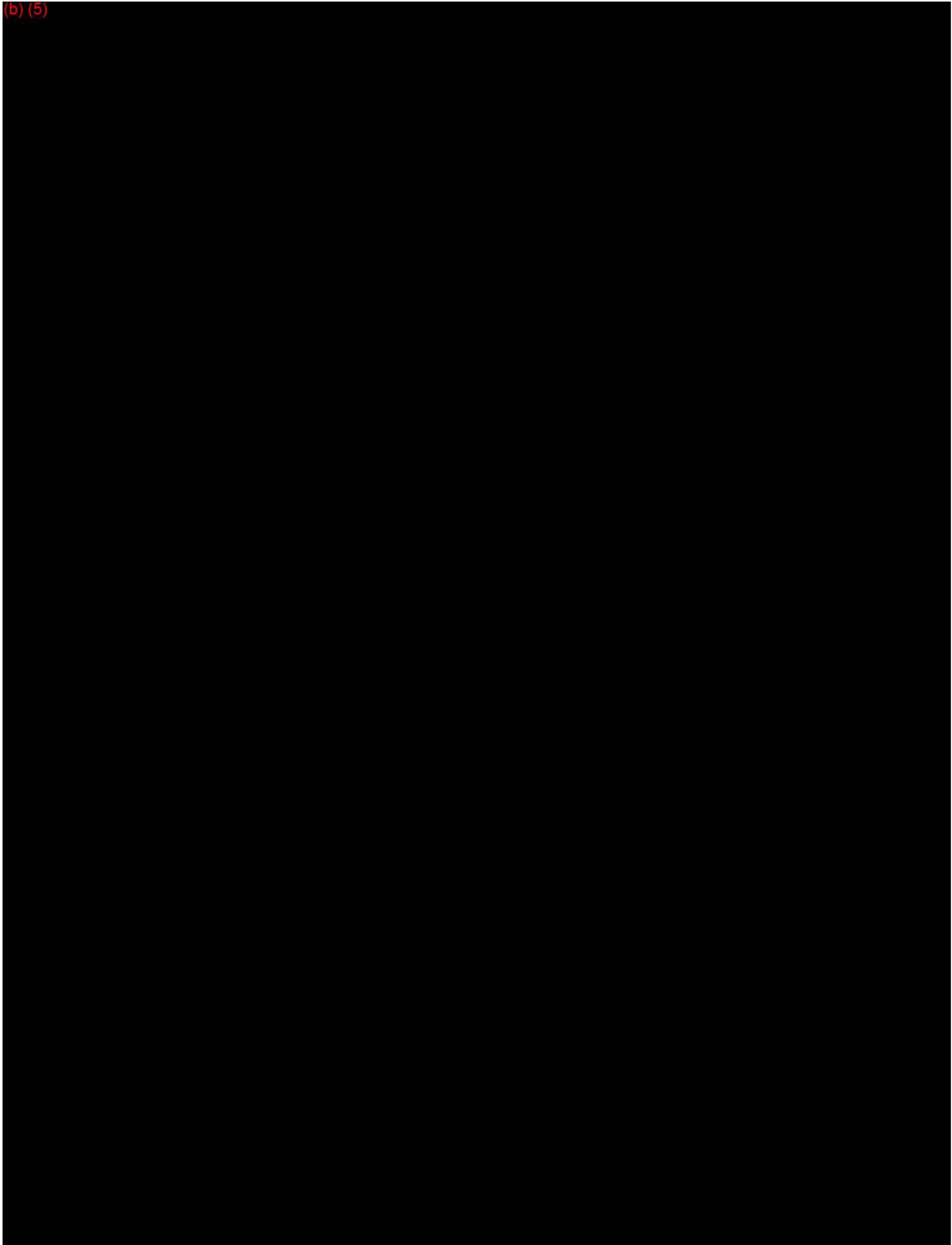


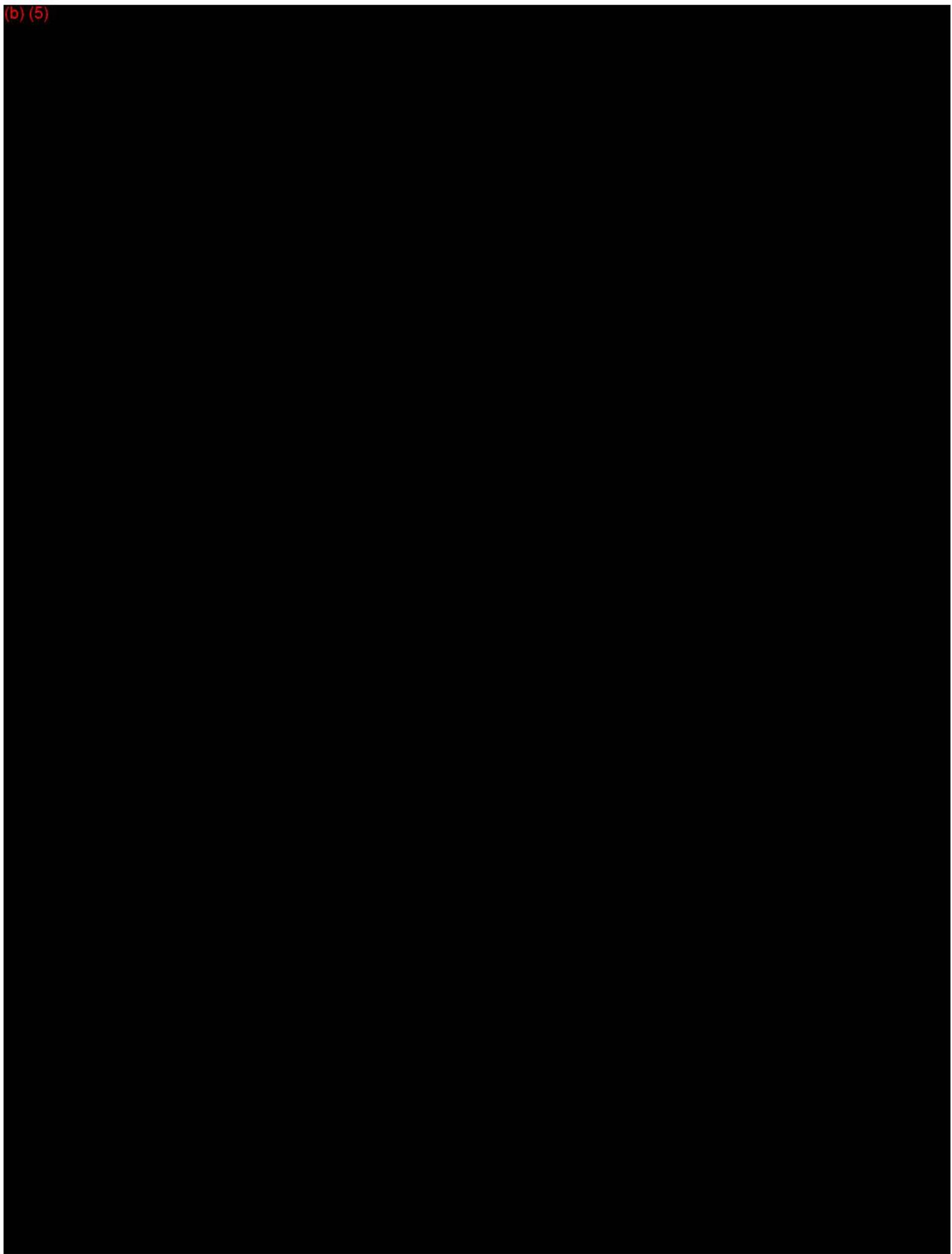




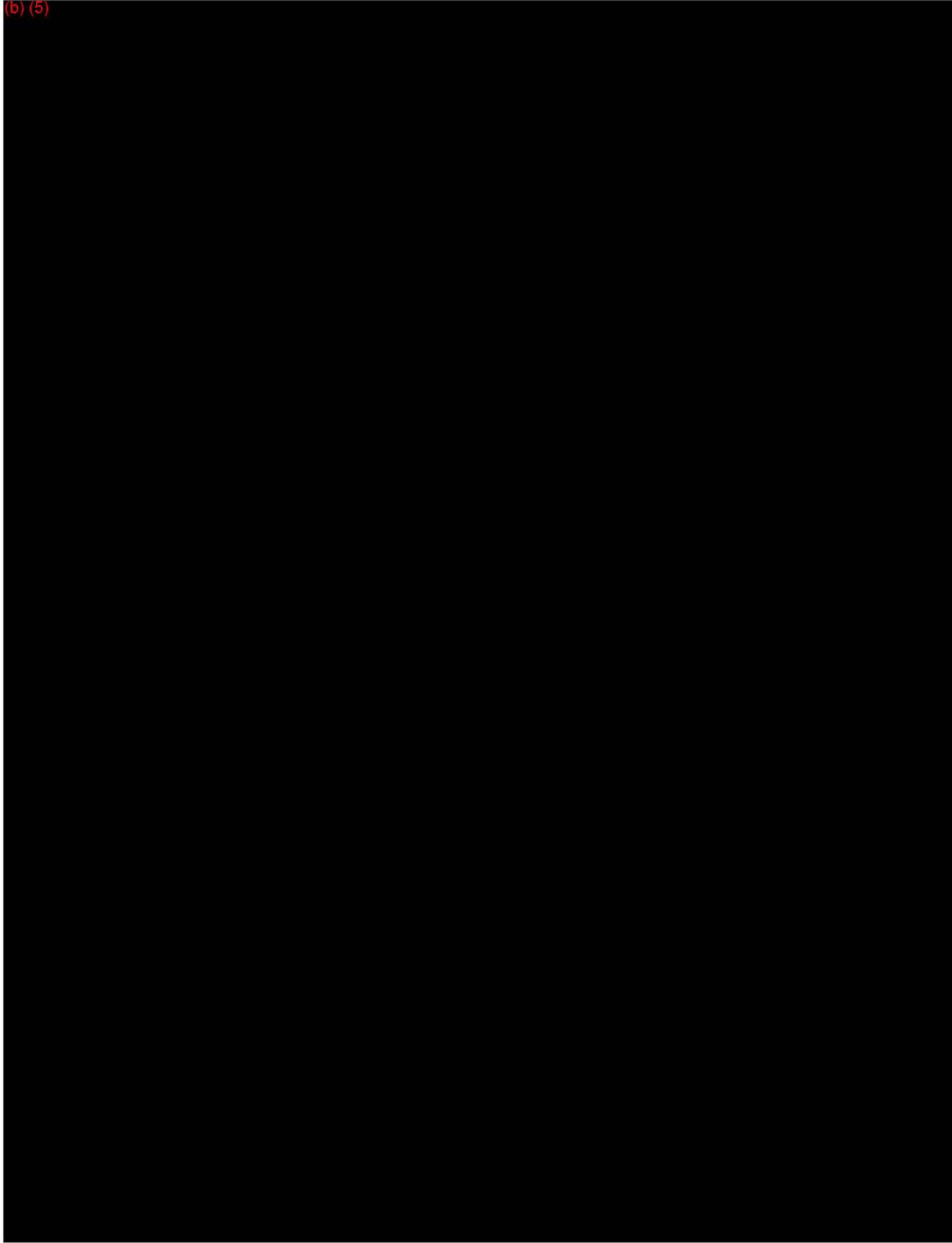


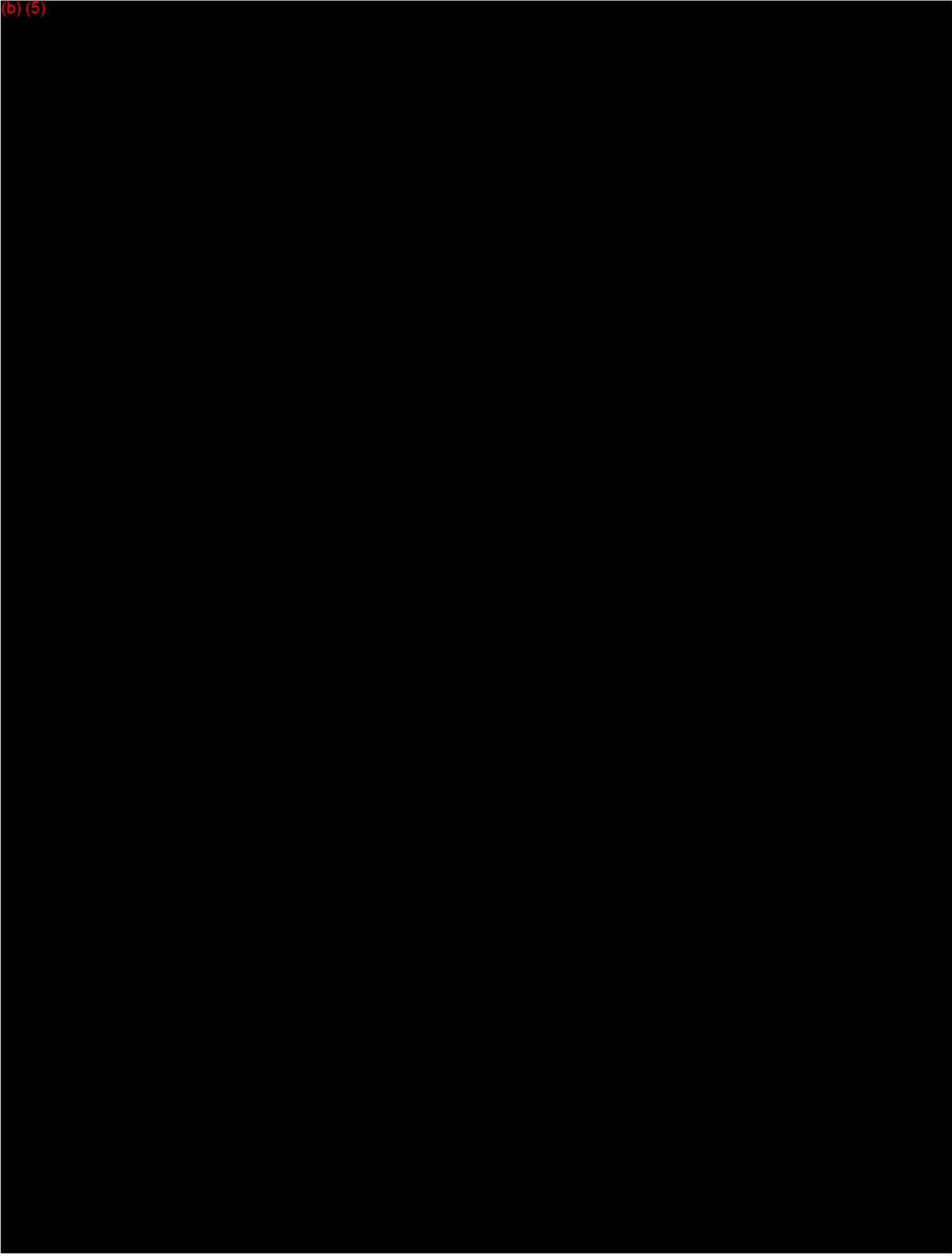


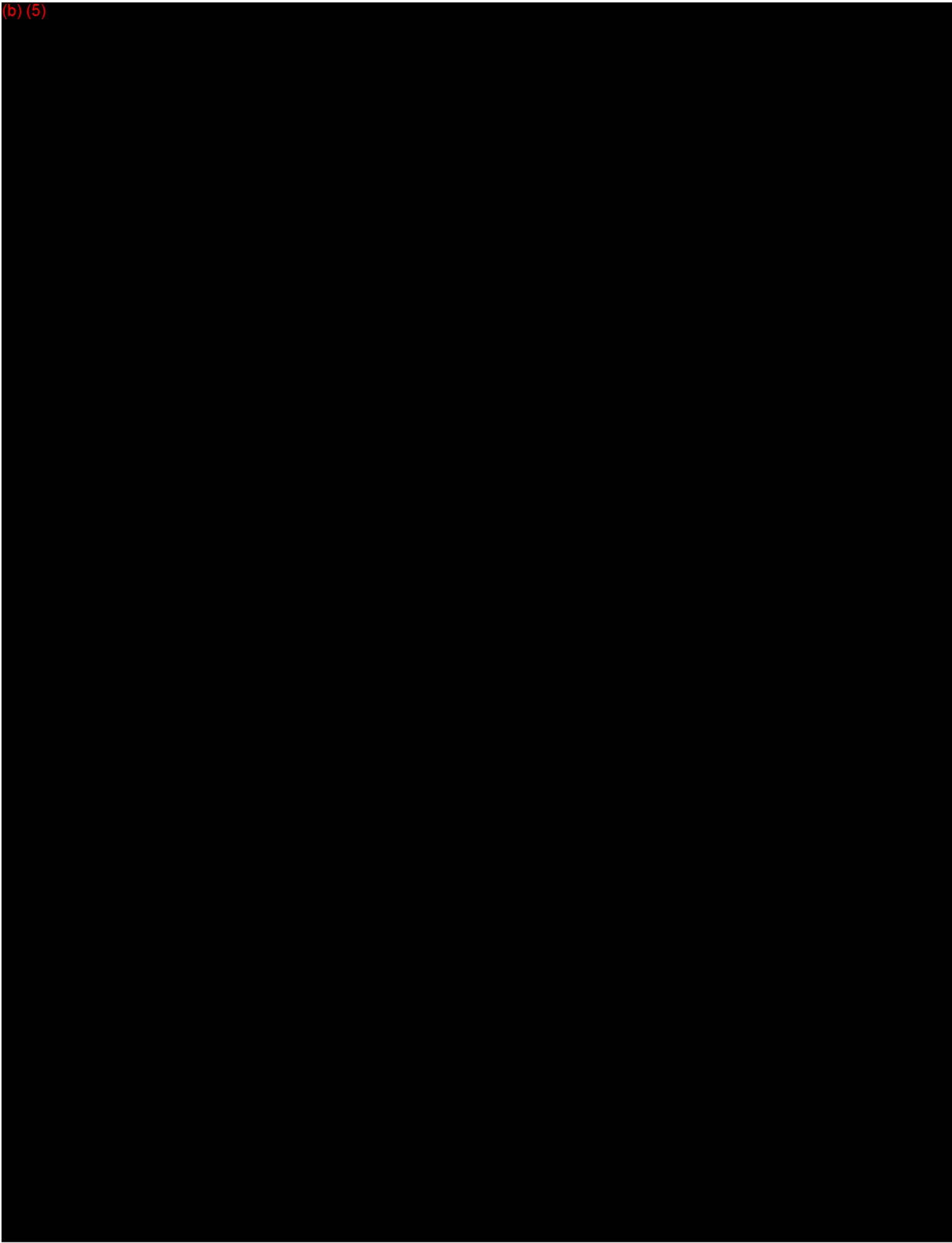


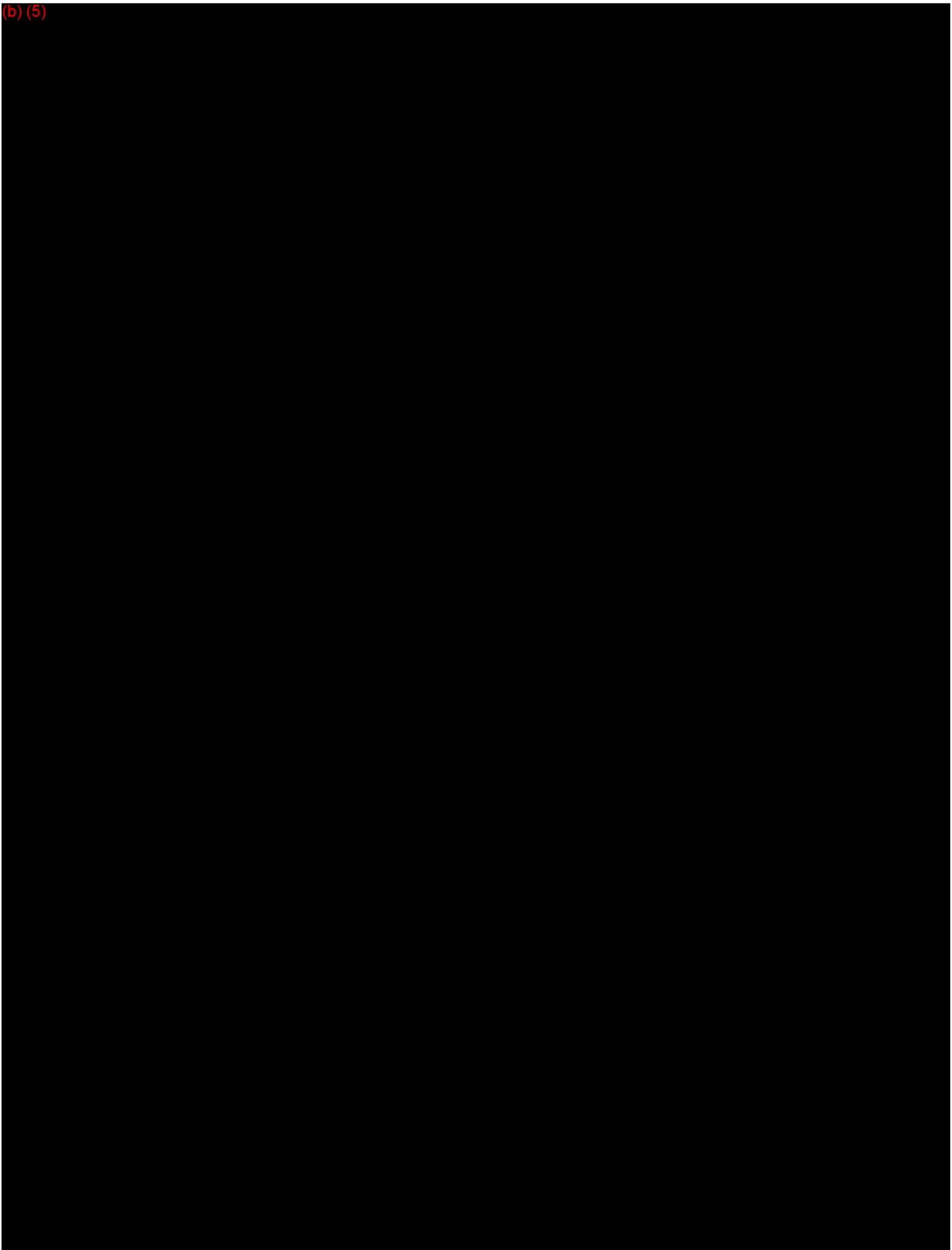


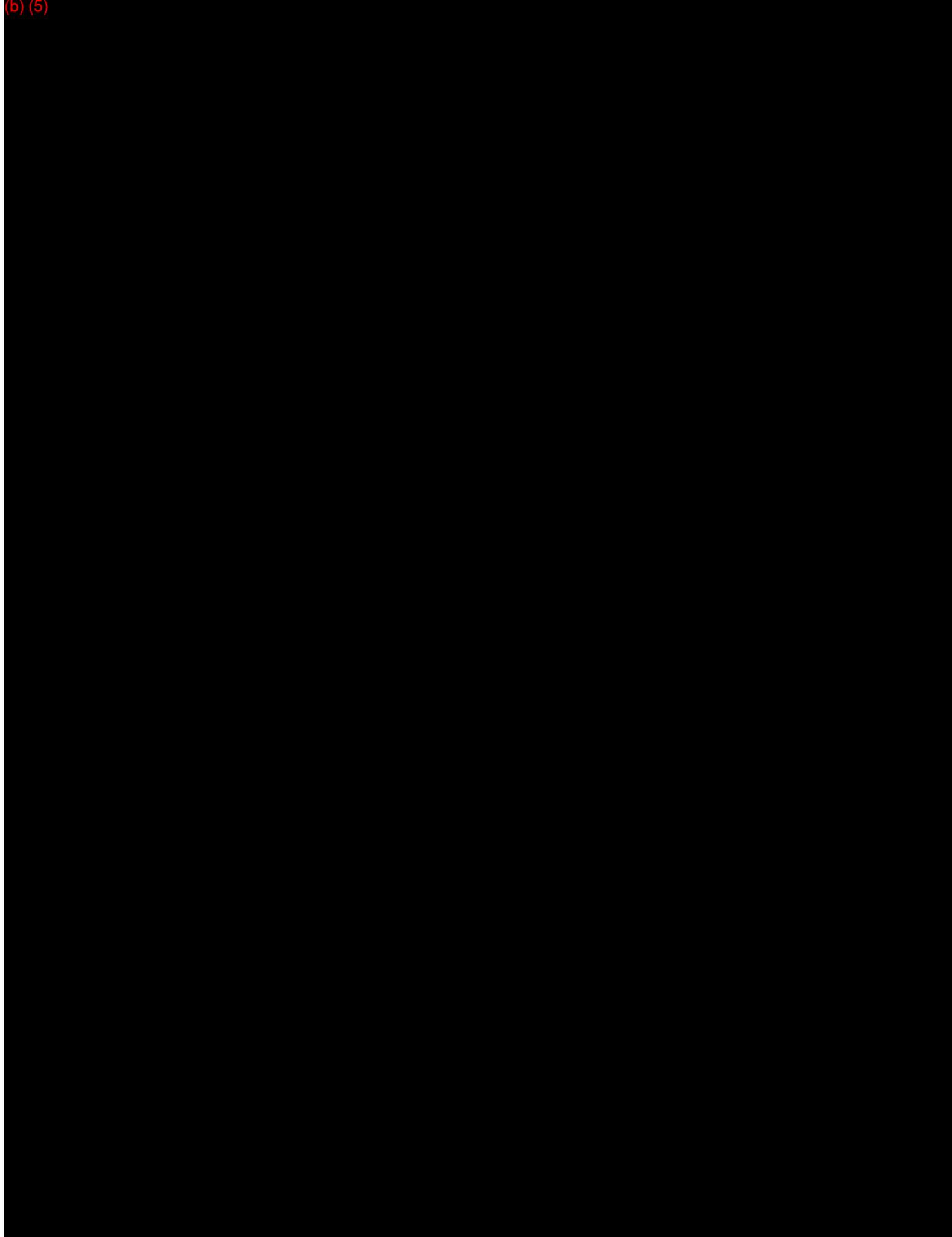


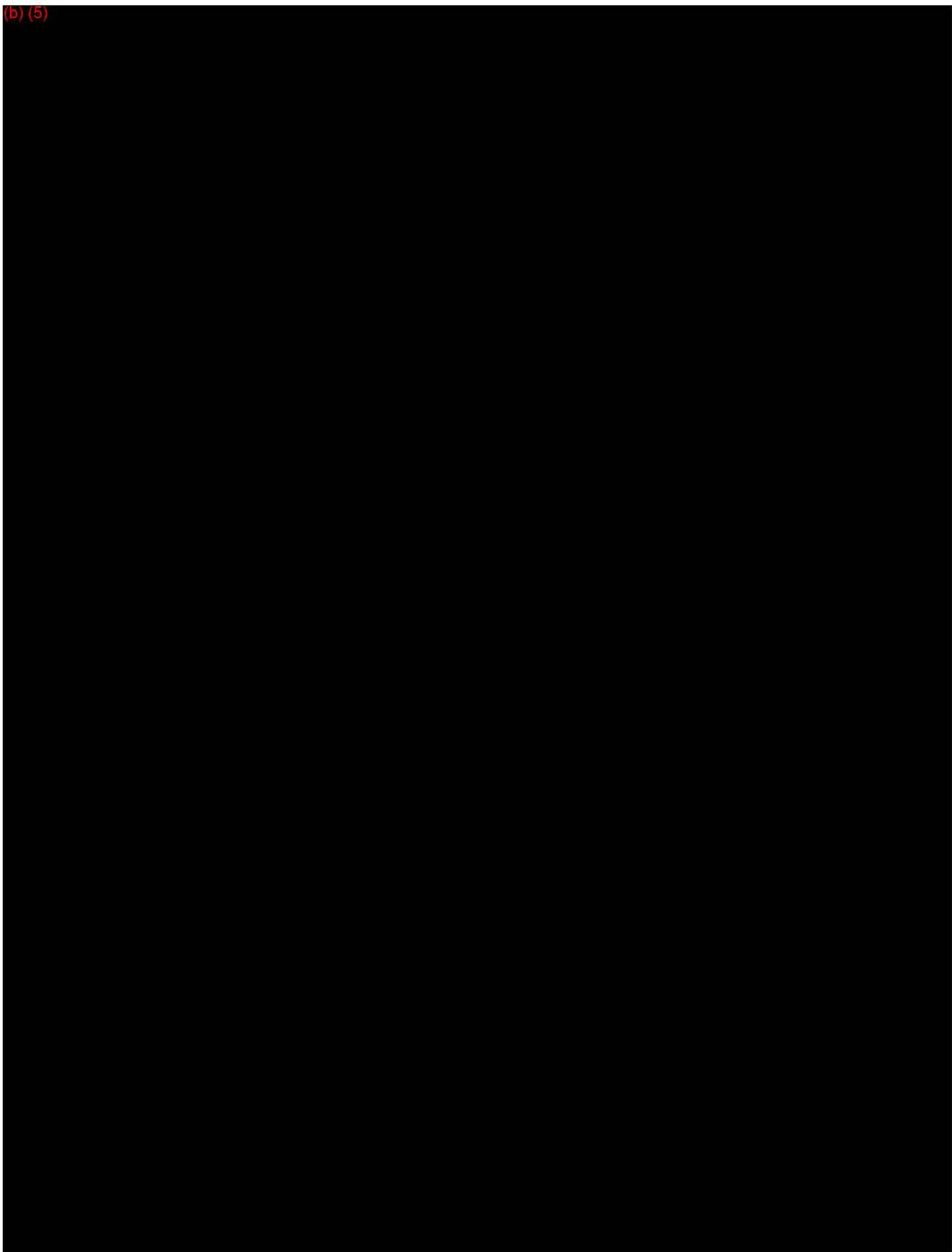


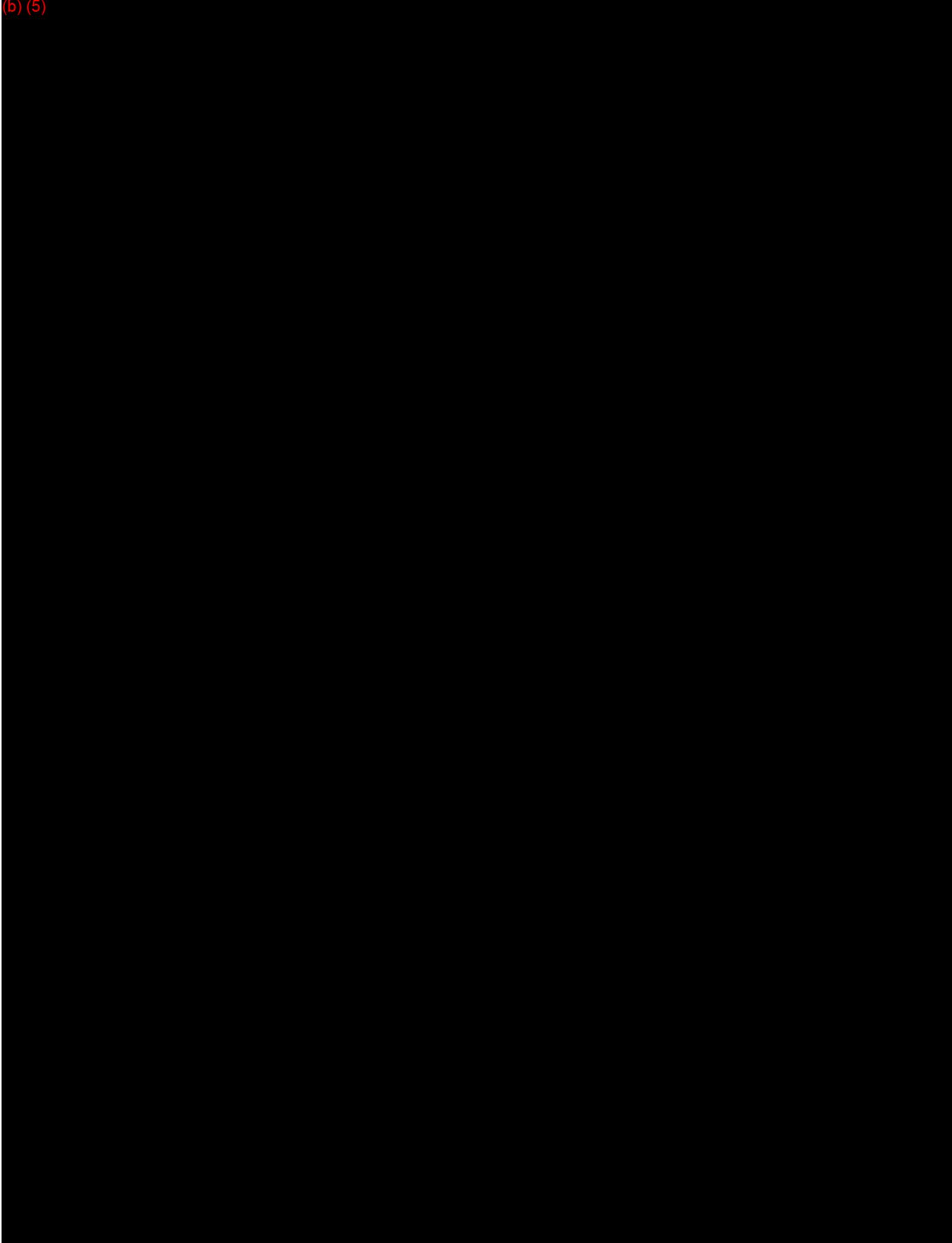


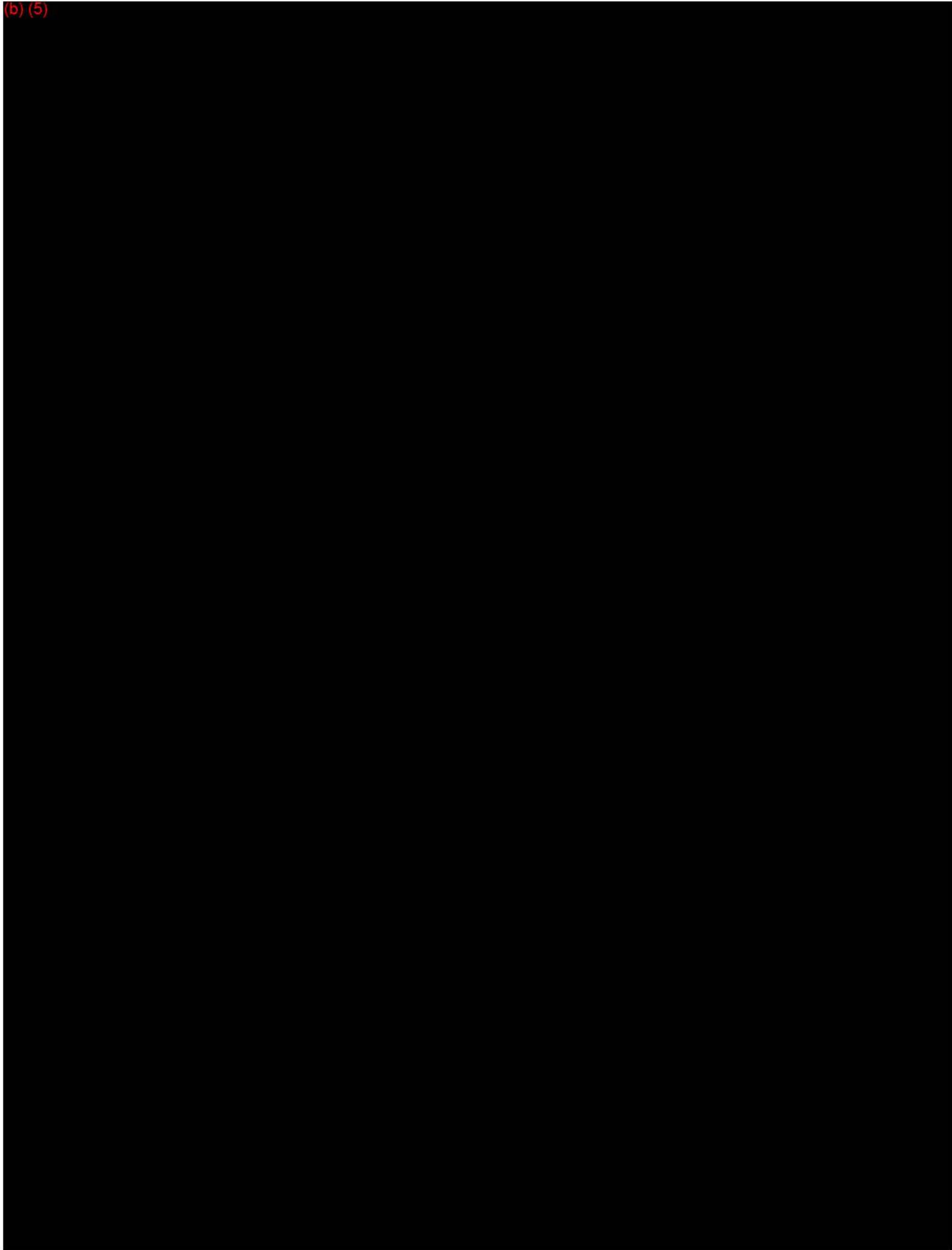


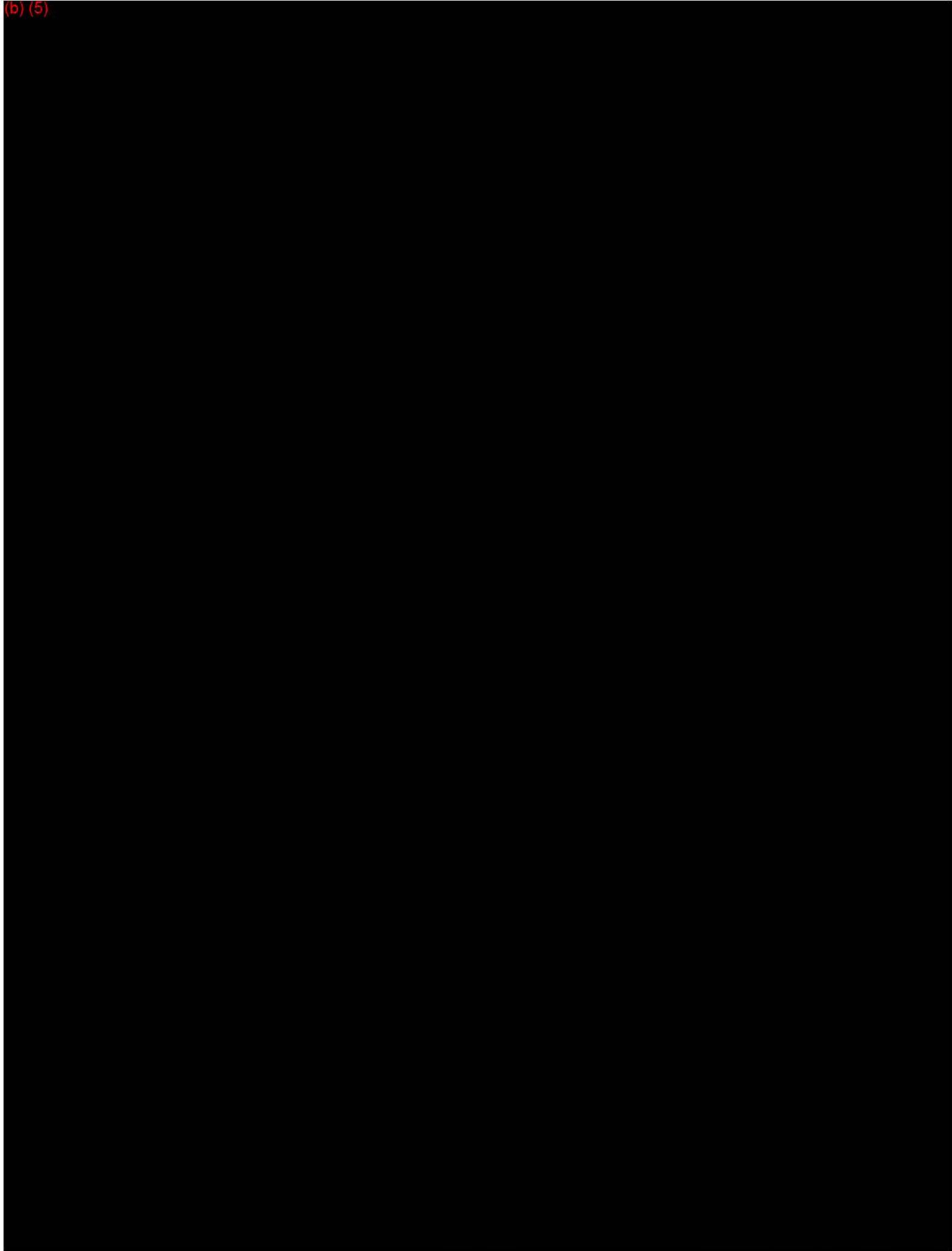




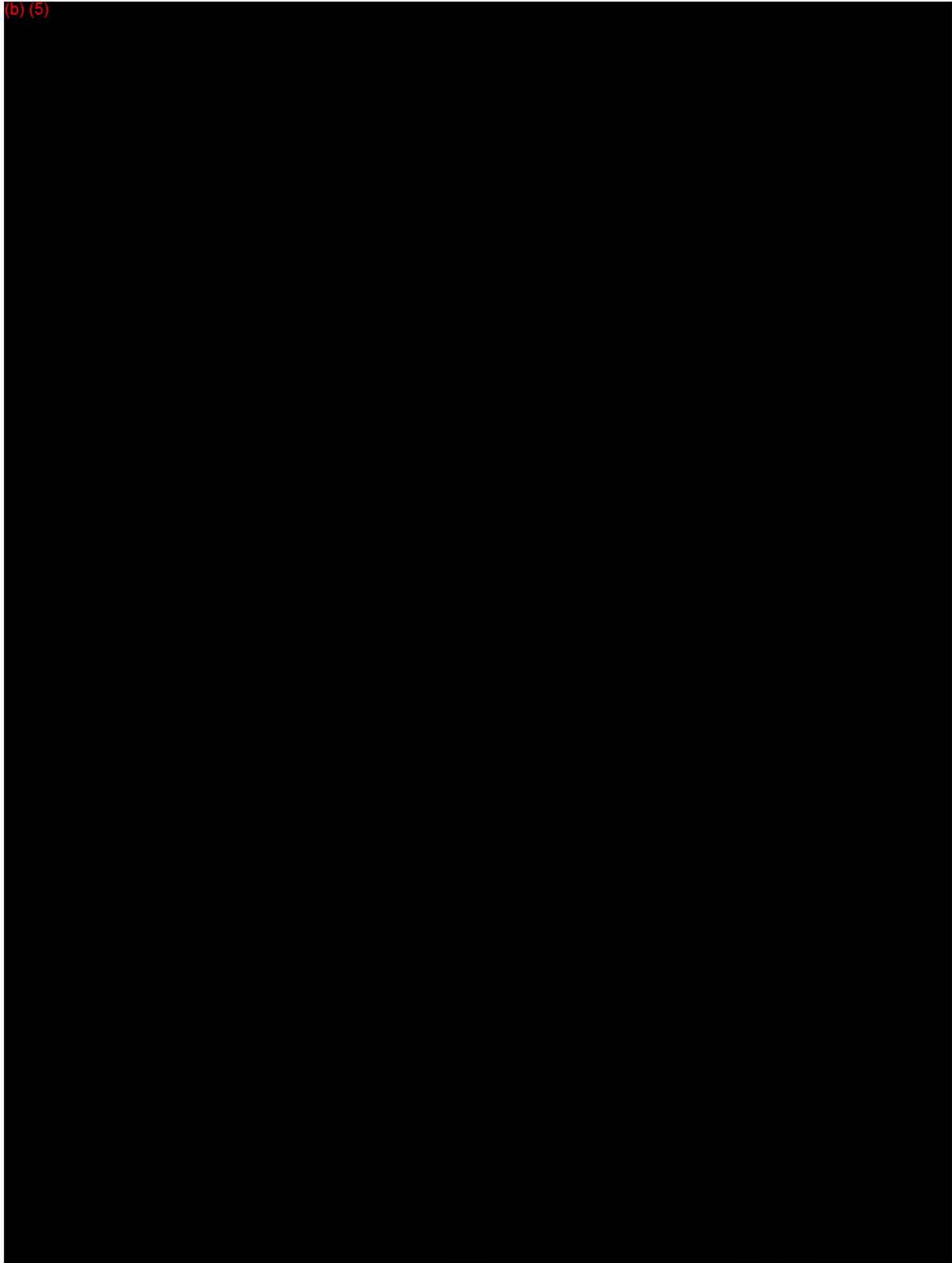


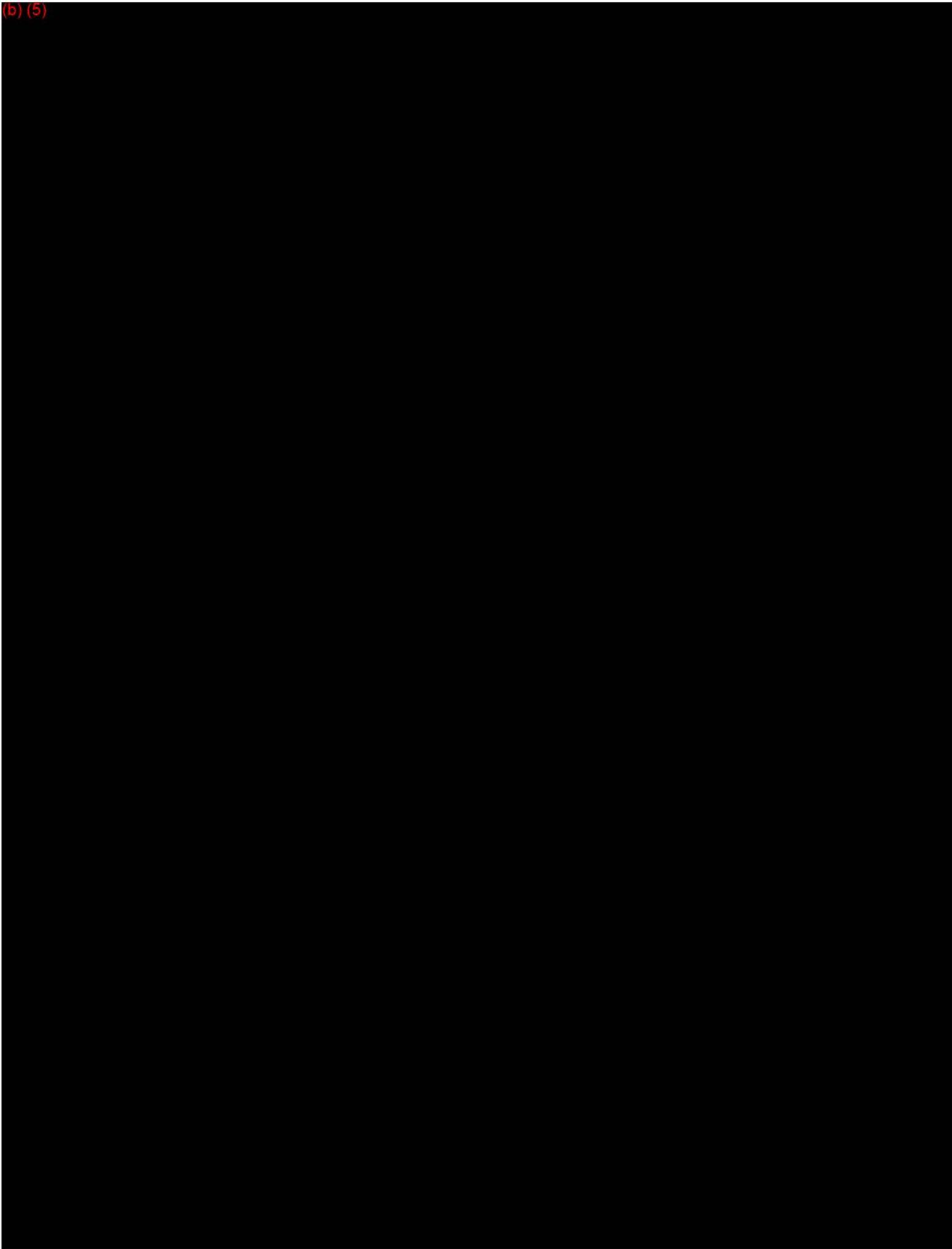




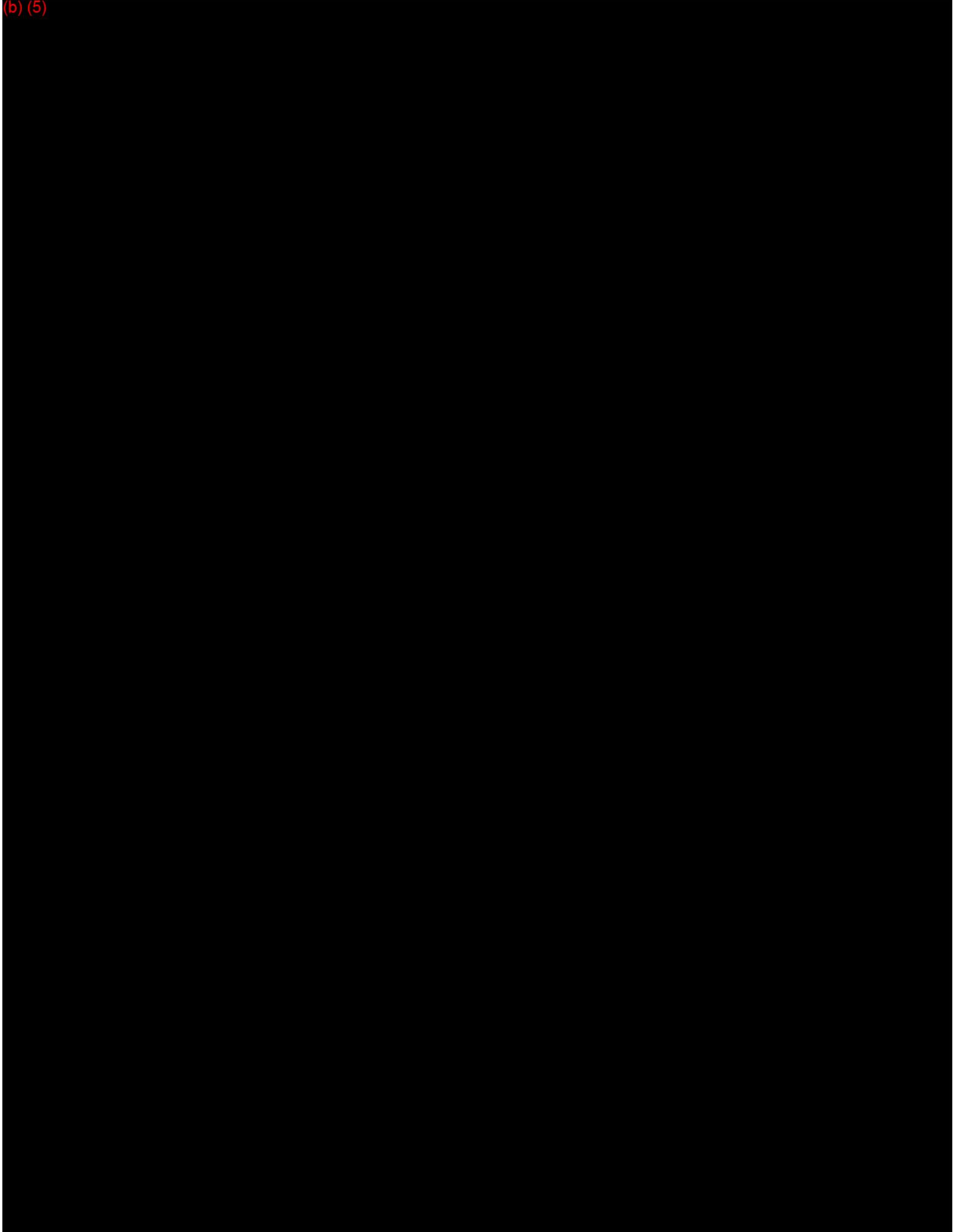


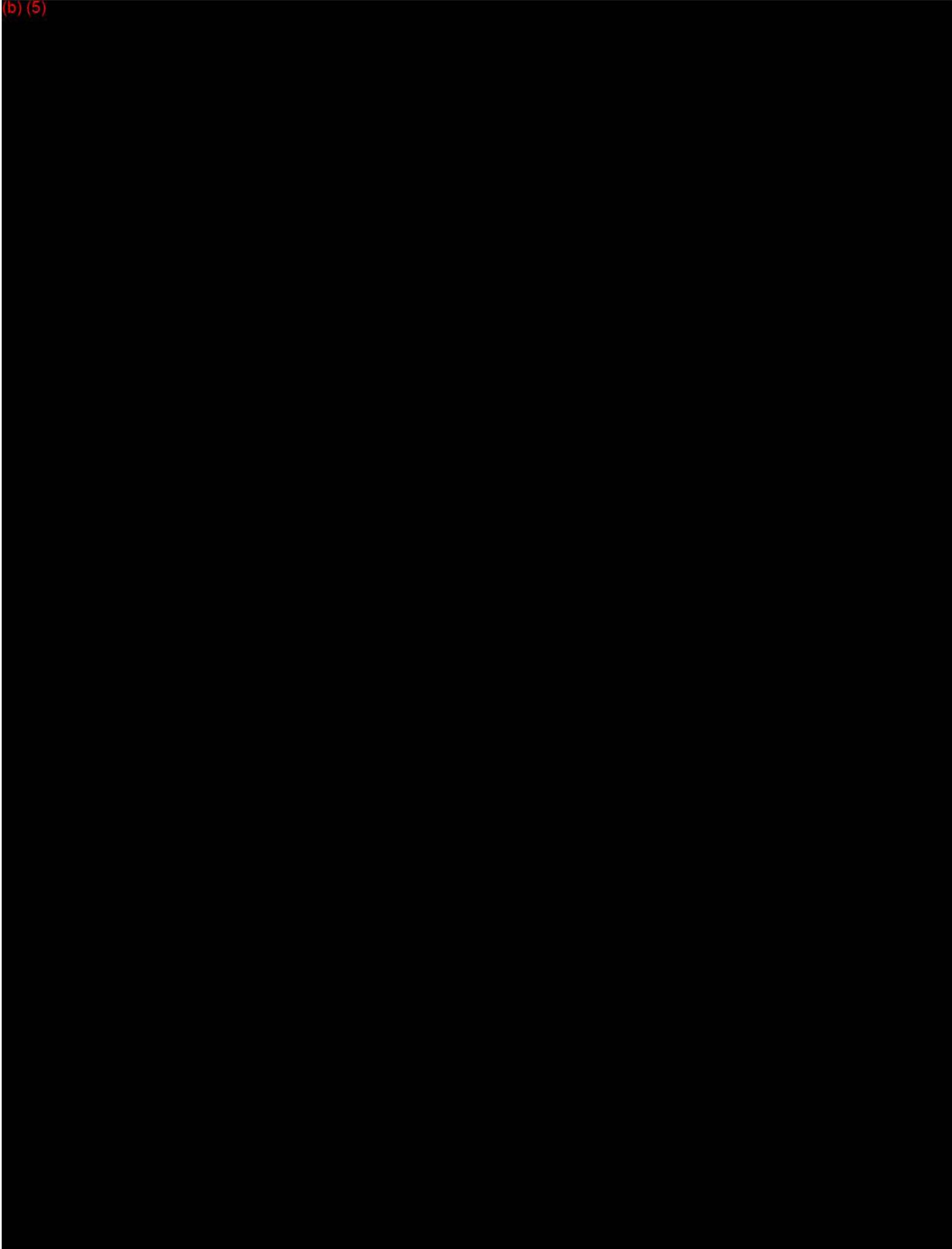


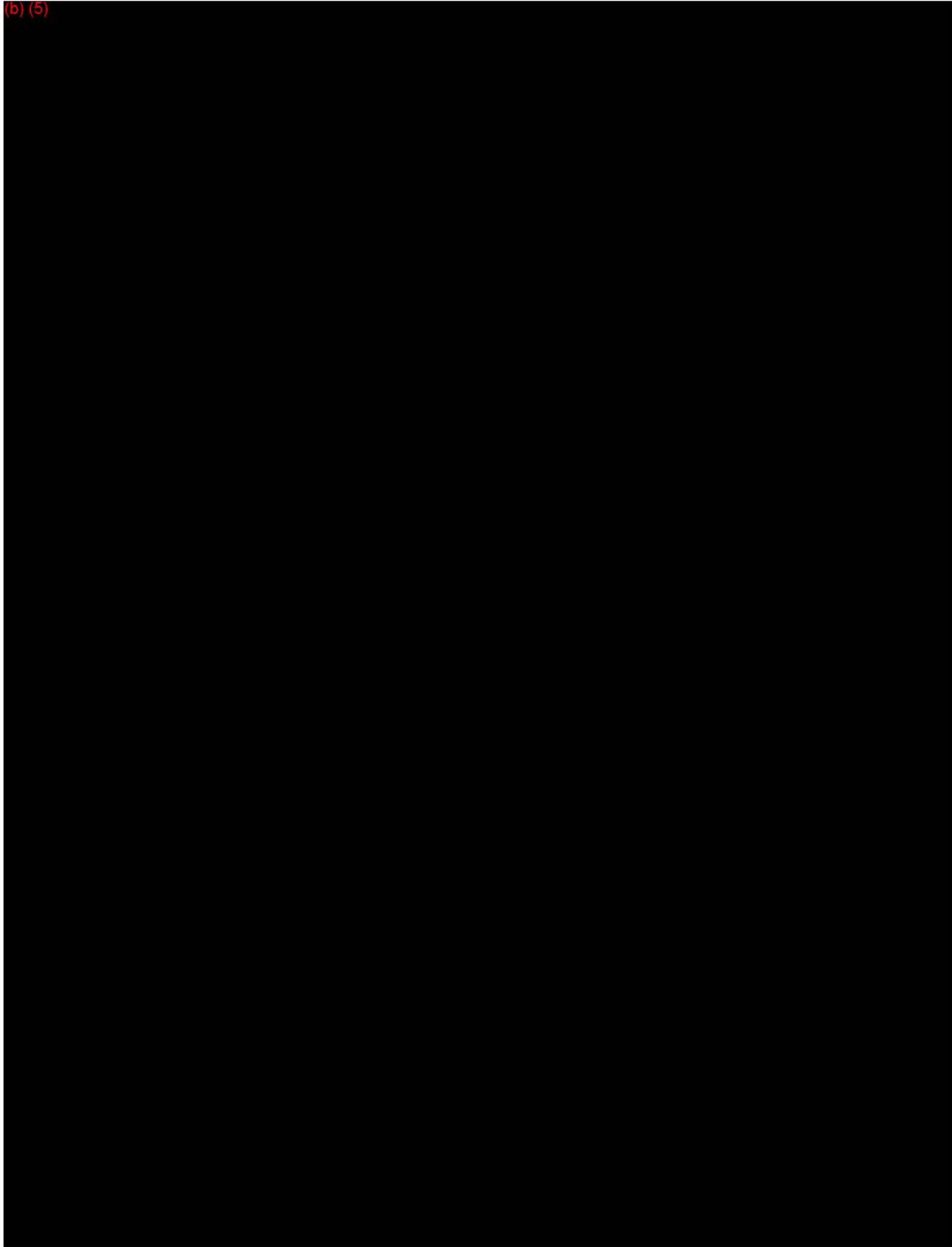






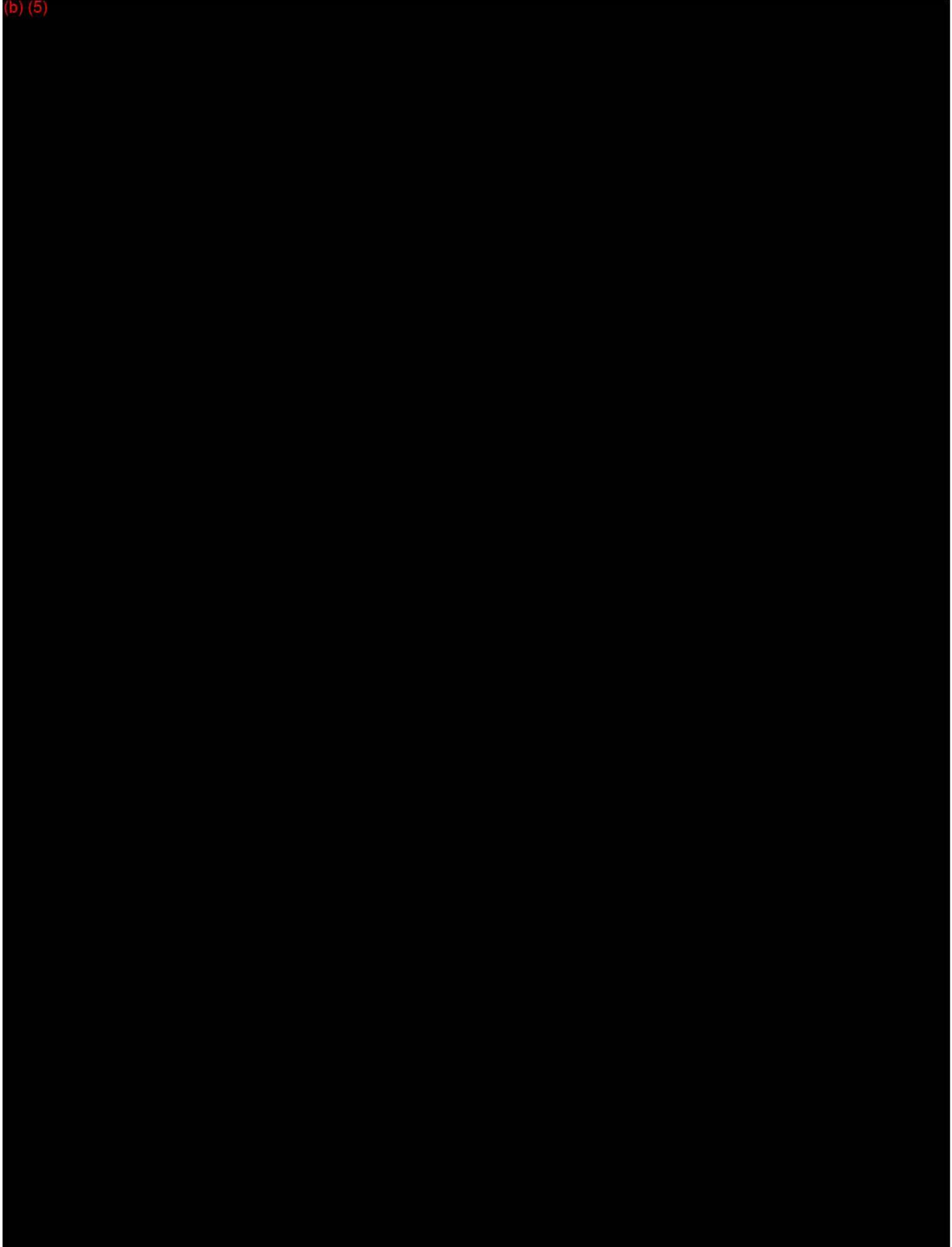












## Draft response letter to Sen. Carper (follow up to QFRs)

---

**From:** "Pettigrew, Theresa L. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=579eb754b4c34f0e8e46d1fb4cd708d7-pe">

**To:** "Lai, Joseph G. EOP/WHO" <(b) (6)> "Brooke, Francis J. EOP/WHO" <(b) (6)> "Leggitt, Lance B. EOP/WHO" <(b) (6)> "Collins, Rachel E. EOP/WHO" <(b) (6)>

**Cc:** "Moran, John S. EOP/WHO" <(b) (6)>

**Date:** Wed, 15 Aug 2018 16:20:54 -0400

**Attachments:** 08.03.17 Senator Carper to Neumayr CEQ Follow-up Letter.pdf (679.21 kB); DRAFT Response to Senator Carper letter - 081518 version.docx (62.22 kB)

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Hello,

Attached please find a letter that Sen. Carper sent to Mary with additional questions and her draft response letter. Please review and let me know of any concerns or suggested edits. Our goal is to get the letter out late tomorrow, if possible.

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 CO<sub>2</sub>? If not, why not? You stated that "Any reconsideration of the Endangerment Finding by the EPA would be subject to the Administrative Procedure Act." It is unclear from this answer if you believe EPA has an obligation to address CO<sub>2</sub> or merely can stop regulating if it goes through a rule making process. Please clarify your answer to (Q37).

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

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

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

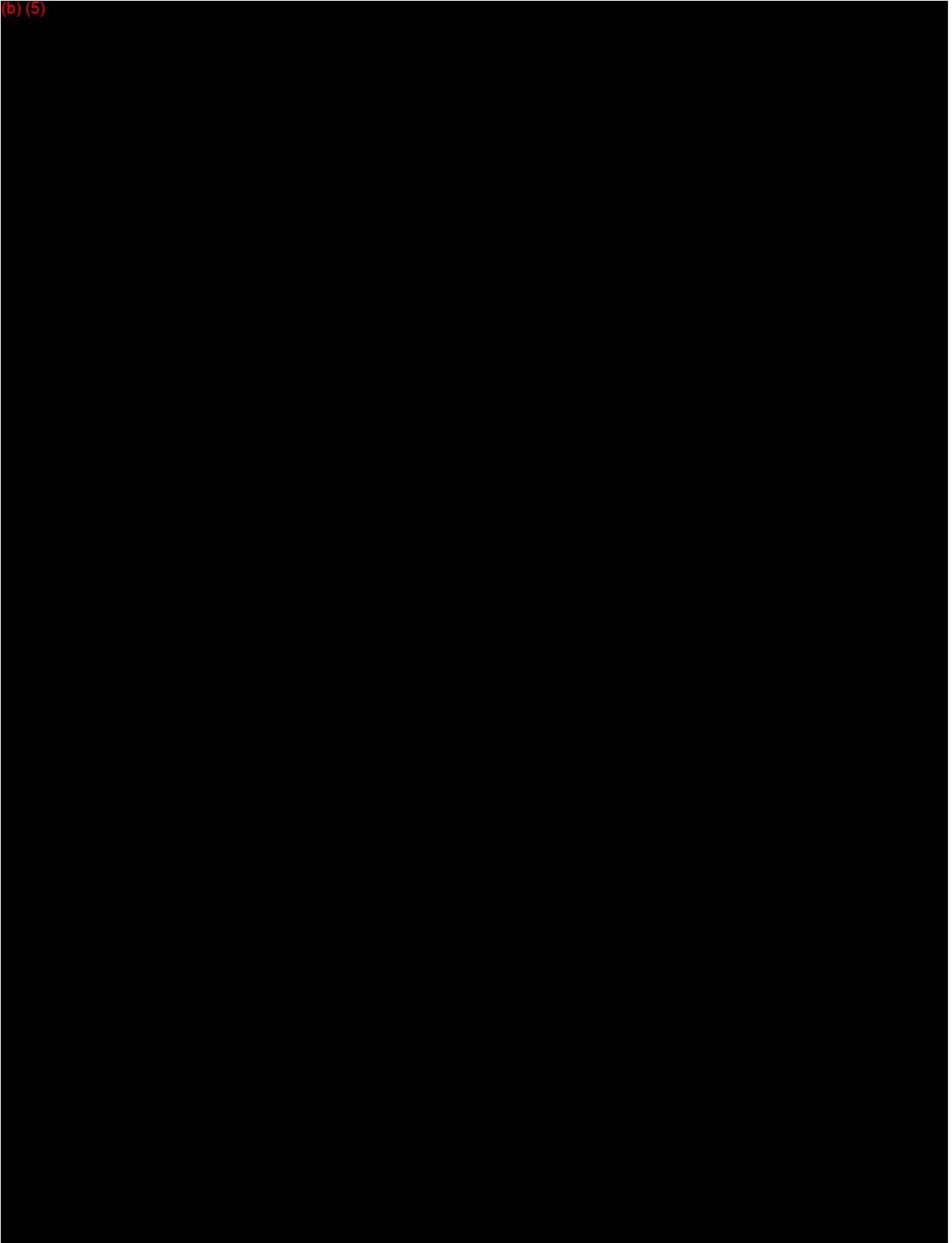
- 2) Please commit to work with my office on reinstatement of the Federal Floodplain Risk Management Standard, or a comparable standard, to hold new infrastructure projects to more resilient standards.
- 3) Please commit to reinstatement of provisions to prepare the United States for the impacts of climate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

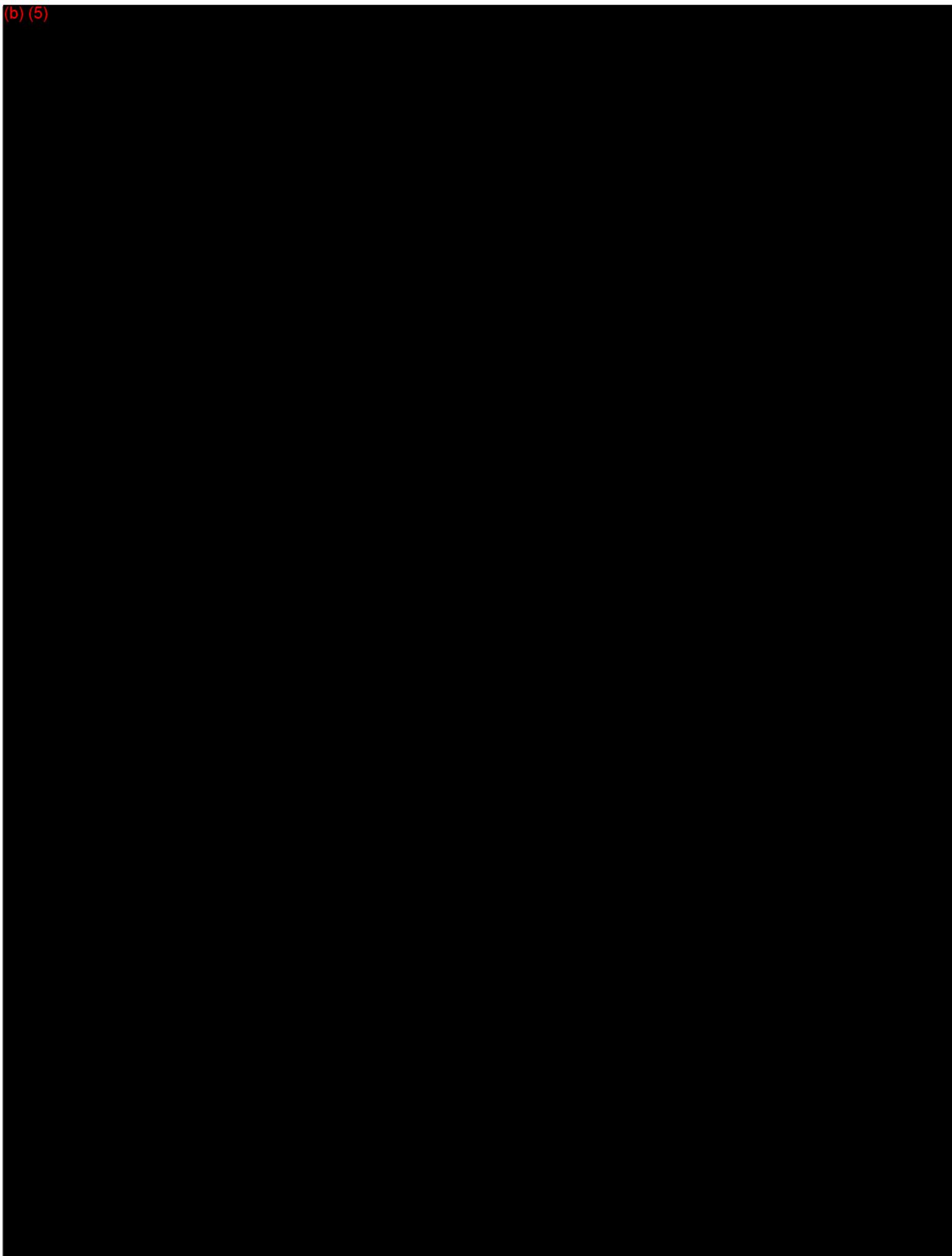
Please do not hesitate to contact me or Michal Freedhoff, a member of my EPW Committee at [Michal\\_Freedhoff@epw.senate.gov](mailto:Michal_Freedhoff@epw.senate.gov), should you have any questions or need further clarification on any of these requests. Thank you in advance for your attention to these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

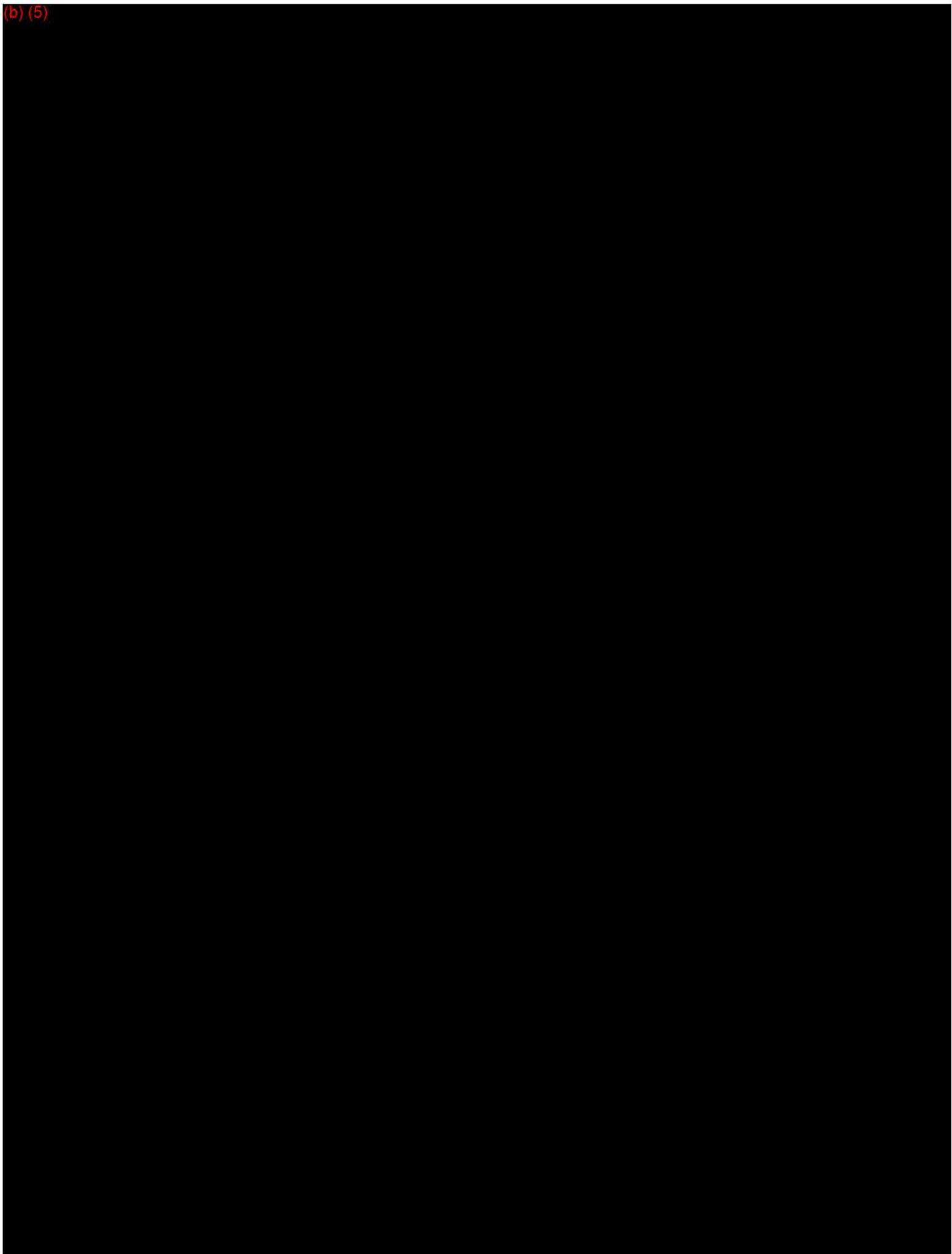
With best personal regards, I am

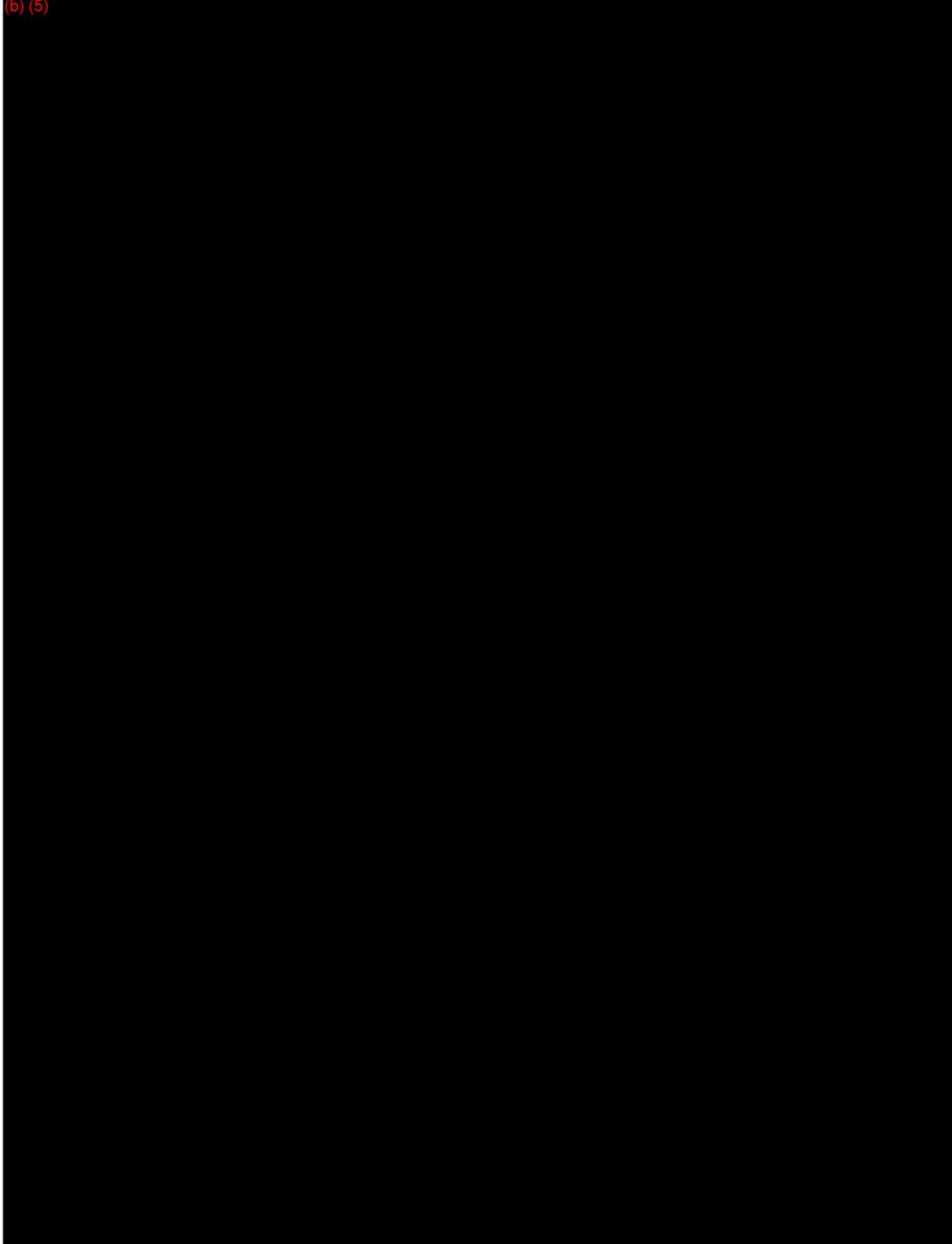
Sincerely yours,

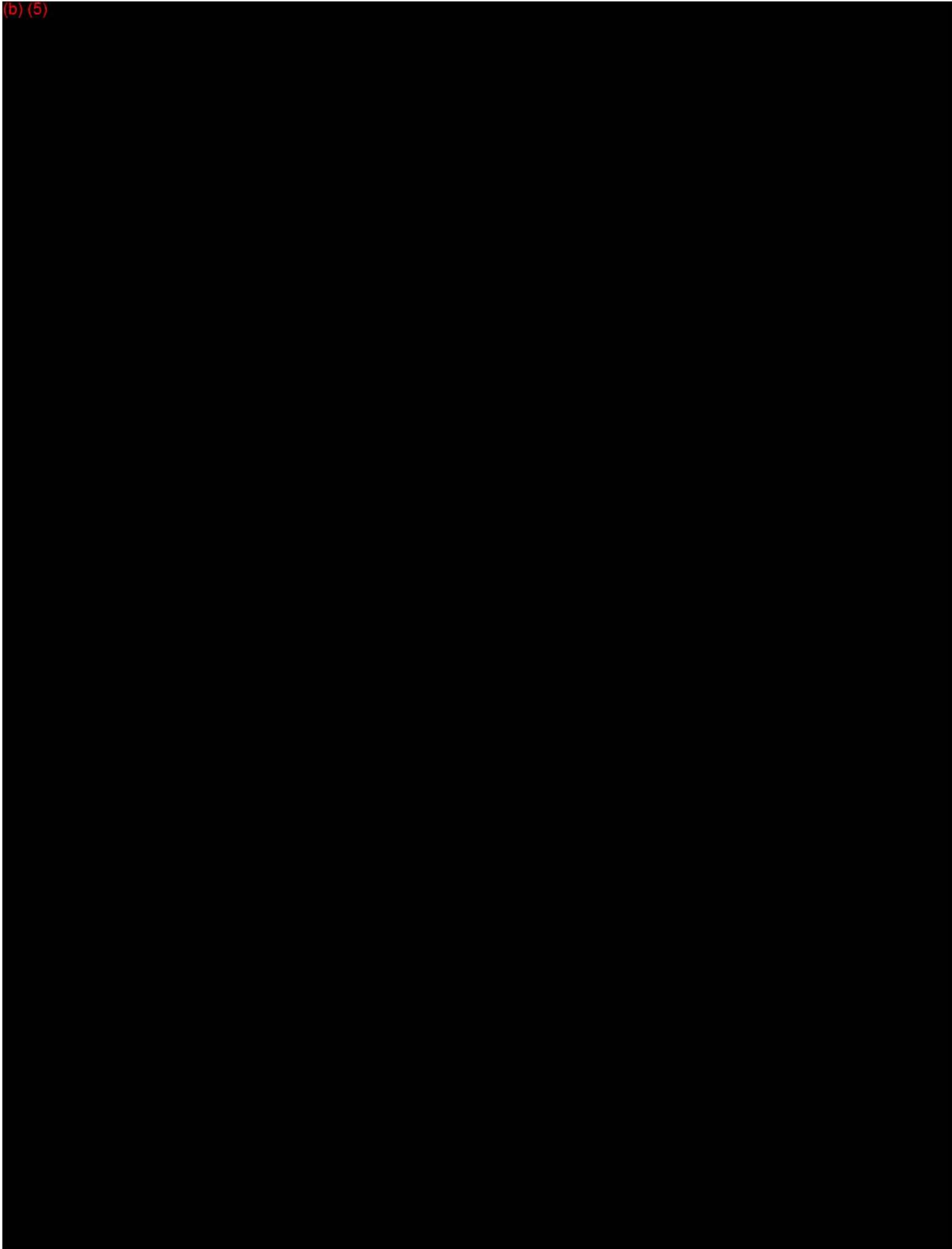
  
\_\_\_\_\_  
Tom Carper  
Ranking Member

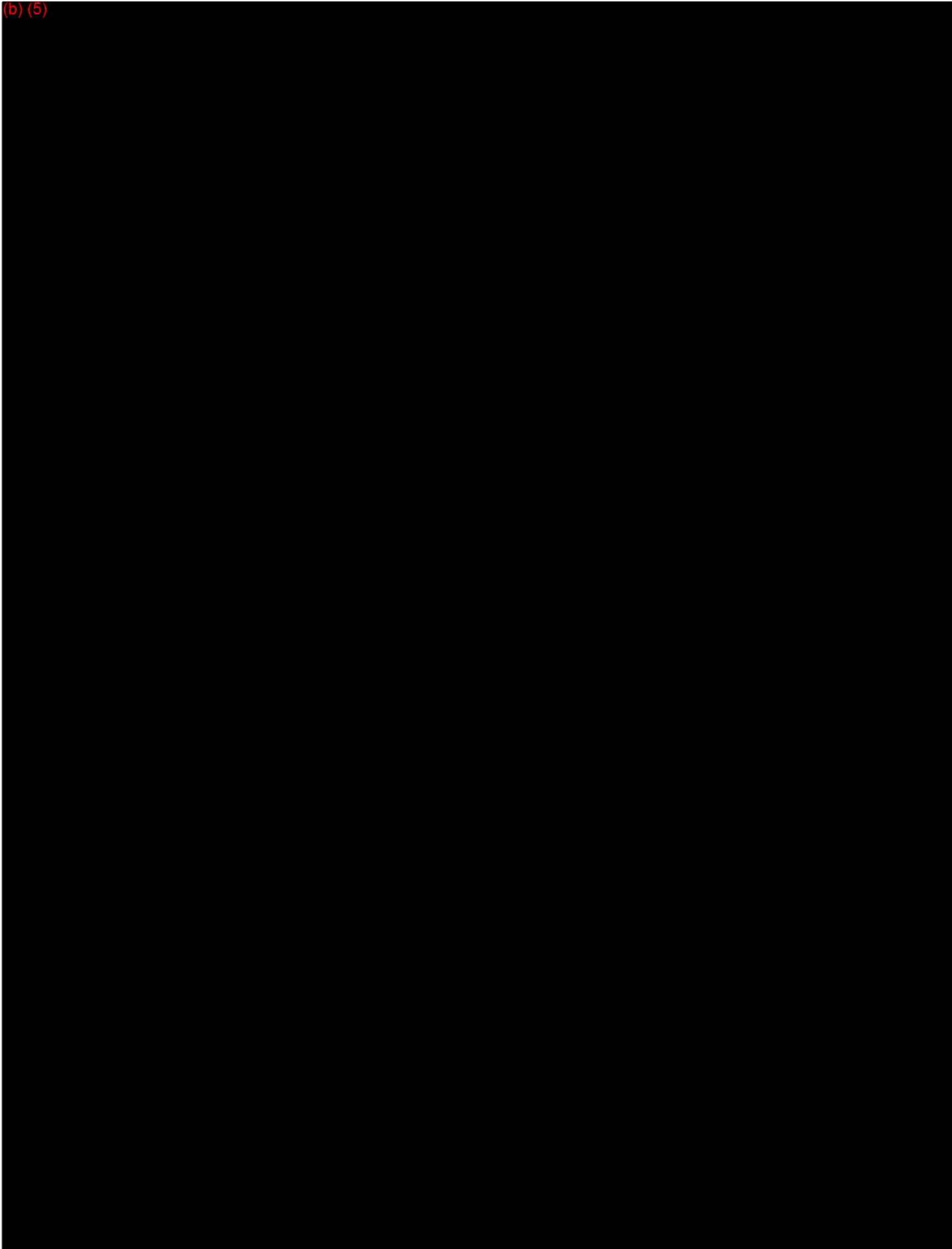


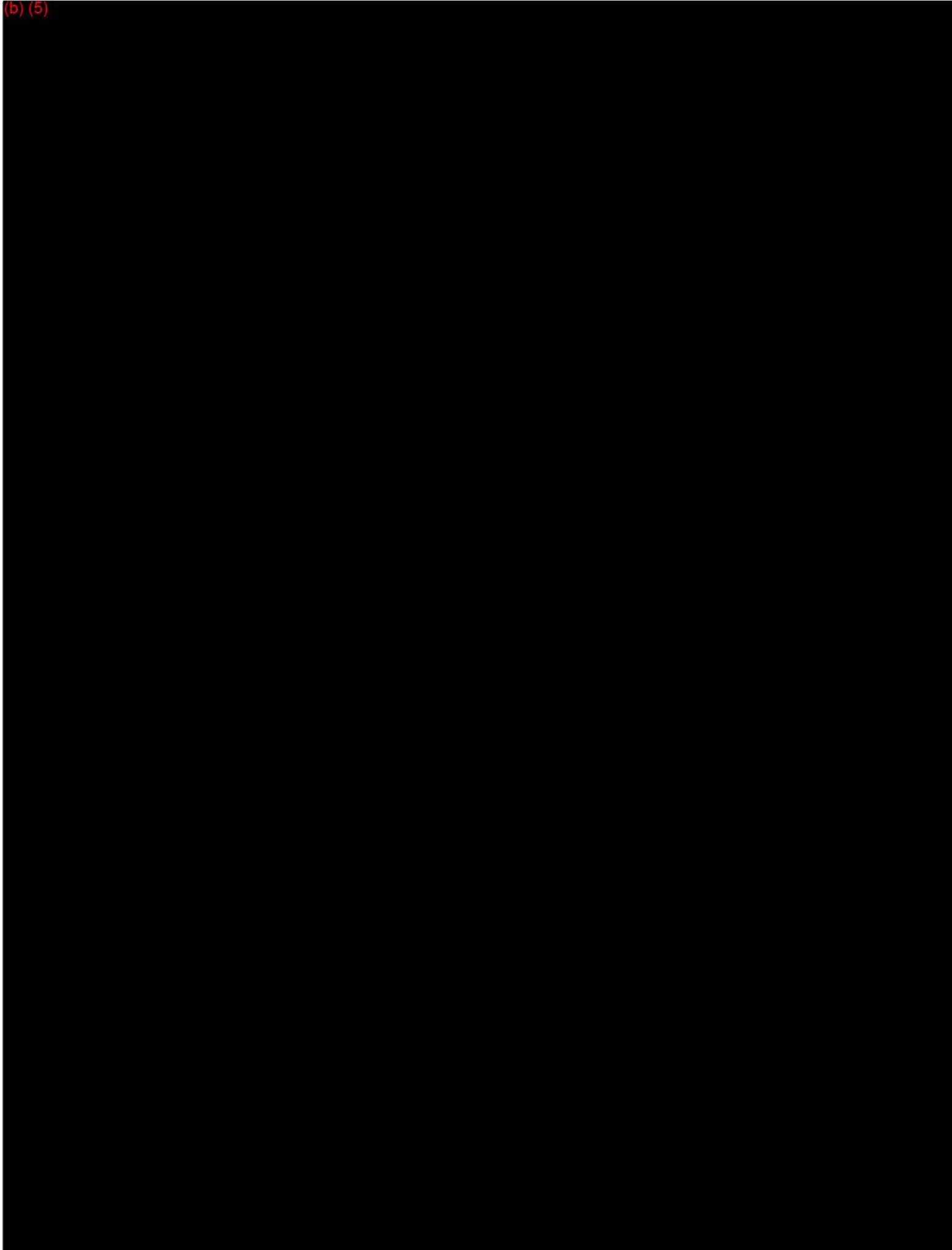


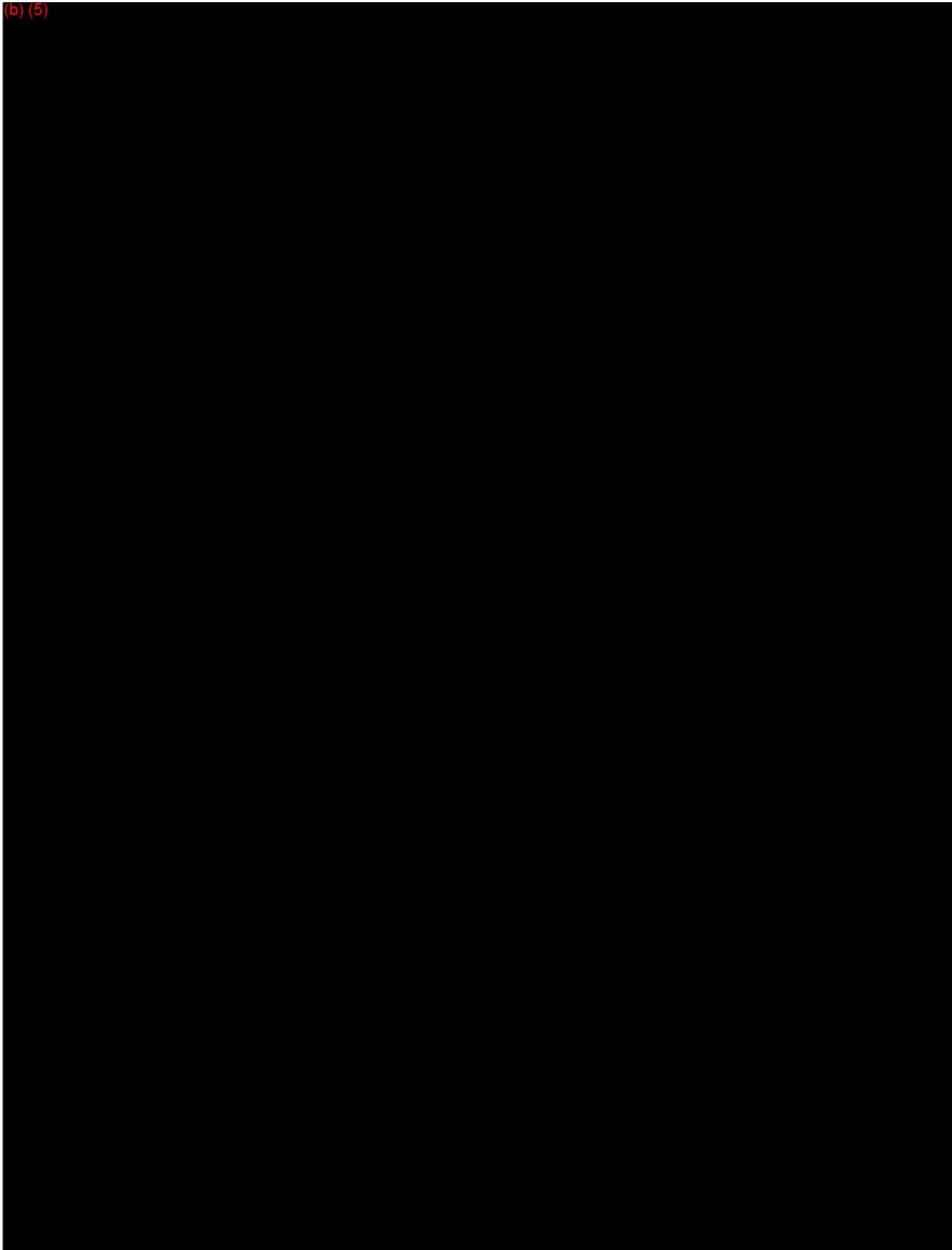


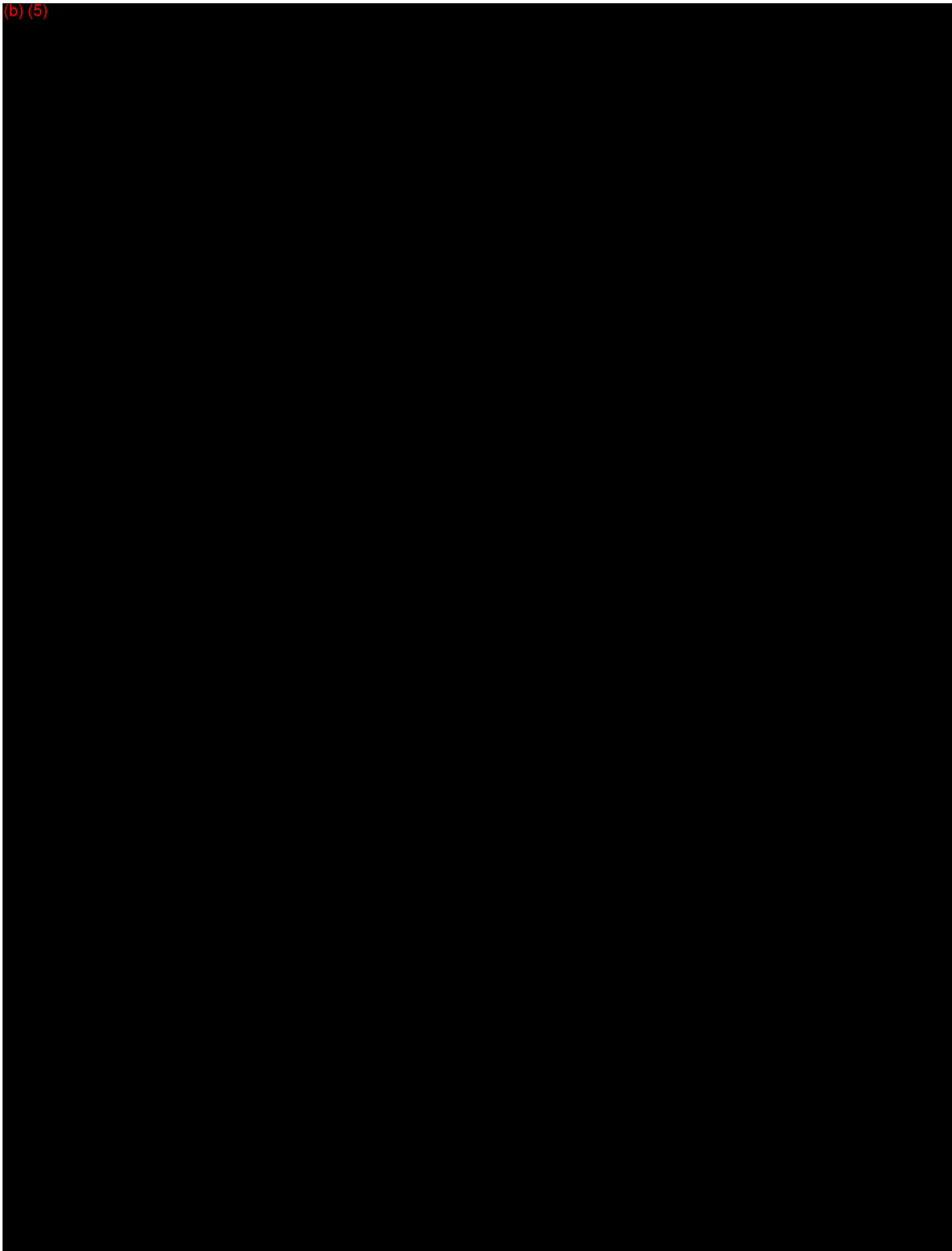


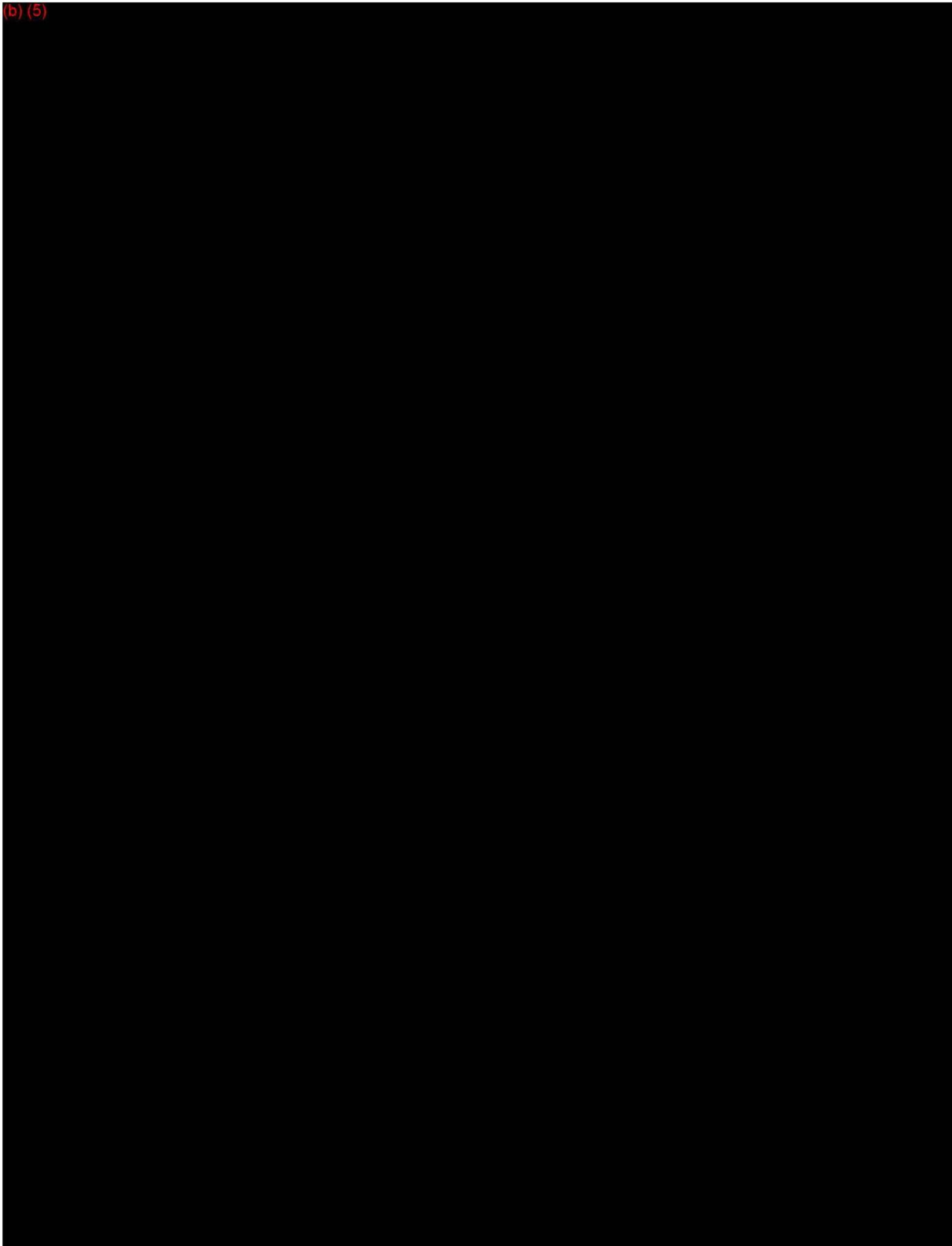


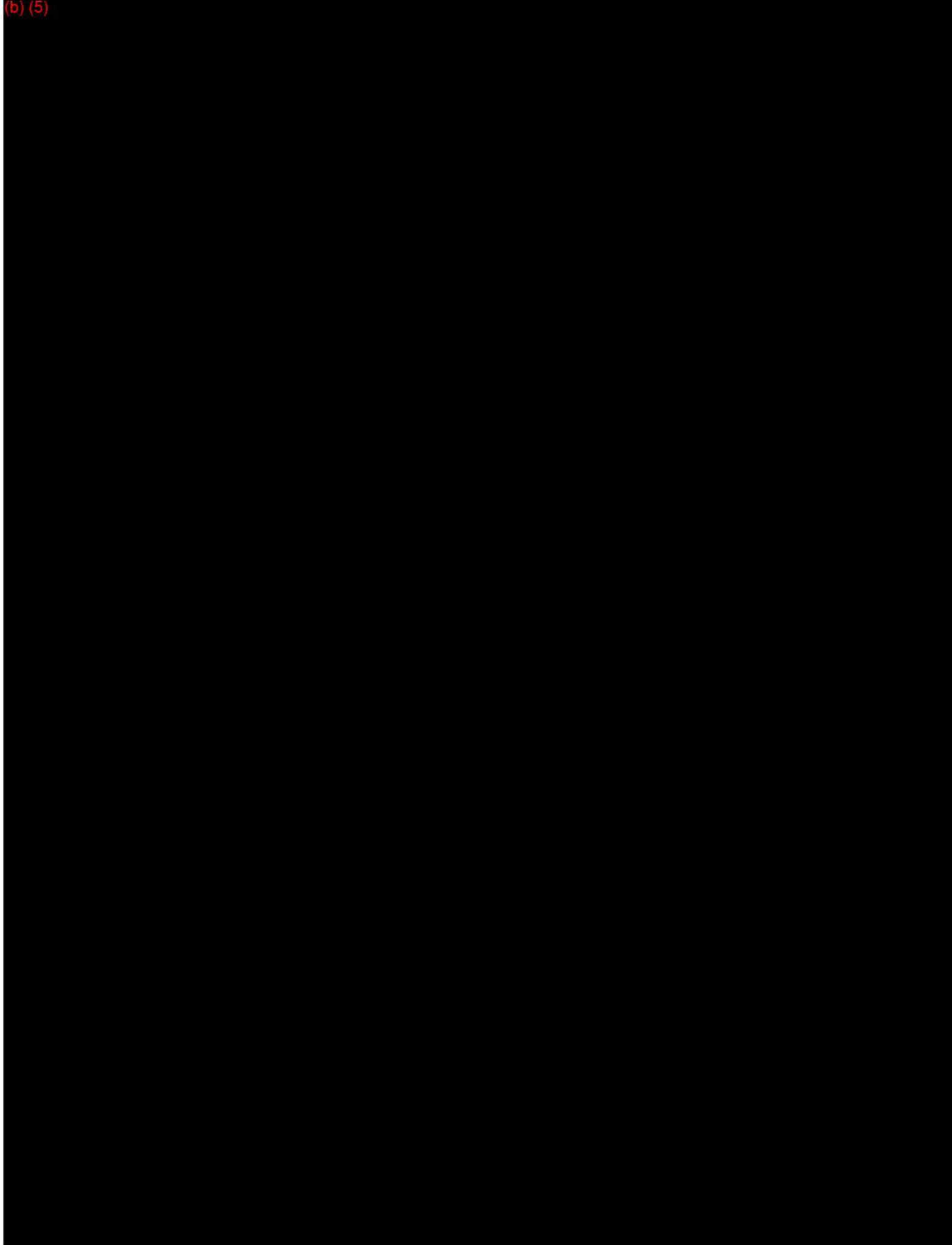


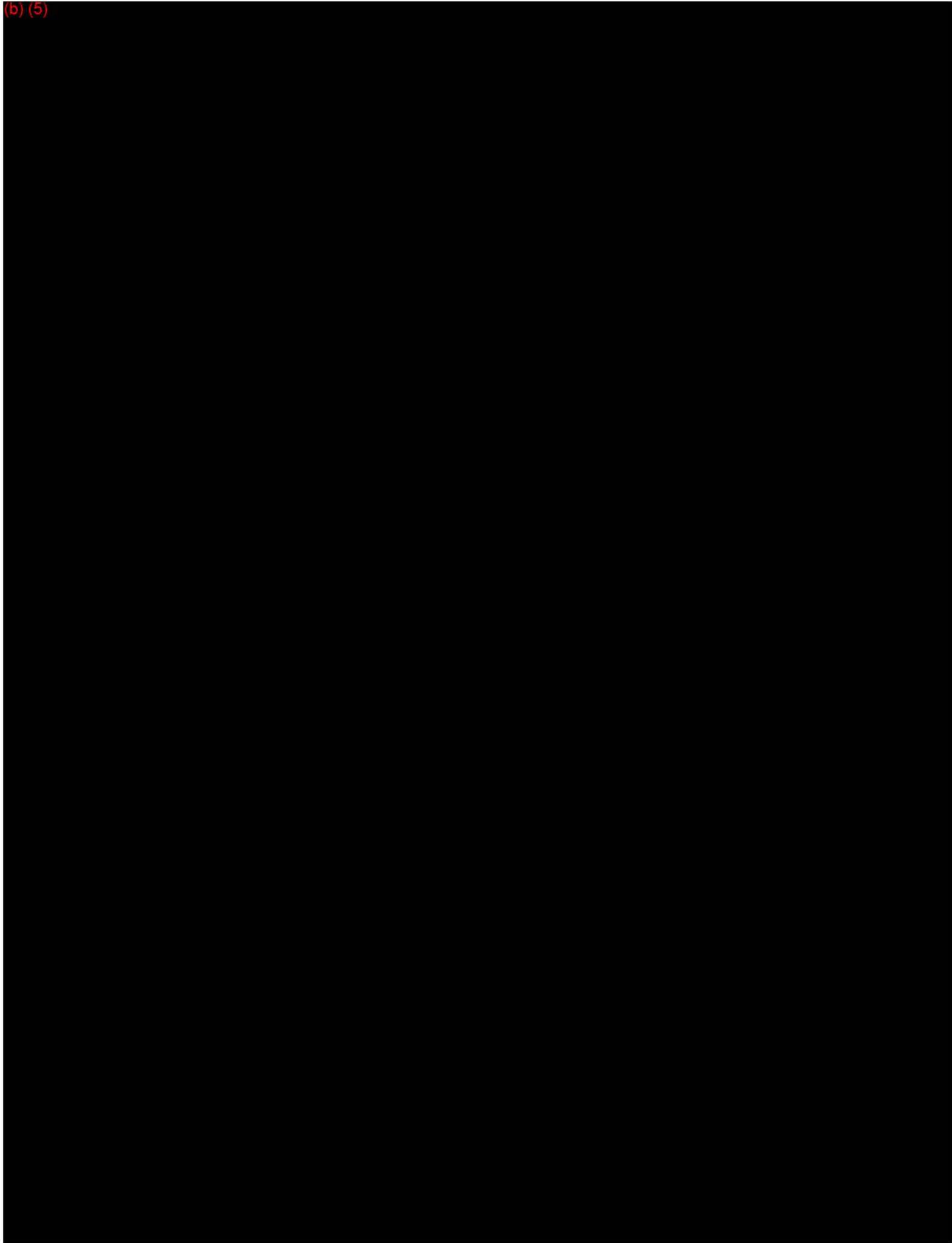


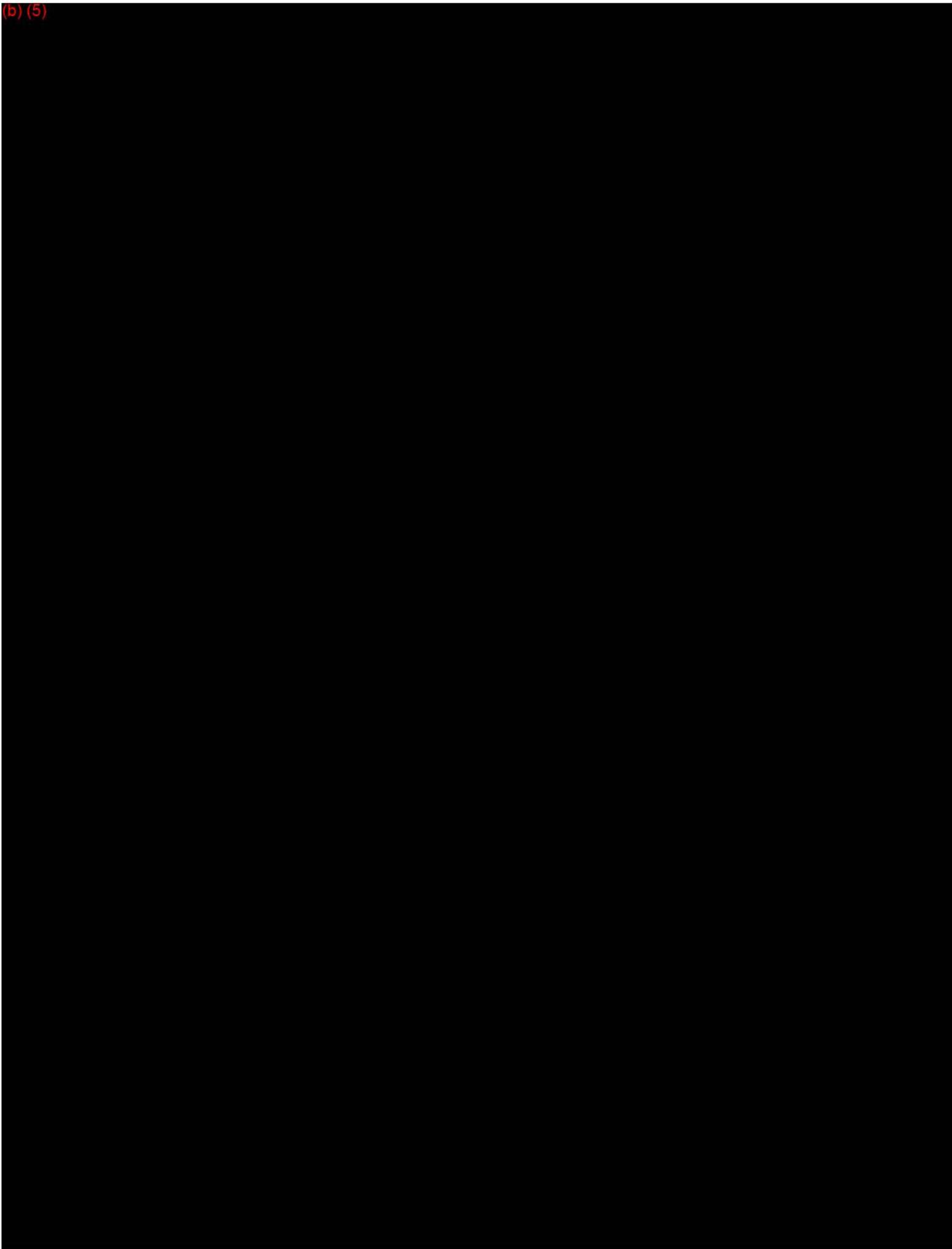


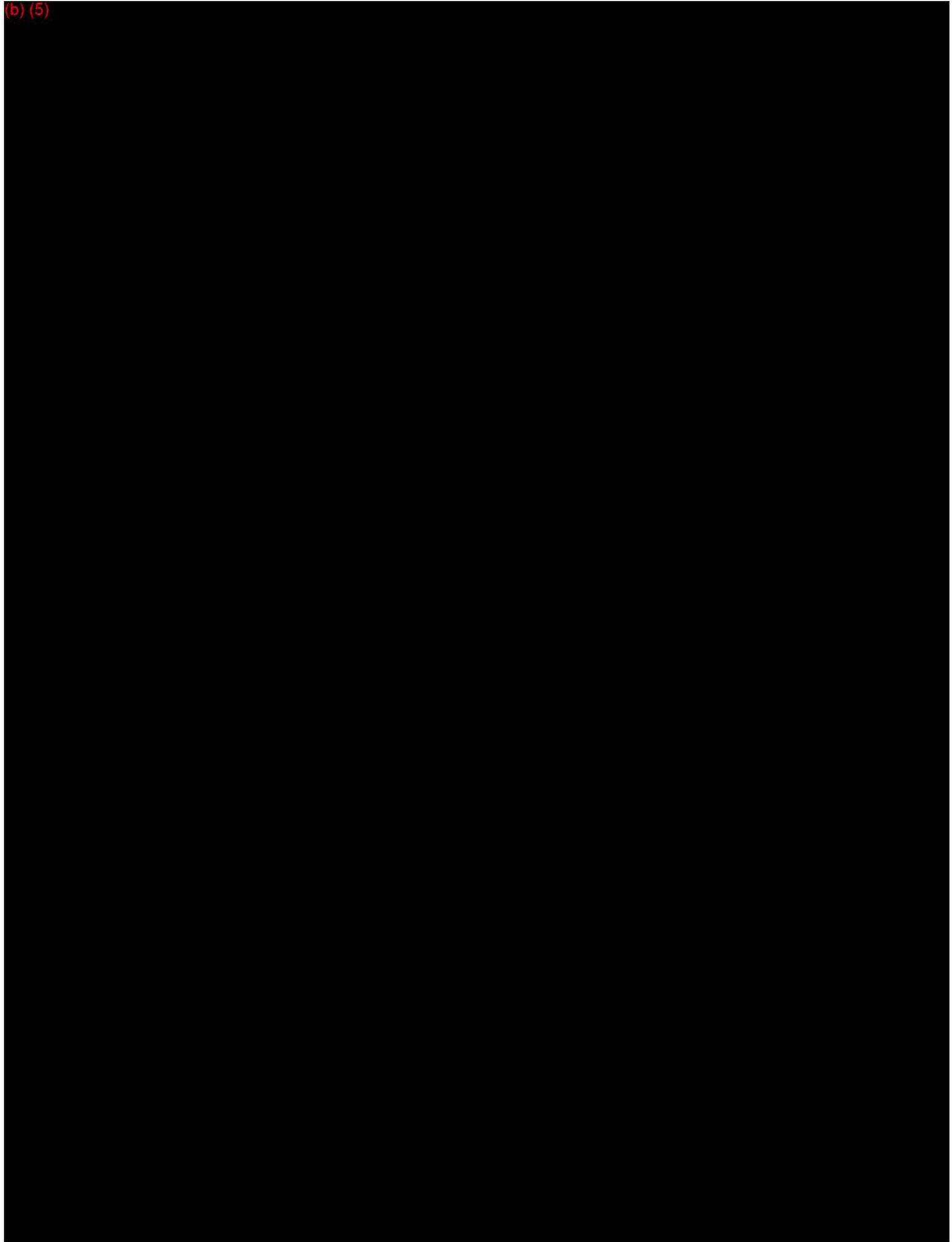


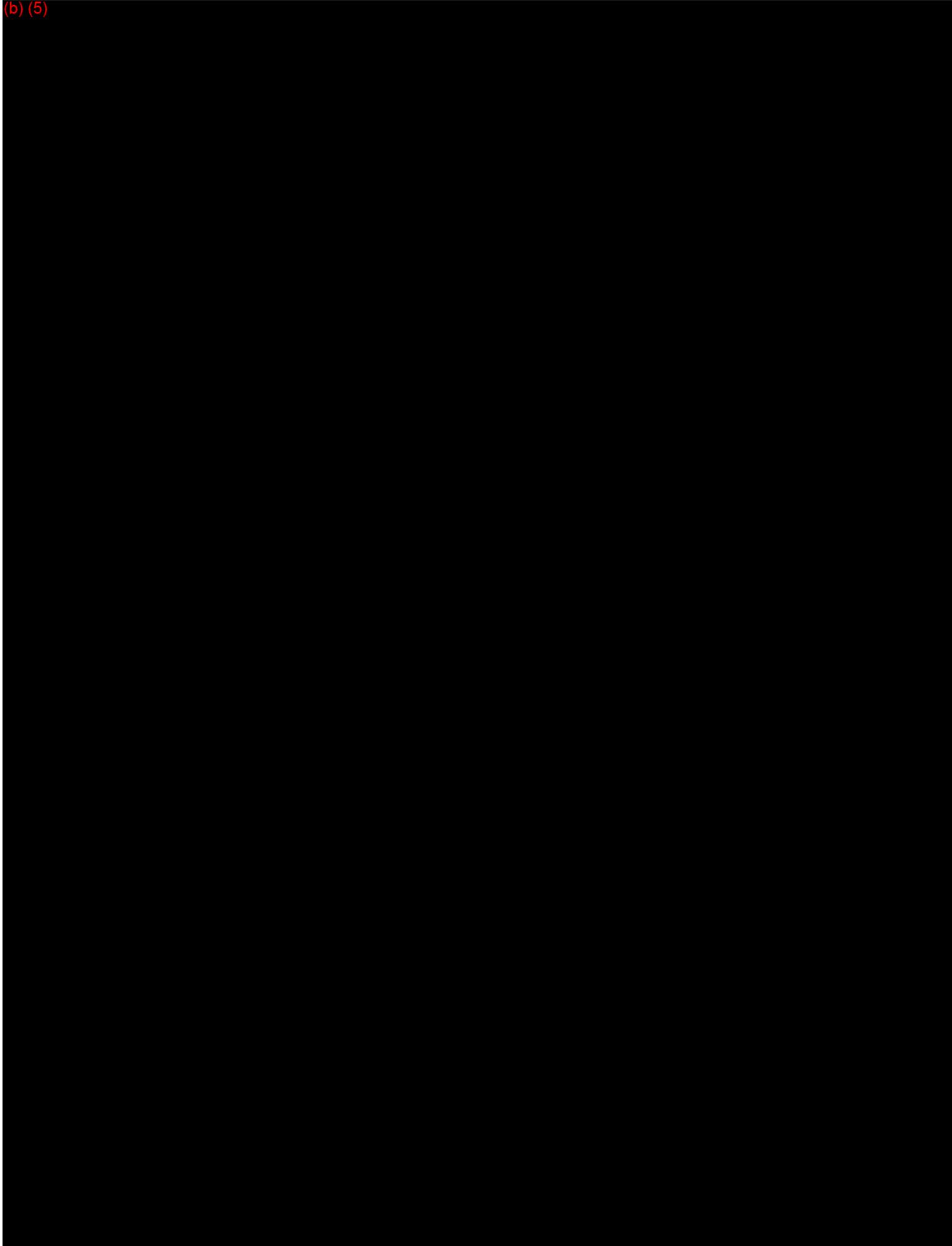


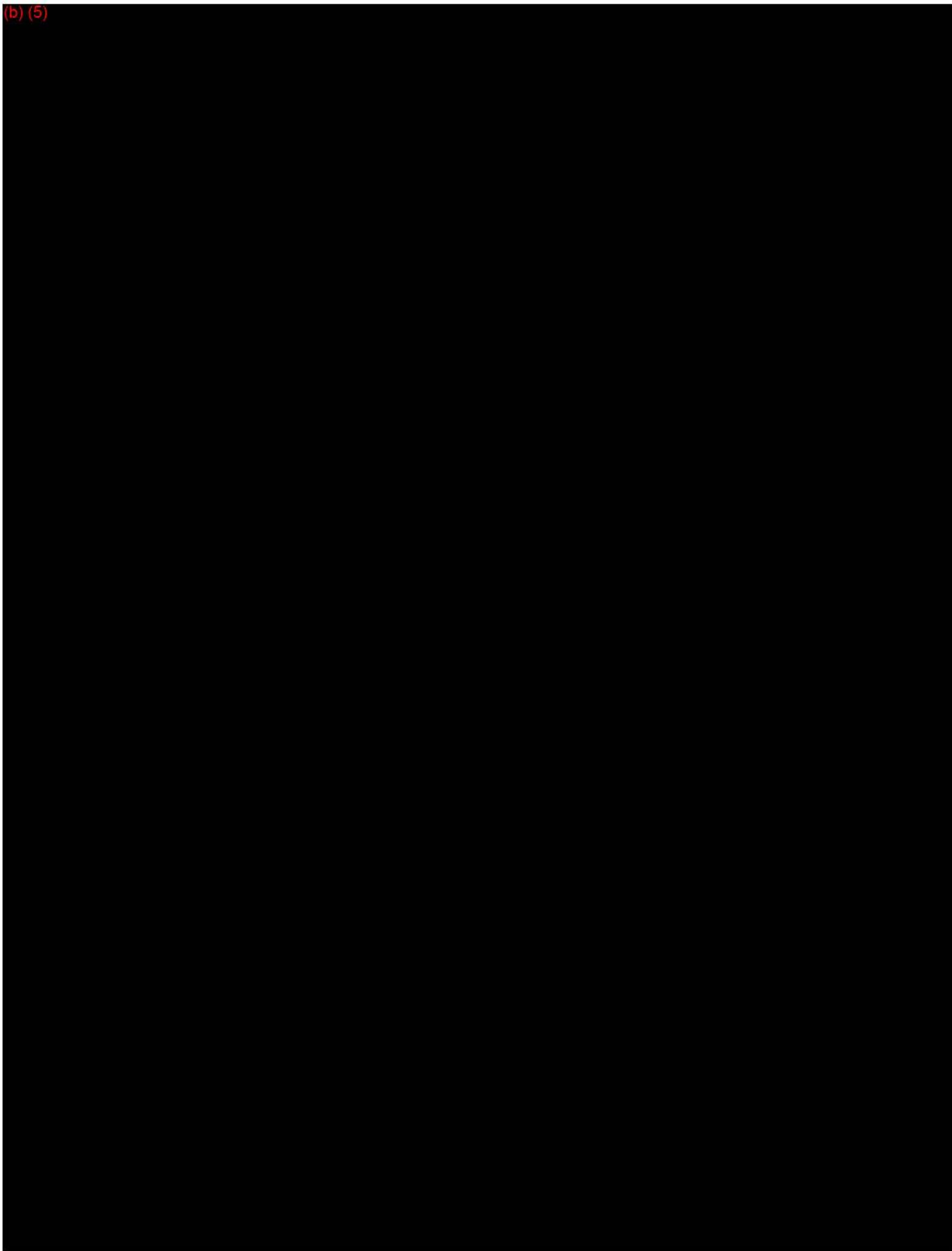


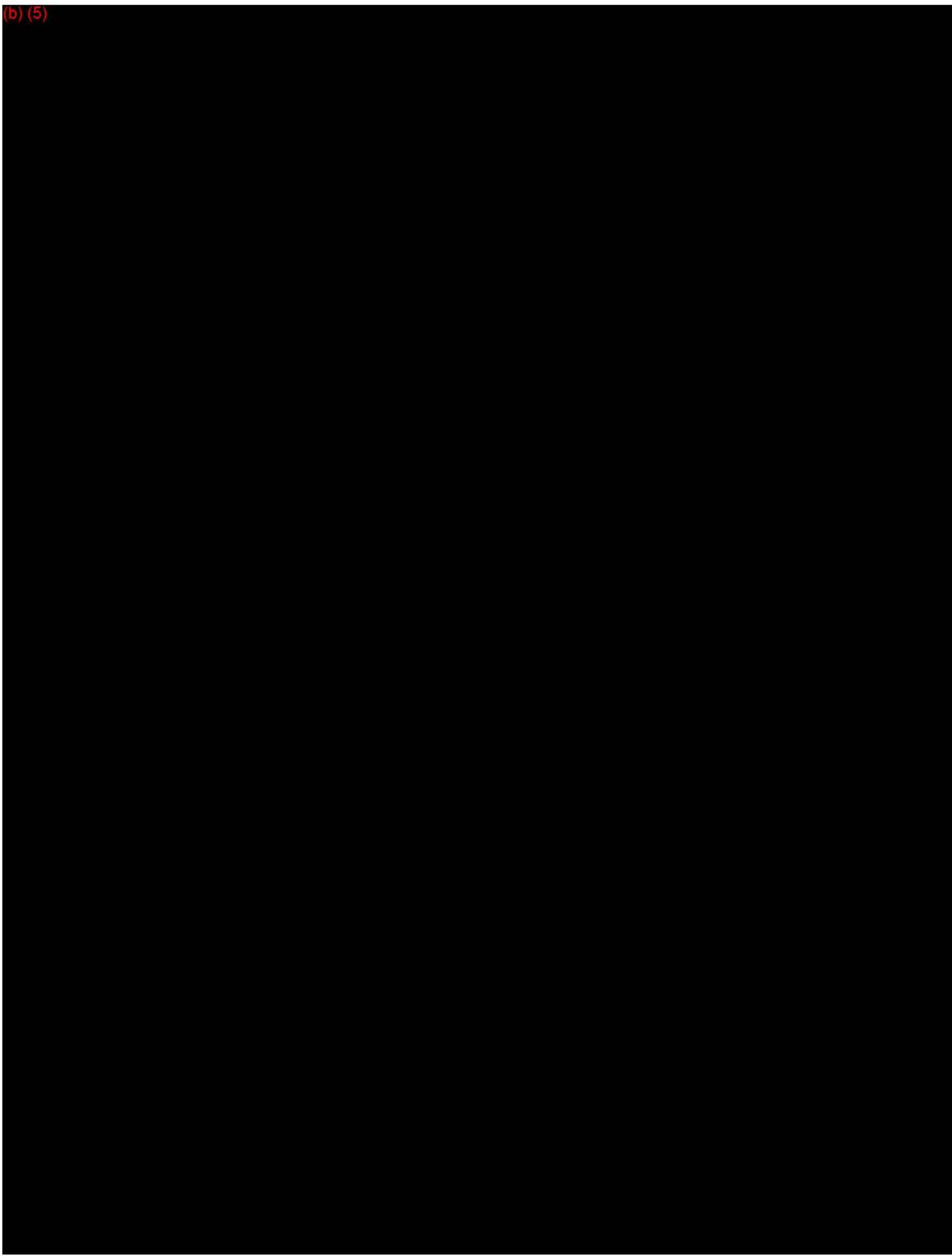


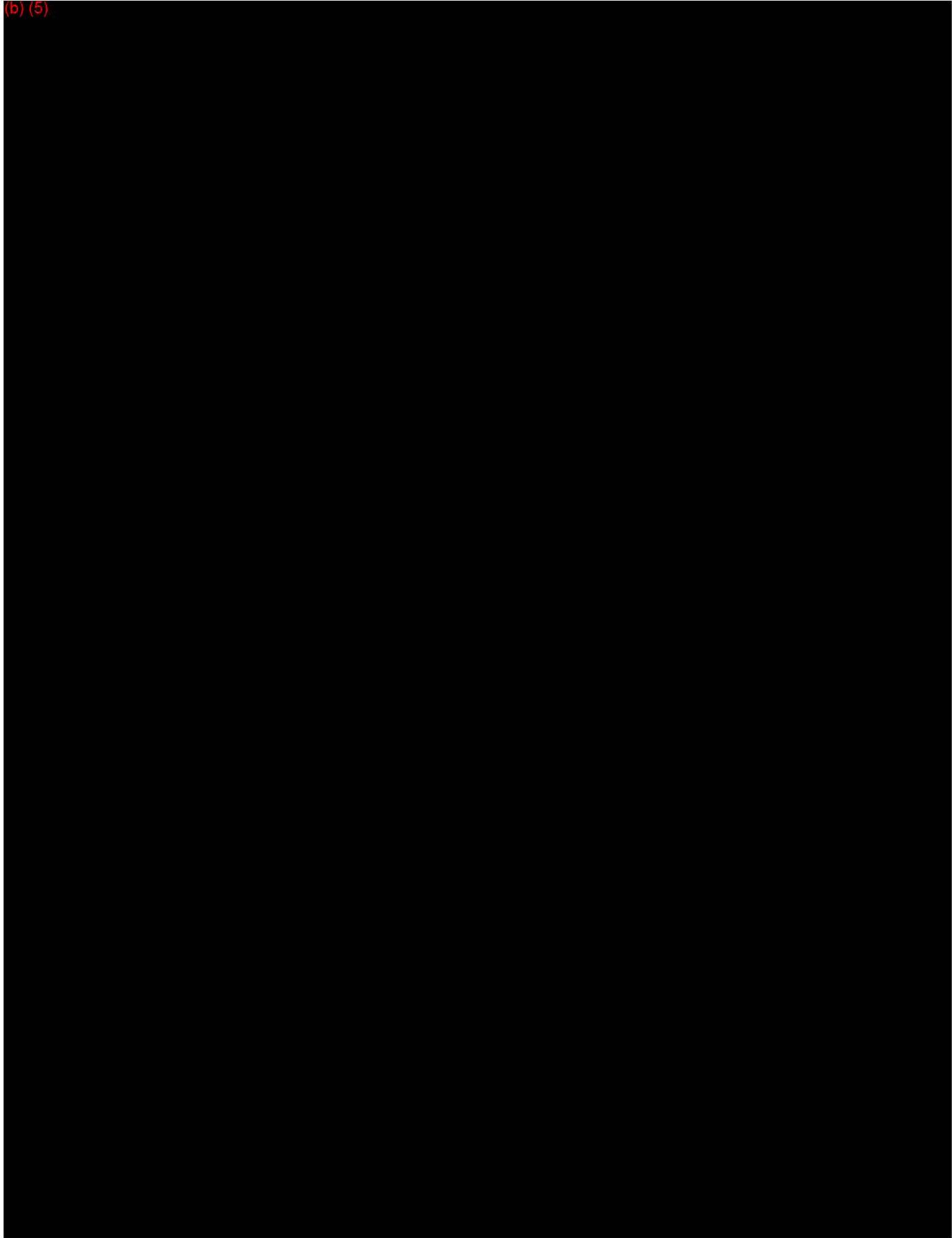












# Follow-up re regulations.gov docket

**From:** "Mansoor, Yarden M. EOP/CEQ" <(b) (6)>  
**To:** "Seale, Viktoria Z. EOP/CEQ" <(b) (6)>  
**Cc:** "Boling, Ted A. EOP/CEQ" <(b) (6)> "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**Date:** Wed, 15 Aug 2018 12:03:24 -0400

Victoria,

I followed up on your concern as to whether the ANOPR docket numbering is anomalous. Thanks for bringing this to our attention.

As of today, 8341 public submittals are posted. Sorting them by docket ID number, they range from 0006 to 8346. There are 2 primary documents (our FR notices) and 3 supporting documents (from the OMB 12866 review), so the numbering appears correct.

That said, there are certainly some odd submittals: one that just says "hello" and one (7209) that contains unintelligible text English and attaches a photo in two formats.



## Filter Results By...

### Document Type ?

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- Notice (0)
- Proposed Rule (2)
- Rule (0)
- Supporting & Related Material (3)
- Other (0)
- Public Submission

8,341 results

Results per page: 50

#### Comment from Audrey SmithRice, N/A

As an advocate and supporter of our national parks, I am writing in opposition to the proposed updates to imp National

Public Submission Posted: 08/14/2018 ID: CEQ-2018-0001-8346

Organization: N/A Submitter Name: Audrey SmithRice

#### Comment from Patricia Burton, N/A

As an advocate and supporter of our national parks, I am writing in opposition to the proposed updates to imp National

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

# [EXTERNAL] AMWA Comment Letter for Docket CEQ-2018-0001

---

**From:** Stephanie Hayes Schlea <schlea@amwa.net>  
**To:** "McLaurin, Juschelle D. EOP/CEQ" <(b) (6)>  
**Date:** Fri, 17 Aug 2018 12:34:25 -0400  
**Attachments:** Association of Metropolitan Water Agencies Comment Letter CEQ-2018-0001.pdf (239.26 kB)

---

On behalf of the Association of Metropolitan Water Agencies, please find attached the comment letter regarding CEQ's *Advance Notice of Proposed Rulemaking: Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act* (CEQ-2018-0001).

---

Stephanie Hayes Schlea  
Manager, Regulatory and Scientific Affairs  
Association of Metropolitan Water Agencies  
Office: 202.331.2820  
1620 I Street NW Suite 500  
Washington, DC 20006  
><http://www.amwa.net/><



August 17, 2018

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

Re: Docket No. CEQ-2018-0001, *Advance Notice of Proposed Rulemaking: Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act*

Dear Mr. Boling:

The Association of Metropolitan Water Agencies (AMWA) welcomes the opportunity to comment on the Council on Environmental Quality’s (CEQ) advance notice of proposed rulemaking to update the regulations on implementing certain provisions of the National Environmental Policy Act (NEPA). AMWA represents the largest metropolitan, publicly owned drinking water systems in the nation and collectively our members serve more than 130 million people.

AMWA is supportive of NEPA as a cornerstone of our country’s environmental protection laws. It is important to our members because it ensures that possible impacts to the environment and public input related to these considerations are taken into account during federal decision making, particularly as it relates to protecting our nation’s water resources. Our members are affected by actions on federal lands that could have environmental impacts on the source of drinking water, such as projects on national forest lands, where many metropolitan cities’ drinking water originates, or projects on federal reservoirs where our members have drinking water storage contracts. NEPA plays a vital role in protecting these water sources and the larger environment by requiring the development of environmental assessments and environmental impact assessments to identify potential impacts of federal actions. While AMWA supports improving the efficiency of the NEPA process, it is important for the integrity of NEPA to be maintained and the opportunity for public participation and comment remain intact.

Our members are often applicants for projects that require NEPA reviews, such as projects for water supply and delivery that will receive funding via drinking water or clean water State Revolving Fund loans or through the Water Infrastructure Financing and Innovation Act. Many of our members have had experiences where the NEPA process has lasted several years and

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Trinity River Authority of Texas

Robert Hunter  
Municipal Water District of  
Orange County

Carrie Lewis  
Portland Water District

James S. Lochhead  
Denver Water Department

Ron Lovan  
Northern Kentucky Water  
District

Sue McCormick  
Great Lakes Water Authority

J. Brett Jokela  
Anchorage Water &  
Wastewater Utility

Charles M. Murray  
Fairfax Water

William Stowe  
Des Moines Water Works

Katlynn Sorensen  
Phoenix Water Services

Jeffrey Szabo  
Suffolk County Water Authority

Douglas Yoder  
Miami-Dade Water and Sewer  
Department

**CHIEF EXECUTIVE  
OFFICER**  
Diane VanDe Hei

therefore AMWA encourages CEQ to consider ways to optimize interagency coordination and streamline authorization decisions. AMWA supports improvements to NEPA regulations, particularly those that would improve the efficiency of environmental reviews and authorizations involving multiple agencies, provided that the decision process remains transparent to the applicant and the public's opportunity for input remains intact.

AMWA supports the administration's one federal decision goal of NEPA reviews being conducted in two years or less provided there is still sufficient opportunity for public input and recognition that some decisions may still take longer, whether due to the complexity of the project itself or the number of collaborating agencies participating. Timely, synchronized and concurrent reviews should be conducted, and to the extent possible, the lead federal agency should be responsible for ensuring this occurs.

Finally, in light of the impacts of climate change on our water resources, it's important that NEPA policies and guidelines facilitate adaptation approaches including projects developed to address future needs for resilience to extreme events and weather disasters, such as storms and droughts, which have been well documented in the United States over the past decade.

Therefore, as the White House takes steps to ensure that the federal "environmental review and permitting process for infrastructure projects is coordinated, predictable, and transparent," AMWA supports the efficiency of NEPA reviews and the Administration's one federal decision goal. As stated elsewhere in this letter, AMWA's support also assumes that the integrity of NEPA will be maintained and the opportunity for public participation and comment will remain intact. AMWA appreciates the opportunity to comment and looks forward to working with CEQ throughout this process.

Sincerely,



Diane VanDe Hei  
Chief Executive Officer

## RE: Meeting with Senator Murkowski

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**From:** "Pettigrew, Theresa L. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=579eb754b4c34f0e8e46d1fb4cd708d7-pe">  
**To:** "Donnelly, Kellie (Energy)" <kellie\_donnelly@energy.senate.gov>  
**Date:** Mon, 20 Aug 2018 18:35:31 -0400  
**Attachments:** Bio Mary Neumayr with photo.pdf (68.25 kB)

Hi, Kellie – Yes, CEQ has been working with agencies to identify steps they will take to implement the One Federal Decision policy outlined in the EO 13807 and the MOU. We have been convening interagency meetings for this purpose and also meeting directly with each of the key agencies.

Please let me know if you need anything further. Attached please find the bio as well.  
Thanks,  
Theresa

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**From:** Donnelly, Kellie (Energy) <Kellie\_Donnelly@energy.senate.gov>  
**Sent:** Monday, August 20, 2018 4:51 PM  
**To:** Pettigrew, Theresa L. EOP/CEQ <(b) (6)>  
**Subject:** RE: Meeting with Senator Murkowski

Thanks Theresa! Can you also please send me Mary's bio? And is there anything to relay on the infrastructure review/plan CEQ was doing (with Alex Hergott as the lead)? I haven't heard much on that front lately.

---

**From:** Pettigrew, Theresa L. EOP/CEQ <(b) (6)>  
**Sent:** Monday, August 20, 2018 4:44 PM  
**To:** Donnelly, Kellie (Energy) <Kellie\_Donnelly@energy.senate.gov>  
**Subject:** RE: Meeting with Senator Murkowski

Hello, Kellie – Here are some topics for discussion below. We look forward to seeing you! Thank you,  
Theresa

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

We anticipate that at the meeting we would briefly address the following topics:

- **NEPA and Environmental Reviews:** CEQ is currently implementing [EO 13807](#) (“Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects”) signed August 15, 2017, which directs CEQ to review its NEPA regulations and guidance. CEQ issued an [Advance Notice of Proposed Rulemaking](#) (ANPRM) on July 20, 2018, inviting comments on potential updates to its NEPA regulations, which were issued in 1978 and have only been amended once with respect to one provision. The [comment period](#) for the ANPRM closes today, and to date CEQ has received over 11,000 comments. Pursuant to EO 13807, CEQ has also been working with Federal agencies to implement a “One Federal Decision” policy for major infrastructure projects, including through an interagency [Memorandum of Understanding](#) announced on April 9, 2018. ([Fact Sheet](#))
  
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**From:** Neumayr, Mary B. EOP/CEQ  
**Sent:** Monday, August 20, 2018 3:16 PM  
**To:** Donnelly, Kellie (Energy) <[Kellie\\_Donnelly@energy.senate.gov](mailto:Kellie_Donnelly@energy.senate.gov)>  
**Cc:** Pettigrew, Theresa L. EOP/CEQ <(b) (6)>  
**Subject:** Re: Meeting with Senator Murkowski

Kellie,  
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Mary

Sent from my iPhone

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Thanks and hope you're well! Kellie

*Kellie Donnelly  
Chief Counsel  
Senate Energy and Natural Resources Committee  
(202)-224-4971*

## RE: Meeting with Senator Murkowski

---

**From:** "Donnelly, Kellie (Energy)" <kellie\_donnelly@energy.senate.gov>

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

**Date:** Mon, 20 Aug 2018 16:51:11 -0400

Thanks Theresa! Can you also please send me Mary's bio? And is there anything to relay on the infrastructure review/plan CEQ was doing (with Alex Hergott as the lead)? I haven't heard much on that front lately.

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**To:** Donnelly, Kellie (Energy) <Kellie\_Donnelly@energy.senate.gov>

**Subject:** RE: Meeting with Senator Murkowski

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Senate Energy and Natural Resources Committee  
(202)-224-4971*

## RE: Meeting with Senator Murkowski

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**From** "Pettigrew, Theresa L. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=579eb754b4c34f0e8e46d1fb4cd708d7-pe">

**To:** kellie\_donnelly@energy.senate.gov

**Date:** Mon, 20 Aug 2018 16:43:53 -0400

Hello, Kellie – Here are some topics for discussion below. We look forward to seeing you! Thank you, Theresa

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Council on Environmental Quality  
(b) (6) (direct)

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Chief Counsel  
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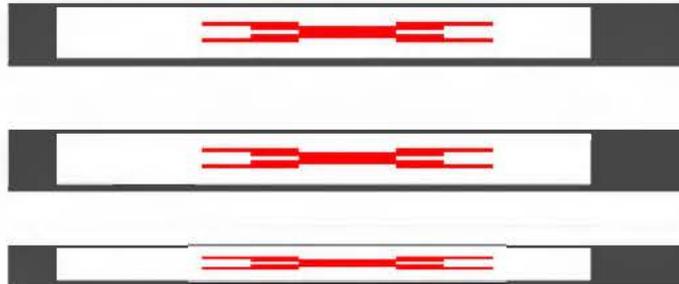
## [EXTERNAL] Alliance Sends NEPA Comments to CEQ

**From:** "Dan Keppen, Executive Director" <dan@familyfarmalliance.org>

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

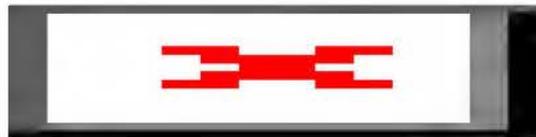
**Date:** Mon, 20 Aug 2018 18:17:37 -0400

Can't See This Message? [View in a browser](#)

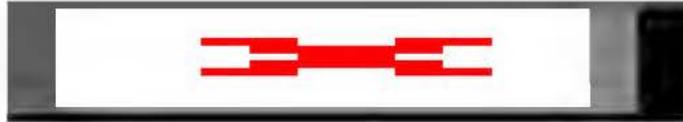
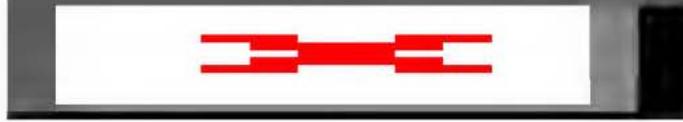


Posted: 20/08/2018

The Family Farm Alliance earlier today sent formal written comments to the White House Council on Environmental Quality (CEQ) in response to an advance notice of proposed rulemaking on a potentially sweeping update of its National Environmental Policy Act (NEPA) implementing rules. Continue reading to learn more and to download a PDF version of the Alliance response to CEQ.



Continue Reading



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If you feel you received it by mistake or wish to unsubscribe, [click here](#)

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

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**From** "Boling, Ted A. EOP/CEQ" </o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=eae5b047f871428b9b46baf8afd1176a-bo">  
**To:** "Szabo, Aaron L. EOP/CEQ" <(b) (6)>  
**Cc:** "Mansoor, Yarden M. EOP/CEQ" <(b) (6)> "Seale, Viktoria Z. EOP/CEQ" <(b) (6)> "Drummond, Michael R. EOP/CEQ" <(b) (6)>  
**Date:** Mon, 20 Aug 2018 17:29:36 -0400

---

Yarden M. Mansoor may be able to  
I'm in Dallas

Sent from my iPhone

On Aug 20, 2018, at 4:23 PM, Szabo, Aaron L. EOP/CEQ <(b) (6)> wrote:

Ted,

Can you please turn this email into a pdf and send it to me?

Thanks.

Sent from my iPhone

On Aug 20, 2018, at 5:22 PM, Boling, Ted A. EOP/CEQ <(b) (6)> wrote:

Trouble at [regulations.gov](http://www.regulations.gov)?

Sent from my iPhone

Begin forwarded message:

**From:** Charlotte Roe <[charlotteeroe@yahoo.com](mailto:charlotteeroe@yahoo.com)>  
**Date:** August 20, 2018 at 4:04:40 PM CDT  
**To:** Mary Neumayr <(b) (6)>  
**Cc:** "Boling, Ted A. EOP/CEQ" <(b) (6)>  
**Subject:** [EXTERNAL] Comments re ANKPRM - Proposed Procedural Revisions of NEPA

I'm submitting these comments via email as I had trouble accessing the Federal eRulemaking portal. Thank you for accepting them. Roe

August 19, 2018

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

RE: Request for Comment, Advanced Notice of Rulemaking Change (ANPRM) to Regulations Implementing the National Environmental Policy Act (83 Fed Reg 28591-28592 June 20, 2018)

Dear Ms. Neumayr,

Thank you for the opportunity to comment on the ANPRM under consideration by the Council on Environmental Quality.

On behalf of In Defense of Animals and The Cloud Foundation, I strongly object to the proposed revisions contained in the Advanced Notice of Proposed Rulemaking (ANPRM) issued by the Council on Environmental Quality with respect to regulations implementing the National Environmental Policy Act (NEPA). CEQ was founded to be a facilitator of robust environmental review and a pillar of the National Environmental Policy Act, our magna carta for environmental protection.

The proposed rule changes are just the opposite. They represent an effort to dismantle these vital regulations that have stood the test of time for decades. They would open the door for commercial interests to block meaningful engagement by the American public and the science community. This has already begun to take place by the Department of Interior's use of Determination of NEPA Adequacy, a procedure not now in the CEQ regulations, that is being used to bypass citizen participation in, or knowledge of, environmental review processes. This is violating an essential public trust. We will not stand silent in the face of such disrespect for the intent and purpose of the National Environmental Policy Act.

I request that CEQ withdraw these proposed rule changes and instead focus on training and education to promote more effective NEPA implementation by federal agencies.

With respect to the proposed categories, should this ill-advised process continue, I offer the following comments:

1. As to the first question regarding multiple agencies: **No changes are necessary.** CEQ is already empowered to encourage timely, efficient inter-agency and multiple agency environmental reviews under Section 1502.2 of CEQ regulations. The best rule to avoid government over-reach or bureaucratic confusion is always: "If it's not broken, don't fix it." This needs no fixing.
2. Should the NEPA process be made more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions? **No.** This issue is fully addressed by Section 1501.6(a)(2) of the CEQ regulations. If agencies are not implementing this regulation, the flaw needs to be addressed by better training and leadership, not by more bureaucracy.
3. Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions? **No.** Section 1501.6 of the CEQ regulations adequately addresses the need for agency cooperation, encourages early agency cooperation, and spells out procedures such as the lead agency inviting others to be cooperating entities. If this process has broken down in some instances, it is not due to a defect in the regulations but, instead a failure on the part of the agencies. More effective CEQ leadership could help address any gaps in implementation.

4. With reference to the question of format and page length of NEPA documents and time limits for completion: **No revision is needed.** The pertinent regulations, Section 1502.10 (format), Section 1502.7 (page limit), and Section 1501.8 (time limit) already allow for flexibility and common sense measures depending on project size and the nature of the environmental issue. No rule-making change is needed to improve on this guidance.,

5. Should rules be revised to ensure NEPA documents better focus on significant issues that are relevant and useful to decision makers and the public? **No.** The CEQ requirements regarding significance outline a bare minimum of what is required to fulfill the purposes and requirements of NEPA. Substantial case law advises the agencies, the public, and regulated communities providing greater assurance and detail regarding the level of analysis required.

If CEQ wishes to revisit the question of when an EIS is required, it should only strengthen the basis upon which a full environmental review is triggered. In that case, the “intensity” factors calling for an EIS should be broadened to include those such as: a) the degree to which members of the general public and members of the affected community are concerned about the proposed action and its environmental, social, cultural and historical impacts; b) the degree to which the proposed action may impact the future genetic viability of a species, including wild horse and burro herds; and c) the degree to which the proposed action may affect the public’s ability to benefit from the preservation of a federally protected species, whether through photography, on-range documentation and monitoring, or tourist activity benefiting the local economy.

6. Should the provisions in CEQ’s NEPA regulations relating to public involvement be revised to be more inclusive and efficient? **No changes are needed at this time.** However, if this rulemaking process proceeds, the public’s role should be expanded to require comments when changing or defining the categories of actions that may fall under a categorical exclusion (CE).

7. Should definitions of any key NEPA terms in CEQ’s NEPA regulations, such as those listed below, be revised? **No.** These definitions are fine in themselves. Their definitions are clarified by case law and best practices, in our American system based on rule of law.

8. Should any new definitions of key NEPA terms be added? **No.** Any effort to add definitions to those which have been working over the life of the statute would only serve to confuse new practitioners. It would undermine the purpose and intent of NEPA.

9. Should the provisions in CEQ’s NEPA regulations relating to any of the types of documents noted be revise? **No.** Nonetheless, should this process continue, the following should be clarified and strengthened: **Supplements -**

CEQ should issue guidance on the use of documents or procedures used either to supplement NEPA review under Section 1502.9(c) of the CEQ regulations or to avoid such review. For example, the Department of Interior has increasingly used an agency protocol, Determination of NEPA Adequacy (DNAs), to bypass public comment, accountability and the need for environmental review. This is an unacceptable attack on the core purpose of NEPA.

10. Should the provisions in CEQ’s NEPA regulations relating to the timing of agency action be revised? **No.** Section 1501.2 of CEQ regulations clearly spells out the why and how to “Apply NEPA early in the process.” To revise these regulations can only lead to confusion, delay and NEPA avoidance.

11. Should the provisions in CEQ’s NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised? **No.**

Nonetheless, if this process continues, we would accept a strengthening of Section 1506.5 of the CEQ regulations. This regulation states that contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. The execution of any disclosure statement under Section 1506.5 should be made public.

12. Should the provisions in CEQ's NEPA regulations relating to programmatic NEPA documents and tiering be revised? **No.** Existing regulations allow agencies to tier off a programmatic EIS to avoid repetitive analyses of an issue and save energy while taking a thorough look at the case in hand.

13. Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised? **No.** The consideration of alternatives is at the heart of the NEPA process, and this is emphasized in CEQ regulations. The determination of whether a certain alternative is appropriate depends, and must arise, from the facts of each case.

14. Are any provisions of the CEQ's NEPA regulations currently obsolete? **I do not recommend** revising CEQ regulations on the pretext that a few references are out-dated. The question should be: Do such references harm or weaken the implementation of the statute? The answer is no.

15. Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient? **No.** Nonetheless, without any change in regulations, CEQ could and should take the initiative to create a central collection of all NEPA documents including draft EISs, environmental assessments, preliminary EAs, finding of no significant impacts, categorical exclusions, and record of decisions along with appendices, comments and responses for any of the aforementioned documents.

16. Are there additional ways CEQ's NEPA regulations should be revised to promote coordination of environmental review and authorization decisions, such as combining NEPA analysis and other decision documents? **No, and no again.** Section 1502.25 of the CEQ regulations states that agencies "[t]o the fullest extent possible" shall prepare draft EISs concurrently with and integrated with other environmental reviews..." Combining NEPA environmental reviews and other decision documents would indelibly harm public participation, as it would cause confusion and obfuscation. If that is the intent of this proposed rulemaking process, it should be dropped immediately.

17. Are there additional ways CEQ's NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA ? **No.** NEPA regulations have not impeded the capacities of federal agencies in their application of this vital legislation. On the contrary, the types of changes now being considered by CEQ would lead to delays and uncertainty and in all likelihood trigger litigation that would delay federal projects.

18. Are there ways in which the role of tribal governments in the NEPA process should be clarified in CEQ's NEPA regulations? **No changes** are necessary in CEQ regulations to address this issue. If the rulemaking process continues, a revision of language should be considered to broaden the engagement of native American tribes whether or not cultural

artifacts are identified on the present location of Indian reservations. For example, where Section 1503.1(a)(2)(ii) of the CEQ regulations reads, "when the effects may be on a reservation" it could best be replaced with the broader terms "if their interests may be affected," so that the section reads: "Indian tribes, if their interests may be affected; and."

19. Are there additional ways CEQ's NEPA regulations should be revised to ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible? This question was answered in responses found above to questions 1,2, 3, 4 & 17.

20. Are there additional ways CEQ's NEPA regulations related to mitigation should be revised? **No changes** are needed to improve mitigation. CEQ's "Final Guidance for Federal Departments and Agencies on the Appropriate Use of Mitigation and Monitoring and Clarifying

the Appropriate Use of Mitigated Findings of No Significant Impact," should be followed by agencies which have in the past often downplayed the mitigation process. Mitigation is a crucial part of NEPA implementation and a prime responsibility of the agencies. The regulations are clear. They need to be followed.

Respectfully yours,

Charlotte Roe  
Science Advisor, The Cloud Foundation  
Wild Horse and Burro Project Partner, In Defense of Animals 1621 So. County Rd. 13  
Berthoud, CO 80513  
[charlottecroe@yahoo.com](mailto:charlottecroe@yahoo.com)

<page4image3681664>

<page5image3682080>

<CEQ ANPRM CR Comments 8.19.18.pdf>

## [EXTERNAL] NEPA ANPRM Comment Letter

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**From:** Stephen Schima <sschima@partnershipproject.org>  
**To:** "Boling, Ted A. EOP/CEQ" (b) (6) "Drummond, Michael R. EOP/CEQ" (b) (6)  
**Date:** Mon, 20 Aug 2018 12:36:41 -0400  
**Attachments:** Final Coalition Comment Letter on NEPA ANPRM.pdf (342.63 kB); Attachment 2 - Haskett NEPA Letter\_final.pdf (591.74 kB); Attachment 3 USFS NEPA ANPR Comments\_final.pdf (1.38 MB); Attachment 1 - NEPA Success Stories.pdf (469.13 kB)

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Ted and Michael,

We submitted our comment letter with attachments on Friday, but I thought I would send along a copy directly to you as well. Also, the attached version corrects two small typos that a shocking number of people flagged to me.

If you have any questions, please feel free to contact me.

Thanks and I hope all is well!  
Stephen

**350 Bay Area • 350 Santa Cruz • 350.org • 350Vermont • ACLU of Wisconsin Foundation • Alaska Clean Water Advocacy • Alaska Community Action on Toxics • Alaska Wilderness League • Alaska Wildlife Alliance • Alaska's Big Village Network • Alaskans FOR Wildlife • Alberta Wilderness Association • All-Creatures.org • Alliance for International Reforestation, Inc. • American Bird Conservancy • American Indian Mothers Inc • American Rivers • Amigos Bravos • Animal Legal Defense Fund • Animal Welfare Institute • Animals Are Sentient Beings, Inc. • Animas Valley Institute • Arizona Native Plant Society • Athens County Fracking Action Network • Atchafalaya Baskinkeeper • Audubon Naturalist Society • Audubon Society of Corvallis • Audubon Society of Omaha, Nebraska • Bard College • Bark • Basin and Range Watch • Battle Creek Alliance/Defiance Canyon Raper Rescue • Bay Area – System Change not Climate Change • Bayou City Waterkeeper • Berks Gas Truth • Berkshire Environmental Action Team (BEAT) • Beyond Pesticides • Beyond Toxics • Big Morongo Canyon Preserve • Bird Conservation Network • Black Canyon Audubon Society • Black Hills Clean Water Alliance • Black Warrior Riverkeeper • Blue Mountains Biodiversity Project • Boise Chapter of Great Old Broads for Wilderness • Bold Alliance • Boulder Rights of Nature, Inc. • Bullsuger Alliance • California Native Plant Society • California Sportfishing Protection Alliance • California Wilderness Coalition • California Wildlife Foundation/California Oaks • Californians for Western Wilderness • Campaign for Sustainable Transportation • Cascadia Wildlands • Center for Biological Diversity • Center for Environmental Health • Chesapeake Climate Action Network • Citizens Action Coalition of IN • Citizens Coalition for a Safe Community • Citizens for a Healthy Community • City of San Luis Obispo • Clean Water Action • Climate Law & Policy Project • Coal River Mountain Watch • Coalition for Responsible Transportation Priorities • Coast Action Group • Coast Range Association • Colorado Native Plant Society • Committee for Green Foothills • Community Works • Compassion Over Killing • Conservancy of Southwest Florida • Conservation Law Foundation • Conservation Northwest • Consumers for Safe Cell Phones • Copper Country Alliance • Cottonwood Environmental Law Center • Crawford Stewardship Project • CT Coalition for Environmental Justice • Cumberland-Harpeth Audubon Society • David Brower, Ronald Dellums Institute for Sustainable Policy and Action • DC Environmental Network • DC Statehood Green Party • Defenders of Wildlife • Delaware Riverkeeper • Delaware-Otsego Audubon Soc. (NY) • Desert Tortoise Council • Dogwood Alliance • Don't Waste Arizona • Earth Guardians • Earthjustice • Earthtrust • Earthworks • Eastern Coyote/Coywolf Research • ECO Diversity Media LLC (ECODiversity Magazine) • Eco-Eating • Ecological Options Network, EON • Ecology Party of Florida • Endangered Habitats League • Endangered Species Coalition • Environmental Defense Fund • Environmental Law & Policy Center • Environmental Protection Information Center • Factory Farming Awareness Coalition • Fairmont, MN Peace Group • Family Farm Defenders • Food & Water Watch • For the Fishes • Friends of Alaska National Wildlife Refuges • Friends of Animals • Friends of Cascade-Siskiyou National Monument • Friends of the Corte Madera Creek Watershed • Friends of Dyke Marsh • Friends of Lana'i • Friends of Merrymeeting Bay • Friends of Nevada Wilderness • Friends of Penobscot Bay • Friends of the Boundary Waters Wilderness • Friends of the Earth US • Friends of the Everglades • Friends of Weskeag • Gasp • Georgia ForestWatch • Gila Resources Information Project • Global Union Against Radiation Deployment from Space • Glynn Environmental Coalition • Golden West Women Flyfishers • Grand Canyon Trust • Great Basin Resource Watch • Great Egg Harbor Watershed Association • Great Old Broads for Wilderness • Great Rivers Habitat Alliance • Greater Hells**

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**Our Shores • Save Our Sky Blue Waters • Save Richardson Grove Coalition • Save the Bay • SAVE THE FROGS! • Save the Scenic Santa Ritas • Saving Birds Thru Habitat • Science and Environmental Health Network • ScientistsWarning.org • Selkirk Conservation Alliance • Sequoia ForestKeeper® • Sierra Club • Sierra Forest Legacy • Sierra Club Alaska • Soda Mountain Wilderness Council • South Florida Wildlands Association • South Umpqua Rural Community Partnership • Southeast Alaska Conservation Council • Southern Environmental Law Center • Southern Maryland Audubon Society • Southern Utah Wilderness Alliance • Spottswode Winery, Inc. • Stanislaus Audubon Society • St. Louis Audubon Society • Sustainable Arizona • Tampa Bay Waterkeeper • Texas River Revival • The Cornucopia Institute • The Land Connection • The Lands Council • The Laukahi Network • The Otter Project and Monterey Coastkeeper • The Shalom Center • The Story of Stuff Project • The Urban Wildlands Group • The Wilderness Society • Time Laboratory • Toxic Free NC • TrailSafe Nevada • Trustees for Alaska • Turtle Island Restoration Network • Umpqua Watersheds Inc. • Upper Peninsula Environmental Coalition • Uranium Watch • Utah Native Plant Society • Utah Valley Earth Forum • Vet Voice Foundation • Virginia Native Plant Society • Wasatch Clean Air Coalition • Waterkeeper Alliance • WaterLegacy • WE ACT for Environmental Justice • Whale and Dolphin Conservation • West Virginia Environmental Council, Inc. • West Virginia Highlands Conservancy • Western Environmental Law Center • Western Organization of Resource Councils • Western Watersheds Project • Whidbey Environmental Action Network • WILD COAST • WildEarth Guardians • Wildlife Conservation Society • Wild Horse Education • Wild Nature Institute • Wilderness Workshop • Wildlife Rehabilitation Center of Northern Utah • Wings of Wonder • Wyoming Outdoor Council • Zumbro Valley Audubon**

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:

This letter represents the collective response of 343 public interest organizations, representing millions of members and supporters, to the Council on Environmental Quality's (CEQ) recent Advance Notice of Proposed Rulemaking (ANPRM). Given the critical importance of the National Environmental Policy Act (NEPA) regulations, some of our organizations will also be submitting separate comments emphasizing particular issues.

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We begin by emphasizing that CEQ's regulations provide a well-crafted, comprehensive framework for implementing the procedural provisions of NEPA. The regulations have stood the test of time well. Rather than contemplating a rewrite of the regulations, we urge that CEQ invest its modest resources, and most importantly, its leadership position, in a systematic initiative to enforce them. Changes to the regulations will not result in improvements unless federal agencies have the organizational structure and resources that facilitate their implementation. In our considered view, the single most important key to efficiency and effectiveness is having competent, trained, and adequate staff in agencies to implement the regulations. As we demonstrate below, the existing regulations already address many of the questions the ANPRM raises in regard to reducing paperwork and delay. What is lacking is the capacity and will to fully implement the regulations.

CEQ has an essential leadership role in ensuring that agencies receive the appropriate direction and resources. As the agency with NEPA oversight responsibility, CEQ should lead an effort to identify the real-world obstacles to implementing those provisions along with ensuring that the goals of inclusive analyses and informed decisionmaking are met. Only after undertaking such an effort should CEQ consider whether any regulatory revisions are warranted.

### **Concerns with the ANPRM Process**

NEPA is rightfully referred to as the environmental "Magna Carta" of this country. Like that famous charter, NEPA enshrines fundamental values into government decisionmaking. NEPA is a proven bulwark against hasty or wasteful federal decisions by fostering government transparency and accountability. The NEPA process achieves the law's stated goal of improving the quality of the human environment by, most importantly, requiring the analysis of reasonable alternatives to a proposed action and by empowering people affected by agency decisions to participate in that analysis. Under NEPA, the identification and evaluation of alternatives must be grounded in sound science and transparency.

One of the authors of NEPA, Senator Henry Jackson, stated on the floor of the U.S. Senate that Congress' bipartisan passage of NEPA represented a declaration "that we do not intend, as a government or as a people, to initiate actions which endanger the continued existence or the health of mankind. That we will not intentionally initiate actions which will do irreparable damage to the resources which support life on earth." 115 Cong. Rec. 40,416 (1969). Rather, "The basic principle of [NEPA] is that we must strive, in all that we do, to achieve a standard of excellence in man's relationship to his physical surroundings. If there are to be departures from this standard they will be exceptions to the rule and the policy. And as exceptions they will have to be justified in the light of public scrutiny." 115 Cong. Rec. 29,056 (1969).

The implementing regulations now under consideration were thoughtfully developed and serve as the principal means by which American communities, individuals, and organizations are informed about and participate in federal agency decisionmaking. They have ensured that federal decisions are, at their core, democratic by guaranteeing meaningful public involvement and transparency in government decisionmaking. CEQ developed the regulations to provide a uniform, consistent approach that promotes effective decisionmaking in accord with the policies

set forth in NEPA. Critically, the regulations provide the public and other federal, state, tribal and environmental justice communities with an essential voice in that process. The regulations reflect case law developed through the federal courts, accounting for the complexities and opportunities that arise in specific places and contexts. Additionally, the regulations manifest a concerted effort to expedite the process without losing either substantive value or public involvement. The regulations also provide considerable flexibility to agencies in regard to their implementation. CEQ must consider how any changes to the NEPA regulations, after decades of experience with the current process, might lead to confusion and litigation.

The promise of the NEPA process—that the government will consider the environmental impacts of its decisions, disclose those impacts to those affected, and ensure the public has an opportunity to meaningfully weigh in—is at the heart of democracy. These democratic principles enshrined in NEPA explain why it is among the most widely exported laws the United States has ever passed, with over 160 countries adopting similar legislation. NEPA’s role in protecting communities is why it is the primary mechanism by which environmental justice considerations are incorporated into government decisions.

In light of other administrative actions taken over the course of the last year, it is clear this rulemaking is part of a broader and deeply troubling ideological effort to reduce or eliminate public contributions to decisionmaking by agencies expending public funds. Those efforts include processes to dismantle NEPA regulations in order to cater to special interests of developers and industry polluters — rather than the interests of the public for whom these regulations are intended to benefit. Misguided efforts to rescind or revise regulations, policies, and guidance across the federal government will put the environment and public health at risk by overemphasizing the supposed “burden” of review and oversight and ignoring the many enormous *benefits* that environmental rules and regulations secure for the public.

This administration’s narrow focus on eliminating regulatory protections and restricting the scope of environmental review is disturbingly clear in actions it has taken government-wide. Last spring, President Trump revoked CEQ’s guidance for agencies on the consideration of climate change in NEPA reviews, indicating an effort to institutionalize climate change denial into government decisionmaking. Then, in a series of actions over the next several months, agencies such as the Bureau of Land Management (BLM), Department of Transportation, Department of Energy, United States Forest Service, and others issued notices with the intention to review their NEPA regulations in a manner that seems intended to help project proponents “overcome” the “obstacles” of environmental review. These efforts systematically fail to acknowledge the critical benefits that review, disclosure, and public input under NEPA provide to all peoples’ health, quality of life, and relations to their surroundings. *See* Attachment 1, NEPA Success Stories. Critically, they also systematically fail to identify or begin to address the actual causes of delay in federal agency processes. The proposed “cures” generally miss the mark, focusing on a forced pathway to project approval rather than a solution based on addressing real world problems.

Our concerns are amplified by the breadth of the questions posed in this ANPRM, which seem to reflect an intention to fundamentally change the NEPA process. Such a fundamental change is not only unwarranted, but also unwise. The fundamentals of the NEPA regulations

are sound and thoughtful. We do, however, have serious concerns about the failure of many agencies to adequately implement the regulations. Those concerns will be assuaged not by changing the rules, but by enforcing them, and by providing the funding, resources, and training that agency staff need to effectively implement them.

The questions posed in the ANPRM and related documents issued by the current administration suggest a singular focus on “efficiency.” Sadly, the administration appears to equate efficiency solely with speed. Our understanding of efficiency is a process implemented in a manner consistent with three basic principles:

- (1) Consideration of the environmental and related social and economic impacts of proposed government actions on the quality of the human environment is essential to responsible government decisionmaking;
- (2) Analysis of alternatives to an agency’s proposed course of action is the heart of meaningful environmental review and indeed of good government more broadly; and
- (3) The public plays an indispensable role in the NEPA process.

Changes to NEPA’s implementing regulations are not warranted at this time. However, to the degree that CEQ does move forward with a rulemaking, we offer two suggestions for improving implementation of the regulations in ways that we believe would efficiently employ the three principles articulated above. As we demonstrate below, the existing regulations already address many of the questions the ANPRM raises. What is lacking is the will and assurance of capacity to fully implement the regulations.

Our position that changes to NEPA’s implementing regulations are not warranted is premised on the lack of public outreach and careful analytical groundwork that is essential to justify what will likely prove to be a time and resource consuming process. NEPA’s implementing regulations have withstood the test of time and should not be revised absent good cause. While we appreciate the extension of the comment period deadline from the original 30 days, we still feel that CEQ’s process falls short. Even with the extension, the process appears designed more for NEPA experts than for the public. Certainly, the extra time will allow more people to respond, but many of the questions, while perhaps appearing simple, involve decades of agency and judicial interpretation. We remind CEQ of its own admonition to agencies that, “Members of the public are less likely to participate or engage in the commenting process if they do not fully understand how a particular project affects them. It is critical that agencies provide context and as much information as possible in the beginning of the public involvement process.” Memorandum for Heads of Federal Departments and Agencies on Effective Use of Programmatic NEPA Reviews, December 28, 2014, fn. 33.

CEQ has customarily engaged in substantial public outreach, especially when considering the regulations as a whole. That outreach has included public meetings with many specific, identifiable constituencies. In this instance, CEQ has provided no forum for an overall discussion of the NEPA process, no public meetings, and indeed, no public outreach that we are aware of other than the publication of the notice in the *Federal Register* and a link on CEQ’s website. This lack of engagement of the public at this initial step limits the role of the public in

informing and shaping this process as it moves forward. Should CEQ decide to propose amendments to its regulations, we urge it to follow its own guidance and engage in more comprehensive outreach, an appropriate comment time frame, and inclusion of multiple accessible public hearings. If it does not, CEQ risks the credibility of its decision-making process and increases the risk of uninformed action—action that would render agency decisions reached in accord with any new regulations vulnerable to failure and cause harm to our country’s health, environment, and economy.

Finally, we remind CEQ that if it proceeds to proposed rulemaking, it must consider the appropriate level of NEPA compliance for its proposal.

## Questions and Responses

### *NEPA Process:*

- 1. Should CEQ’s NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?**

No. CEQ’s 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. *See* 40 C.F.R. § 1502.25; *see also* 40 C.F.R. § 1500.2(c) (requiring, to the fullest extent possible, that federal agencies “[i]ntegrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively”); 40 C.F.R. § 1500.4(k) (agencies should reduce paperwork by “[i]ntegrating NEPA requirements with other environmental review and consultation requirements”); 40 C.F.R. § 1500.5(i) (agencies shall reduce delay by “[c]ombining environmental documents with other documents”). Since promulgation of the regulations, CEQ has consistently stressed the need for environmental review processes to run concurrently rather than sequentially. This makes sense, not just from the point of view of meeting a particular timeline, but also because availability of analyses required by other laws such as the National Historic Preservation Act and the Clean Water Act will result in a more informative EIS. The current regulations and guidance are sound in this respect. These mechanisms to reduce delay and paperwork are also applicable to EAs, per CEQ’s guidance on “Improving the Process for Preparing Efficient and Timely Environmental Review under the National Environmental Policy Act” (Mar. 12, 2012).

We are aware that in practice, compliance is not always “concurrent, synchronized, timely and efficient.” We suggest that a first step to addressing that concern is to systematically survey the federal agencies that typically prepare the majority of EISs and identify the actual on-the-ground barriers that prevent CEQ’s existing regulations and guidance from being implemented, and then propose steps to address the actual problems. This information should then be shared with the public for input: often the public and

affected stakeholders can identify specific barriers (particularly adequate staffing, training, and funding) to efficient coordination among federal agencies.

**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?**

No. Under CEQ's current regulations, agencies are already directed to use available environmental studies and analyses, whose scientific and professional integrity they can assure, in the course of implementing NEPA, whether those studies and analyses were prepared in the context of an earlier federal, state, tribal or local environmental review or outside of such a review. A study that is relevant to the proposed action and judged to be credible by a federal agency (and does not contain proprietary information) – whether or not it was produced in the course of an agency environmental review process – can and should be incorporated by reference. The only additional requirement is that the study be available to the public during the comment period, which is reasonable. *See* 40 C.F.R. § 1502.21.

*If* the existing study is a formal environmental review document prepared in the course of another federal, state, tribal or municipal environmental review process for substantially the same action as the proposed action at hand, the analysis upon which it is based remains current, *and* the document was prepared to meet NEPA requirements with the involvement of at least one federal agency, *then* it can be adopted by the lead federal agency by simply recirculating the statement as a final EIS (with no comment period). If the proposed action is not substantially the same as that covered under the earlier review but is still relevant, an agency can circulate it as a draft EIS (40 C.F.R. §1506.3.), (after reviewing to determine whether the EIS needs to be supplemented) or the agency may incorporate the document by reference.

Further, agencies should make much better use of tiering from existing NEPA documents, as we discuss in response to Question 12. This is an underutilized and often misused mechanism that – when coupled with the development of more effective higher-level EIS-level NEPA analyses – has the potential for greatly increasing efficiency and effectiveness of NEPA reviews.

Regulatory changes are unwarranted because the current provisions work. They maximize use of available analyses, reviews, and reports. They provide the public and other agencies with the ability to track and understand what analyses are being relied upon in the decisionmaking process. These regulations are successfully implemented by many agencies. When they are not it is often because agency staff do not understand how to use them. The solution to this problem is not regulatory changes, but training for all agency NEPA staff on an annual basis would help ensure greater awareness of these mechanisms.

This question also includes a reference to “decisions.” We interpret that to mean decisions related to the implementation of an earlier environmental review process, resulting in a determination of adequacy. We would oppose a revision of the CEQ regulation to waive or exempt a lead federal agency from independently evaluating and taking responsibility for an environmental document being used for compliance with NEPA. Indeed, CEQ cannot take such action through rulemaking because it is a fundamental change to statutory direction, whether the document is prepared by a federal agency or a state agency. *Compare* 42 U.S.C. § 4332(2)(C) with § 4332(D)(iii). We believe the same standard should apply if the document is prepared by a municipality or a tribe. This issue is best addressed by engaging in joint environmental review processes.

We further caution CEQ to remember that the NEPA process hinges on a specific “proposal” and the agency’s consequent “purpose and need” for a particular agency action. *See* 40 C.F.R. §§ 1502.13, 1508.23. This is acutely important relative to the agency’s hard look at impacts and the identification and consideration of alternatives with the public, in particular where there are “unresolved conflicts” (which requires consideration of alternatives even where impacts are not expected to be significant). 42 U.S.C. § 4332(2)(E). Unfortunately, certain agencies, namely the BLM, have invented mechanisms (so-called “Determinations of NEPA Adequacy,” or “DNAs”) to avoid public input and NEPA review and, in effect, to inappropriately justify a distinct implementation-level “proposal” on the basis of an existing, often decades-old, NEPA analysis developed for a separate, typically programmatic level decision. For example, BLM has sought to use DNAs to justify the sale of geographically discrete oil and gas leases on the basis of land use plan-level NEPA analyses. Neither BLM’s programmatic NEPA analyses—which typically cover millions of acres—nor BLM’s DNAs provide the requisite site-specific analysis of impacts or consider alternatives calibrated to geographically specific proposed oil and gas leases, including the option not to issue the oil and gas lease or to condition the lease on site-specific stipulations or mitigation measures. Accordingly, leases issued pursuant to DNAs are of dubious legal validity at best and voidable. These DNAs also undercut public involvement, undermining agency credibility with local communities and leading to distrust. It should therefore be no surprise that these DNAs—because of conflicts with NEPA’s statutory framework—have given rise to litigation.

We have seen this attempted dodge of analysis before by agencies trying to rely on a programmatic NEPA analysis that simply does not cover a proposed site-specific action. The DNA process is simply putting a new label on it. To the degree that agencies think implementation-level actions should not require further NEPA review, the proper course is not to contrive a new, non-NEPA mechanism, but to improve the robustness of programmatic NEPA analyses that clearly and explicitly address these implementation-level issues in advance, properly tier to those programmatic NEPA analyses (while ensuring appropriate analysis of any site-specific impacts not covered by the earlier programmatic analysis), or to consider and justify appropriate categorical exclusions.

Similarly, for many years, some agencies have utilized a Supplemental Information Report (SIR) as a mechanism for evaluating new information related to an action

analyzed in an EIS. Except for new information that clearly has no potential for significance relevant to environmental concerns or substantial changes related to the proposed action, this type of analysis should be evaluated through the NEPA process. The analysis could be presented in an EA available for public review or, of course, through a supplemental EIS. Further, an SIR is not an appropriate place to present new analysis of information available at the time the original NEPA documentation was provided. Generally, the default mechanism for evaluating new information, especially in the context of a proposed action analyzed in an EIS, should be, at a minimum, an EA with public involvement.

CEQ guidance is needed to address this issue throughout the executive branch. Such guidance should reiterate the importance of evaluating environmental consequences and providing for public review before making commitments of public resources and provide strict limitations on uses of DNAs. The guidance should emphasize that if there is not an available categorical exclusion, a DNA is not the next best option.

**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 regulations provide a solid framework for interagency coordination between federal, state and local agencies. As set forth below in our responses to questions 6a and 18, we support improving the regulations dealing with coordination with tribal governments, because the existing regulations do not adequately ensure appropriate coordination over issues that affect tribal members.

The existing regulations allow a lead agency to fund analyses from cooperating agencies, mandate that lead agencies include such funding requirements in their budget requests, and require that agencies notify CEQ when they are unable to cooperate in the NEPA process because of other program commitments. Further, as made clear by CEQ many years ago, if a potential cooperating agency's involvement in the NEPA process is precluded because of other commitments, it is barred from further involvement with the project under the CEQ regulations (although other laws may require its involvement in some form). See 40 C.F.R. § 1501.6. and *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 *Fed. Register* 18026 (March 23, 1981), Q. 14a. It is not clear the extent to which these provisions of the regulations are typically applied by federal agencies in the course of implementing NEPA for proposed actions.

We are aware that there is concern that agencies do not always provide comments in a timely manner. We question how much of that concern is based on anecdotes and myths versus systematic surveys of factual information. Indeed, the Government Accountability Office (GAO) underscored the paucity of information about NEPA implementation in a 2014 report, *Little Information Exists on NEPA Analysis* (GAO-14-369). Existing research relates almost exclusively to federal highway actions. Since at least the mid-1990s, the GAO and the Congressional Research Service (CRS), have prepared a series

of reports, remarkably consistent in their findings, regarding the construction of highway projects and the relationship of environmental laws generally—and NEPA specifically—to decisionmaking timelines. This type of analysis is needed more broadly so that agencies and legislators are able to formulate successful approaches to reducing delays. In short, the GAO and CRS reports find that a number of federal projects have indeed been delayed or stopped, but for reasons unrelated to NEPA. “Causes of delay that have been identified are more often tied to local/state and project-specific factors, primarily local/state agency priorities, project funding levels, local opposition to a project, project complexity, or late changes in project scope.” Congressional Research Service, *The Role of the Environmental Review Process in Federally Funded Highway Projects: Background and Issues for Congress*, R42479, (Apr. 11, 2012).<sup>1</sup> Nonetheless, NEPA usually gets the blame. CEQ is in the ideal position to conduct a systematic study throughout the executive branch to determine the actual, as opposed to perceived, causes of delay in interagency coordination.

### *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?**

Format: No. We are not aware of a rationale for changing the regulation at § 1502.10 on recommended format. As the title of the regulation makes clear, this is a recommendation and an agency may use a different format so long as it addresses all required sections and there is a compelling reason to change the format.

Page length: No. We support the current suggested page limits in the CEQ regulation at §1502.7 (150 pages for an EIS or for proposals of unusual scope of complexity, no more than 300 pages). These limits help encourage brevity and clarity and focus agencies on those issues that could significantly affect the environment, as the regulations already require. See §§ 1500.1(b) and 1501.7. However, as the important qualifier “normally” makes clear, situations will arise in which adequate disclosure of potential impacts requires additional pages. One size does not fit all when it comes to effective and efficient NEPA analysis. Avoiding excess verbiage will improve the quality of environmental review. But elevating page length over effective disclosure of potential impacts as the ultimate criterion of adequacy would lead to less informed public participation, poorer decisionmaking, and more violations of NEPA.

We also support the suggested limits with the understanding that as stated in the regulation, these page limits only include the substantive portions of an EIS and do not

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<sup>1</sup> See also, Government Accountability Office Report No.14-370, *National Environmental Policy Act: Little Information Exists on NEPA Analyses*, (Noting that “there could be a number of ‘non-NEPA’ reasons for the ‘start,’ ‘pause,’ and ‘stop’ of a project, such as waiting for funding or a non-federal permit, authorization, or other determination.”), (August, 2014); see also, Department of Treasury report by Toni Horst, et al., *40 Proposed U.S. Transportation and Water Infrastructure Projects of Major Economic Significance*, (Noting that “a lack of funds is by far the most common challenge to completing” major transportation infrastructure projects)(December, 2016).

include appendices, which are vital to providing technical information. Without excluding appendices from the page count, it is virtually impossible for an agency preparing an EIS to implement the regulatory direction to integrate other environmental review requirements with NEPA. 40 C.F.R. § 1502.25.

Time limits: No. We support the existing regulation that sets forth the factors to be considered in setting timeframes for analysis and agree with CEQ's determination that prescribing universal time limits is inflexible and unwise. 40 C.F.R. § 1501.8. As CEQ noted in its preamble to the current regulations, "The factors which determine the time needed to complete an environmental review are various, including the state of the art, the size and complexity of the proposal, the number of Federal agencies involved, and the presence of sensitive ecological conditions. These factors may differ significantly from one proposal to the next." National Environmental Policy Act, Implementation of Procedural Provisions; Final Regulations, 43 Fed. Reg. 55,978 (Nov. 29, 1978). The preamble goes on to note that the same law that applies to a Trans-Alaska pipeline applies to a modest federally funded building and that the individual agencies are in the best position to judge the appropriate time needed. We also note that the current regulation allows applicants to ask an agency to set time limits for a particular proposed action. The scoping process is the appropriate time for an agency to set both page and time limits if necessary. 40 C.F.R. § 1501.7(b) and (c).

We are concerned about the "one size fits all" approach now being implemented at, for example, the Department of the Interior. Secretarial Order 3355, "Streamlining National Environmental Policy Act Reviews and Implementation of Executive Order 13807" (August 31, 2017); Additional Direction for Implementing Secretary's Order to Assistant Secretaries, Heads of Bureaus and Offices and NEPA Practitioners (April 27, 2018). This management direction ignores critical considerations of context, 40 C.F.R. § 1508.27(a), and the importance of carefully considering alternatives with the public and other stakeholders which may require time, in particular where there are "unresolved conflicts," 42 U.S.C. §§ 4332(2)(C)(ii), 4332(2)(E). Rushed NEPA analyses, especially given severe staff shortages in a number of agencies, will result in badly flawed results. Rushed public processes may result in increased litigation, decreased agency credibility with the public, and distorted, poorly reasoned decisionmaking. *See* Attachment 2, Statement Geoffrey Haskett, former U.S. Fish & Wildlife Service Director for Alaska (On rushed NEPA process for proposed oil and gas development in the Arctic National Wildlife Refuge).

As President Nixon once said:

The National Environmental Policy Act has given new dimension to citizen participation and citizen rights as is evidenced by the numerous court actions through which individuals and groups have made their voices heard. Although these court actions demonstrate citizen interest and concern, they do not in themselves represent a complete strategy for assuring compliance with the Act. We must also work to make government more responsive to public views at every stage of the decisionmaking process. Full and timely public disclosure of

environmental impact statements is an essential part of this important effort.  
President's Message to Congress, August, 1971.

Ultimately, the key to robust compliance with NEPA that empowers the public, inform input from sister agencies and elected officials, and guide better, more durable, and less wasteful decisions is proper staffing and training of the agency personnel principally responsible for compliance.

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

No. No one would be more delighted than our millions of members to review NEPA documents that provide greater clarity and better analysis of significant issues relevant to the proposed action. Much of our advocacy in the context of NEPA relates to this very topic. However, improved clarity will not be achieved by changes to CEQ's regulations but, rather, by better implementation of CEQ's existing regulations.

CEQ regulations already call for: concentrating "on the issues that are truly significant to the action in question, rather than amassing needless detail," 40 C.F.R. § 1500.1(b), reducing the accumulation of extraneous background data, § 1500.2(b), using the scoping process to identify significant issues and de-emphasize insignificant issues, § 1501.7, the often-overlooked regulation calling for clear writing and appropriate graphics, § 1502.8, and the mandate to ensure professional integrity of analyses, § 1502.24, and all associated CEQ guidance. Fully implemented, these provisions would go far in achieving greater clarity and better informing both decisionmakers and the public.

CEQ's Memorandum for General Counsels, NEPA Liaisons and Participants in Scoping, (April 30, 1981), is excellent guidance that focuses on ways to effectively and efficiently undertake the scoping process. We suggest that CEQ revisit that guidance with an eye to updating it to account for new approaches to communication and lessons learned since publication of the original guidance.

Most importantly, CEQ, working with agencies that regularly implement NEPA, needs to provide training to the agencies on effective scoping processes. Efficiency in the NEPA process must begin at the start of the process with a good internal and external scoping process that results in agencies identifying the important issues that must be analyzed, the information they need to obtain, the parties who are interested in and may be affected by the proposed action, and at least the initial appropriate spatial and temporal scope boundaries of the analyses for each significant issue. As agencies plan for scoping processes for particular types of actions, they should also educate and solicit input from the interested public regarding the NEPA process generally and the purpose of scoping in particular. Simply noticing a meeting and expecting well crafted, thoughtful scoping comments is not sufficient.

**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?**

Our members consistently support robust public involvement throughout the NEPA process. While the overall framework for public involvement set forth in §1506.6 is sound, there are several improvements that should be made:

- a. Consistent with 40 C.F.R. § 1501.7(a)(1) and with our response to question 18 below, the restrictions in 40 C.F.R. § 1503.1(a)(2)(ii), regarding inviting comments on an EIS, and 40 C.F.R. § 1506.6(b)(3)(ii), regarding the requirement to notify tribal governments of proposed agency actions with effects primarily of local concern, should be modified to substitute “**affect tribal interests**” for the phrase “occur on reservations” as the trigger.
- b. CEQ should issue guidance directing agencies to use all available technology as well as (not as a substitute for) the mechanisms already identified in § 1506.6. Given modern communications technology, there is no reason that notification of actions falling under an agency's categorical exclusions cannot be easily provided; indeed, the Department of Energy and Forest Service do just that; *See* 36 C.F.R. § 220.4(e)(1) and <https://www.energy.gov/nepa/nepa-documents/categorical-exclusion-determinations>. Other agencies should follow that example. Certainly, agency websites and other means of communication should be employed to reach all potentially interested parties. We recommend that CEQ reference such mechanisms generally so that the guidance stays current.

That said, we emphasize that not everyone uses the internet, let alone social media. According to 2018 studies by the Pew Research Center, home broadband access is around 50% for African Americans and Hispanics and also low for low-income populations, older adults and rural residents. <http://www.pewinternet.org/fact-sheet/internet-broadband/>. Indeed, as of January 2018, 30% of all US adults do not have home broadband access. With an estimated 200 million adults in the US, this means that 60 million people rely on phones, work, or libraries for internet access. These alternative means of access, such as use of computers in public libraries, are typically quite restricted. Approximately 11% of American adults don't use the internet at all. <http://www.pewresearch.org/fact-tank/2018/03/14/about-a-quarter-of-americans-report-going-online-almost-constantly/>. Moving all notifications and documents to the internet in anticipation of the day when all Americans are on it would restrict involvement by many individuals in affected communities or in remote, rural areas. It would also ignore the potential for online outages that make documents unavailable or unsearchable for critical periods of time during public review. To ensure that public involvement is conducted in a manner that is truly inclusive, the regulations should expressly require that in providing notice about the availability of documents and scheduling public meetings, agencies consider whether the format and timing equitably provides notice, information, and meaningful opportunities to participate to vulnerable and traditionally marginalized populations.

- c. As noted previously, the emphasis on meaningful public input and careful consideration of environmental impacts outlined in NEPA and its implementing regulations is why it is one of the principal tools in ensuring environmental justice principles guide government decisionmaking. The NEPA process provides one of the primary forums for agencies to openly consider the composition of affected areas, relevant public health impacts, exposure risks, and solicit meaningful public input with the aim of avoiding disproportionate impacts on vulnerable and traditionally marginalized communities. In the memorandum to departments and agencies on Executive Order 12898 (Feb. 16, 1994)(“Federal Actions to Address Environmental Justice in Minority and Low-Income Populations”) President Clinton emphasized the importance of NEPA in addressing environmental justice issues, which led CEQ to issue guidance on environmental justice under NEPA in 1997. The guidance provides an excellent model for how agencies should incorporate environmental justice considerations into government decisionmaking. However, an update is needed given that guidance is now twenty years old and is in need of an update. Specifically, the guidance should be updated to include strong recommendations to agencies to consider opportunities in the NEPA process to accommodate individuals with limited English proficiency, consistent with Executive Order 13166 (Aug. 11, 2000)(“Improving Access to Services for Persons with Limited English Proficiency”). In addition CEQ should update the guidance to reflect the roles of new technologies and supplement the guidance to align with the 2016 report of the Federal Interagency Working Group on Environmental Justice and NEPA Committee entitled “Promising Practices for EJ Methodologies in NEPA Reviews,” and its more recent (March 2018) report entitled “Community Guide to Environmental Justice and NEPA Methods.” Updated and formalized guidance would better promote transparency, disclosure, collaboration, and meaningful input of environmental justice communities.
- d. Per our response to question 9c below, we also recommend a new provision in 40 C.F.R. § 1501.4 to enhance public participation in the context of environmental assessments.

**7. Should definitions of any key NEPA terms in CEQ’s NEPA regulations, such as those listed below, be revised, and if so, how?**

In general, the existing definitions are sound and have stood the test of time. They are based on case law, best practices, and considerable experience and are well understood by practitioners. Revisions are not warranted.

- a. Major Federal Action - No.**
- b. Effects - No.**
- c. Cumulative Impact - No.**
- d. Significantly - No.**
- e. Scope - No.**
- f. Other NEPA terms - No**

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

The existing definitions are sound and have stood the test of time. Revisions are not warranted. The definitions are based on case law, best practices, and considerable experience and are well understood by practitioners. CEQ will bear a heavy burden if it proposes changes in definitions to fundamental concepts such as these.

- a. Alternatives - No.**
- b. Purpose and Need - No.**
- c. Reasonably Foreseeable - No.**
- d. Trivial Violation - No.**
- e. Other NEPA terms - No.**

**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 - No.**

**b. Categorical Exclusions – No.**

**c. Environmental Assessments -** The nature of public involvement for EAs varies a great deal. CEQ's regulations currently offer minimal guidance specific to EAs, stating that agencies "shall involve environmental agencies, applicants and the public to the extent practicable" in the preparation of EAs. 40 C.F.R. § 1501.4(b). In practice, agencies seldom involve the public in the preparation of EAs, although some agencies routinely provide a comment period on EAs and some provide a comment period in particular situations. Frequently, however, EAs are prepared for actions that may have significant effects or actions for which the nature of those effects is in dispute, there are "unresolved conflicts" compelling consideration of alternatives (42 U.S.C. § 4332(2)(E)), or there are sensible opportunities to engage the public with an eye towards further mitigating impacts beyond what the agency has already considered. We propose the following as an additional sentence to be added to the end of 40 C.F.R. § 1501.4(b): "**Agencies shall make an EA available for public review for a minimum of 30 days.**"

**d. Findings of No Significant Impact – No.**

**e. Environmental Impact Statements – No.**

**f. Records of Decision – No.**

**g. Supplements –** CEQ's current regulatory direction on supplementing EISs is excellent and we support retaining it. 40 C.F.R. §1502.9(c)

However, we strongly recommend CEQ consider issuing guidance on the types of documents that individual agencies are currently using to determine whether to supplement NEPA analyses, including Supplemental Information Reports (SIRs) and Determinations of NEPA Adequacy (DNAs). We understand, of course, the need to review earlier NEPA documents in light of new or revived proposals and the desirability of documenting an agency's rationale. However, we reiterate the concerns about the Bureau of Land Management's use of DNAs noted in response to Q. 2. CEQ guidance regarding use of both SIRs and DNAs should reiterate the importance of evaluating environmental consequences, permitting public review, and making commitments of public resources. CEQ should provide strict limitations on the use of non-NEPA documents to bypass public involvement. A brief EA with public involvement is the most appropriate way of assessing the significance of new information or possible changed circumstances.

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

No. We support the existing regulation on timing of agency action at 40 C.F.R. § 1502.5. The regulation lays out a common-sense approach for linking the NEPA process to the agency's consideration of a proposed action.

**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?**

CEQ's existing provisions regarding agency responsibility and preparation of NEPA documents by contractors and project applicants, including the conflict of interest provision, are the minimum of what should be required and certainly must be retained, if not strengthened. We are very concerned about conflicts of interest when agencies use contractors paid for by an applicant to prepare an EIS—the so-called “third-party EIS” situation. CEQ's requirements that a federal agency select the contractor and that contractors execute disclosure statements regarding any conflict of interest are essential. The disclosure statement should be executed prior to signing the contract and should always be publicly available. It must also be understood that the agency continues to have the legal responsibility for any and all NEPA documents prepared by an outside contractor. It cannot shift NEPA compliance duties to an outside entity, in particular given that outside entities may lack an understanding of local community dynamics to help balance competing needs and issues and ensure that public input is properly accounted for. It is also essential to maintain strong oversight and enforcement of the prohibition on utilizing contractors that would benefit in some manner by the proposed action (for example, additional contracts implementing a particular proposed action) that is the subject of the NEPA process at issue.

We understand that agencies need to be able to communicate directly with the applicant regarding the proposed action. However, agencies must take special care in the context of a third-party EIS. For example, applicants should not be invited to regularly attend

interdisciplinary team meetings or interagency meetings. Agencies must draw a bright line distinguishing their role of evaluation and regulation from the role of the applicant.

We strongly believe the integrity, effectiveness, and efficiency of the NEPA process are much-better served when agencies conduct the NEPA process themselves, as the law intended. This is particularly the case where the NEPA process operates as a critical decisionmaking tool for agencies with complex, diverse missions—e.g., land management agencies that operate under a “multiple use” framework or where local community dynamics require careful attention to ensure that the agency listens to public concerns. Contractors and project applicants are simply not in a position to effectively apply this framework to resolve conflicts or to balance competing values and agency mandates.

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

No. CEQ’s guidance document on “Effective Use of Programmatic NEPA Reviews” is comprehensive, current, and useful. It accurately reflects the concerns of many of our members regarding the challenges the public often faces in the context of programmatic NEPA documents and tiering. Chief among these concerns is the difficulty of determining when an agency will do a particular type of analysis. As noted in CEQ’s guidance, agencies sometimes say they are deferring a particular type of analysis to a later stage, only to improperly refer back to a programmatic document when that later stage arrives to justify the implementation-stage action. We certainly support tiering a more detailed and site-specific analysis at the project level to a programmatic EIS, but only when the programmatic analysis is sufficient to support such tiering by providing a site-specific hard look at impacts to inform alternatives and mitigation. As discussed in the guidance, it is imperative for agencies to be clear about what type of analysis they will do at what stage of a tiered process—and then to do it, absent changed circumstances accompanied by a clear explanation to the public.

For specific observations on the implementation problems with programmatic EISs and tiering, we incorporate by reference the discussion presented in the context of the Forest Service’s Advance Notice of Proposed Rulemaking on its NEPA regulations. *See*, Letter from The Wilderness Society and 82 other organizations to Chief Tony Tooke, February 1, 2018, pp. 18-21 (Attachment 3). As stated in that discussion, which we believe is applicable to other agencies’ NEPA implementation, especially in the land management and installation management context, agencies are often not taking advantage of efficiencies that the tiering process provides. Rather, there is a tendency to push analysis and decisionmaking off to a later time. Unfortunately, when that later time comes, agencies are often under even more pressure to “streamline” the process.

We see no reason for regulatory change in this area. Rather, we recommend CEQ invest resources into training and assisting agencies to shape programmatic NEPA analyses so that the resulting documents will facilitate appropriate tiering. Indeed, we think more effective programmatic analyses—i.e., “smart from the start” thinking to shape and

inform implementation-level action that tiers from a programmatic analysis—provides one of the single greatest opportunities to improve the efficiency of the NEPA process and to cultivate good-will and public buy-in for actions that meet a project applicant’s goals while also protecting our country’s health, environment, and economy.

**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?**

No. We oppose changes to the regulations regarding an appropriate range of alternatives. Changes are not warranted and could do tremendous damage to the value of NEPA. NEPA calls for analysis of alternatives twice, emphasizing their importance. *See* 42 U.S.C. §§ 4332(2)(C)(ii), 4332(2)(E). Consistent with these statutory mandates and per the regulations, alternatives are indeed the “heart” of the NEPA process. 40 C.F.R. § 1502.14. Without them, NEPA review cannot perform its core function of creating informed reflection so that agencies do not simply pursue their first reflexive idea about discharging a mandate or responsibility. Without a bona fide examination of alternatives, the NEPA process would do nothing more than document the impacts of the agency’s or applicant’s preferred course of action with the possible addition of some mitigation measures. In numerous examples, the alternatives developed—whether by a lead agency or externally—have truly improved decisionmaking. Further, agencies have benefitted from alternatives proposed by members of the public or by other agencies. Even where alternatives offered by members of the public are not chosen, agencies create public buy-in and acceptance when they show they have taken public input seriously. *See* Attachment 1 for examples of where alternatives analysis has benefitted decisionmaking.

CEQ and the courts have consistently made it clear that the range of reasonable alternative varies with the facts of each situation, resting on public input and key notions of reasonableness and feasibility. Any effort to constrain the requirement to analyze alternatives, including the no action alternative and reasonable action alternatives not within the jurisdiction of the lead agency, would directly undercut a central mandate of NEPA and be met with significant public backlash. If anything, we would strongly encourage agency training for making better and more expansive use of alternatives as a tool to better engage and work with the public on the design of action alternatives that eliminate or mitigate impacts. Done well, the careful identification and consideration of alternatives—with the public—will improve the credibility and acceptability of agency action and better protect our country’s health, environment, and economy.

We also oppose changes to Section 1506.1 regarding limitations on actions during the NEPA process, which is essential to the analysis of alternatives. The very purpose of limiting action while the NEPA process is ongoing is to avoid the “real environmental harm [that] will occur through inadequate foresight and deliberation.” *See Sierra Club v. Marsh*, 872 F.2d 497, 504 (1st Cir. 1989) (noting the difficulty of stopping a “bureaucratic steam roller” once started). The regulation already allows the development of plans, designs, or performance of other work necessary to support compliance with other legal requirements. Allowing additional work to be done on a preferred alternative

would eviscerate the value of alternatives in actually influencing the agency's decision for the better. It would relegate NEPA analysis to a post-hoc justification for a decision the agency had already made, rather than a process for determining the best course of action. NEPA itself contemplates its role before a decision is made. See 42 U.S.C. § 4332(c)(v) (requiring the "detailed statement" to discuss "any irreversible and irretrievable commitments of which *would be* involved in the proposed action *should it be* implemented") (emphasis added).

**General:**

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

The references to EPA's publication of the *102 Monitor* in § 1506.6(b)(2) and § 1506.7 are obsolete.

- 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?**

Utilization of existing and new technologies could greatly enhance the quality of analyses and the communication of those analyses to all interested parties. However, this goal requires leadership and resources, not regulatory changes. Section 1502.24 dealing with "Methodology and scientific accuracy" emphasizes scientific integrity and disclosure of methodologies rather than endorsing particular methods; this is a sound approach in terms of technology. It would not be practical for regulations to prescribe particular types of technology for every agency. Doing so would no doubt result in obsolete regulations within a short amount of time. This is another instance in which leadership and resources make the NEPA process more effective *and* efficient through increasing information access to all involved.

Per our response to question 6, CEQ could issue guidance both encouraging the use of technology to provide information and as a tool for public involvement. However, CEQ should also provide for communities and individuals who by choice or necessity do not have access to computers. In addition, to the extent that technology is referenced, it must be clear that there is an obligation to ensure clear pathways for use (including advisors to provide assistance) and to ensure that the technology is fully functioning at all times.

Again, most important gains to be achieved through technology do not require regulatory revisions, but rather financial investments and leadership. For example, all available EISs and EAs should be available electronically on a single website that permits searching by types of actions, locations, and impacts. Such a tool could greatly facilitate preparation of NEPA documents, particularly in assessing cumulative impacts and increasing public understanding of particular topics. Additionally, Geographical Information Systems data utilized in NEPA analysis should be readily available to the public (subject to any legal requirements to keep certain locational information

confidential).

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

No. CEQ regulations and guidance already provide for and encourage combining NEPA documents with other relevant decision documents. For example, the requirements for a Record of Decision can and should be integrated into the preamble for a final rule. *See* 40 C.F.R. § 1502.2. However, many agencies lack staff who have received enough training to identify these opportunities. Regular training of agency NEPA staff would help the agencies, our members, the public in general, and applicants.

We caution against a move to promote combining a final EIS (FEIS) and a Record of Decision, except in the limited instance provided for in Section 1506.10(b)(2). An EIS, and especially an EIS that carries with it the full weight of compliance with all environmental review laws, contains a considerable amount of information, which the decisionmaker must consider. Allowing the decision to be made simultaneously with publication of the FEIS creates pressure to make the decision in haste without thoughtful consideration of all relevant issues. It would also eliminate a window for additional outside input in light of changes to analysis and alternatives in the FEIS that in our experience can improve agency decisions and increase public acceptance. Put differently, combining the FEIS and ROD into a single document strikes us a “penny wise, pound foolish” gimmick that would degrade the ability of agencies to make reasoned and informed decisions.

**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?**

If improving the effectiveness and efficiency of the implementation of NEPA is truly a goal, then CEQ should reinstate the sensibly written guidance for agencies on the consideration of climate change in NEPA reviews. Planning projects and investing taxpayer dollars without considering the risks associated with rising sea levels, increased droughts, and more severe weather is irresponsible and ignores the statutory mandate to “promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man.” 42 U.S.C. § 4321. As CEQ noted in the now revoked guidance, “[c]limate change is a fundamental environmental issue, and the relation of Federal actions to it falls squarely within NEPA’s focus.” It is now well established by courts that climate change is precisely the type of environmental impact agencies should consider. Moreover, it is utterly impractical to ignore climate change relative to virtually any project, in particular public infrastructure, that is designed and built with public funds and must be durably built to withstand climate and environmental realities. Revocation of the climate guidance did not relieve agencies of their responsibility to consider climate impacts; its sole accomplishment was to introduce tremendous regulatory uncertainty for both agency officials and project sponsors and increase the risk that projects will fail, wasting taxpayer and private sector resources.

The climate guidance therefore rightly provided much needed clarity to agencies on how to not only consider how federal projects and decisions impact the climate, but also how climate change impacts federal projects and infrastructure. To truly ensure the regulations implement NEPA’s goal of preserving the human environment for future generations, CEQ should reinstate the guidance. The guidance will provide agency staff, project sponsors, and communities the confidence that the government is investing taxpayer dollars on critical infrastructure that is resilient and built to withstand the future impacts of climate change. By providing guidance to agencies on how to consider the fundamental environmental challenge of this century, CEQ will not only provide consistency across agencies and further the purposes of NEPA, but will also better fulfill its responsibility under Executive Order 12898 (“Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”) to identify and address “disproportionately high and adverse human health or environmental effects” on minority and low-income communities. It is now well known that minorities, low-income communities, immigrants, and people who are not fluent in English suffer disproportionate health impacts due to climate change, have less ability to relocate or rebuild after a disaster, and are generally exposed to greater risks – all due to climate change. Reinstatement of the guidance will help to ensure that the potential health, environmental, and economic impacts of climate change are mitigated if not prevented and are better disclosed to disproportionately impacted communities.

In addition to reinstating the climate change guidance, CEQ’s should focus on enforcing and ensuring adequate funding for implementation of the existing regulations, not expending limited resources through what will likely prove to be a time-consuming and contentious rulemaking. CEQ’s regulations state that, “Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements [of the regulations.] Such compliance may include use of other’s resources, but the using agency shall itself have sufficient capability to evaluate what others do for it.” 40 C.F.R. § 1507.2. Accordingly, we urge systematic oversight of agency compliance with this provision. In our considered view, the single most important key to efficiency and effectiveness is having competent, trained, and adequate agency staff to implement NEPA.

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

Yes. Tribal governments should be accorded the same status as state or local agencies, including, specifically, the ability to be designated as a cooperating agency. The current regulations narrowly focus tribal government participation on circumstances where the effects of a proposed action are located on a reservation. Not all tribal lands are, however, reservations. Moreover, less than 22% of Native Americans and Alaska Natives live on reservations, ([https://www.census.gov/newsroom/releases/archives/facts\\_for\\_features\\_special\\_editions/cb11-ff22.html](https://www.census.gov/newsroom/releases/archives/facts_for_features_special_editions/cb11-ff22.html)) and a number of reservations are not in the traditional homeland of a tribe, or represent a small fraction of the original homeland. Further, with one exception,

Alaska Natives do not have reservations at all because of the provisions of the Alaska Native Claims Settlement Act of 1971 and Pueblo peoples are located on sovereign, ancestral lands. Perhaps most importantly, the Federal government holds a legal trust obligation towards Native peoples that is not delimited by the location of either reservations or tribal lands, period. Indeed, Native peoples hold protected rights to and interests in non-reservation and non-tribal lands that are rooted in their individual histories, vibrant cultural and land protection practices and ethics, and economic vitality.

Section 1508.5 should be amended to delete the phrase, “when the effects are on a reservation” so that the relevant sentence reads, “**A state, tribal, or local government agency of similar qualifications may by agreement with the lead agency become a cooperating agency.**”

Per our response to question 6, the restriction in § 1506.6(b)(3)(ii), regarding the requirement to notify tribal governments of actions with effects primarily of local concern, should be modified to delete the phrase “when effects may occur on reservations” and substitute “**affect tribal interests**” for the phrase “occur on reservations” as the trigger.

**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?**

CEQ’s guidance on “Improving the Process for Preparing Efficient and Timely Environmental Review under the National Environmental Policy Act” (Mar. 12, 2012) made it clear that existing CEQ regulations intended to reduce delay and paperwork in preparation of EISs (for example, incorporation by reference, adoption, supplements) could also apply to EAs. Again, this is an issue in which the key to improvement is training within the agencies.

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

CEQ’s guidance on “Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact” is an excellent document. Mitigation and monitoring are often the neglected part of the NEPA process. It is essential to the integrity of the process that mitigation be capable of being implemented, that it is implemented and that it is monitored. We are concerned that ineffective mitigation measures have been used as a means to overlook environmental and community harms having significant impact.

Thank you for the opportunity to comment. Representatives of our organizations would be pleased to discuss any of these responses with CEQ representatives. Our contact for this purpose is Stephen Schima at the Partnership Project, (503) 830-5753 or by email at [sschima@partnershipproject.org](mailto:sschima@partnershipproject.org).

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RE: Advanced Notice of Proposed Rulemaking, Request for Comment, National Environmental Policy Act Compliance (83 Fed. Reg. 302, Jan. 3, 2018)

Dear Chief Tooke:

February 1, 2018

On behalf of the 83 undersigned organizations and individuals, we are pleased to provide the U.S. Forest Service with the attached comments on the agency's advanced notice of proposed rulemaking (ANPR) regarding National Environmental Policy Act (NEPA) compliance, 83 Fed. Reg. 302 (Jan. 3, 2018). Our organizations collectively represent decades of experience with the Forest Service's implementation of NEPA across the spectrum of land management actions, including forest planning, vegetation, wildlife, mineral, range, aquatic, travel, and recreation

management decisions. We have extensive expertise regarding the Council on Environmental Quality (CEQ) NEPA regulations, the Forest Service's NEPA regulations and procedures, and the federal body of case law interpreting the agency's legal obligations under NEPA. Our experience in agency decision-making processes, collaborative efforts, and as plaintiffs in NEPA litigation lends us unique insight into the promises and pitfalls of the Forest Service's NEPA policies and practices.

NEPA is rightfully referred to as the "Magna Carta" of environmental laws. Like that famous charter, NEPA enshrines fundamental values into government decision-making. NEPA has been a proven bulwark against hasty or wasteful federal decisions by fostering government transparency and accountability. It has ensured that federal decisions are at their core democratic, by guaranteeing meaningful public involvement. And it has achieved its stated goal of improving the quality of the human environment by relying on sound science to reduce and mitigate harmful environmental impact.

NEPA is inherently flexible, and the current law, CEQ regulations, and Forest Service regulations and procedures provide significant authority to conduct efficient yet meaningful analysis, including through use of tiering, mitigated findings of no significant impact, appropriate application of existing categorical exclusions, and other tools. Within the scope of this existing authority, we have seen agencies conduct highly efficient yet robust NEPA analysis, and have provided examples in our comments. At the same time, we agree that many Forest Service environmental analysis and decision-making processes could be more efficient and satisfying to stakeholders and the agency. However, we believe the primary problems with – and solutions to – the Forest Service's NEPA process lie not with the agency's regulations and procedures but with operational and organizational culture issues that can be addressed within the scope of the agency's existing authority.

We have carefully tracked and engaged in past and ongoing legislative and administrative efforts to modify and weaken NEPA. Based on misperceptions that the law prescribes overly burdensome process, analysis, and public engagement requirements, these efforts generally fail to identify root causes and hence implement meaningful changes to improve federal decision-making. We have learned over the years that attempts to undercut NEPA's democratic principles of government accountability and public engagement often result in more controversy and less trust, collaboration, and efficiency in the long run. To avoid a similar outcome, and in a collaborative spirit of improving the quality of the human environment, as NEPA commands, our comments offer the following recommendations:

- **The Forest Service should conduct an adequate and complete problem analysis, including examining operational hurdles, prior to initiating the rulemaking. The agency should craft a strategy, including an action plan, to address operational and organizational culture issues related to environmental analysis and decision-making.** Accurately defining the problems is a necessary prerequisite to finding effective solutions. The agency's data shows that delays in project implementation are most often the result of operational and organizational culture issues such as staffing, funding, and training.

- **The Forest Service should better utilize programmatic, landscape-scale analysis and decision-making, with tiered project-level analysis and appropriate use of categorical exclusions.** Done correctly, the two-tiered approach facilitates more integrated and collaborative restoration actions that incorporate high-quality ecosystem science and stakeholder input. However, effective use of this two-tiered approach *requires* the development of affirmative priority-setting and meaningful and enforceable restrictions in programmatic analysis and decisions – including in land management plans – to direct and narrow the impacts associated with project implementation.
- **The Forest Service should continue to invest in more up-front public process, including collaboration, to help improve and expedite project planning and implementation.** The agency should encourage early public outreach and engagement, a proven strategy to reduce controversy and back-end delays, and invest in relevant training. The agency should not consider any changes to its NEPA regulations that would reduce or eliminate public engagement opportunities, even when collaboration has taken place.
- **Prior to creating new authorities, the Forest Service should analyze its current use of existing authorities designed to make environmental analysis and decision-making more efficient, articulate if and how those authorities are being utilized ineffectively, and provide direction to field officers on improved utilization.** The Forest Service enjoys a broad range of existing tools and authorities – including over three dozen categorical exclusions – that allow it to expeditiously implement restoration and other forest management projects. These tools are often under- or ineffectively-utilized. In addition, some authorities (e.g., Farm Bill categorical exclusions, good neighbor authority) are relatively new, and the agency may simply need more time and resources to incorporate them into widespread practice.
- **Regarding categorical exclusions:**
  - **New or expanded categorical exclusions must be predicated on a publicly-available analysis that demonstrates they are needed and appropriate.** The Forest Service cannot presume that a category of action typically documented with an environmental assessment is appropriate for a categorical exclusion, and it must support any new or expanded categorical exclusion categories with meaningful analysis documenting that the category does not have significant individual or cumulative effects. The analysis must be shared with the public for comment.
  - **The Forest Service should explore expanding existing categorical exclusions related to restoration of lands and waters disturbed by unneeded closed roads** to address the agency’s significant backlog of road maintenance needs. Such categorical exclusions would facilitate restoration of aquatic and terrestrial systems.

- **Additional categorical exclusions related to outfitter and guide special use authorizations, if contemplated, must have sufficient sideboards to ensure that the actions are below the significance threshold, and should result in more equitable access and opportunities on our national forests.** Guided access to national forests is an important way to connect people, especially traditionally underserved populations and youth, to our national forests.
- **The Forest Service should not consider expanding the breadth of existing categorical exclusions to enable larger-scale salvage logging.** The science is clear that post-fire salvage logging does not advance ecosystem integrity or restoration, which is a stated purpose of this rulemaking, and instead is a “tax” on the environment. Thus, expanding the acreage for salvage logging projects that can be categorically excluded from NEPA analysis would be completely inappropriate.
- **The Forest Service should not consider further relaxing its definition of extraordinary circumstances.** The extraordinary circumstances direction is integral to appropriate application of existing categorical exclusions. The public needs the assurance that the filter is sufficiently rigorous.
- **The Forest Service should use this rulemaking to clean up remnant inconsistencies with other regulations and federal court decisions.**
- **The Forest Service should retain important and necessary procedural safeguards for roadless and wilderness-eligible lands.** The agency should, however, make targeted changes to the relevant regulatory language to reflect updated terminology, but it should not otherwise alter or weaken that language.

As outlined above, our organizations have extensive experience and expertise with NEPA analysis, implementation, and case law, and would welcome the opportunity to work with the Forest Service to incorporate our best practices into the proposed rulemaking and the broader Environmental Analysis and Decision Making initiative. In the meantime, thank you for considering these comments.

With regards,

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## I. Introduction.

Thank you for the opportunity to comment on the U.S. Forest Service's advanced notice of proposed rulemaking (ANPR) regarding National Environmental Policy Act (NEPA) compliance, 83 Fed. Reg. 302 (Jan. 3, 2018). Our organizations collectively represent decades of experience with the Forest Service's implementation of NEPA across the spectrum of land management actions, including forest planning, vegetation, wildlife, mineral, range, aquatic, travel, and recreation management decisions. We have extensive expertise regarding the Council on Environmental Quality (CEQ) NEPA regulations, the Forest Service's NEPA regulations and procedures, and the federal body of case law interpreting the agency's legal obligations under NEPA. Our experience in agency decision-making processes, collaborative efforts, and as plaintiffs in NEPA litigation lends us unique insight into the promises and pitfalls of the Forest Service's NEPA policies and practices.

NEPA is rightfully referred to as the "Magna Carta" of environmental laws. Like that famous charter, NEPA enshrines fundamental values into government decision-making. NEPA has been a proven bulwark against hasty or wasteful federal decisions by fostering government transparency and accountability. It has ensured that federal decisions are at their core democratic, by guaranteeing meaningful public involvement. And it has achieved its stated goal of improving the quality of the human environment by relying on sound science to reduce and mitigate harmful environmental impacts.

NEPA is inherently flexible, and the current law, CEQ regulations, and Forest Service regulations and procedures provide significant authority to conduct efficient yet meaningful analysis, including through use of tiering, mitigated findings of no significant impact, appropriate application of existing categorical exclusions, and other tools. Within the scope of this existing authority, we have seen agencies conduct highly efficient yet robust NEPA analysis and have catalogued examples in Appendix I, primarily at sections 2.a and 2.b. At the same time, we agree that many Forest Service environmental analysis and decision-making processes could be more efficient and satisfying to stakeholders and the agency. However, as described in detail below, we feel the primary problems with – and solutions to – the Forest Service's NEPA process lie not with the agency's regulations and procedures but with operational and organizational culture issues that can be addressed within the scope of the agency's existing authority.

We have watched and commented on several past and ongoing legislative and administrative efforts to modify and weaken NEPA (e.g., the House Natural Resources Committee's 2005 *Task Force on Improving the National Environmental Policy Act* and the current suite of forest management bills that would alter, restrict, or obviate the application of NEPA to land management decisions and often limit public engagement in and judicial review of those decisions). Collectively, these efforts sought to constrain basic democratic principles of government accountability and public engagement. Based on misperceptions that the law prescribes overly burdensome process, analysis, and public engagement requirements, the efforts failed to identify root causes and thus implement meaningful changes to improve federal decision-making. We have learned over the years that attempts to undercut democratic principles such as those prescribed in NEPA often result in more controversy and less trust, collaboration,

and efficiency in the long run. To avoid a similar outcome, and in a collaborative spirit of improving the quality of the human environment, as NEPA commands, we offer the following comments in response to the ANPR.

## **II. Accurate and Complete Problem Identification is Required Prior to Initiating Rulemaking.**

We agree that the Forest Service can improve its delivery of goods and services to the American public through improvements to its environmental analysis and decision-making processes. We do not agree, however, that the proposed rulemaking to amend the agency's NEPA procedures is the correct "solution" to the problem. While the Forest Service's approach to NEPA compliance leaves room for improvement, we disagree that the "fault" lies with the agency's NEPA regulations. This rationale has been deployed for decades, yet we are unaware of any data to support it.<sup>1</sup>

Instead – and as the agency itself recognizes<sup>2</sup> – most delays in project implementation result from inadequate congressional appropriations, insufficient training of agency personnel tasked with NEPA compliance, inadequate staff qualified to undertake NEPA compliance, and the failure to leverage existing internal learning around NEPA. The ANPR notes that "an increasing percentage of the Agency's resources are spent each year to provide the necessary resources for wildfire suppression, resulting in fewer resources available for other management activities such as restoration," and that "there has also been a corresponding shift in staff, with a 39 percent reduction in all non-fire personnel since 1995." 83 Fed. Reg. at 302. We agree: the Forest Service has fewer employees generally, and the majority of the agency's already-reduced budget now goes to pay for fire suppression. Both factors necessarily reduce the agency's ability to focus on and complete mission-critical work. Additionally, since the Forest Service abandoned regular NEPA training for staff in the 1990s, it is not surprising that many staff "learn NEPA" from colleagues who themselves are not trained in how to comply with and effectively implement the law.<sup>3</sup> And, although the Forest Service has been through several internal and external initiatives to "improve NEPA," the agency continues to struggle to *learn* from and leverage the lessons of these endeavors, no doubt in part a consequence of the capacity challenges cited above.

These operational and organizational culture issues – funding, staffing, and training – are wholly unrelated to NEPA. Instead, these factors are chronic issues faced by all federal agencies – although in the Forest Service they are exacerbated by systemic management practices that, for example, encourage frequent relocation. This practice results in numerous "acting" employees that may not be an appropriate fit, and in turn often stalls NEPA analysis on critical project-level work, sometimes for months or years. Inadequate agency budgets and hiring freezes also mean that many positions remain vacant for months or even years. In short, these are not "NEPA

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<sup>1</sup> If the agency possesses such data, we request that information be made publicly available prior to the publication of the draft proposed rule.

<sup>2</sup> USDA Forest Service, *Environmental Analysis and Decision Making: The Current Picture* (Phoenix, AZ. Sept. 2017) (hereinafter Phoenix EADM Presentation).

<sup>3</sup> Phoenix EADM Presentation.

problems” that can be remedied by amending the Forest Service’s NEPA regulations. Until the Forest Service grapples with and addresses these issues, its attempts to alter its NEPA regulations will be arbitrary and capricious because its rulemaking will be based on “factors Congress did not intend it to consider.” *Lands Council v. McNair*, 629 F.3d 1070, 1074 (9th Cir. 2010).<sup>4</sup>

Instead, the Forest Service needs to conduct an accurate and complete problem analysis that clearly articulates the operational and organizational culture hurdles to effective and efficient environmental analysis and decision-making that are reflected in its own data. The agency should then craft a strategy, along with an action plan, to address those identified issues, and reflect the strategy in its budget requests and program direction.

Relatedly, litigation is often portrayed as a reason for inefficient environmental analysis and decision-making, particularly with respect to “vegetation management” (i.e., timber sale, including “salvage”) projects. This portrayal is flawed for at least two reasons. First, NEPA is designed to help the agency *avoid* litigation, by conducting transparent, collaborative decision-making processes that result in higher stakeholder satisfaction. While the agency may be tempted to avoid stakeholder complaints by pursuing CEs or limiting projects to an overly narrow scope, that approach often results in poorer quality NEPA analysis that is more vulnerable to litigation. Instead, as described in detail in the following section, the agency should focus its analysis and decision-making on a landscape-scale and over a longer time periods (i.e., programmatic analysis).

Second, the contention is belied by the agency’s own data, which demonstrates that very few NEPA decisions generally, or vegetation management decisions specifically, are ever challenged in court, and even fewer projects are enjoined by court order such that project implementation does not occur:<sup>5</sup>

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<sup>4</sup> See also *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) (decisions that “entirely fail to consider an important aspect of the problem” are arbitrary and capricious); *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985) (record must demonstrate that the agency considered the relevant factors).

<sup>5</sup> Phoenix EADM Presentation.

**Percentage of NEPA Decisions Challenged by Region  
FY 2009 – FY 17, 1<sup>st</sup> Quarter**

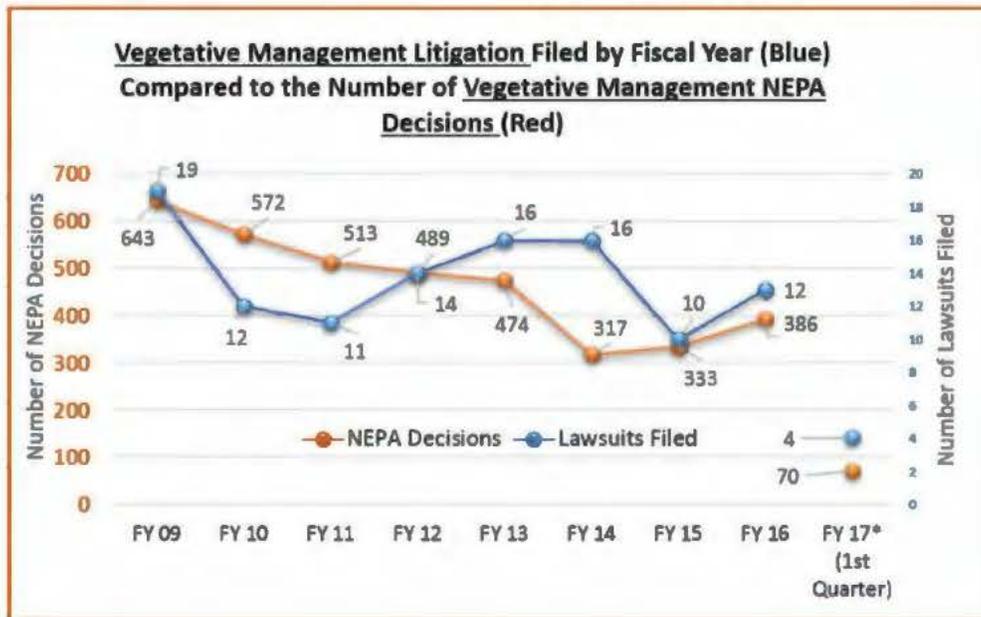
Region	No. Lawsuits	No. NEPA Decisions	% NEPA Challenged
1	91	2112	4%
2	33	2440	1%
3	46	1600	3%
4	51	1784	3%
5	64	2629	2%
6	55	2512	2%
8	26	3091	<1%
9	18	2755	<1%
10	10	730	1%

**FS Land Management Litigation Filed by FY vs. # of Agency NEPA Decisions**



**% of Regional Vegetation Management NEPA Decisions Challenged in Litigation From FY09 - FY17 (1st Quarter)**

Region	No. Lawsuits	No. Veg Mgmt. NEPA Decisions	% Veg. Mgmt. Decisions Litigated
1	43	321	13.4%
2	5	285	1.8%
3	2	181	1.1%
4	3	251	1.2%
5	38	576	6.6%
6	17	652	2.6%
8	0	1004	0.0%
9	0	435	0.0%
10	6	92	6.5%



Scholarly and governmental analysis similarly concludes that litigation, while often acutely felt by those involved, has little commensurate effect on project implementation.<sup>6</sup> Moreover, in our

<sup>6</sup> See Miner et al., *Twenty Years of Forest Service Land Management Litigation*, 112 J. FOR. 32 (2014); GOVERNMENT ACCOUNTABILITY OFFICE, *Forest Service: Information on Appeals, Objections, and Litigation Involving Fuel Reduction Activities, Fiscal Years 2006 through 2008*

observation and experience, agency attempts to “bulletproof” NEPA analysis to avoid litigation generally results in lengthier documents but does not improve the quality of the analysis. This too is an issue of adequate training, funding, and staffing, as skilled NEPA practitioners can efficiently address analysis requirements to develop projects that are better for the environment and more effective at achieving project objectives.

Finally, it is worth noting that the Forest Service administers a sizeable portion of the federal estate, with vast national forests and grasslands and innumerable terrestrial, aquatic, and atmospheric resources entrusted to its care. The public cares deeply about those lands and resources, which are a unique part of our natural heritage. Because the trust relationship based on land and resource stewardship is different than the relationship that other federal agencies maintain with the public and stakeholders, it should not be surprising that the Forest Service experiences NEPA in a way that is qualitatively and quantitatively different than other federal agencies. Thus, the Forest Service should not presume, without applicable data, that the NEPA procedures of other federal agencies are appropriate for the stewardship of our national forests and grasslands. The Forest Service and the lands it manages are special, and deserve special recognition and treatment in the NEPA process.

For the forgoing reasons, **we urge the Forest Service to conduct an adequate and complete problem analysis prior to commencing the rulemaking process and publishing a draft proposed rule to amend its NEPA procedures. The analysis should clearly articulate operational hurdles to effective environmental analysis and decision-making, and the agency should craft a strategy, including an action plan, for addressing them.**

**III. Existing Authorities Allow for Efficient Environmental Analysis and Decision-Making and May Be Under-Utilized.**

The stated goal of the proposed rule-making is to increase the efficiency of environmental analysis in order “to complete more projects needed to increase the health and productivity of our national forests and grasslands.” 83 Fed. Reg. at 302. The ANPR fails to address, however, the significant number of existing authorities that allow the Forest Service to expeditiously implement projects, often with expedited or reduced NEPA analysis. For instance, the following, non-exhaustive chart catalogues the existing streamlining authorities that we are aware of that apply to various restoration activities.

**Major Forest Service Authorities to Expedite, Facilitate, and Streamline Project Planning and Associated Environmental Analysis Related to Vegetation Management, Restoration, and Fuels Reduction (not exhaustive)**

Authority	Description	Purpose
Administrative Categorical	At least seven CEs apply to activities related to vegetation management, wildlife management, and specific restoration activities that have	Eliminate the requirement to prepare an EA or EIS for project categories that the agency has

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(2010); Jacqueline Vaughn & Hanna J. Cortner, *George W. Bush’s Healthy Forests: Reframing the Environmental Debate* (2005). Articles attached as Exhibit 1.

Exclusions, 36 C.F.R. § 220.6(d) and (e)	been deemed not to individually or cumulatively have a significant impact on the human environment, as long as no extraordinary circumstances apply to the proposed activities. Use of a CE for most covered restoration activities requires a decision memo.	demonstrated are not significantly impactful.
Programmatic NEPA and tiering, 40 C.F.R. § 1502.20; FSM 1950.3(2)(d); FSH 1909.15, ch. 10, § 11.41	Authorizes agencies to tier their EISs or EAs to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each scale of environmental review. Subsequent environmental analyses need only summarize the issues discussed in the broader programmatic analysis and can concentrate on the issues specific to the subsequent action at the appropriate scale.	Eliminate redundant analyses, and focus the level of analysis at the appropriate scale. When done well, results in better planning at multiple scales.
Adoption and joint preparation of NEPA statements, 40 C.F.R. § 1500.5(h); FSH 1909.15, ch. 10, § 11.42	Authorizes an agency to adopt the environmental analysis of another federal agency. An agency may also jointly prepare an environmental analysis with state, local, and other federal agencies to reduce duplication.	Eliminate duplicative analyses and reduce delay.
Healthy Forest Restoration Act § 404(d), 16 U.S.C. § 6554(d)	Establishes special NEPA procedures for EAs or EISs prepared for authorized hazardous-fuel-reduction projects, including limited alternatives analysis and modified judicial review for specific projects. Establishes a CE for “applied silvicultural assessment” up to 1,000 acres.	Expedite decision-making and subsequent implementation of certain hazardous fuel reduction projects.
Healthy Forest Restoration Act § 603, 16 U.S.C. § 6591b	Establishes a CE for treatment of up to 3,000 acres within lands identified by State Governors to be experiencing or at risk of experiencing “declining forest health” or where “the risk of hazard trees poses an imminent risk to public infrastructure, health, or safety.” Projects carried out in qualified areas to reduce the extent of or increase the resilience to insect and disease infestation, subject to certain limitations, are considered authorized projects eligible for limited NEPA and judicial review provisions under HFRA.	Eliminate need for environmental analysis for specific types of insect & disease remediation projects. Expedites project development and implementation.
Section 8006 of Public Law 113-79	Establishes a pre-decisional objection process that enables the agency to consider and rule on objections before issuing a final decision. Eliminates post-decision appeals.	Expedite project approval and implementation.
50 C.F.R. part 402, subpart C	Inter-agency regulations authorize alternative Endangered Species Act consultation	Enhance the efficiency and effectiveness of the consultation

	requirements for activities conducted in support of the National Fire Plan.	process under section 7 of the ESA for Fire Plan Projects.
Good Neighbor Authority, Public Law 113-79	Allows the Forest Service to enter into cooperative agreements or contracts to allow States to perform watershed restoration and forest management services on National Forest System lands.	Create efficiencies and leverages technical and financial resources.
Stewardship End Result Contracting, 16 U.S.C. § 6591c	Allows agency to enter into long-term contracts (up to 10 years) to meet land-management objectives (e.g., to reduce wildland fire risk and improve forest and rangeland health). Allows forest products to be exchanged for ecological restoration services, which may include thinning and removing brush.	Encourage longer-term stewardship projects.
Legacy Roads and Trails Program, authorized annually since 2008 via appropriations act	Drives urgently needed road decommissioning, road and trail repair and maintenance, and removal of fish passage barriers. Emphasizes areas where Forest Service roads may be contributing to water quality problems in streams and water bodies that support threatened, endangered, and sensitive species or community water sources.	Drive the restoration of lands and waters disturbed by damaging roads and trails through targeted funding and leveraging of third party funding and collaboration.
Collaborative Forest Landscape Restoration Program, Public Law 111-11	Provides competitive funding to support science-based landscape-scale collaborative restoration programs in fire-adapted landscapes.	Drive the establishment of multi-year collaborative landscape-scale restoration plans and projects to increase pace and scale of restoration, along with community support and participation.
The Joint Chiefs' Landscape Restoration Partnership	Establishes a multi-year partnership between the Forest Service and Natural Resources Conservation Service to facilitate cross-boundary restoration through interagency and community collaboration. The primary goals of the initiative are to work across public and private lands to reduce wildfire threats to communities, protect water quality and supply, and improve habitat quality for at-risk or ecosystem surrogate species. Provides up to three years of funding for projects through a competitive process managed internally by the NRCS and Forest Service.	Increase effectiveness and efficiency of restoration and fuels reduction projects by leveraging technical and financial resources on private and public lands.

These and other existing tools – some of which are discussed in more detail in the following sections – provide ample authority and mechanisms for the Forest Service to increase its restoration footprint and otherwise increase the pace of project implementation. The Forest Service has, in some cases, made innovative and effective use of existing authorities. For

example, the Crawley Branch project on the Grandfather District of the Pisgah National Forest was a pilot project for the 2014 Farm Bill insect and disease treatment authority, and it enjoys strong support from the Grandfather CFLR. *See* App'x 1 at § 3.a. for additional detail. However, it generally seems as if the agency may be under-utilizing or ineffectively utilizing existing authorities, and, in some instances, even abusing existing streamlining tools in an attempt to bypass necessary and important environmental analysis. *See* App'x 1 at § 3.c. In addition, some authorities (e.g., Farm Bill CEs and good neighbor authority) are relatively new, and the Forest Service may simply need more time and resources, including training, to incorporate them into widespread practice.<sup>7</sup>

**Prior to creating new authorities, the Forest Service should analyze its current use of these and any other authorities that are designed to make environmental analysis and decision-making more efficient.** The analysis should document the frequency with which each tool is used, identify trends around the use of each tool (e.g., used more or less frequently for certain types of projects or in certain geographies) and cite the rationale for using or not using the tool. It should identify where and how current tools can be better utilized, and where certain tools may be being used inappropriately. It should also identify gaps, if any, where the existing authorities do not permit efficient environmental analysis and decision-making, and it should clearly articulate a rationale for any proposed alterations or additions to existing authorities. Finally, where the Forest Service finds that existing CEs are under-utilized or inappropriately utilized, the agency should provide direction to field officers to address the identified issues.

#### **IV. The Forest Service Should Better Utilize Programmatic, Landscape-Scale Analysis and Tiering.**

The ANPR specifically seeks comment on approaches to landscape-scale analysis to increase the pace and scale of restoration on the national forests and grasslands. While the objective of enhanced restoration is not appropriate for every type of ecosystem across the National Forest System,<sup>8</sup> we generally agree that the Forest Service can better employ programmatic, landscape-scale analysis both to attain restoration objectives where ecosystems are degraded and to streamline other project-level decision-making. In general, we believe that programmatic, landscape-scale analysis with tiered project-level analyses of site-specific impacts – or, in appropriate circumstances, use of categorical exclusions – can increase the efficiency of NEPA and improves outcomes by more effectively aligning impact analysis with scale. This approach requires two levels of decision-making and analysis: the large-scale analysis that appropriately considers the landscape-level impacts and cumulative impacts, and the smaller-scale analysis that appropriately and narrowly looks at site-specific impacts. Projects can then be implemented with

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<sup>7</sup> Although only a few years in existence, the CEs authorized under the 2014 Farm Bill have been used by the Forest Service. As of March 2017, 81 projects have been proposed using the Farm Bill Insect and Disease provisions, with 68 of those projects utilizing the new CE. The 81 projects span 40 national forests and 18 states. Forest Service Briefing Paper on the Status of Implementing 2014 Farm Bill Insect and Disease NEPA Tools (Mar. 2017) (Exhibit 2).

<sup>8</sup> For example, not all ecosystems are outside of their natural ecological condition, and do not require upscaled management intervention. *See also* Forest Service Manual 2020 (“not all National Forest System lands require restoration”).

an environmental assessment, or in certain circumstances, a categorical exclusion (categorical exclusions are discussed in more detail in the following section). This front-loaded approach in the long run will result in smarter management strategies, more public buy-in, and better consideration of cumulative impacts. Other large landscape-level analysis, such as that required by the Collaborative Forest Landscape Restoration Program, can also be used to more efficiently analyze the potential impacts of restoration projects.

Beyond the obvious benefits of strategizing restoration at multiple scales and better aligning analysis to scale, the two-tiered approach to decision-making offers additional benefits. For example, the larger-scale analysis enables the agency to consider the array of ecosystem elements requiring restoration (e.g., aquatic restoration, road restoration) and does not limit projects to vegetation management alone. It also encourages the agency to set implementation priorities instead of relying on haphazard implementation, and facilitates effective engagement by collaborative groups. Ultimately, the two-tiered approach facilitates a more integrated and collaborative restoration approach and results in healthier ecosystem condition and function. For example, the Cherokee National Forest is currently working on an innovative programmatic project as a bridge from the plan's broad restoration goals to concrete site-specific action. The project will identify common departed conditions in need of vegetation management as "covered activities," avoiding duplicative analysis in future projects. *See* App'x 1 at § 2.a. for additional detail.

We are concerned, however, that the agency's current use of landscape-scale analysis and tiering is under-utilized and often ineffective at achieving the benefits described above. The approach is not encouraged or emphasized in the Forest Service's current policies. In fact, the term "tiering" does not even appear in the current regulations. Moreover, in our experience the agency is often highly reticent to include meaningful and enforceable restrictions and set affirmative priorities in programmatic analysis and decisions that will guide project-level decision-making. This reticence leads to projects that create a risk of surprise, controversy, and delay from litigation. *See* App'x 1 at § 2.c. Including enforceable side-boards and affirmative priorities at the programmatic level necessarily narrows the scope and intensity of impacts associated with project implementation, thereby permitting narrower and more streamlined project-level analysis of any remaining site-specific impacts, more effective tiering, and increased use of existing categorical exclusions. This will also help reduce cumulative impacts over time, which in turn lessens the need to analyze complex and cascading cumulative impacts in subsequent project authorizations. In other words, in order to enjoy efficiencies offered by programmatic analysis and subsequent tiering, the programmatic, landscape-scale analysis must constrain the uncertainty and impacts associated with future projects. Yet in our experience, the agency generally shies away from including meaningful and enforceable side-boards or setting affirmative priorities at the programmatic-level.

Perhaps no opportunity for providing meaningful programmatic direction and associated environmental analysis is more significant than land management planning. And, with its substantive requirements to provide for ecological sustainability, the diversity of plant and animal communities, and integrated resource management for multiple uses, 36 C.F.R. §§ 219.8-219.10, the 2012 planning rule provides ample opportunity for developing meaningful programmatic direction for restoration and other projects. Yet we have routinely seen forests

engaged in planning under the 2012 rule be reticent to affirmatively set priorities for restoration and other forest management activities and to develop enforceable standards and guidelines to constrain project-level activities, due to a desire for maximum flexibility and discretion. This results in plans that rely almost exclusively on desired future conditions and unenforceable and optional management approaches and goals. This approach not only raises serious questions about whether and how those forest plans provide for ecological sustainability and species diversity, as required, but also means that future environmental analysis and decision-making at the project level will necessarily need to be more robust – and therefore more resource intensive – in order to comply with NEPA. And with a lack of clear priorities for project-level action, the agency will have expanded decision-space at the project level, with correspondingly diverse potential impacts that will necessarily require sprawling, inefficient analysis. In short, the agency cannot have it both ways: flexibility at the programmatic level and increased pace and scale of project level implementation with streamlined environmental analysis.

The May 2016 draft plan for the Sierra National Forest provides an example of this problem.<sup>9</sup> There the Regional Forester identified sixty-four species of conservation concern (SCC)<sup>10</sup> – many of which are negatively impacted by vegetation management and other restoration-focused activities. The draft plan included species-specific plan components for only six of those SCC. For the remaining fifty-eight, the Forest Service deferred development of conservation measures to project-level planning. The draft plan provided only high-level plan components,<sup>11</sup> and no additional direction to guide the development of conservation measures at the project development stage. This approach ensures that, prior to authorizing restoration or other forest management activities, more robust project-level environmental analysis will be necessary to comply with NEPA and relevant species protection laws. In contrast, the George Washington National Forest, under the 1982 planning rule, used an efficient combination of strategies, including management area allocations and coarse- and fine-filter protections, to ensure that very few projects will require considerable additional analysis.

Another important aspect of programmatic NEPA analysis that can help streamline project implementation is meaningful consideration of climate impacts. While the majority of Departments in the Trump Administration continue to systematically dismantle important policies aimed at mitigating climate impacts and enhancing climate adaptation and resilience, climate change remains the most significant and fundamental environmental issue of our day and falls squarely within NEPA's focus. Thus, the Forest Service must analyze not only the effects of its proposed actions on climate change (i.e., how will the action contribute to climate change?), but also the implications of climate change on its proposed actions (i.e., how is climate change making affected resources, ecosystems, human communities, or structures more vulnerable to the

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<sup>9</sup> The Sierra National Forest is currently preparing a revised draft plan and draft EIS.

<sup>10</sup> SCC list available at

[http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/3403\\_FSPLT3\\_3096353.pdf](http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/3403_FSPLT3_3096353.pdf).

<sup>11</sup> For instance, the draft plan included a standard requiring “consideration” of special habitats during project design (p. 32) and guidelines that projects should protect at-risk species and their habitat by “considering” them early in environmental planning processes and incorporating “design features, mitigation, and project timing considerations” (pp. 97-98).

proposed action's impacts?). In other words, the reality of climate change must be factored into the environmental baseline for NEPA analysis because, "without establishing . . . baseline conditions . . . there is simply no way to determine what effect [an action] will have on the environment, and consequently, no way to comply with NEPA." *Half Moon Bay Fisherman's Mktg. Ass'n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988). Given the significant ongoing and reasonably foreseeable landscape-scale impacts of climate change, addressing the already deteriorating, climate-impacted state of resources, ecosystems, human communities, and structures through programmatic analysis will help streamline project-level implementation. Programmatic analysis of climate impacts and contributions also provides an important opportunity to develop appropriate climate adaptation and mitigation measures that will help confine project-level impacts and analysis. For instance, programmatic analysis of climate adaptation needs could help set priorities and identify best management practices for aquatic restoration, including removal of under-sized culverts and other mechanisms to stormproof aging infrastructure.

**The Forest Service should better utilize programmatic, landscape-scale analysis and decision-making, with tiered project-level analysis, or appropriate use of existing categorical exclusions – tools that are well within the Forest Service's existing authority and do not require significant revision of current regulations and policies. Effective use of this two-tiered approach will require the development of affirmative priority-setting and meaningful and enforceable restrictions in programmatic analysis and decisions – including in land management plans – to direct and narrow the impacts associated with project implementation. It will also require more meaningful analysis of climate impacts at the programmatic level.**

## **V. Existing Categorical Exclusions Provide Significant Authority to Conduct Streamlined NEPA Analysis.**

### **A. Governing Law & Policy.**

The CEQ NEPA regulations permit agencies to identify categories of actions "which do not individually or cumulatively have a significant effect on the human environment" and therefore may be "categorically excluded" from the requirement to prepare an environmental assessment or environmental impact statement under NEPA. 40 C.F.R. § 1508.4. These categorical exclusions (CEs) do not apply, however, where there are "extraordinary circumstances in which a normally excluded action *may have* a significant environmental effect." *Id.* (emphasis added). Agency procedures must identify such extraordinary circumstances. *Id.* Where an action is categorically excluded, agencies are free to prepare an EA even though they are not required to do so. *Id.* §§ 1508.4, 1508.9.

Existing agency and Departmental CEs applicable to the Forest Service are at 36 C.F.R. § 220.6(d) & (e) and 7 C.F.R. § 1.63, and, along with relevant statutory CEs, are compiled in Forest Service Handbook 1909.15, ch. 30, § 32. In total, the Forest Service has over three dozen CEs that apply to a wide range of actions, including numerous restoration activities and special use permitting.

Identification of new CEs must comply with the requirements identified by the Ninth Circuit Court of Appeals in *Sierra Club v. Bosworth*, 510 F.3d 1016 (9th Cir. 2007). First, the Forest Service must conduct scoping to determine the range of potential issues and impacts related to the activities covered by the contemplated CE. *See id.* at 1027 (“The determination that a categorical exclusion was the proper path to take should have taken place after scoping, reviewing the data call, and determining that the proposed actions did not have individually or cumulatively significant impacts.”). The Forest Service also must analyze whether the impacts of the actions encompassed by the CE will individually *or cumulatively* have a significant environmental impact. *See id.* at 1027-1028.<sup>12</sup> The determination of significance must be made in light of the same context and intensity factors that are implicated in evaluating individual actions. *See id.* at 1030-1031. The agency cannot evade such analysis by asserting that the analysis of cumulative impacts is impractical or infeasible, because use of a CE is improper where such impacts cannot practically or feasibly be assessed. *See id.* at 1028. Nor can the agency satisfy that obligation with conclusory assertions. *Id.* at 1030.<sup>13</sup> Further, any new CE must be written with sufficient specificity to distinguish between actions likely to have significant impacts and those properly covered within a CE. *See id.* at 1032-33 (“The Service must take specific account of the significant impacts identified in prior hazardous fuels reduction projects and their cumulative impacts in the design and scope of any future Fuels CE so that any such impacts can be prevented.”).

#### **B. New or Expanded CEs for Vegetative Restoration are Generally Unnecessary.**

We are aware that the Forest Service is keenly interested in identifying new or expanded CEs to encompass vegetation management and other restoration-focused activities that are typically evaluated using an environmental assessment (EA). While we generally support the use of appropriately-tailored CEs, we believe that new or expanded CEs for vegetation management are generally unnecessary and urge the Forest Service to tread very cautiously for the following reasons.<sup>14</sup>

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<sup>12</sup> *See also id.* at 1026 (stating that the proper question is “whether the evidence supports the Forest Service’s determination that the identified category of actions in the [challenged] CE do not individually or cumulatively have a significant impact on the environment,” and citing Mandelker, *NEPA Law & Litigation* § 7:10 for the proposition that “[t]he effect of this method of defining categorical exclusions is to apply the same criteria for determining whether an impact statement is necessary to the categorical exclusion decision”).

<sup>13</sup> *See also Heartwood, Inc. v. U.S. Forest Serv.*, 73 F. Supp. 2d 962, 975 (S.D. Ill. 1999) (CE was arbitrary and capricious where “FS did not provide any rationale for why [the] magnitude of timber sales [under the CE] would not have a significant effect of the environment” and record lacked “any evidence ... to support the [new increased] limit, except to refer to the FS’ expertise and prior experience with timber sales having ‘these characteristics.’”).

<sup>14</sup> We also refer you to the comments in the beginning of this letter about operational barriers to efficiency, and the need to accurately define those barriers before contemplating changes to the regulatory framework.

First, we are concerned that the Forest Service rationale that a CE may be appropriate for the significant portion of its vegetation management projects that are analyzed using EAs fails to appreciate the difference between an EA and a CE. Most EAs result in the preparation of a decision notice and finding of no significant impact (DN/FONSI). However, these EAs and DN/FONSIs are appropriately categorized as “mitigated EAs and FONSIs”: that is, the Forest Service is able to justify its finding of no significant impact (and therefore proceed without preparing an EIS) only because it has employed mitigation measures (often dozens or more) to reduce the impact of the proposed action below the threshold of significance. Because mitigation measures are used to reduce a project’s impacts below the significance threshold, there is little factual basis to conclude that the scope of work proposed in a mitigated EA is appropriate for a CE. CEs are intended to be “a category of actions which do not individually or cumulatively have a significant effect on the human environment.” Mitigated EAs and DN/FONSIs are decidedly *not* such a category of action. In fact, these types of vegetation management projects *may* have an individual or cumulative effect on the environment, but those effects have been minimized to the point of non-significance by the utilization of mitigation measures. Had it not been for preparation of an EA, the measures may never have been developed in the first place. This is particularly so where mitigation measures are often developed through engagement with the public during preparation of the EA – a process which would not occur with use of a CE.

Significant issues addressed through project refinement, alternatives analysis, and mitigation include old growth, access, inventoried roadless areas, potential wilderness areas, and other undeveloped areas, soil erosion, sedimentation of waters, state-designated natural areas, threatened and endangered species and critical habitats, cultural and social impacts, and ecological restoration. *See* App’x 1 at § 1.a. for examples. Access, in particular, is a significant issue that is inextricably related to vegetation management. Using CEs to implement vegetation management would hide the cumulative impact of projects with respect to this significant issue, making it impossible to systematically address the urgent need to move toward a more ecologically and fiscally sustainable road system. *See generally* App’x 1 at § 4. The haphazard approach to road-building in previous eras is the cause of the road system’s unplanned proliferation and unsustainable costs. Returning to such an approach would be inconsistent with agency policy requiring progress toward an ecologically and fiscally sustainable road system. *See, e.g.*, 36 C.F.R. § 212.5(b) (road system management); 36 C.F.R. § 219.1(g) (land management planning).

Moreover, in our experience, the mitigation measures required by mitigated EAs and DN/FONSIs are often ineffective at reducing the environmental impacts of vegetation management projects. Thus, a proposed CE that required measures utilized in past mitigated EAs and DN/FONSIs would need to be supported by an analysis demonstrating that the required mitigation measures are likely to be effective in reducing individual and cumulative impacts below the significance threshold. Because many mitigation measures are either not implemented in the field or are only partially effective (or not effective at all), we anticipate that it will be difficult for the agency to make such a showing. For example, gates, tank traps, and other methods to block “closed” roads used for logging activities can be ineffective in prohibiting resource damage to soils, vegetation, and wildlife. Other mitigation measures such as treating hazardous fuels in logged areas with prescribed fire are only partially implemented, or not implemented in a timely fashion, which increases the fire risk in those areas. Forest Service

monitoring reports (when they are prepared) do not consistently address the outcomes associated with implementation of mitigation measures and often indicate that measures designed to protect terrestrial and aquatic resources are ineffective. *See* App'x 1 at § 1.b. for examples. Because mitigation measures are not consistently effective, it is inappropriate for the agency to presume that activities undertaken with mitigated EAs and DN/FONSI are appropriate for a CE.

Second, to identify a new category of CE, the Forest Service must demonstrate that the activity will not individually or cumulatively have a significant environmental impact. 40 C.F.R. § 1508.4; *Sierra Club*, 510 F.3d at 1027-1028. The Forest Service has not proffered data demonstrating that vegetation management projects of significant size or scope would have no significant individual or cumulative effects. Indeed, CEs for larger-scale restoration projects could very well overwhelm smaller national forests, particularly those in the east. The examples provided in Appendix 1 illustrate, among other things, the different scales at which projects begin to cause significant impacts in different ecoregions. Moreover, given the vast dearth of monitoring that occurs post-project, we would be surprised to learn that the agency has carefully analyzed this issue. To justify a determination that a scope of work usually undertaken with an EA is appropriate for a CE, the Forest Service must analyze whether projects analyzed with EAs did in fact have no significant direct, indirect, or cumulative impacts on the environment. We are aware of no such analysis, and urge that one be completed before proposing any new vegetation management CEs.

NEPA is a forecasting law designed to predict environmental impacts. But only post-implementation monitoring can determine whether the predicted effects were the actual effects of an action, or whether other, unforeseen effects in fact occurred. And because the Forest Service lacks a budget to sufficiently monitor and adaptively manage the national forests, it is unlikely that the agency can rationally conclude that its vegetation management actions can appropriately be documented with the use of a CE.

Third, it appears that the Forest Service may be employing circular logic to justify increasing the pace and scale of forest management (or restoration) by using CEs. Over the past decade or more, the Forest Service has expressed its desire to increase its management footprint on the national forests and grasslands by arguing that projects need to be bigger in order to have the desired effect on the landscape. Usually this justification stems from the desire to reduce the risk of wildfire and its impacts on western national forests and grasslands. The agency's intent with this management approach admittedly is to have a "more significant" impact on the composition, structure, and function of these forests.

The problem with using a CE to implement this work is one of scale. CEs are intended to be used for "small," "insignificant" projects, not large landscape-level projects that alter fire regimes, vegetation classes, or watershed condition class. The latter effects are substantial, and likely have direct, indirect, and/or cumulative effects – as they *should*, because that is the stated purpose and need of the project. If the Forest Service wants to increase the pace and scale of land management (or restoration), then using a "small" tool like a CE, independent of a larger programmatic plan and analysis, is by definition the wrong tool. Instead, the agency should make more use of programmatic NEPA analysis and tiering, as described above.

Fourth, the Forest Service's existing CEs already encompass many restoration activities. Some are oriented at vegetation management (e.g., 36 C.F.R. § 220.6(e)(6) (CE for timber stand or wildlife habitat improvement); *id.* § 220.6(e)(10) (CE for hazardous fuels reduction activities); *id.* § 220.6(e)(11) (CE for post-fire rehabilitation activities); *id.* §§ 220.6(e)(12)–(14) (CEs for various tree cutting activities, including salvage logging and insect and disease control); Healthy Forests Restoration Act (HFRA) § 603 (CE for insect and disease projects in designated areas); HFRA § 404 (CE for silvicultural assessments and treatments)), while others address aquatic restoration (e.g., 36 C.F.R. § 220.6(e)(7) (CE for aquatic habitat improvement); *id.* § 220.6(e)(18) (CE for aquatic restoration activities)). As with programmatic analysis and tiering, the Forest Service should ensure it is effectively utilizing these existing authorities before contemplating new CEs.

Finally, we strongly caution the Forest Service against expanding the breadth of existing CEs to enable larger-scale salvage logging. The science is clear that post-fire salvage logging does not advance ecosystem integrity or restoration.<sup>15</sup> Given that a stated purpose of this rulemaking is to advance restoration, it would be inappropriate to expand the acreage for salvage logging projects that can be completed using a CE. Moreover, there is no evidence to suggest that salvage logging at larger scales will not individually or cumulatively have significant impacts on the human environment.

**In sum, the Forest Service should not presume that a category of action documented with an EA is appropriate for a CE simply because the action is one that is regularly undertaken. The Forest Service already has ample authority – via programmatic analysis and tiering, existing CEs, and other streamlining authorities – to conduct efficient environmental analysis for vegetation management and other restoration activities. To rationally support new or expanded CEs for those activities, the Forest Service must document – with data – that the category does not have significant individual or cumulative effects. The Forest Service should not consider expanding the breadth of existing CEs to enable larger scale salvage logging.**

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<sup>15</sup> See, e.g., David L. Peterson, James K. Agee, Gregory H. Aplet, Dennis P. Dykstra, Russell T. Graham, John F. Lehmkuhl, David S. Pilliod, Donald F. Potts, Robert F. Powers, and John D. Stuart, 2009. *Effects of Timber Harvest Following Wildfire in Western North America*. General Technical Report PNW-GTR-776. March 2009; Jonathan R. Thompson, Thomas A. Spies, and Lisa M. Ganio, 2007. *Reburn severity in managed and unmanaged vegetation in a large wildfire*. Proceedings of the National Academy of Sciences. Published online June 11, 2007; D. C. Donato, J. B. Fontaine, 2 J. L. Cambell, W. D. Robinson, J. B. Kauffman, 3 B. E. Law, 2006. *Post-Wildfire Logging Hinders Regeneration and Increases Fire Risk*. In *Science*. Vol 359, Issue 6374. January 2006. Available at: <http://science.sciencemag.org/content/suppl/2006/01/10/1122855.DC1>. Articles attached as Exhibit 3.

## **VI. CEs Related to Permitting for Outfitters and Guides and Recreational Infrastructure.**

The ANPR asks for feedback specifically on:

classes of actions that are unlikely, either individually or cumulatively, to have significant impacts and therefore should be categorically excluded from NEPA's environmental assessment and environmental impact statement requirements, such as . . . special use authorizations; and activities to maintain and manage Agency sites (including recreation sites), facilities, and associated infrastructure.

83 Fed. Reg. at 302. In this section, we provide feedback to this query for CEs specific to outfitter and guide permitting and recreation infrastructure and facilities.

If the agency is contemplating a new CE related to recreation infrastructure maintenance and management or special use authorizations, the agency must carefully identify the ways in which the existing CEs are deficient. If the language of the CEs is adequate but the application of the CEs has been deficient, then the agency should address the application problem. If the agency determines that the existing CEs are deficient, we urge it to consider amending them before creating entirely new CEs. A few surgical amendments to the existing language might address these deficiencies with minimal disruption and less risk of unanticipated consequences. The agency should only explore creating an entirely new CE if the existing CEs cannot be modified to address agency needs, or if the subject matter of the desired CE is entirely new. In short, the key threshold step is to carefully identify the problem the agency is trying to solve, and then provide as narrow a fix as possible. As discussed above, the agency must undertake the requisite analysis to support the creation of appropriate new CEs, consistent with the requirements articulated by the Ninth Circuit in *Sierra Club v. Bosworth*, 510 F.3d 1016.

### **A. Outfitter and guide permitting.**

Outfitting and guiding is an important service that helps visitors get out into nature, learn outdoor skills, and connect with forest resources. People who are cautious about getting outdoors in our national forests, especially for longer trips or those requiring specialized outdoor skills, look to professional outfitters and guides to assist them. In addition, organizations classified as outfitters and guides that serve youth and traditionally underserved populations by taking them into (and teaching them about) National Forest System lands are crucial to ensuring that forests are, and will continue to be, enjoyed and cherished by future generations. Guided visitation can often be less damaging than dispersed visitation (for the same amount of people doing the same activity) because the outfitter is bound by permit conditions that may not apply to the general public.

Outfitters and guides operate under outfitter-guide recreational special use authorizations. These authorizations fall into two categories: priority use and temporary use. Priority use permits are generally for ten years. Temporary use permits are issued on an annual basis and authorize the short-term use (180 days) of National Forest System lands for up to 200 service days. Temporary permits are currently most useful to outfitters and guides proposing one-time uses of Forest Service lands and also to smaller or start-up outfitters and guides seeking to break into the

system and obtain service days. They may also be useful to priority use permitted outfitters and guides that would like to add service days to their operation (for instance, in response to changes in weather, or other factors that affect demand).

Applying and receiving a priority use permit requires a detailed application and usually an environmental assessment. This makes sense given the potential effect on the human environment, length of permit, and scope of operation. However, the Forest Service recognized that the issuance of temporary permits, or the renewal or replacement of existing priority use authorizations, under certain conditions could appropriately be done under CEs, hence expediting permitting and increasing guided access opportunities to national forests and associated benefits. These existing CEs are:

- Section 220.6(d)(8) covers “[a]pproval, modification, or continuation of minor, short-term (1 year or less) special uses of NFS lands. Examples include, but are not limited to . . . (i) Approving, on an annual basis, the intermittent use and occupancy by a State-licensed outfitter or guide.”
- Section 220.6(d)(10) covers “[a]mendment to or replacement of an existing special use authorization that involves only administrative changes and does not involve changes in the authorized facilities or increase in the scope or intensity of authorized activities, or extensions to the term of authorization, when the applicant or holder is in full compliance with the terms and conditions of the special use authorization.”
- Section 220.6(e)(15) covers “[i]ssuance of a new special use authorization for a new term to replace an existing or expired special use authorization when the only changes are administrative, there are not changes to the authorized facilities or increases in the scope or intensity of authorized activities, and the applicant or holder is in full compliance with the terms and conditions of the special use authorization.”

Taken together, these CEs cover short-term permits for minor intermittent uses, permit replacement without modification, and permit renewal without modification. They do not cover issuance of new permits that are for more than one year.

Regarding the second and third CEs, we suspect that in practice the Forest Service’s interpretation of what constitutes an “administrative change” may be inconsistent. For instance, we know of one instance in which an outfitter wanted to shift kayak service days to paddleboard service days but was told he could not do so. **We therefore recommend that the Forest Service explore whether a clarification about what constitutes an administrative change in the context of the second and third CEs is necessary, and provide that clarification if it is.**

If the agency contemplates a new or expanded CE related to outfitter and guide permitting, the Forest Service must, of course, satisfy the requirements for new and expanded CEs described earlier in this letter. Further, any exploration of a new or expanded CE should start with an evaluation of problems related to permit backlogs, and whether operational issues rather than the absence of a CE are primarily to blame. While we recognize that providing guided services to the public, especially traditionally underserved populations and youth, is important, we also are cognizant that shifts in how specific trails and areas are used can at times be controversial and

deserve a public conversation before long-term outfitting is permitted. That said, we offer two major ideas for your consideration.

First, we believe programmatic NEPA and tiering are underutilized in this context of special use administration. We believe **the Forest Service should encourage programmatic forest or district-wide environmental reviews of recreational special uses such as outfitting and guiding in advance, before specific requests are submitted.**<sup>16</sup> These reviews could be used to establish overall activity and service day limitations for a forest, district, or zone, which in turn would put the forest in a better position when special permit applications are submitted. When an application is submitted, the forest would be able to tier – or potentially categorically exclude – its environmental review of the specific proposal to its programmatic analysis. This would simplify the review process for specific proposals, increasing efficiency and lowering the costs of processing special use applications. It would also produce better, more consistent environmental reviews and public engagement.

**Second, if the agency feels that there is a compelling need for a new or expanded CE related to issuing outfitting and guide permits, it must include the following sideboards necessary to ensure that excluded actions individually and cumulatively will not have significant impacts:**

1. A CE should only apply to permit applications for non-motorized use of established recreational infrastructure such as trails, campsites, and roads in areas that are open to the general public for recreational use;
2. A CE should only apply to uses that are the same or substantially similar to an existing permissible use of the covered area;
3. A proposed use must be consistent with applicable plans (e.g., land management plan, programmatic recreation plan, or wilderness management plan);
4. A CE should only be used for proposed uses that do not substantially increase the scope or intensity of overall use in the targeted area, taking into account both general public use and use under existing special use permits; and
5. A CE should only be used to issue permits of limited duration.

In furtherance of marrying these two preceding recommendations, the agency should seriously consider crafting any contemplated CE so that it could only be invoked under the umbrella of a programmatic analysis for special use authorizations. This would have the effect of encouraging programmatic recreation planning, a sorely lacking function currently within the agency.<sup>17</sup>

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<sup>16</sup> For high recreation forests, these reviews could be integrated into the land management plan.

<sup>17</sup> For example, a CE could be made available for certain classes of activity that have been determined in planning or a programmatic analysis to not have impacts greater than ordinary use for a discrete area within the plan or analysis area.

## **B. Recreational infrastructure and facilities.**

With respect to recreation infrastructure and facilities, the agency currently has CEs that appear to be broad enough to cover a wide range of activities. These include:

- Repair and maintenance of roads and trails (36 C.F.R. § 220.6(d)(4)).
- Repair and maintenance of recreation sites and facilities (36 C.F.R. § 220.6(d)(5)).
- Construction and reconstruction of trails (36 C.F.R. § 220.6(e)(1)).

We do not see a need for broader CEs related to maintenance and repair (although note that we do see a need for expedited decommissioning of unneeded roads and trails, as discussed in the next section, which would have the practical effect of freeing up more funds for maintenance and repair of needed infrastructure).

## **VII. The Forest Service Should Consider an Expansion to CE#20 to Facilitate the Restoration of Lands and Waters Disturbed by Unneeded Closed Roads.**

The ANPR asks for feedback specifically on:

classes of actions that are unlikely, either individually or cumulatively, to have significant impacts and therefore should be categorically excluded from NEPA's environmental assessment and environmental impact statement requirements, such as integrated restoration projects; . . . and activities to maintain and manage Agency sites (including recreation sites), facilities, and associated infrastructure.

83 Fed. Reg. at 302. While our organizations are skeptical that new or expanded CEs for vegetation management activities are appropriate given the array of current authorities, including CEs, designed to expedite NEPA processes for those projects, we are interested in seeing the agency explore expanding the scope of the CE at 36 C.F.R. § 220.6(e)(20) to include the restoration of lands occupied by system roads that have been closed to public motorized use. This expansion would advance the pace of restoration and address the Forest Service's exorbitant and ever-growing road maintenance backlog. Restoring the lands and waters disturbed by these roads is one of the most significant and enduring restoration actions the agency can take.

### **A. Background.**

#### **1. Roads in the National Forest System.**

The National Forest System has about 370,700 miles of system roads and at least another 60,000 miles of non-system routes. That is nearly eight times the length of the entire U.S. Interstate Highway System and enough to circle the earth at the equator fifteen times. About 18% of the system roads are passable by a car, while 55% are high clearance, and 27% or closed to motorized travel. USDA Forest Service 2016. Much of the system suffers from inadequate maintenance, as recent appropriations have paid for one-fifth to one-half of the annual required maintenance cost. As of 2016, the national forest road system had a 3.2-billion-dollar

maintenance backlog. *Id.* These roads – both system and non-system – are contributing sediment pollution to forest streams and water bodies, resulting in impacts to fish and other aquatic and riparian systems. In some forests, stream segments are actually listed under the Clean Water Act as impaired because of road-derived sediment pollution. These roads also fragment wildlife habitat, reduce wildlife connectivity, and facilitate the spread of non-native, invasive species.

## **2. Road Policy Framework.**

Current Forest Service direction for the management of the road system is to “maintain an appropriately sized and environmentally sustainable road system that is responsive to ecological, economic, and social concerns.”<sup>18</sup> In doing so, forests must use a science-based analysis to “identify the minimum road system [MRS] needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands,” with the MRS defined as:

the road system determined to be needed [1] to meet resource and other management objectives adopted in the relevant land and resource management plan . . . , [2] to meet applicable statutory and regulatory requirements, [3] to reflect long-term funding expectations, [and 4] to ensure that the identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance.

36 C.F.R. §212.5(b)(1). Forests must also “identify the roads . . . that are no longer needed to meet forest resource management objectives and that, therefore, should be decommissioned or considered for other uses, such as for trails.” *Id.* § 212.5(b)(2). Forest officials should give priority to decommissioning those unneeded roads that pose the greatest risk to public safety or to environmental degradation. *Id.* The aforementioned analysis is referred to as a travel analysis and the resulting report, which has now been completed by a majority of forests, is referred to as a travel analysis report (TAR).

## **3. Adverse environmental effects associated with the Forest Service road system.**

The scientific literature, including numerous Forest Service reports and studies, document the many environmental problems attendant to the Forest Service’s large and under-maintained road system. For a general summary, we recommend that you consult the Forest Service Technical Report by Gucinski *et al.* entitled “Forest Roads: A Synthesis of Scientific Information,” which summarizes and describes the science as of 2001 regarding the effects of roads on the landscape. In a 2010 technical report, the Forest Service summarized some of the problems associated with the road system;

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<sup>18</sup> Memorandum from Joel Holtrop to Regional Foresters *et al.* re Travel Management, Implementation of 36 C.F.R., Part 212, Subpart A (Nov. 10, 2010); Memorandum from Leslie Weldon to Regional Foresters *et al.* re Travel Management, Implementation of 36 C.F.R., Part 212, Subpart A (Mar. 29, 2012); Memorandum from Leslie Weldon to Regional Foresters *et al.* re Travel Management Implementation (Dec. 17, 2013) (Exhibit 4).

Expansive road networks, however, can impair water quality, aquatic habitats, and aquatic species in a number of ways, often to a greater degree than any other activities conducted in forested environments. Roads intercept surface and subsurface flows, adding to the magnitude and flashiness of flood peaks and accelerating recession of flows. Road networks can also lead to greater channel incision, increased sedimentation, reduced water quality, and increased stream habitat fragmentation. Modern road location, design, construction, maintenance, and decommissioning practices can substantially mitigate these impacts, but most forest roads were built using older methods and are not adequately maintained owing to a lack of resources. In addition, many critical drainage components like culverts, are nearing or have exceeded their life expectancy. These deteriorating road conditions threaten our ability to manage forests and pose significant risks to watersheds.

Gucinski *et al.* 2010 (emphasis added). The Forest Service also summarizes these effects in the final rule for CE#20, and provides a list of select research papers and supporting documents for the establishment of CE#20. 78 Fed. Reg. at 56157, Appendix I.<sup>19</sup>

Exhibit 5 surveys the extensive and best-available scientific literature on a wide range of road-related impacts to ecosystem processes and integrity on National Forest lands. These adverse impacts are long-term, occur at multiple scales, and often extend far beyond the actual “footprint” of the road.

For example, erosion, compaction, and other alterations in forest geomorphology and hydrology associated with roads seriously impair water quality and aquatic species viability. Exhibit 5 at 2-4, 6-8. Roads disturb and fragment wildlife habitat, altering species distribution, interfering with critical life functions such as feeding, breeding, and nesting, and resulting in loss of biodiversity. *Id.* at 4-8. Roads also facilitate increased human intrusion into sensitive areas, resulting in poaching of rare plants and animals, human-ignited wildfires, introduction of exotic species, and damage to archaeological resources. *Id.* at 9.

Climate change intensifies the adverse impacts associated with roads. For example, as the warming climate alters species distribution and forces wildlife migration, landscape connectivity becomes even more crucial to species survival and ecosystem resilience. *Id.* at 9-11; *see also* USDA Forest Service 2011 (National Roadmap for Responding to Climate Change recognizes importance of reducing fragmentation and increasing connectivity to facilitate climate change adaptation). Climate change is also expected to lead to more extreme weather events, resulting in increased flood severity, more frequent landslides, altered hydrographs, and changes in erosion and sedimentation rates and delivery processes. *Id.* Many National Forest roads, however, were not designed to any engineering standard, making them particularly vulnerable to these climate alterations. And even those designed for storms and water flows typical of past decades may fail under future weather scenarios, further exacerbating adverse ecological impacts, public safety concerns, and maintenance needs. USDA Forest Service 2010.

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<sup>19</sup> Available at:

[https://www.fs.fed.us/emc/nepa/restorationCE/includes/USFS\\_CE\\_Supporting\\_Statement\\_Appendix%20I.pdf](https://www.fs.fed.us/emc/nepa/restorationCE/includes/USFS_CE_Supporting_Statement_Appendix%20I.pdf).

**B. Actions required to restore lands and waters impacted by unauthorized and closed system roads are similar, and do not shift access.**

Most scientific research and agency publications do not distinguish between the impacts of non-system routes and system routes. This is because the character of, the impacts from, and the restoration strategies applied to unauthorized and authorized roads are substantially similar. See Exhibit 5 for a summary of these impacts.<sup>20</sup> For example, National Forest System roads 219 A and 905 as shown in Figure 1 are system roads closed to public motorized use in the Cibola National Forest. It is indistinguishable in character from the non-system road shown in Figure 2 also located in the Cibola National Forest. In both cases, decommissioning will include activities such as ripping the compacted surface, placing brush across the entrance, and re-establishing natural contour and stable drainage patterns.

In addition, in the case of both unauthorized and closed system roads, motorized access is prohibited, and the act of restoring the lands and waters disturbed by the roads does not alter access. 36 C.F.R. §§ 212.50(a) & 261.13. As the Forest Service rightly noted, “the majority of issues associated with road and trail restoration activities are related to access and travel management policies, rather than from implementing restoration projects.” 78 Fed. Reg. at 56160.

**C. Expanding the scope of CE#20 would increase the pace and scale of restoration on national forests and create efficiencies in environmental analysis.**

The National Forest System contains thousands of miles of system roads that are closed to public motorized use, no longer needed, and should be fully decommissioned to reduce impacts.<sup>21</sup> In recent years, the Forest Service commendably has launched several initiatives designed to “right-size” the road system. These initiatives involve a combination of identifying unneeded and environmentally problematic roads for decommissioning, closing unneeded routes to public motorized use, and identifying roads for decommissioning in project-level decisions. Examples of these initiatives with road decommissioning elements are provided in Exhibit 6.<sup>22</sup> In some

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<sup>20</sup> In fact, during the rulemaking process for CE#20, respondents asked that the Forest Service expand the proposed CE to include closed system roads; in response, the Forest Service notably did not argue that the impacts of unauthorized and system roads fall into different categories and instead simply stated that the agency felt that the requested expansion was “at this time [] unnecessary and would divert public and agency focus from the Agency’s continued implementation of the 2005 Travel Management Rule.” 78 Fed. Reg. at 56159.

<sup>21</sup> In 2017, The Wilderness Society aggregated data offered in forest-level TARs in 68 of the 86 forests in Forest Service Regions 1, 2, 4, 5, 6, and 8 (these were the TARs available online in these regions as of August 2017) and found that the Forest Service across these regions identified about 10% (about 37,000 miles) of its system roads as likely unneeded for future use.

<sup>22</sup> The Forest Service utilizes an array of strategy documents and project level plans to document and design needed projects for restoring lands and waters occupied by closed roads that are unneeded and/or environmentally problematic. These include: Travel Management Plans in which forests establish designated systems for motorized vehicle use; TARs in which forests identify unneeded roads for decommissioning or conversion to trails; Watershed Restoration

forests, there are hundreds of miles of roads waiting for decommissioning or some type of restoration work to prevent further environmental degradation, prevent illegal use, and reduce the financial burden of the current road system. Enabling this work to be done through a CE would speed up the pace of restoration and enable the Forest Service to address the impacts to aquatic and other resources that these roads continue to cause.

In the final rule that established CE#20, the Forest Service stated that “[t]he primary economic effects of the CEs for soil and water restoration activities are changes in costs of conducting environmental analysis and documentation.” 78 Fed. Reg. at 56161. By expanding CE#20 to include closed system roads, the Forest Service would reduce its costs significantly for this work and could direct saved funds to additional on-the-ground restoration projects.

#### **D. Recommended language for a modified CE#20.**

**We recommend the following modifications to CE#20** (additions in bold, italics; deletions in strike-through text):

(20) Activities that restore, rehabilitate, or stabilize lands occupied **by system roads and trails that are closed to public motorized use or by unauthorized** roads and trails, ~~excluding National Forest System Roads and National Forest System Trails,~~ to a more natural condition that may include removing, replacing, or modifying drainage structures and ditches, reestablishing vegetation, reshaping natural contours and slopes, reestablishing drainage-ways, or other activities that would restore site productivity and reduce environmental impacts.

Additionally, we recommend the Forest Service modify example (i) as follows:

Decommissioning a road ~~that is no longer a National Forest System Road~~ to a more natural state by restoring natural contours and removing construction fills, loosening compacted soils, revegetating the roadbed and removing ditches and culverts to reestablish natural drainage patterns;

#### **VIII. The Forest Service Should Eliminate Categorical Exclusions that the Courts Have Invalidated or Called into Question.**

The Forest Service should use the proposed rulemaking to address inconsistencies between its existing CEs and federal court decisions. First, the Forest Service Handbook properly strikes the hazardous fuels reduction activities CE, 36 C.F.R. § 220.6(e)(10), the use of which has been enjoined by a federal court pending compliance with Ninth Circuit direction in *Sierra Club v. Bosworth*, 510 F.3d 1016. *Sierra Club v. Bosworth*, No. 04-2114 (E.D. Cal. Nov. 25, 2008). **The**

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Action Plans, in which forests identify necessary projects for the restoration of a priority watershed including road decommissioning; Access and travel management plans, in which forests identify roadwork projects, including decommissioning, necessary to move towards an appropriately sized transportation system; and integrated restoration plans, in which forests identify integrated restoration projects necessary for the integrated restoration of an identified planning area.

**hazardous fuels reduction activities CE still appears in the Forest Service regulations at 36 C.F.R. § 220.6(e)(10) and should be removed.**

**Second, the two CEs related to land management planning, 36 C.F.R. §§ 220.6(d)(2)(vi) & (e)(16), should be removed.** First, the CE for establishing planning procedures is inconsistent with a federal court decision overturning the use of a categorical exclusion for the Bush Administration’s revision of the Forest Service planning regulations. *See Citizens for Better Forestry v. U.S. Dep’t of Agric.*, 481 F. Supp. 2d 1059, 1085-1090 (N.D. Cal. 2007). The Forest Service’s 2012 planning rule was subject to intensive NEPA analysis through an EIS. Given the significant procedural and substantive requirements that the National Forest Management Act requires the planning regulations to address to guide the development, revision, and amendment of land management plans for all national forest system units, any significant amendment or revision to the planning regulations is inappropriate for a CE. Thus, **the CE for establishing procedures for amending or revising forest land and resource management plans, 36 C.F.R. § 220.6(d)(2)(vi), should be repealed.**

**The CE for land management plans, plan amendments, and plan revisions, *id.* § 220.6(e)(16), should also be repealed – or, at a minimum, significantly narrowed to encompass only minor amendments – because it is inconsistent with the 2012 planning rule,** which requires preparation of an EIS for new plans and plan revisions, *id.* § 219.5(a)(2)(i), and preparation of an EIS, EA, or CE for plan amendments, depending on the scope, scale, and likely effects of the amendment, *id.* § 219.5(a)(2)(ii). More generally, both existing CEs are inconsistent with utilizing programmatic, plan-level analysis to enhance project-level NEPA compliance and efficiency.

#### **IX. The Forest Service Should Not Relax The Extraordinary Circumstances Definition.**

While it is not explicitly referenced in the ANPR, we are aware that the Forest Service is interested in revising its extraordinary circumstances guidance as part of this rulemaking effort. Currently, the agency must consider seven different types of resource conditions “in determining whether extraordinary circumstances related to a proposed action warrant further analysis and documentation in an EA or an EIS.” 36 C.F.R. § 220.6(b)(1). The regulation explains:

The mere presence of one or more of these resource conditions does not preclude use of a [CE]. It is the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions, and if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist.

36 C.F.R. § 220.6(b)(2). This direction is a relaxation of prior direction, which precluded the use of a CE if any “resource condition” was present at all in the action area.

Currently, the agency must only evaluate the degree of potential effect of its proposed actions on the enumerated resource conditions, which allows for those actions to move forward, provided there are no direct, indirect, or cumulative effects that warrant the preparation of an EA or EIS.

We suspect the current language may present some challenges in employing a CE for a management action, given the myriad of “resource conditions” that are ever-present on national forests and grasslands. Indeed, National Forest System lands are brimming with valuable, important, and sometimes rare resources. The existing extraordinary circumstances direction helps to ensure that these resources will be protected during land management activities, and we do not support a regulatory change that would make it easier to disregard the diverse and often fragile nature of our national forests and grasslands. The Forest Service should not consider any regulatory changes that would further relax the extraordinary circumstances regulation. If the agency does contemplate any changes, it must provide a rationale for why the existing regulation is problematic – and ensure that any proposed changes are adequate to identify when application of a CE may be inappropriate.

Indeed, if the Forest Service intends to propose new or expanded CEs, then it will likely be required to enumerate even more extraordinary circumstances. Each CE contains its own limits on the intensity of the action, but context is limited by the extraordinary circumstances list. The greater the intensity of actions covered by CEs, the more important it will be to differentiate between contexts in which those CEs may have significant impacts. Otherwise, the first CE project proposed in the wrong context will make the entire CE vulnerable to challenge.

We look forward to providing additional comment on this topic, should the Forest Service move forward with amending this aspect of its NEPA regulations.

#### **X. Forest Service NEPA Procedures Must Ensure Proper Consideration of the Character and Future Status of Roadless and Wilderness-Eligible Lands.**

The Forest Service’s NEPA regulations currently provide important and necessary procedural protections for roadless and wilderness-eligible lands. First, the regulations list “inventoried roadless areas” (IRAs) and “potential wilderness areas” (PWAs) as resource conditions that should be considered in determining whether extraordinary circumstances related to a proposed action warrant further analysis and documentation in an EA or an EIS. 36 C.F.R. § 220.6(b)(1)(iv). Second, the regulations include “proposals that would substantially alter the undeveloped character of an [IRA] or a [PWA]” within the “classes of actions normally requiring [EISs].” *Id.* § 220.5(a)(2).

IRAs are an administrative designation that applies to the roadless lands protected under the Roadless Area Conservation Rule, 36 C.F.R. part 294. Colorado and Idaho have developed their own rules to protect inventoried roadless lands within their states. 77 Fed. Reg. 39576 (July 3, 2012) (Colorado Roadless Rule); 73 Fed. Reg. 61456 (Oct. 16, 2008) (Idaho Roadless Rule). Those designated areas are now properly referred to as Colorado Roadless Areas and Idaho Roadless Areas, respectively. Collectively, IRAs, Colorado Roadless Areas, and Idaho Roadless Areas provide significant ecological and social functions:

[IRAs] provide large, relatively undisturbed blocks of habitat for a variety of terrestrial and aquatic wildlife and plants, including hundreds of threatened, endangered, and sensitive species[,] . . . function as biological strongholds and

refuges for a number of species, and . . . play a key role in maintaining native plant and animal communities and biological diversity.

Roadless Area Conservation Rule, Final Environmental Impact Statement, Summary, p. 17.<sup>23</sup> To properly reflect the current status of administratively designated and protected roadless areas, references to IRAs in the agency's NEPA regulations and procedures should be amended to encompass Colorado Roadless Areas and Idaho Roadless Areas as well.

Potential wilderness area is a term defined in the 2007 version of the Forest Service's land management planning handbook, FSH 1909.12, ch. 70, addressing the wilderness evaluation process. In short, PWAs were the term utilized in the 2007 handbook to describe lands inventoried by the Forest Service and identified to have wilderness characteristics, making them suitable for potential future inclusion in the National Wilderness Preservation System. The 2015 version of the handbook, which corresponds with the 2012 planning rule, no longer uses the term PWA. The product of the Forest Service inventory and evaluation – often referred to as the “Chapter 70” process – is now referred to as “areas that may be suitable for inclusion in the National Wilderness Preservation System.” While areas inventoried under the 2012 planning rule are not referred to as PWAs, they are comparable to PWAs in terms of their social and environmental qualities. Similarly, areas referred to as “newly inventoried roadless areas” like those in the White Mountain National Forest were also delineated for the same undeveloped characteristics. Regardless of label, these areas encompass lands with wilderness characteristics that would be suitable for designation as wilderness by Congress.

Like IRAs, areas identified through the Chapter 70 process provide myriad social and ecological benefits, including habitat for at-risk species, provision of clean air and water, relatively undisturbed and intact ecosystems, climate refugia, and outstanding opportunities for backcountry recreation. However, because IRAs are based on inventories conducted often decades ago, the mandatory inventory to identify undeveloped, wilderness-quality lands as part of land management planning provides important contemporary information and often encompasses lands not included in earlier inventories (due to, for example, changes on the ground or acquisition of private inholdings).

We understand that the Forest Service is interested in removing the PWA language from its NEPA regulations. While we support making clarifications to the regulatory language to reflect relevant terminology, it would be inappropriate for the Forest Service to simply remove the procedural protections for PWAs without replacement language to ensure that those and other comparable wilderness-quality lands receive adequate NEPA analysis for proposed management actions that could impact their wilderness characteristics and related social and ecological values. It is not the label, but the areas' (1) generally undeveloped character and (2) eligibility for future designation or other protected status that matters. Simply declaring that development of such areas is no longer significant would be arbitrary, absent a showing that the characteristics that qualified areas for PWA status are somehow no longer worthy of additional consideration – something we do not believe the Forest Service can demonstrate. Indeed, federal courts have

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<sup>23</sup> Available at

<http://www.fs.usda.gov/roaddocument/roadless/2001roadlessrule/finalruledocuments>.

repeatedly held that roadless and wilderness-quality lands warrant higher NEPA scrutiny due to their unique attributes. *E.g.*, *Lands Council v. Martin*, 529 F.3d 1219, 1230-1232 (9th Cir. 2008) (citing earlier cases and explaining that roadless area “attributes, such as water resources, soils, wildlife habitat, and recreation opportunities, possess independent environmental significance” and that such areas are also “significant because of their potential for designation as wilderness areas under the Wilderness Act of 1964”). The “stock” of inventoried lands that may one day be added to the National Wilderness Preservation System is finite, and the importance of those lands will only continue to grow as population pressures increase, as Congress has explicitly recognized. *E.g.*, Eastern Wilderness Areas Act, Public Law No. 93-622 (1975).

It is important that the Forest Service recognize that “PWA” is not a vestigial term. Numerous forests that conducted planning under the 2007 version of Chapter 70 have PWAs – and will continue to have them until their next plan revision. In fact, as the agency recently recognized in connection with the plan revision for the George Washington & Jefferson National Forests, the characteristics that make PWAs special “remain relevant to project-level planning,” because even plans that *allow* development of PWAs do not *commit* to developing them, and appropriate analysis (including consideration of alternatives) is needed to avoid and mitigate the impacts of development. *See* USDA Forest Service, George Washington & Jefferson National Forests, Resolution of Appeal Agreement (July 22, 2015) (Exhibit 7). Proposed projects in these areas should continue to receive heightened NEPA process and scrutiny: their largely undisturbed and sensitive character (the context for the proposed action) means that projects are more likely to have significant impacts. The same is true for newly inventoried areas – “lands that may be suitable for inclusion in the National Wilderness Preservation System” – identified under the 2015 version of Chapter 70. Both the 2007 and 2015 processes were designed to capture similar environmental qualities. Thus, impacts to the areas – regardless of what they are called – will be similar in terms of context, with project-level impacts affecting those qualities likely to be significant.

In short, regardless of the label used, activities that would substantially alter the character of wilderness-eligible lands should continue to be categorized as a class of actions normally requiring an EIS and as inappropriate for use of a CE. Without that safety valve to account for significant impacts to wilderness-eligible and roadless lands, application of existing CEs or development of new CEs for vegetation management or other activities will be vulnerable to legal challenge. Notably, providing more robust forest plan direction – and corresponding programmatic NEPA analysis – for these wilderness-suitable lands can greatly streamline project-level NEPA analysis. For instance, forest plan allocation of lands included in the wilderness inventory to an appropriate management area with corresponding plan components designed to safeguard their wilderness characteristics is an efficient way to ensure that future project activities will not require additional EIS-level analysis. In other words, if the management allocation precludes activities that would substantially impact the particular area – taking into account its unique characteristics and values – then future projects consistent with the forest plan will not require further EIS-level analysis. If, on the other hand, the plan contemplates activities that might substantially impact the particular area, then further EIS-level analysis may be needed if and when such projects are proposed.

We anticipate that the Forest Service may take the position that regulatory protections for PWAs or their equivalent can be eliminated because current Forest Service policy is explicit that inclusion in the wilderness inventory and evaluation “is not a designation that conveys or requires a particular kind of management.” FSH 1909.12, ch. 70, § 71. This rationale confuses requirements under the 2012 planning rule (i.e., do wilderness inventory areas require special treatment during planning?) with requirements under NEPA (i.e., what are the agency’s analysis and procedural obligations with respect to proposed projects that may degrade wilderness characteristics?). Sections 220.5(a)(2) and 220.6(b)(1)(iv) are relevant only to the latter; they do not require a particular kind of management for any areas, whether classified as IRAs, PWAs, or a part of any other inventory of wilderness-quality lands. Instead, the current regulations help direct what type of analysis should precede project-level decision-making in those areas, and, as described above, provide necessary safeguards for PWAs. Consistent with the change in Forest Service terminology, those procedural protections should be expanded to encompass all lands that the Forest Service has inventoried and identified as potentially eligible for future inclusion in the National Wilderness Preservation System.

**The Forest Service should amend the phrase “inventoried roadless area or potential wilderness area” in sections 220.5(a)(2) and 220.6(b)(1)(iv) as follows: “inventoried roadless areas, Colorado Roadless Areas, Idaho Roadless Areas, or areas that the Forest Service has identified as potentially eligible for future inclusion in the National Wilderness Preservation System.” The agency should otherwise retain those provisions as written to ensure adequate procedural protections of important roadless and wilderness-quality lands.**

## **XI. Consultation and Collaboration.**

Consultation with expert federal agencies and stakeholder collaboration are two required elements of Forest Service environmental analysis and decision-making. With respect to consultation requirements under federal laws such as the Endangered Species Act and National Historic Preservation Act, we believe there are structural challenges, including inadequate staffing and funding, that can lead to delayed or inefficient decision-making. Because the expert consulting agencies such as the U.S. Fish and Wildlife Service, NOAA-Fisheries/National Marine Fisheries Service, and state and federal Historic Preservation Offices are also underfunded and understaffed, the consultation process can often take longer than the prescribed timeline, which further delays project implementation. These are not “NEPA problems” and cannot be addressed by changes to the Forest Service’s NEPA regulations.<sup>24</sup>

The Forest Service increasingly enhances its capacity to implement land management through collaboration with stakeholders. Indeed, the agency’s 2012 planning rule emphasizes the role that collaboration and public engagement play in national forest and grassland management. However, often collaboration – particularly initially – takes substantial investments of time and energy (and sometimes funding) before it can “bear fruit” and result in an increase in the pace,

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<sup>24</sup> Some of our organizations have worked with the Forest Service and consulting agencies to secure additional funding to support up-front consulting agency participation in the planning process, and remain willing to work with the agencies in the future to meet this need.

scale, and quality of restoration or other management activities. Committing to this initial investment can result in more efficient project planning and implementation. In other words, to improve and expedite project planning and implementation, effective collaboration necessarily requires stakeholders to “go slow to go fast.”

Although many of our organizations participate in collaborative efforts on our national forests and grasslands, we all note that stakeholder collaboration is *never* a substitute for full NEPA compliance. Importantly, not all interested members of the public are able to participate in collaborative efforts, and they are entitled to provide input that is meaningfully considered on those projects. Disclosure and analysis of environmental consequences, consideration of a robust range of alternatives, and public comment on agency actions is essential not only for NEPA compliance, but also for fostering an informed public and open democracy. Collaboration is one way to engage stakeholders in democratic decision-making, but it is by no means the only way.

## **XII. Public Engagement and Collaboration.**

As stated above, public engagement is essential to informed decision-making, and collaboration can be an excellent tool to increase stakeholder understanding and involvement in project development and implementation. Our organizations that participate in collaborative efforts strongly believe that when collaboration is effective, it is effective because our federal partners in the Forest Service involve collaborative groups *early* in the planning process, well before the NEPA process commences. *See* App’x 1 at § 2.b. Whether forest plan revision or project planning, relationships among stakeholders – including the Forest Service – must be built, rebuilt, or repaired before the tough work of discussing desired outcomes, management approaches, and the integration of science can begin. When federal and nonfederal partners take the time to understand each other, it is far more likely that they will be able to jointly develop, implement, and monitor on-the-ground projects, which is what stakeholders ultimately want.

Collaboration in the form of stakeholder groups is not the only way to engage the public early on in a decision-making process. Other effective tools include webinars, social media, and monitoring workshops. Outreach to youth and underserved populations is particularly important; as our country’s demographics continue to shift, the Forest Service needs to be proactive in engaging the next generation of public lands stewards.<sup>25</sup> Collaboration and meaningful public engagement is useful not only to inform project design, but also to help identify best available scientific information, assess baseline conditions and potential environmental justice impacts of proposed actions, synthesize and incorporate public feedback, and explore potential partnerships to assist with monitoring and other implementation efforts.

Consequently, **we urge the Forest Service to robustly engage the public not only in this rulemaking effort, but also in its land management decision-making processes, especially large-scale endeavors, and implementation actions.** This engagement will take time, money,

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<sup>25</sup> The Federal Advisory Committee for implementation of the Forest Service’s 2012 planning rule recently issued useful recommendations on public engagement and youth outreach. We encourage the Forest Service to review and incorporate these and other FACA recommendations relevant to environmental analysis and decision-making in the context of this proposed rule-making.

and effort on the part of the Forest Service, but we believe the investment will ultimately result in more streamlined and effective environmental analysis, decision-making, project implementation, and adaptive management. Our organizations are willing and able to assist the agency with developing and implementing robust public engagement, and collaboration, processes associated with land management planning and project implementation.

**Due to the importance of public engagement and transparency, the Forest Service should not consider any changes to its NEPA regulations or procedures that would reduce or eliminate public comment periods.** Reducing or eliminating public comment periods would not meaningfully streamline the time for project or permit approvals. Minimal comment periods of at least 90 days for a draft EIS and at least 30 days for other NEPA evaluations constitute only a small portion of the overall time required to reach a Record of Decision (on average 1,373 days in 2016) or Decision Notice (on average 730 days in 2016). In addition, reducing those comment periods would likely slow the NEPA process on the back-end with increased objections, appeals, and legal challenges.

Reducing public comment periods would frustrate the public's ability to fully understand the impacts of a proposal, and impair the ability of the public to provide meaningful comment to agency decision-makers. Members of the public that care about public lands may not realize the full extent of the impacts of a proposal until the agency discloses them in a draft EA or EIS. Moreover, evaluating those impacts once they are disclosed requires a comment period of adequate length to allow the public to understand and respond to the technical analyses set out in the draft document and often highly technical appendices. This often requires obtaining the assistance of experts in diverse and highly technical fields, compiling data and sources cited by the agency, preparing or reviewing GIS information, and coordinating with other interested members of the public, groups, and volunteers. In some cases, it may require obtaining additional documents from the agency through Freedom of Information Act requests.

Thus, any attempt to reduce comment periods would curtail the ability of the public to engage in the activities that are necessary to provide meaningful comments in response to the agency's draft analysis of alternatives and impacts. Further, where lengthy timelines for project approvals are the result of understaffing and underfunding, as the ANPR indicates, reducing public comment periods would clearly be an inappropriate and ineffective route for trimming project timelines.

Finally, in keeping with the theme that early public and collaborative input and communication is the most important ingredient of efficient decision-making, we suggest that the Forest Service consider adding a requirement or an incentive for agency staff to offer an additional public participation checkpoint after scoping comments are received and translated into "issues" for analysis. Such a checkpoint could take the form of a meeting or sharing written materials, but either way it would allow agency staff to ask stakeholders, did we understand you? This will help to avoid the surprise often experienced when stakeholders read an EA's or EIS's response to comments and do not feel their input was fairly characterized. Such a check-in has been a hallmark of good collaboration on many projects we have participated in. The Cherokee National Forest, for example, has made this a standard part of collaborative project development, and we applaud this extra effort, which is more than worth the time.

### **XIII. Adequate Agency Training.**

As discussed above and acknowledged by the Forest Service, agency personnel who deal with NEPA compliance are given inadequate tools for their job: the agency has lacked systematic NEPA training since the 1990s. What training does exist is haphazard at best and inaccurate at worst, as many agency personnel resort to querying colleagues about NEPA compliance and often receive erroneous “advice” as a result. Consequently, it is not surprising that the Forest Service struggles with consistent and accurate application of the law.

Therefore, **we support your decisions to reallocate Washington Office staff to forests to assist with NEPA compliance and to implement rigorous and regular NEPA training for relevant staff.** Many of our organizations employ or retain NEPA practitioners with decades of experience in NEPA compliance, and many are regular NEPA litigants. As a result, we have a unique perspective on how, when, and why the Forest Service goes astray in NEPA compliance, and we would welcome the opportunity for a technical discussion regarding how the agency can do better.

### **XIV. Conclusion.**

Our organizations thank the Forest Service for the opportunity to provide comments on the ANPR. While we believe that the agency’s environmental analysis and decision-making process could be more efficient, we do not believe that the agency has provided the factual and legal basis for amending its NEPA regulations at this time. Instead, we believe that Forest Service resources may be better spent addressing operational issues associated with funding, staffing, training, and budgeting, which are external to the NEPA regulatory framework. We welcome the opportunity to explore these issues further with the Forest Service.

## Attachments

### Appendix I: Examples of NEPA Outcomes

- Exhibit 1: Miner et al., *Twenty Years of Forest Service Land Management Litigation*, 112 J. FOR. 32 (2014); GOVERNMENT ACCOUNTABILITY OFFICE, *Forest Service: Information on Appeals, Objections, and Litigation Involving Fuel Reduction Activities, Fiscal Years 2006 through 2008* (2010)
- Exhibit 2: Forest Service Briefing Paper on the Status of Implementing 2014 Farm Bill Insect and Disease NEPA Tools (Mar. 2017)
- Exhibit 3: David L. Peterson, James K. Agee, Gregory H. Aplet, Dennis P. Dykstra, Russell T. Graham, John F. Lehmkuhl, David S. Pilliod, Donald F. Potts, Robert F. Powers, and John D. Stuart, 2009. *Effects of Timber Harvest Following Wildfire in Western North America*. General Technical Report PNW-GTR-776. March 2009; Jonathan R. Thompson, Thomas A. Spies, and Lisa M. Ganio, 2007. *Reburn severity in managed and unmanaged vegetation in a large wildfire*. Proceedings of the National Academy of Sciences. Published online June 11, 2007; D. C. Donato, J. B. Fontaine, 2 J. L. Cambell, W. D. Robinson, J. B. Kauffman, 3 B. E. Law, 2006. *Post-Wildfire Logging Hinders Regeneration and Increases Fire Risk*. In Science. Vol 359, Issue 6374. January 2006. Available at: <http://science.sciencemag.org/content/suppl/2006/01/10/1122855.DC1>.
- Exhibit 4: Memorandum from Joel Holtrop to Regional Foresters *et al.* re Travel Management, Implementation of 36 C.F.R., Part 212, Subpart A (Nov. 10, 2010); Memorandum from Leslie Weldon to Regional Foresters *et al.* re Travel Management, Implementation of 36 C.F.R., Part 212, Subpart A (Mar. 29, 2012); Memorandum from Leslie Weldon to Regional Foresters *et al.* re Travel Management Implementation (Dec. 17, 2013).
- Exhibit 5: The Wilderness Society. 2014. *Transportation Infrastructure and Access on National Forests and Grasslands: A Literature Review*.
- Exhibit 6: Examples of Forest Service initiatives that identify, recommend or decide road decommissioning.
- Exhibit 7: USDA Forest Service, George Washington & Jefferson National Forests, Resolution of Appeal Agreement (July 22, 2015).
- Figure 1: Photographs showing closed system roads on the Cibola National Forest. Photographs taken 2012.
- Figure 2: Photographs showing unauthorized road on the Cibola National Forest. Photographs taken 2012.

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## Appendix 1 – Examples of NEPA Outcomes

With an emphasis on “smart from the start” federal decision making, the National Environmental Policy Act (NEPA) has improved countless federal projects and helped save tens of millions of dollars in taxpayer money by giving ordinary citizens a voice in government decision-making.

NEPA success stories are as numerous as they are varied, from the construction of the 3.5-mile Hoover Dam Bypass and the redevelopment of the country’s largest Brownfield site in Atlanta to the continued preservation of Giant Sequoia National Monument and El Yunque National Forest.

*The following examples illustrate the critical importance that NEPA and its implementing procedures play in providing a strong foundation for informed, science-based decision-making:*

### Alabama

#### *The Choctaw Point Complex Mobile Container Terminal*

In early 2000, Alabama sought to revive its Choctaw point shipping port terminal. Business at the port had changed since its dedication in 1928 such that it was no longer adequate for modern shipping needs. In 2001, the Army Corps of Engineers submitted a project proposal to upgrade the port with a modern, world-class container handling facility that would meet current needs. During the NEPA process, the Corps discovered that it needed to modify the original berthing configuration to avoid posing navigational safety issues to ships. Further, the review helped the Corps improve overall operational efficiency in the intermodal rail yard, intermodal container yard, and traffic control areas, reduce the port's environmental effects, including its impact on wetlands, and increase mitigation efforts. Today the terminal forms an important part of the Port of Mobile, Alabama, which provides over 120,000 jobs.<sup>1</sup>

### Arizona

#### *Hoover Dam Bypass*

The Federal Highway Administration (FHWA) developed the 3.5-mile Hoover Dam Bypass project, which would stretch from Clark County, Nevada, across the Colorado River to Mojave County, Arizona, to address increased congestion at the Hoover Dam crossing. However, the environmental impact statement for the project failed to explore an adequate variety of options. Project manager Dave Zanetell admitted as much, stating that the FHWA had "grossly underestimated some of the alternatives and too quickly dismissed them." To ensure full NEPA compliance, Zanetell's team more thoroughly researched an alternative proposed by environmental groups and added some important features to the project in response to public comments. In its final form, the bypass, which opened in October 2012, runs closer to developed areas instead of cutting through pristine corridors; it also includes accommodations such as sidewalks, pedestrian facilities, and parking to enable pedestrian access. "Oftentimes the public is a huge influence on

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<sup>1</sup> "Record of Decision: Choctaw Point Terminal." *Alabama State Port Authority*. February 18, 2005. Available at: [http://www.asdd.com/aspa\\_feis/ChoctawPointTerminal\\_RecordofDecision.pdf](http://www.asdd.com/aspa_feis/ChoctawPointTerminal_RecordofDecision.pdf)

## Appendix 1 – Examples of NEPA Outcomes

the project. NEPA is certainly the foundation for public participation," said Zanetell. "We don't look at it as a burden; it is something we relish," he added.<sup>2</sup>

### Arkansas

#### *Shady Lake Recreation Area*

In 2011, the Forest Service proposed to construct a new entrance road to the Shady Lake Recreation Area in Arkansas' Ouachita National Forest to improve visitors' experiences, provide safe vehicular access to the Shady Lake Recreation Area, and minimize conflicts with residents living nearby. While the Environmental Assessment proposed to wait to open the new entrance to visitors until the project was complete, thanks to NEPA, the Federal Highway Administration and Forest Service put their heads together to reach a better solution. They decided to open the new entrance road to public traffic upon completion of the project's first phase, ensuring that visitors could access the area and that nearby residents would benefit from diminished traffic as soon as possible.<sup>3</sup>

#### *Arkansas' Cache River National Wildlife Refuge and the Endangered Ivory-billed Woodpecker*

In 1971, shortly after the passage of National Environmental Policy Act (NEPA), the Army Corps of Engineers proposed draining and channelizing Arkansas' Cache River flood basin. The dredging would have had adverse effects on the vast tracts of wetland that support several species of wildlife, including the endangered Ivory-billed woodpecker (then thought to be extinct). Public outcry was tremendous. Tens of thousands of comments from concerned citizens were submitted during the environmental review process, but the Corps of Engineers continued to push forward with the project. Environmentalists challenged the adequacy of the Corps' environmental analysis in court, pointing out that the Corps had failed to evaluate any alternatives that would have mitigated damage to wetland habitats in its massive channeling program. The court ordered all work halted on the project until the Corps of Engineers considered a series of viable project alternatives. The court order, combined with sustained public pressure, forced the Corps of Engineers to abandon the project. Arkansas' Cache River National Wildlife Refuge (NWR) was subsequently established in 1986 to protect significant wetland habitats and provide feeding and resting areas for migrating waterfowl. Encompassing some 72,000 acres, the refuge straddles in Jackson, Woodruff, Monroe, and Prairie counties in east-central Arkansas. Today, the Cache River National Wildlife Refuge remains one of the few remaining areas in the Lower Mississippi River Valley not drastically altered by channelization and drainage projects carried out by the US Army Corps of Engineers throughout the first half of the 20<sup>th</sup> century. In 2006, the endangered Ivory-billed woodpecker – thought to be extinct – was spotted in the Cache National Wildlife Refuge for the first time in over 60 years. The large, showy bird disappeared in the 1950s following sustained logging of bottomland forests in the southeast.<sup>4</sup>

### California

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<sup>2</sup> "Record of Decision: US 93 Hoover Dam Bypass Project." *U.S. Federal Highway Administration*. March 2001. Available at: <https://nepis.epa.gov/Exec/ZyPDF.cgi/2000U92D.PDF?Dockey=2000U92D.PDF>

<sup>3</sup> "Finding of No Significant Impact on the Environmental Assessment for the Construction of a New Entrance Road to the Shady Lake Recreation Area." *U.S. Federal Highway Administration*. October 3, 2011. Available at: <https://flh.fhwa.dot.gov/projects/ar/shady-lake/documents/fonsi.pdf>

<sup>4</sup> "Ivory-Billed Woodpecker Rediscovered in Arkansas." *National Public Radio*. April 28, 2005. Available at: <https://www.npr.org/2005/04/28/4622633/ivory-billed-woodpecker-rediscovered-in-arkansas>

## Appendix 1 – Examples of NEPA Outcomes

### *Bolinas Lagoon*

The NEPA review process exposed the devastating impacts of the Army Corps of Engineers' plan to dredge the Bolinas Lagoon, one of the most pristine tidal lagoons in California. A 1996 management plan found that the lagoon, which is an important habitat for fish, waterbirds, and marine mammals, had lost about 25% of its tidal habitat from 1968 to 1988 due to excessive sedimentation, and was projected to continue these losses. The U.S. Army Corps of Engineers, in turn, proposed dredging 1.4 million cubic yards of sediments from the lagoon at a cost of over \$100 million. Local stakeholders, deeply concerned about the environmental impacts of such a project, commissioned a review of the assumptions and conclusions in the Draft EIS. The resultant study found that sedimentation in the lagoon was a much more dynamic process than had been accounted for in the EIS, and was driven by long-term sediment delivery (which makes the lagoon shallower) and earthquakes (which deepen it). The study also found that since the lagoon's depth is ultimately controlled by these dynamic processes, dredging would have only a small and short-term effect. On the basis of this work, the stakeholder group developed a "locally preferred alternative" that emphasized habitat restoration and getting excessive levels of sediment inputs under control. As a result, this misguided plan was abandoned in 2006, saving taxpayers \$133 million. The non-federal sponsor then worked with scientists, local stakeholders, environmental groups, and state and federal agency representatives to develop a series of community-supported recommendations for the restoration and management of Bolinas Lagoon that were finalized in 2008.<sup>5</sup>

### *Crenshaw/LAX Transit Corridor*

When construction wraps up on Los Angeles' Crenshaw/LAX Line in 2019, the highly anticipated light rail route will connect a key corridor of the city from Jefferson Park to El Segundo and add a long-sought rail connection from downtown to one of the busiest airports in the world. Getting the project off the ground, however, was no small feat. Without the approval of "Measure R," a half-cent sales tax approved by Los Angeles County voters in 2009 that provided a dedicated funding for twelve metro area transit projects, the city simply wouldn't have had the money to proceed. Early project planning and work on the Environmental Impact Statement (EIS) to construct the 8.5-mile line connecting two existing subway lines began in 2009. During this review process, the Federal Transit Administration (FTA) and Los Angeles Metro officials jointly identified a rarely-used five-mile long freight rail line instead of building new tracks that would have disrupted several neighborhoods and proven far more costly. That decision decreased project costs, saved time, and reduced disturbances for the nearby community by using an existing right-of-way while providing significant environmental benefits, economic development, and employment opportunities throughout Los Angeles County. One of the visionary elements of National Environmental Policy Act (NEPA) EPA is its creation of broad opportunities for public participation in government decisions that affect their environment and local communities. Throughout the environmental review and planning process, local residents were continuously engaged in dialogue to ensure the project would be completed in an equitable, beneficial, and resourceful way that met the needs of local communities. The Crenshaw/LAX Community

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<sup>5</sup> "Draft Environmental Impact Statement: Bolinas Lagoon Ecosystem Restoration Project Feasibility Study." U.S. Army Corps of Engineers. June 2002. Available at: <https://www.marincountyparks.org/~media/files/departments/pk/projects/open-space/bolinas-lagoon/draft-bolinas-lagoon-ecosystem-restoration-feasibility-study-and-draft-cir-cis.pdf>

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Leadership Council (CLC) was established thereafter to provide feedback and carries out its work through topic-specific working groups, quarterly community meetings, bi-monthly construction meetings and special project collaborations with Metro staff and other community groups. Residents of Leimert Park Village, for example won the battle for their own station and for the train to run underground and out of site for its first three stops. One of the Federal Transit Administration's first projects piloting a new process that helped identify and mitigate project risks more efficiently, the project's Environmental Impact Statement (EIS) was finalized less than two years later in 2011 and the Crenshaw/LAX light-rail alternative moved forward. The Crenshaw/LAX transit corridor provides two key lessons. First, when projects are assigned dedicated sources of funding (e.g., Los Angeles' Measure M) the NEPA review process is normally swift and rarely a major barrier to project completion. Project delays are more often than not the result of a combination of inadequate funding and local opposition. The NEPA review process and Environmental Impact Statement (EIS) were completed in less than two years. Second, without the NEPA review process, residents tens of thousands of residents from Inglewood to El Segundo would have been able to weigh in and provide feedback on the Crenshaw/LAX corridor project that stood to affect their livelihood and quality of life. Similarly, without the NEPA review process, federal decision-makers might not have been able to identify that a rarely-used freight railroad could be utilized at a lower cost and with less disruption to local communities. Scheduled for completion in 2019, the Crenshaw/LAX line will run from the Jefferson Park neighborhood in the north to Inglewood and El Segundo in the south with an estimated daily ridership of 16,000.<sup>6</sup>

### *Sequoia National Forest*

One of the earliest examples of NEPA's importance and profound effect on conservation efforts came in the 1970s after Walt Disney Company proposed construction of a ski resort in Sequoia National Forest. With some 38 distinct groves, Sequoia National Forest is home to the greatest concentration of giant sequoia found anywhere in the world. Here, trees often exceed 250 feet in height and 2,000 years in age. In February 1965, however, the Forest Service issued a prospectus inviting proposals for a ski resort in the valley, then part of Sequoia National Forest. Walt Disney Company answered the call, its plans envisioning a five-story hotel complete with 1,030 rooms, a movie theater, general store, pools, ice rinks, tennis courts, and a golf course on the floor of Sequoia National Forest's Mineral King Valley. Twenty-two lifts and gondolas would scale the eight glacial cirques above the village, leading to ski runs four miles long with drops of 3,700 feet. Construction of the ski resort would clearly interfere with the preservation of the nearby Sequoia National Park, surrounding forest area, and local wildlife. Adding insult to injury was the fact that that Congress had already designated Mineral King a National Game Refuge in 1926, and Sequoia National Park bordered the area on three sides. On June 5, 1969, Sierra Club sued Sequoia National Park, Sequoia National Forest, and Secretaries of the Interior and Agriculture in federal court, arguing that the project improperly handed control of too much national forest land to Disney and that the highway through the national park was illegal. A trial judge issued a preliminary injunction, halting work until the case reached the Supreme Court. The high court struck the Sierra Club a blow on April 19, 1972, when it ruled against the organization on procedural grounds in *Sierra Club v. Morton*. In a 4-3 decision, the court held that the organization—founded by John Muir in 1892—lacked standing to sue because it had not shown how the proposed ski resort would

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<sup>6</sup> "Record of Decision: Crenshaw/LAX Transit Corridor." *Federal Transit Association (FTA)*. December 30, 2011. Available at:

[http://media.metro.net/projects\\_studies/crenshaw/images/20111230\\_CrenshawLAX\\_Record\\_of\\_Decision.pdf](http://media.metro.net/projects_studies/crenshaw/images/20111230_CrenshawLAX_Record_of_Decision.pdf)

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injure any individuals, as opposed to the collective interests of the club's membership. While Sierra Club took time to amend its complaint and show it had standing to sue, an important piece of legislation passed: the National Environmental Policy Act (NEPA). Signed into law by President Nixon on January 1, 1970, NEPA requires federal government and project sponsors to engage in a review process designed to identify potentially adverse effects on the environment and our public health *before* construction begins. Simply put, NEPA sought to ensure that those who manage projects make the decisions in the best interest of local communities while involving the public. With the passage of NEPA, Disney was required to complete an Environmental Impact Statement (EIS) detailing what impact the resort would have on the area. In 1977, the Forest Service attempted to revive the resort plan, but by then Walt Disney Productions had walked away. Less than a year later, President Carter expanded the boundaries of Sequoia National Park to ensure the permanent protection of Mineral King in 1978.<sup>7</sup>

### *Giant Sequoia National Monument (2005)*

The Giant Sequoia National Monument's towering trees are among the planet's most majestic living things. It boasts more than half of all the Sequoia redwoods in the world, with most of the remainder found in the adjacent National Park. But that hasn't stopped efforts to cut them for timber. In 2005, the Forest Service finalized plans to allow for commercial logging in the prized Giant Sequoia groves. Under the plan, nearly 7.5 million board feet of timber would have been removed annually from the Monument, enough to fill 1,500 logging trucks each year. This policy would have included logging of healthy trees of any species as big as 30 inches in diameter or more – trees that size can be as much as 300 years old. Although the administration of President George Bush Sr. had proclaimed the Sequoia groves off-limits to commercial logging, the Forest Service sought to justify the timber sale under the guise of forest thinning activities designed to mitigate the risk of wildfires. Conservationists challenged the Bush administration under the National Environmental Policy Act (NEPA) in search of a better way to manage the rare forest. The trees were saved when a federal judge ruled in August of 2006 that logging in Giant Sequoia National Monument was illegal. Judge Breyer called the proposal "incomprehensible," concluding "the Forest Service's interest in harvesting timber...trampled the applicable environmental laws."<sup>8</sup>

## Colorado

### *The Glenwood Canyon I-70 Mountain Corridor*

For many years, the I-70 Mountain Corridor, which runs from Denver, Colorado to Glenwood Springs, experienced severe congestion – particularly on weekends. In the winter, I-70 provides access to of the country's premier ski resorts including Vail, Aspen, Winter Park, Keystone, and Breckenridge. In the summer, I-70 also serves as a gateway into the Rocky Mountains for campers, bikers, hikers, climbers and kayakers alike. When the Colorado Department of Transportation (CDOT) began exploring expanding the I-70 Mountain Corridor in the 1970s, however, they found the project presented unique challenges. Much of the interstate cuts through narrow valleys where there is little room to add additional lanes. Where it is feasible to add lanes, cost is high and there the risk of rockslides remains ever present. In order to improve the corridor's capacity and mobility,

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<sup>7</sup> Sierra Club v. Morton, 405 U.S. 727 (1972). Available at:

<https://supreme.justia.com/cases/federal/us/405/727/case.html>

<sup>8</sup> Sierra Club v. Bosworth, 465 F. Supp. 2d 931. Available at:

[http://earthjustice.org/sites/default/files/library/legal\\_docs/sequoia-decision-8-22-06.pdf](http://earthjustice.org/sites/default/files/library/legal_docs/sequoia-decision-8-22-06.pdf)

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CDOT's original proposal included blasting through cliff, building unattractive retaining walls, and channeling the Colorado River. When CDOT began work on an Environmental Impact Statement (EIS) shortly after, a process that seeks to encourage public input in government decision-making with mandated comment periods, they discovered that a majority of stakeholders (including local residents) were firmly opposed to the plan. In response, used the National Environmental Policy Act's (NEPA) review process to initiate a collaborative decision-making process to identify a new reconstruction plan. The Colorado Highway Commission's lone environmental member helped to form a Citizens Advisory Committee (CAC) of design and ecological professionals, with members from the Colorado Open Space Coalition and western Colorado interests. In 1978, after two years of design review, a new proposal was brought before the public that incorporated local input including the suggestion to place a section of the highway in tunnels to protect the scenic Hanging Lake area from noise and visual impacts. The final design preserved the natural topography and maintains the integrity of the Colorado River and side rivers entering it. Eastbound and westbound lanes often diverge with one lane rising over a bridge or ducking through a tunnel, preserving the canyon floor, walls, vegetation, and river where possible. Forty bridges and viaducts (totaling 6.5 miles) and three tunnels minimized the highway's impact on its surrounding environment while the speed limit was set at 50 miles per hour to improve safety. A construction technique called balanced cantilever construction was also utilized. The technique allowed each section of the highway to be built on bridge columns, reducing damage to the canyon. Other features added to the final design included four rest stops, a bike and jogging path along the length of the canyon, a boat launch, and a raft drop allowed for canyon recreational use by tourists and regional residents. The result of the NEPA process was a 12.5-mile stretch of highway with lower environmental impacts. "NEPA helped engineers to understand ecology and environmental design. In this case, without it, the CAC would have been ignored or abolished and the unique Canyon would have been destroyed. NEPA ensured that citizens and design professionals were heard in preserving the Canyon," said Bert Melcher, a citizen activist. The project has since won more than thirty awards for innovative design and environmental sensitivity, with the American Society of Civil Engineers giving the project its Outstanding Civil Engineering Achievement Award in 1993.<sup>9</sup>

### *North Fork Valley Leasing*

In late 2011, the Bureau of Land Management (BLM) announced its intention to lease approximately 30,000 acres of public and private lands in Colorado's North Fork Valley for oil and gas development. Local residents immediately raised concerns about the proposal's possible impacts on the area's economy, which depends largely on orchards, vineyards, meat production, and tourism. Residents were also concerned about the geology of BLM's proposed oil and gas leases. "Those parcels are on geologically unstable land and right under avalanche chutes," said Peter Kolbenshlag, a Paonia resident who filed a statement with the BLM opposing the leasing plan. There were other problems, too. The BLM's resource management plan, the basic planning document for the valley, hadn't been revised in 22 years. "Any oil and gas leasing should wait for a revised resource-management plan," said Dan Feldman, a board member of Citizens for a Healthy Community, a local group that was created to deal with risks of drilling. A wide range of stakeholders, including farmers, conservationists, wineries, ranchers, chambers of commerce, and

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<sup>9</sup> "I-70 Mountain Corridor History." *Colorado Department of Transportation*. Accessed February 16, 2018. Available at:

<https://www.codot.gov/projects/i-70-old-mountaincorridor/trafficrevenuestudy/i-70-mountain-corridor-history>

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local and state politicians rallied together to oppose the poorly conceived plan. A town meeting in Hotchkiss, Colorado to organize local concerns drew a crowd of 350 people. Several weeks later, a meeting in the nearby town of Paonia was attended by almost 500. Public response – and the demand for technical information – to the proposed oil and gas lease was so great that Bureau of Land Management’s public-comment deadline on the agency’s Environmental Assessment (EA) was extended an additional month to February of 2012. In written comments submitted to BLM, Western Environmental Law Center concluded that, “given the proximity of these parcels to the communities of Paonia, Hotchkiss, Crawford and Somerset, the critical water resources serving those communities, as well as the Paonia Reservoir and the North Fork of the Gunnison River, BLM’s...chosen path of opening this area up to oil and gas development will threaten the North Fork Valley’s very foundation and further engender public contempt for the manner in which BLM has chosen to manage our public lands.” Five months later, the Bureau of Land Management canceled the proposed lease amid the outpour of public comments. The outpour of public opposition that made this victory possible would not have been possible, however, without the National Environmental Policy Act (NEPA). Passed into law in 1970, NEPA requires federal agencies to assess the environmental impacts of proposals, solicit the input of all affected stakeholders, and disclose their findings publicly *before* undertaking projects that may significantly affect the environment. Public participation in the NEPA process serves two functions. First, individual citizens and communities affected by the proposed action can be a valuable source of information and ideas. Second, allowing citizens to communicate and engage with federal decision-makers serves fundamental principles of democratic governance. While NEPA is often called an environmental impact law, it is far more than that. As the BLM’s decision to remove the North Fork Valley from oil and gas exploration demonstrates, NEPA is a critical tool for civic engagement. It empowers local communities to hold the government and corporations accountable. Because of NEPA, federal agencies are no longer allowed to say “we know best” and make decisions without public accountability.<sup>10</sup>

### *Canyons of the Ancients National Monument*

Designated as a National Monument in 2000 by President Clinton, Canyons of the Ancients in southwestern Colorado is home to the highest known density of archeological sites in the United States. Home to some 6,000 archaeological sites representing Ancestral Puebloan and other Native American artifacts, its designation was necessary to protect the sites from vandalism and looting, oil and gas development, and destructive grazing practices. As a result of its designation as a National Monument, existing oil and gas leases on the land were permitted to run their course, but they would not be renewed after their current term expired. On the eve of the lease’s expiration, however, lessees proposed a new seismic exploration project for the land that would have resulted in catastrophic damage to numerous archeological sites. In an effort to protect these irreplaceable areas, a coalition of groups led by San Juan Citizens Alliance filed suit in federal district court and were granted an emergency injunction on the grounds that the Bureau of Land Management’s (BLM) original Environmental Assessment was based on inadequate cultural resource surveys, and, as a result, allowed exploration on the edges of several sensitive sites, including standing “towers” and multiple collections of artifacts. As mandated by the National Environmental Policy

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<sup>10</sup> “Comments Regarding August 2012 Oil and Gas Lease Sale.” Western Environmental Law Center. February 8, 2012. Available at: <https://westernlaw.org/sites/default/files/Comments%20To%20BLM%20on%20North%20Fork%20Valley%20Lease%20Sale%202.8.2012.pdf>

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Act (NEPA), BLM facilitated negotiations between a diverse number of stakeholders including local government, conservation groups, and the lessees to work out a compromise that reflected local input and consensus. The result was an exploration project that enabled lessees to obtain the seismic information they needed while avoiding the National Monument's most significant cultural features and fragile habitats. It was a rare win-win that exemplified effective multiple-use management of the public lands, balancing energy exploration with cultural resource protection. What's more, economic data shows that in the decade since the National Monument's designation, Montezuma County has experienced strong economic growth. The Monument has not impaired natural resource extraction outside the Monument's boundaries and travel and tourism continue to grow.<sup>11</sup>

### *State Highway 9*

When considering improvements to a 9-mile stretch of State Highway 9 between Frisco and Breckenridge, Colorado in 2016, the Colorado Department of Transportation (CDOT) and the Federal Highway Administration utilized the National Environmental Policy Act's (NEPA) review process to meet the project goals of safety and mobility. Throughout the planning process, CDOT actively sought out input from stakeholders including both the city councils of Breckenridge and Frisco, the businesses community, and the non-profit Continental Divide Land Trust. By engaging a diverse group of stakeholders at an early stage, CDOT secured \$340,000 in funding from Vail Resorts for a four-lane reduced section roadway including necessary turn lanes, acceleration and deceleration lanes, curbs and gutters, medians, and shoulders between milepost 97 and milepost 85. "There's a whole list of benefits," said Summit County Commissioner Thomas Davidson. "First off, the new alignment is a safer alignment, and two, given traffic counts, it provides for increased capacity. Number three, the recreational experience with the realigned recreational path is far superior to what we had before." The final project plans also incorporated a number of suggestions gathered during the project's public comment period. These included wider shoulders for cyclists, bus priority signals, wetland mitigation, minimization of tree removal, and a bridge over Blue River to avoid wildlife damage. Other environmental protections secured by the Continental Divide Land Trust included re-vegetation of native grasses and trees, and improvements to the nearby wetlands. The improvements to Colorado State Highway 9 were completed in 2017 on schedule and below budget.<sup>12</sup>

### *Grand Mesa, Uncompahgre, and Gunnison National Forests*

In 1989, the U.S. Forest Service was all but ready to approve a plan to clear-cut every aspen grove in the Grand Mesa, Uncompahgre, and Gunnison National Forests in western Colorado. The timber was to supply a waferboard plant operated by Louisiana Pacific Corporation. A combination of three separate National Forests located on the western slope of the Colorado Rockies, the Grand Mesa, Uncompahgre, and Gunnison National cover some three million acres of public land south of the Colorado River that make for some of the most spectacular scenery in the Rockies. The Forest Service's plan was rightly met with outrage from the public, who argued that the scenery, wildlife habitat, and water quality in the forests essential to the region's quality of life and

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<sup>11</sup> "New Energy Project at Monument." *Los Angeles Times*. August 13, 2002. Available at: <http://articles.latimes.com/2002/aug/13/nation/na-drill13>

<sup>12</sup> "Record of Decision for State Highway 9: Frisco to Breckenridge Summit County, Colorado." *U.S. Federal Highway Administration*. May 2004. Available at: [https://www.codot.gov/projects/archived-project-sites/hwy9f2b/documents/pdfs/SH9\\_ROD.pdf](https://www.codot.gov/projects/archived-project-sites/hwy9f2b/documents/pdfs/SH9_ROD.pdf)

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recreation-based economy could be gravely damaged. Clearcutting operations have historically increased the risk of large, unnatural fires by removing the largest and most fire-resistant trees from forests and can have profound impacts on local rivers. Clearcutting also destroys habitat for a wide variety of animals, including many endangered species. After receiving a record-setting number of letters during the National Environmental Policy Act's (NEPA) mandated public comment period from private citizens, businesses, and local officials, the Forest Service substantially scaled back its clearcutting proposal. Forest Service rangers and scientists acknowledged that the initial proposal was more than the land could bear, but said they had felt pressured to “get the cut out.” Absent the NEPA public review process, hundreds of thousands of acres of majestic Rocky Mountain landscapes would have disappeared. By demanding that federal decisions are made based on the best available science, NEPA ensured that no single use or priority eclipsed another.<sup>13</sup>

### Connecticut

#### *Plum Island Biological Laboratory*

Located off the northeast coast of Long Island, Plum Island was once the home of Fort Terry and a World War II-era anti-submarine base. Decommissioned after the war, the Fort was reassigned to the Army Chemical Corps for the research of common cattle and other livestock diseases that could harm the country's food supply. In response to the threat of biological terrorism involving pathogens like anthrax following the September 11<sup>th</sup> attacks, the newly-formed Department of Homeland Security (DHS) took over the facility in 2003 and quickly proposed upgrading Plum Island from a “Biosafety Level 3” to a “Biosafety Level 4” facility. Located within 50 miles of some 20 million people who live on Long Island, the upgraded lab would have been responsible for handling some of the most dangerous and deadly pathogens known to humankind, many of which are highly infectious and have no known cures. Under the National Environmental Policy Act (NEPA), the Department of Homeland Security was required to carry out an Environmental Impact Statement (EIS) before it could implement the proposed changes. This review process is designed to protect local communities and the environment from harm by requiring project sponsors to engage in a review process to discover any significant environmental and public health impacts *before* a decision is made. Senator Blumenthal, who was then Connecticut Attorney General, expressed grave concerns about the project and the adequacy of DHS' environmental review, challenging the government's proposed plan on the basis that it failed to assess the intolerable security risks in an area so densely populated, heavily traveled, and environmentally valued. For example, the EIS did not address the proximity of Plum Island to New York City – the nation's most populous city and a repeated target of terrorist attacks – or the extreme difficulty of providing emergency response services to an island. As a result, DHS was forced to re-examine its decision and chose to relocate the laboratory to a far more appropriate location in Kansas, where the project was welcomed by the governor and remained far away from any major population centers.<sup>14</sup>

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<sup>13</sup> “Final Supplemental Environmental Impact Statement: Grand Mesa, Uncompahgre, and Gunnison National Forests.” *USDA, Forest Service*. July 1, 1991. Available at:

[https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fsbdev7\\_003097.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsbdev7_003097.pdf)

<sup>14</sup> “Record of Decision for the National Bio and Agro-Defense Facility Environmental Impact Statement.”

*Department of Homeland Security*. January 16, 2009. Available at:

<https://www.gpo.gov/fdsys/pkg/FR-2009-01-16/html/E9-914.htm>

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### Florida

#### *Contaminated Water in Florida's Lake Belt*

Situated east of Everglades National Park, the 60,000-acre Lake Belt region is home to the Biscayne Aquifer's vast underground network of freshwater reserves that provide 150 million gallons of clean drinking water to some 6.5 million South Floridians every day. The Aquifer was intentionally built on the remote, half-wild outskirts of Miami-Dade County to ensure that South Florida's drinking water would remain safe from contamination by development and industry. In early 2002, however, the U.S. Army Corps of Engineers approved several permits allowing for the mining of limestone on a total of 5,700 acres in the Lake Belt. Three years later in January of 2003, benzene – a cancer-causing chemical – was detected at a Miami-Dade County water treatment facility. Although benzene emerged as a common household chemical found in everything from shaving cream to industrial lubricant, the EPA officially declared it a hazardous pollutant in 1977 after it was discovered exposure was linked to an increased risk of leukemia 1977. The legal limit for benzene in drinking water is one part per billion. Samples from Miami-Dade County indicated benzene levels were five times that limit. Weeks later, another well in the Lake Belt registered traces of benzene and was ordered shut down. Thankfully, Miami-Dade's water treatment facilities proved fully capable of purifying the water; at no point during the crisis were any customers exposed to heightened levels of benzene. Nonetheless, the Miami-Dade Water and Sewer Department (WASD) immediately launched a months-long investigation, the cost of which would eventually grow to exceed \$1 million. The investigation led them straight to the Lake Belt's limestone mines. In order to mine the limestone, four-inch-wide holes were drilled into the ground, filled with explosives, and blown up. Upon further inquiry, the team learned that most of the mining firms were using ANFO — ammonium nitrate fuel oil — of which a small constituent is benzene. A coalition of environmental groups including Sierra Club, NRDC, and NPCA sued in federal court to halt the limestone mining and protect South Florida's drinking water, alleging that the Corps of Engineers and the U.S. Fish and Wildlife Service mishandled the permitting process.<sup>15</sup> Judge William Hoeweler condemned the Corps of Engineers and Fish and Wildlife Service for "failing to carry out their duty" to safeguard the surrounding wetlands and ruled that the conclusions in the original Environmental Impact Statement (EIS) were based on inaccurate industry information. The mining permits for the three companies closest to the wells were canceled in July of 2007. In his scathing, 176-page written opinion, the judge wrote that "In three decades of federal judicial service, this Court has never seen a federal agency respond so indifferently to clear evidence of significant environmental risks." Judge Hoeweler concluded that limestone mining directly contributed to the benzene contamination and pointedly blamed the Corps for failing to address it. Had the Corps of Engineers carried out due diligence and handled the Environmental Impact Statement properly instead of rubberstamping it, the mining companies would likely have been forced to use alternative explosives from the start and drinking water contamination could have been avoided. Instead, cleanup of the contaminated wells required tens of millions of dollars in needless expense. The story of Lake Belt is a sobering reminder that when safeguards like environmental reviews mandated by the National Environmental Policy Act (NEPA) are rushed or ignored, the financial, environmental, and public health consequences can be severe. Many NEPA "reforms" under discussion by President Trump and opponents in Congress threaten the impartiality of this review process. Proposed reforms such as fining already

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<sup>15</sup> *Sierra Club v. Lt. Gen. Robert L. Van Antwerp*, No. 07-13297 (11th Cir. 2008). Available at: <https://cases.justia.com/federal/appellate-courts/ca11/09-10877/200910877-2011-02-28.pdf?ts=1411113348>

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cash-strapped federal agencies for missing permitting deadlines or further delegating environmental reviews to states – many of which are facing their own budget crises – aren't likely to speed up the environmental review process. The outcome would be more delays or the approval of poorly conceived projects threatening our environmental and public health.<sup>16</sup>

### *Everglades Parkway (Alligator Alley)*

Following the passage of the Federal-Aid Highway Act of 1956, the United States began a national program of highway construction to facilitate more efficient connections between metropolitan areas and provide farmers with better access to local markets. The act authorized the construction of a 41,000-mile system. In 1968, Congress passed another highway bill to expand the interstate system by an additional 1,500 miles. The legislation included an authorization to extend Interstate 75 (I-75) south and east from Fort Myers on the Gulf Coast to an area west of Fort Lauderdale on the Atlantic Coast. The 114-mile extension would become known as the Everglades Parkway. In 1969, the Florida Department of Transportation (FDOT) began to study alternative routes. Unlike the planning for earlier interstate segments, FDOT was required to comply with the newly-passed National Environmental Policy Act (NEPA). As a result, the I-75 extension included numerous design elements tailored to minimize impacts on the natural environment. Importantly, none of these design elements undermined the original goal of the project: to construct a limited-access, four-lane, divided highway that would connect Gulf and Atlantic Coast population centers, providing increased travel speeds and reduced travel times. Large infrastructure projects such as the I-75 extension present states with many technical challenges. Engineers must determine everything from pavement type and interchange design to the sharpness of curves and how to prevent rainwater from forming unsafe pools on the roadway. These challenges share a common thread: They are all related to the design of the roadway. Prior to NEPA, engineers focused narrowly on how to design a facility as opposed to how that facility would affect the surrounding community or natural environment. Part of NEPA's value is that it requires planners and engineers to widen the aperture of concern. Environmental review necessitates that state and local governments solve the engineering puzzle in a way that minimizes the negative spillover that often accompanies major infrastructure projects. Improving flow involved several design modifications. According to FDOT design policy at the time, highways were required to provide at least 100 feet of land between the edge of the roadway and any adjacent body of water. This requirement was intended to reduce the risk of passengers drowning in the event that a driver loses control of a vehicle. In effect, the 100-foot buffer provided a chance for a driver to slow the vehicle and regain control, hopefully avoiding entering the water. In the case of the Everglades Parkway, complying with this requirement would have meant draining additional wetland on either side, further impairing critical habitats and the sheet flow of fresh water. Instead, FDOT chose to waive this policy and add a cable barrier where necessary. The cable barrier would stop wayward vehicles before they reached the water. FDOT's final significant modification dealt with the channels running parallel to the highway on either side as well as the connections spaced at regular intervals that connected the channels on the north and south side of the highway. Experience with the channels along the original State Route 83 showed that the state needed to both modify their depth and regularly remove aquatic vegetation that could reduce sheet flows by as much as 90 percent. FDOT also scheduled construction activity to avoid the heaviest seasonal rains. By adjusting the sequence and timing of work, the state was able to significantly reduce sedimentation—rainwater

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<sup>16</sup> "Poisoned Well." *Miami New Times*. March 20, 2008. Available at: <http://www.miaminewtimes.com/news/poisoned-well-6363391>

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carrying dirt, rocks, and other loose debris from the construction site into the wetlands. The environmental review process provided FDOT with the information necessary to make smart and effective changes to the design, construction, and maintenance of the Everglades Parkway, all with an eye toward reducing harmful impacts on the surrounding ecosystem. Far from being a burden, NEPA brought forward the technical expertise of scientists across numerous fields to help the state build a fundamentally better, more sustainable facility that continues to provide benefits to this day.<sup>17</sup>

### *Scripps Research Institute Florida*

In October 2003, Palm Beach County and Scripps Research Institute jointly developed plans for a Biotechnology Research Park to be built on the Mecca Farms site – a 1,919-acre parcel in rural western Palm Beach County bordered by wetlands and conservation areas. In addition, Mecca's wetlands drain into the Loxahatchee River, a nationally designated Wild and Scenic River and an essential component of the Everglades Ecosystem. In order to develop the area, Palm Beach County and Scripps sought approval of a Clean Water Act Section 404 permit from the U.S. Army Corps of Engineers to fill wetlands at the Mecca Farms. The Corps issued the permit in 2005 along with an Environmental Assessment (EA), concluding there were no significant environmental impacts associated with filling the wetlands. It was soon discovered, however, that the Corps' environmental review – designed to identify any significant impacts a project may have on both the environment and public health – had been limited to only 25 percent of the 1,919 acre Mecca Farms site. Environmental groups challenged the adequacy of the Army Corps of Engineers' Environmental Assessment under the National Environmental Policy Act (NEPA). In 2005, a District Court held that the Corps' issuance of the permit had violated both the National Environmental Policy Act and Clean Water Act and ordered preparation of a new environmental review of the entire Mecca Farms site (as required by law) before the project could proceed. During the ensuing evaluation process, Palm Beach County and Scripps decided to relocate the research park to a new location that minimized environmental impacts and saved money by utilizing existing access roads. The grand opening of the new facility took place on February 26, 2009, and included a public ceremony including then-Florida Governor Charlie Crist. Today, the Scripps Florida Research Institute operates a state-of-the-art biomedical research facility focusing on neuroscience, cancer biology, medicinal chemistry, drug discovery, biotechnology, and alternative energy development employing more than 500 research staff.<sup>18</sup>

## Georgia

### *Savannah Harbor Expansion Project*

Home to the fourth busiest seaport in the country, the city of Savannah's deepwater port is an integral part of Georgia's economy. All told, the Port of Savannah handles 8.5 percent of all containerized cargo volume and averages 38 ocean carrier service calls per week, more than any other port on the East Coast port. For each of the past 17 years, it's also been the fastest growing deepwater port in the country. Since 2000, the Port of Savannah has seen an average annual

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<sup>17</sup> "Final List of Nationally and Exceptionally Significant Features of the Federal Interstate Highway System." U.S. Department of Transportation, FHWA. Available at:

[https://www.environment.fhwa.dot.gov/env\\_topics/historic\\_pres/highways\\_list.aspx](https://www.environment.fhwa.dot.gov/env_topics/historic_pres/highways_list.aspx)

<sup>18</sup> 404 F.Supp.2d 1352. *Florida Wildlife Federation v. U.S. Army Corps of Engineers* (2005). Available at: <https://www.courtlistener.com/opinion/2315811/florida-wildlife-federation-v-us-army-corps-of-engineers/>

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increase of 16.5% in the amount of container traffic it processes each year. Add that up and you get a 280% increase in container traffic. In order to ensure the Port of Savannah will be able to accommodate future increases in shipping traffic, in 2012 the U.S. Army Corps of Engineers began study on an expansion project designed to deepen the 18.5-mile outer harbor to 49 feet and 39 miles of Savannah River channel to 47 feet in order to accommodate larger ships coming through the expanded Panama Canal. An essential component of this study was the completion of an Environmental Impact Statement (EIS). This review process is designed to identify any significant impacts a project may have on the environment, economy, or public health *before* construction. Mandated by the National Environmental Policy Act (NEPA), this review process also requires project sponsors to identify steps that may be taken to mitigate those impacts. Under the U.S. Army Corps of Engineers' original plans, salt water would have been pushed upstream, threatening the vitality of the Savannah National Wildlife Refuge's tidal freshwater wetlands and further endangering the shortnose sturgeon. Studies also showed the Corps' plans would negatively impact local drinking water resources. Thanks to the NEPA review process, these adverse effects were identified and Corps of Engineers' final plans for the Savannah Harbor Expansion Project (SHEP) included funding for wetlands protection, restoration efforts benefiting the Savannah River, established a water quality monitoring program for the Savannah River, and ensured long-term protections for the endangered shortnose sturgeon. The Corps of Engineers is also in the process of installed two dissolved oxygen injection systems upstream on Plant McIntosh and downstream of Hutchinson Island to ensure that oxygen levels remain at pre-deepening levels and will not adversely impact fish or plant life. Construction on SHEP began promptly in 2015 and is expected to be complete in 2019 at a cost of \$973 million. The Army Corps of Engineers completed outer harbor dredging – marking the midpoint of the expansion project – in February 2018. Once the project is complete, the deepening of the harbor will result in a net benefit of \$282 million in transportation savings for shippers and consumers per year. According to the Corps' benefit-to-cost ratio, each dollar spent on construction will yield \$7.30 in net benefits to the nation's economy.<sup>19</sup>

### *Atlantic Station (Atlantic Steel Site Redevelopment Project)*

For almost a century, Atlanta's Atlantic Steel Mill churned out barbed wire, plough shears, and galvanized steel in massive quantities destined for locations across the country. Once the largest steel mill in the South, at the height of its production in the 1950s, the facility employed more than 2,300 people and produced approximately 750,000 tons of steel annually. The factory continued to operate on a limited degree into the 1970's but was eventually forced to close its doors for good in 1998 as competition at home and abroad intensified. That left 138 acres of contaminated land abandoned in the heart of midtown Atlanta, one of the fastest growing cities in America. Less than a year later, developers proposed a bold idea – what if the industrial property could be cleaned up and turned into a multi-use residential community? Planning quickly began on what would become the largest ever cleanup of a Brownfield site in history. They called it Atlantic Station. The potential environmental and economic benefits of the project were numerous: cleanup of an old industrial property; separation of sanitary and storm sewer systems; reduction of auto emissions; and creation of jobs and economic development where infrastructure already exists. However, because the Mill was located on an industrial property already known to be polluted by heavy metals and other potentially dangerous toxins, project sponsors immediately began working to

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<sup>19</sup> "Record of Decision for Savannah Harbor Expansion Project." *U.S. Army Corps of Engineers*. October 26, 2012. Available at: <http://www.sas.usace.army.mil/Portals/61/docs/SHEP/Reports/ROD%20Signed.pdf>

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complete an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA). Passed with overwhelming bipartisan support in Congress and enacted into law in 1970, NEPA requires the federal government to undertake an environmental review process designed to discover any significant environmental and public health impacts a project may have on local communities *before* construction begins. We teach our children to “look before you leap.” NEPA simply and sensibly requires our government to do the same. All told, the cleanup of Atlantic Station cost \$3 billion and included removal of some 165,000 tons of soil from the property, the construction of the 17th Street Bridge over Interstate 75/85, and the development of a three-level, 8,000 space parking structure underneath the commercial core. The Environmental Protection Agency officially certified the property as safe for construction on Dec. 11, 2001, after two years of environmental cleanup. From there, it took another \$250 million of infrastructure investment in roads, sewers and utility lines before construction of buildings could begin in 2002. A public comment period – mandated by the NEPA process – also played a crucial role in the successful revitalization of Atlantic Station. Public participation in the NEPA process serves two functions. First, individual citizens and communities affected by proposed action can be a valuable source of information and ideas. Second, allowing citizens to communicate and engage with federal decision-makers serves fundamental principles of democratic governance. Local citizens filed a total of 255 comments identifying several concerns about the project. In particular, residents were concerned that the development could increase traffic congestion and negatively impact historic properties. As a result, 15 historic architectural sites were identified, listed in the National Register of Historic Properties, and preserved under the supervision of an archaeological consultant. The comments also prompted significant design modifications to reduce traffic congestion and increase the project's transportation connectivity. Atlantic Station is now easily accessible from two major interstates and a nearby public transit station. In total, the EPA estimates that the modifications to Atlantic Station reduced residents' number of vehicle miles traveled by 34 percent and resident's car emissions by 45 percent.<sup>20</sup> Today, Atlantic Station encompasses six million square feet of development and includes more than 5,000 residents in 3,000 residential units, 7,000 employees, a luxury hotel, and 11 acres of public parks. It also provided a new model for high-density, walkable urban development, and was recognized by the US Environmental Protection Agency for its contribution to emissions reductions. Perhaps most importantly, by knitting together Midtown Atlanta with the city's long underserved and largely industrial west side, Atlantic Station was the catalyst for the wholesale revitalization of an entire quadrant of the city.<sup>21</sup>

### *Northwest Corridor Project*

In 2007, the Federal Highway Administration and Georgia Department of Transportation (GDOT), in cooperation with other state and federal agencies, proposed to expand I-75 and I-575 in the Atlanta metropolitan area's Northwest Corridor to alleviate traffic congestion in one of the region's most congested thoroughfares. The most expensive highway project in Georgia's history at nearly \$1 billion, the Northwest Corridor project will add nearly 30 miles of reversible lanes along I-75 I-575 through Cobb and Cherokee counties when it is completed in 2018. The initial design plan proposed expanding sections of I-75 and I-575 from six to ten lanes by adding four general-purpose

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<sup>20</sup> “Building a City Within the City of Atlanta.” *The New York Times*. May 24, 2006. Available at: <http://www.nytimes.com/2006/05/24/realestate/commercial/24atlanta.html?mtrref=www.google.com>

<sup>21</sup> “Project XL and Atlantic Steel Supporting Environmental Excellence and Smart Growth.” *U.S. Environmental Protection Agency*. September 1999. Available at: <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockkey=P1009QPS.txt>

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lanes, but community members – using the NEPA review process to express their environmental, public health, and economic concerns about the project – pushed the Georgia Department of Transportation (GDOT) to make improvements to the plan. Instead of adding new lanes, GDOT’s final designed plan called for the conversion of the existing medians and road space on I-75 into reversible HOV traffic lanes. This simple change minimized adverse effects on low-income and minority communities by reducing the number of residences and businesses displaced by the project from over 300 to 18. The modification also significantly reduced the project’s impact on the nearby wetlands that are home to an endangered species from 4.2 to 0.3. To top it all off, the project modifications will save a significant amount of money. While any project of this magnitude will inevitably affect the surrounding environment, thanks to NEPA, the Northwest Corridor Project has fewer impacts on local homes, businesses, and the environment, and is more cost-effective than the original plan. Construction on the Northwest Corridor Express Lanes broke ground in October 2014 and the project is anticipated to open to traffic in summer of 2018.<sup>22</sup>

### Hawai'i

#### *Daniel K Inouye Solar Telescope (DKIST) at the Haleakala High Altitude Observatory Site on the Island of Maui, Hawai'i*

In the early 2000s, the National Science Foundation (NSF) proposed building the world’s largest world’s largest optical solar telescope atop the summit of Maui's Haleakalā Volcano. With a resolution of 25 kilometers, when it is completed in 2019 the \$344 million the Daniel K Inouye Solar Telescope (DKIST) will have the equivalent zoom power to scrutinize the contours of an inch-wide coin from 100 km (62 mi) away. That will allow scientists to examine out the long sought-after phenomenon of magnetic flux tubes – twisted and tangled filaments that can channel energy into the corona. It is hoped that observation of these magnetic flux tubes will help to answer the so-called “coronal heating problem”: why the corona is millions of degrees hotter than the photosphere, the visible surface of the sun. When the DKIST was initially proposed, however, many Native Hawaiians expressed serious concerns about the planned construction atop Haleakalā volcano. Native Hawaiian culture celebrates a profound spiritual connection with the land, and few places are considered more sacred than high mountain peaks. In ancient times they were regarded as wao akua – the “realm of the gods” – where deities and demigods walked the earth. Today, these mountains are still treated with reverence, places many Hawaiians visit to honor ancestors and practice spiritual traditions. Such cultural concerns prompted a halt to construction on another privately-funded telescope, the “Thirty Meter Telescope” (TMT), on the dormant volcano of Mauna Kea in 2015. At 18 stories, the TMT would have been the largest humanmade structure on Hawaii Island on the highest mountain in the Pacific. Because the DKIST was a federally funded project, the National Science Foundation (NSF) was required to satisfy U.S. historic preservation rules and carry out an environmental review under the National Environmental Policy Act (NEPA). At its most basic level, NEPA requires government agencies to engage in a review process intended to discover any significant environmental, economic, social, or public health impacts *before* a decision is made. A key element of this review process is the solicitation of public comments. Acutely aware of Native Hawaiian cultural objections, the NSF used the NEPA process to engage in extensive discussion with local communities and other

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<sup>22</sup> “Record of Decision: Northwest Corridor Project.” *Federal Highway Administration and Georgia Department of Transportation*. May 2013. Available at:

[http://www.nwcpoject.com/media/pdfs/NWCP\\_ROD\\_2013.pdf](http://www.nwcpoject.com/media/pdfs/NWCP_ROD_2013.pdf)

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agencies on possible alternatives and methods of mitigation. After hours of public testimony and countless meetings with Native Hawaiian leaders, NSF adopted numerous design changes to better respect native beliefs. While the proposed TMT telescope would have had a footprint of almost 5 acres, including its roads and parking lot, the plat for DKIST will be nearly 10 times smaller. Workers and scientists were also required to undergo cultural training and watch an educational video about the role of the mountain in Hawaiian culture and spirituality. Finally, a dressing area was built at the summit for Hawaiian practitioners conducting ceremonies at the ahu, and DKIST established a \$20 million program at Maui College that combines Hawaiian culture with science education. Although many Native Hawaiians remained opposed construction of the nearly 14-story high telescope, and that opposition should be respected, the NEPA process provided a platform for real dialogue between project proponents and Native Hawaiians. This resulted in the adoption of a series of mitigation measures that made the DKIST telescope as minimally intrusive as possible. A comparison of the vastly different outcomes between the TMT telescope, did not require NEPA review, and the DKIST telescope, which underwent comprehensive environmental and historic review, also lends further credence to the fact that NEPA more often than not improves projects.<sup>23</sup>

### Idaho

#### *Lakeview-Reeder Roads Project*

In Idaho, the Forest Service proposed the Lakeview-Reeder Roads project to improve fish passage in Priest Lake and reduce sedimentation. Public participation in the plan's NEPA review brought a mistake to light, thereby preventing possible litigation and a waste of taxpayer money. Specifically, a public comment identified a discrepancy between the planned buffer zone for the protection of the endangered boreal toad and the federal requirement for such a zone. In response, the Forest Service redesigned the road to adequately protect the species. By informing the public of its plan and listening to citizen comments, the Forest Service avoided irretrievably committing taxpayer dollars to a project that violated federal laws and might have led to litigation.<sup>24</sup>

### Illinois

#### *Building 330 at Argonne National Laboratory*

In 2009, the Department of Energy (DOE) proposed to demolish Building 330, which housed the decommissioned Chicago Pile-5 research nuclear reactor at Argonne National Laboratory in Illinois. The DOE used the NEPA process to ensure the demolition, which included the removal and transport of radioactive and toxic waste, did not harm the surrounding community and environment. Specifically, the DOE used NEPA to bring together operational and environmental expertise to develop demolition and transportation approaches that better-protected workers and the public from potential hazards. For example, the final project mandated that air monitoring be performed at the building site during demolition to ensure that the public would not be exposed to dangerous levels of radionuclides. It also required airborne contamination controls such as filters

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<sup>23</sup> “Record of Decision: Advanced Technology Solar Telescope.” *National Science Foundation*, 9/29/2009. Available at:

<https://dkist.nso.edu/sites/atst.nso.edu/files/docs/NHPA/RecordofDecision-120309.pdf>

<sup>24</sup> “Record of Decision for the Lakeview-Reeder Project.” *U.S. Forest Service*. December 2009. Available at: [http://data.ecosystem-management.org/nepaweb/nepa\\_project\\_exp.php?project=6258](http://data.ecosystem-management.org/nepaweb/nepa_project_exp.php?project=6258)

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and barriers, along with personal protective equipment like respirators, to ensure the safety of the demolition workers.<sup>25</sup>

### *Springfield High-Speed Rail*

Springfield, Illinois, wanted high-speed passenger rail service, but also wanted to protect its downtown from excessive disruption from freight and passenger trains. A supplemental EIS helped the community identify a reroute of trains from the current 3rd Street corridor to the 10th Street corridor as the best long-term alternative while allowing incremental upgrades on the current 3rd Street line.<sup>26</sup>

## Indiana

### *Flagship Enterprise Center*

In Anderson, Indiana, NEPA facilitated proper planning of a 2.7 million-dollar project to build the Flagship Enterprise Center – an 80,000 square foot technological business incubator. Through NEPA's environmental review process, the project applicant became aware of the project's impacts on the area's forested wetlands, which are used by migratory waterfowl. As a result, provisions were added to the project to preclude negative effects on wetland hydrology, prevent stormwater runoff from being directed to the wetland, and provide retention facilities to contain stormwater within the current footprint of the project site. Additionally, a 26.5-acre forested wetland southwest of the Flagship Enterprise Center was protected.<sup>27</sup>

## Iowa

### *Southeast Connector U.S. 65*

Iowa's Southeast Connector project will link the local Martin Luther King Parkway in Des Moines to U.S. Highway 65. The Federal Highway Administration, Iowa Department of Transportation, and the City of Des Moines worked alongside other agencies and local communities through the NEPA process to identify issues with the original proposal that might have led to damage to the nearby levee. Other improvements included consideration of previously-unidentified hazardous material sites, improved wetlands mitigation, and better efforts to engage Spanish-speaking communities affected by the project. Construction of the project began in 2012.<sup>28</sup>

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<sup>25</sup> “Environmental Assessment for the Proposed Demolition of Building 330 at Argonne National Laboratory.” *U.S. Department of Energy*. August 2009. Available at:

[https://www.energy.gov/sites/prod/files/nepapub/nepa\\_documents/RedDont/EA-1659-FEA-2009.pdf](https://www.energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/EA-1659-FEA-2009.pdf)

<sup>26</sup> “Record of Decision for the Springfield Rail Improvement Project.” *U.S. Department of Transportation, Federal Railroad Administration*. December 2012. Available at:

<https://www.fra.dot.gov/Elib/Document/2777>

<sup>27</sup> “The Tenth Report on the National Environmental Policy Act Status and Progress for American Recovery and Reinvestment Act of 2009.” *White House Council on Environmental Quality*. August 1, 2011. Available at:

[https://ceq.doe.gov/docs/ceq-reports/aug2011/CEQ\\_ARRA\\_NEPA\\_Report\\_Aug\\_2011.pdf](https://ceq.doe.gov/docs/ceq-reports/aug2011/CEQ_ARRA_NEPA_Report_Aug_2011.pdf)

<sup>28</sup> “Record of Decision for the Southeast Connector.” *U.S. Department of Transportation, Federal Highway Administration*. May 5, 2010. Available at:

<http://www.seconnector.com/PDFs/SEConnectorRecordofDecisionMay2010.pdf>

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### Kansas

#### *John Redmond Dam and Reservoir*

The U.S. Army Corps of Engineers built the John Redmond Dam and Reservoir for flood control, water conservation, recreation, and water supply. However, sediment built up 80 percent faster than anticipated in the pre-NEPA project, requiring the Corps to fix the problem in order to meet its local water supply requirements. During the NEPA process, other agencies discovered that the proposed raising of the conservation pool would inundate hundreds of acres of nearby wildlife refuge areas, posing a risk to both protected wildlife and deer and turkey hunting, and destroy one of the only local boat ramps to the lake. The Corps was able to work with the state to replace both the ramp and wildlife areas and minimize environmental impacts, and is continuing to work with both local and federal interests to make sure the reservoir meets local needs.<sup>29</sup>

### Kentucky

#### *Paris Pike*

Kentucky's Paris Pike is a scenic road between Lexington and Paris, whose beauty was overshadowed by safety hazards and congestion. The Kentucky Transportation Center (KTC) proposed building a standard four-lane highway but faced opposition from local communities concerned about irreparable harm to the corridor's history and natural landscape. When the public did not approve of KTC's plan for the highway, they decided to take their concerns to court to voice their opinions. A judge's ruling told KTC to return to the planning process and seek a workable alternative to the highway that would meet the demands of both parties. KTC and community members decided on a design that fit the aesthetics and contours of the land while minimizing environmental impacts. The improved road has received nationally recognized design awards and is the model for future projects of this nature. The original two-lane rural highway extended over 13.5 miles of rolling hills dotted with historic thoroughbred farms. The highway had minimal shoulders with no passing or turning lanes, contributing to a fatal accident rate significantly higher than the average for two-lane roads. The new design consists of two independent two-lane highways, one northbound and the other southbound, and an added shoulder to increase safety. Existing trees, fences, and stone walls were either preserved or moved and re s to red to their original condition. Environmental improvements include the relocation of more than 3,000 new trees and shrubs, designation of wetland areas, natural wooden guardrails, grass instead of gravel shoulders, three miles of stone fence, and the preservation of the natural environment within the median. A historic farmhouse was turned into a visitors' center, generating tourism dollars for a town that would have lost money if Paris Pike were merely expanded. "It has been an immensely successful project. It preserved aesthetic integrity while doing what it was supposed to do: increase safety and capacity. It has significantly improved the corridor," said Cumberland Sierra Club Chapter Chair, Lane Boldman. The final approach included hiring architects and landscape designers to work with the project's engineering team on a context-sensitive design, creating a more natural relationship between the landscape and road. Local resident Hank Graddy

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<sup>29</sup> Environmental Impact Statement for the John Redmond Dredging Initiative project." *U.S. Army Corps of Engineers*. September 22, 2014. Available at: [https://www.swt.usace.army.mil/Portals/41/docs/library/john\\_redmond/John%20Redmond%20Dredging%20Review%20Plan.pdf](https://www.swt.usace.army.mil/Portals/41/docs/library/john_redmond/John%20Redmond%20Dredging%20Review%20Plan.pdf)

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said going through the NEPA process was essential, noting, “It brought people and ideas to the table that otherwise would not have been there.” Paris Pike represents a true compromise facilitated by the NEPA process—road expansion without accompanying aesthetic and natural destruction. The National Trust for Historic Preservation, not usually a friend of road expansion, cited Paris Pike as a project that “celebrates the spirit of place instead of obliterating it.” The fourth and final phase of the \$70 million project was completed in 2003.<sup>30</sup>

### Louisiana

#### *Bastrop Senior Housing Project*

Built in 1927, Bastrop High School is a sprawling, two-story, brick Tudor Revival structure located just outside downtown Bastrop, Louisiana. After serving as an education center for six decades, the building fell into disrepair. Rains from Hurricane Katrina led to roof leaks, causing further deterioration of the historic structure. In 2009, a number of partners including the Department of Housing and Urban Development raised funds to convert the building into 76 affordable-housing units for elderly individuals. The NEPA review process helped identify numerous issues with the historic building that, if left unaddressed, could have endangered the lives of the building's future occupants; these included structural instability, lead-based paint, asbestos, and lead-contaminated water pipes. The final project design incorporated solutions to these problems, ensuring the safety of the senior citizens who would soon call the building home while preserving and restoring the building's historic features such as its original redbrick exterior. The project also benefited the community by converting a public nuisance into a facility that locals believe will contribute greatly to the town's downtown redevelopment plan and attract investors to the area, which lost its major employer, International Paper, in 2009.<sup>31</sup>

### Maine

#### *Acadia National Park's Park Loop Road*

In developing a project to repair damaged culverts and headwalls along Acadia National Park's Park Loop Road in Maine, the National Park Service realized that one of the culverts to be repaired spanned Hunters Brook, a high-quality trout fishery. At this culvert, paving stones had been used to armor the stream bank in the past. However, due to stream movement and erosion over the years, the stones had fallen into the stream channel, causing additional erosion and sedimentation of the trout stream. Through the NEPA scoping process, which included consultation among various state and federal agencies, an alternative emerged that will restore the health of Hunters Brook and the trout that live there while preserving the historic character of the nationally-recognized Park Loop Road. If not for the NEPA and permitting processes, the agencies would have likely just replaced the paving stones, providing a short-term fix that would have required future repairs and done

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<sup>30</sup> “The Paris to Lexington Road Reconstruction Project.” *Kentucky Transportation Center, College of Engineering*. September 2001. Available at: [http://www.e-archives.ky.gov/pubs/transportation/tc\\_rpt/ktc\\_02\\_02\\_fr79\\_96\\_1f.pdf](http://www.e-archives.ky.gov/pubs/transportation/tc_rpt/ktc_02_02_fr79_96_1f.pdf)

<sup>31</sup> Environmental Impact Statement for the Bastrop Senior Housing Project.” *U.S. Department of Housing and Urban Development*. September 2009. Available at: [https://www.hudexchange.info/resource/reportmanagement/published/ESD\\_900000010022800\\_01192018\\_900000010061859\\_1484835001829.pdf](https://www.hudexchange.info/resource/reportmanagement/published/ESD_900000010022800_01192018_900000010061859_1484835001829.pdf)

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nothing for the fishery. But thanks to this law, the relevant stakeholders developed an innovative approach that will restore the health of the stream in the long term, contribute to the trout fishery, and enhance park visitors' experience.<sup>32</sup>

### *Umbagog National Wildlife Refuge*

Over the last decade, the economy and land ownership patterns of the communities surrounding New Hampshire and Maine's Umbagog National Wildlife Refuge have changed and public access pressures have increased. For this and other reasons, the U.S. Fish and Wildlife Service (FWS) felt it was necessary to develop a master plan for the refuge, which would provide a 15-year strategic guide for conserving land, helping FWS determine how to expand the refuge and where to locate a new refuge headquarters and visitor's center. During the NEPA process for the plan, the community expressed interest in new public uses of the refuge, including dog-sledding, horseback riding, bicycling, and increased boat access, all of which FWS incorporated into the plan. FWS also expanded hunting opportunities on the refuge in response to the public's request to hunt turkeys there. The final plan balances conservation and public use, while also identifying areas for expansion. In 2012, as the refuge moves towards its acreage goal with conservation purchases and easements, refuge manager Paul Casey said, "This project is an excellent example of what can be accomplished through partnerships. By working with the forest industry, private conservation organizations, and the state, we have been able to craft a broad scale conservation effort that meets each of the partners' needs."<sup>33</sup>

### *New England Fishery Management Council*

The Magnuson Act requires every Fishery Management Plan to periodically review its identification management of Essential Fish Habitat- those waters and seafloor habitats that support spawning, feeding, and growth of fish stocks that support recreational and commercial fisheries around the country. When the New England Fishery Management Council recently completed this review, it used an Environmental Impact Statement to analyze and consider alternatives for all of the FMPs under its management authority, a so-called omnibus amendment. This EIS process started with a public scoping process where stakeholders submitted ideas and proposals for action. The amendment was then developed by technical experts in a range of fields and ultimately yielded a Final EIS with dozens of alternatives and analysis that spanned six volumes and nine appendices. This process was the most thorough review of EFH ever completed and included novel analysis of the effects of fishing on EFH, the vulnerability, and recovery of habitats and the way that EFH supports healthy oceans and fisheries. The FEIS allowed the NEFMC to recommend significant changes to EFH identification and management in the region. These changes included preserving some existing management areas as the status quo, re-opening some previously closed areas that are no longer necessary and are unsupported by the analysis, and approving some new EFH areas for conservation. The action was approved by the National Marine Fisheries Service and the Secretary of Commerce in January of 2018 and will take effect in mid-2018.<sup>34</sup>

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<sup>32</sup> "The Park Loop Road." *AcadiaMagic*. Accessed August 3, 2018. Available at:

<https://acadiamagic.com/park-loop-road.html>

<sup>33</sup> "Lake Umbagog National Wildlife Refuge: Final Comprehensive Conservation Plan and Environmental Impact Statement." *U.S. Fish and Wildlife Service*. December 2008. Available at:

<https://www.fws.gov/northeast/planning/Umbagog/PDF/NewsletterDec08lowres.pdf>

<sup>34</sup> "Fishing officials ease restrictions in waters off New England." *The Boston Globe*. January 7, 2018. Available at:

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### Maryland

#### *Maryland Oyster Restoration*

When first proposed about a decade ago, it seemed like a promising means to revive the Chesapeake Bay's devastated oyster crop: bring in Chinese oysters, which are impervious to the diseases killing the native stock and also grow faster. If successful, the plan would resurrect an oyster industry that had almost been wiped out. But under NEPA, a major step such as introducing an alien species into an ecosystem requires a thorough environmental review by the federal government. More than 2,000 comments poured into the U.S. Army Corps of Engineers. Scientists, federal agencies, and other coastal states raised numerous red flags about the Chinese oysters' potential dangers, many of which are irreversible, including harm to the remaining native stock and possible threats to human health. After carefully weighing all the evidence, and considering a number of alternate solutions, the Corps ruled that the Chinese oysters posed "unacceptable ecological risks." Result: a reinvigorated effort to bring back the native oyster species, which so far seems to be paying off. Indeed, fall oyster survey results released by the Maryland Department of Natural Resources in April 2013 showed population and reproduction increases for the second year in a row.<sup>35</sup>

#### *Baltimore-Washington Intermodal Facility*

When CSX Corp. wanted to relocate an existing freight container transportation facility in downtown Baltimore to Elkridge, Maryland, it triggered a federal environmental review under NEPA to assess the impact that a new 24/7 operation visited by 300 trucks a day would have on the small city. During the extensive public comment period, Elkridge citizens expressed concern that the facility would be too close to a planned middle school and would undermine their quality of life and the environment.<sup>36</sup> As a result, CSX worked with Maryland Governor Martin O'Malley and Baltimore Mayor Stephanie Rawlings-Blake to find a more appropriate site for the facility. In the end, CSX relocated its project to an existing South Baltimore railyard site that CSX already owns—a plan that has received broad community support and will expand the economic and job-growth potential for the Port of Baltimore, which currently generates more than 14,000 direct jobs and \$5 billion annually. Thanks to NEPA, a more suitable location was found and between \$50 and \$240 million will be saved.<sup>37</sup>

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<https://www.bostonglobe.com/metro/2018/01/07/fishing-officials-unveil-sweeping-new-regulations/k4AmOocI2tOlqUydCsXCKO/story.html>

<sup>35</sup> "Decision Document: Chesapeake Bay Oyster Recovery Project Maryland." *U.S. Army Corps of Engineers*. May 2002. Available at:

<http://www.nab.usace.army.mil/Portals/63/docs/Environmental/Oysters/Oysters%20main%20report%20May%202002.pdf>

<sup>36</sup> "CSX ends agreement to buy land in Elkridge for rail facility." *The Baltimore Sun*. June 5, 2012. Available at:

<http://www.baltimoresun.com/ph-ho-cf-csx-0607-20120605-story.html>

<sup>37</sup> "Baltimore-Washington Rail Intermodal Facility Health Impact Assessment." National Center for Healthy Housing. September 2013. Available at: <http://www.pewtrusts.org/-/media/assets/2013/09/01/baltimorewashingtonintermodalhia.pdf?la=en&hash=E4579369513D19AB3557CFDF7811CB4B42AB4602>

## Appendix 1 – Examples of NEPA Outcomes

### Massachusetts

#### *Route 146*

Route 146 runs through an area of central Massachusetts rich with American history, industrial development, and growing communities. The Federal Highway Administration's \$290 million proposal to transform Route 146 and improve travel would have expanded a section of a two-lane, unlimited-access road into a four-lane divided parkway, modifying major interchanges and bridges in the process. To integrate NEPA principles into the process, the Massachusetts Highway Department (MassDOT) established a Citizens Advisory Committee of local business owners, residents, political leaders, environmental groups, and representatives from federal and state agencies to help inform the final design. The final plan links towns to the highway and the history of the Blackstone River while enhancing natural and historic resources. For example, the project includes construction of a bike path through the corridor, building preservation, historic bridge restoration, stormwater and wetlands mitigation, and creation of wildlife passages. George Batchelor of MassDOT said the Citizens Advisory Committee was "a meeting of the minds" ensuring that "what was done was done properly." Without the input of citizen groups, the road design would not have addressed the region's historic and environmental resources. Local leaders hope Route 146 will become a renowned historic parkway that will attract tourism.<sup>38</sup>

### Michigan

#### *US-23*

The Michigan Department of Transportation (MDOT) pushed for the construction of a four-lane freeway parallel to the existing two-lane US-23 for close to a decade. The expansion would have rerouted US-23 through undeveloped country in the northeastern part of the state, causing the largest single wetlands loss in Michigan and severely compromising protected wildlife habitat, state and national forestland, coastal wetlands, and the Au Sable River Corridor. Residents opposed the expansion, instead preferring to fix the existing highway by adding passing lanes and making other safety improvements. "Right from the start, that was our whole focus: Fix what we have and don't build a new, billion-dollar freeway," said Paul Bruce, founder of People for US-23 Freeway Alternatives, a citizens' group in Alpena. MDOT issued a draft environmental impact statement in 1995 that considered only two choices: Build the extension or do nothing. Upon discovering this failure to fully analyze alternatives to new construction, the Federal Highway Administration stepped in. It rejected the proposal, directed MDOT to upgrade the existing highway or study the creation of a less-damaging boulevard, and recommended resident-supported alternatives such as the addition of passing lanes and turn lanes and traffic signal upgrades. Kelly Thayer, transportation project coordinator at the Michigan Land Use Institute, said the intervention was a huge success. "NEPA kept alive the public's opportunity to give input," said Thayer. Due to the NEPA process, these communities will be spared the devastating impacts of unneeded and unwanted expansion. And in the end, an eye-popping \$1.5 billion will be saved.<sup>39</sup>

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<sup>38</sup> "Route 146 Transportation Study." Massachusetts Department of Transportation. December 2005. Available at: <https://www.massdot.state.ma.us/Portals/17/docs/Studies/Route146TransportationStudy.pdf>

<sup>39</sup> "Final Environmental Impact Statement and Section 4(f) Evaluation for the Proposed US-23 Freeway Extension Project Phase I." Michigan Department of Transportation in cooperation with the Federal Highway Administration. Available at: [http://www.michiganhighways.org/indepth/US-23\\_Executive\\_Summary.pdf](http://www.michiganhighways.org/indepth/US-23_Executive_Summary.pdf)

## Appendix 1 – Examples of NEPA Outcomes

### *Midland Manufacturing Facility Construction*

In 2010, the Department of Energy (DOE) proposed construction of a manufacturing facility for vehicle batteries and hybrid components in Midland, Michigan. Through the NEPA process, the DOE became increasingly aware of potential safety issues related to dioxin contamination of the soil at the site from past manufacturing activities there. Dioxin can cause reproductive and developmental problems, damage the immune system, interfere with hormones, and cause cancer. As a result, the DOE incorporated measures into their plan to minimize the risk of exposing workers and children at the nearby daycare facility to contaminated soil during construction. These included more rigorous management and monitoring of fugitive dust emissions at certain times, temporary relocation of daycare services on days of exposure, scheduling construction around daycare operations, and temporarily enhanced air filtration during construction.<sup>40</sup>

### *Petoskey Bypass*

After an effective process including public engagement, the Michigan Department of Transportation in 2001 abandoned an environmentally damaging and disruptive plan to build a four-lane bypass in Petoskey in favor of supporting a transportation and land use planning process led by local citizens and governments.<sup>41</sup>

## **Minnesota**

### *Central Corridor Light Rail*

The Central Corridor Light Rail is a 10.9-mile light rail transit line connecting downtown Minneapolis and St. Paul. Running along University Avenue for most of the route, the project includes the construction of 18 new stations and is expected to cost \$1 billion by completion in 2014. In January 2011, the National Association for the Advancement of Colored People (NAACP) filed suit against the U.S. Department of Transportation (DOT) and the Metropolitan Council (the regional transit authority) claiming that the final environmental impact statement for the project was inadequate, in part because it failed to analyze the short-term impact of project construction on surrounding businesses. Specifically, the businesses were concerned with the project's removal of street parking, which would prevent customers from patronizing their stores, negatively affecting their revenues. In response, the DOT used NEPA to hold town meetings, hearings, and otherwise engage the community, resulting in a supplemental environmental assessment that suggested a range of mitigation measures to help small businesses affected by construction activities. In total, the Metropolitan Council, the City of St. Paul, City of Minneapolis, Metro Transit (the regional transit authority), and the contractor committed nearly \$15 million to help small, local businesses in the corridor cope with the impacts of construction and loss of street parking.<sup>42</sup>

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<sup>40</sup> "Final Environmental Assessment for DOE's Proposed Financial Assistance to Dow Kokam MI, LLC to Manufacture Advanced Lithium Polymer Batteries for Hybrid and Electric Vehicles." *U.S. Department of Energy, National Energy Technology Laboratory. March 2010.* Available at:

[https://www.energy.gov/sites/prod/files/nepapub/nepa\\_documents/RedDont/EA-1708-FEA-2010.pdf](https://www.energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/EA-1708-FEA-2010.pdf)

<sup>41</sup> "Report Offers Route to Cut Petoskey Traffic: existing roads, tight zoning could solve problem." Michigan Land Use Institute. December 7, 2007. Available at:

[http://www.mlui.org/mlui/archives.html?archive\\_id=834%2523.WnspF66nHIV#.WoMwbZM-fwc](http://www.mlui.org/mlui/archives.html?archive_id=834%2523.WnspF66nHIV#.WoMwbZM-fwc)

<sup>42</sup> "Amended Record of Decision on the Central Corridor Light Rail Transit Project." *Federal Transit Administration.* August 2013. Available at: