

**BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES (CIS)
INTERIM FINAL RULE: ADJUSTMENT OF THE IMMIGRATION BENEFIT
APPLICATION FEE SCHEDULE**

Background Memorandum

Federal Guidelines require that the CIS establish and collect fees to recover the full cost of processing immigration benefit applications, rather than supporting these services through general tax revenue.

Background:

Fees collected from persons filing immigration benefit applications are deposited into the Immigration Examinations Fee Account (IEFA) and used to fund the full cost of processing immigration benefit applications and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to other immigrants, as specified in the regulation, at no charge.

Statement of the Problem:

In FY 2002, the President proposed a 5-year, \$100 million a year initiative to attain a universal 6-month processing time standard for all immigration benefit applications. In contrast to the appropriated resources necessary to reduce the backlog, this CIS rule addresses the full costs of processing incoming immigration benefit applications. If the CIS does not adjust the current fees to recover the full costs of processing immigration benefit applications, the backlog will likely increase.

This Interim Rule:

The interim rule adjusts the immigration benefit application fees by an average of \$45, and eliminates a separate fee charged for the fingerprinting of applicants who apply for certain immigration benefits. The rule adjusts for the following cost elements (per application): 1) National Security Checks--\$20.50; 2) Biometrics Processing--\$16; 3) Asylum Interpreter Services--\$2; 4) Section 457 of HSA--\$.7; 5) CIS Ombudsman--\$.90; 6) Office of Citizenship--\$.70; 7) OMB Circular A-76 Study--\$.40; 8) Litigation Settlements--\$.30; 9) Cost of Living--\$4.50.

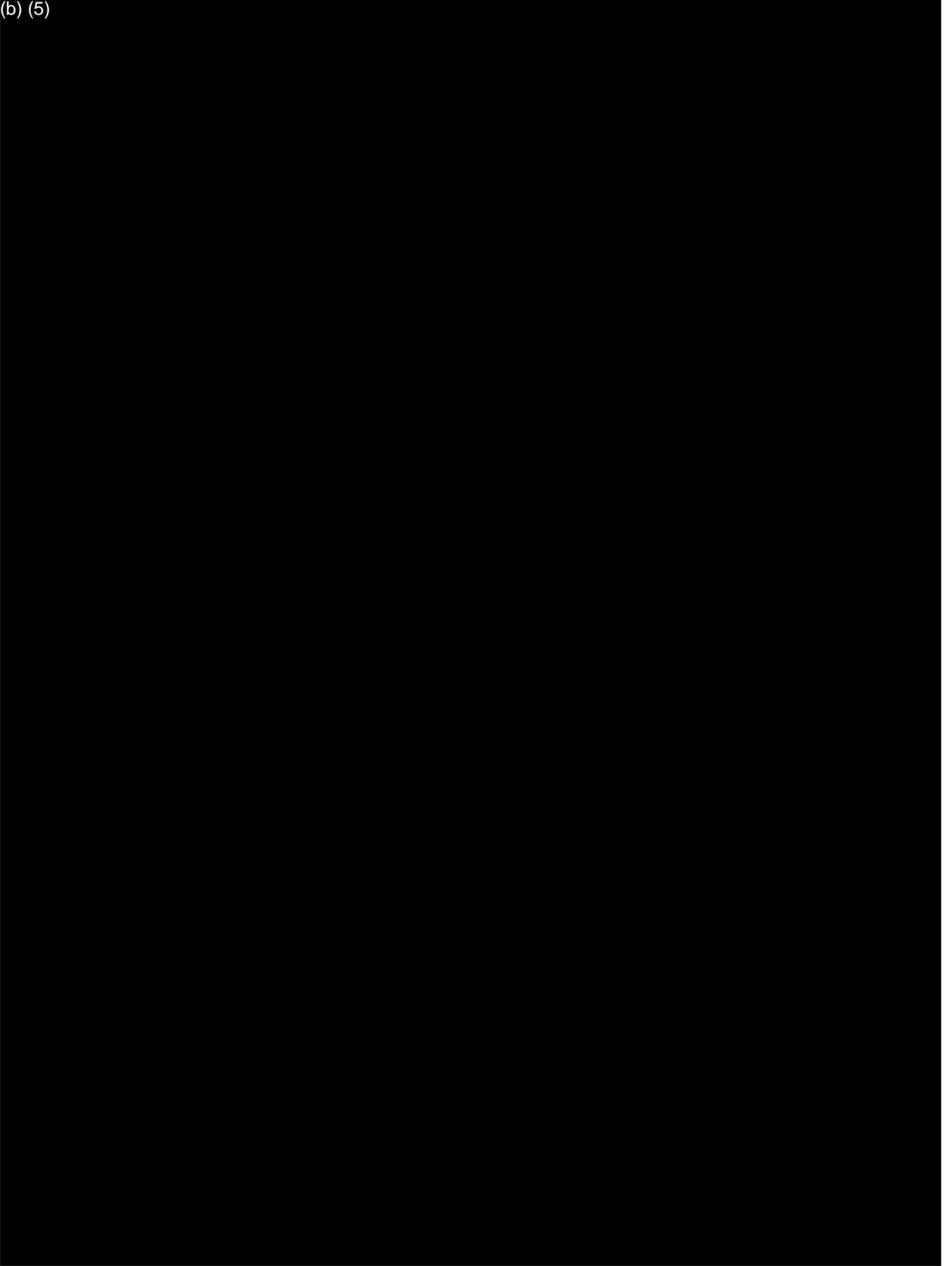
Discussion of the Costs and Benefits:

Although increasing the fees for immigration benefit applications will increase the cost to the applicant/petitioner, Federal guidelines require that CIS establish and collect the appropriate fee to recover the full cost of processing these immigration benefit applications. CIS cannot process immigration benefit applications in a timely manner without these funds. The rule will increase fee revenues by \$312 million per year. For every day the fee rule is delayed, CIS will lose approximately \$855K in fee revenues.

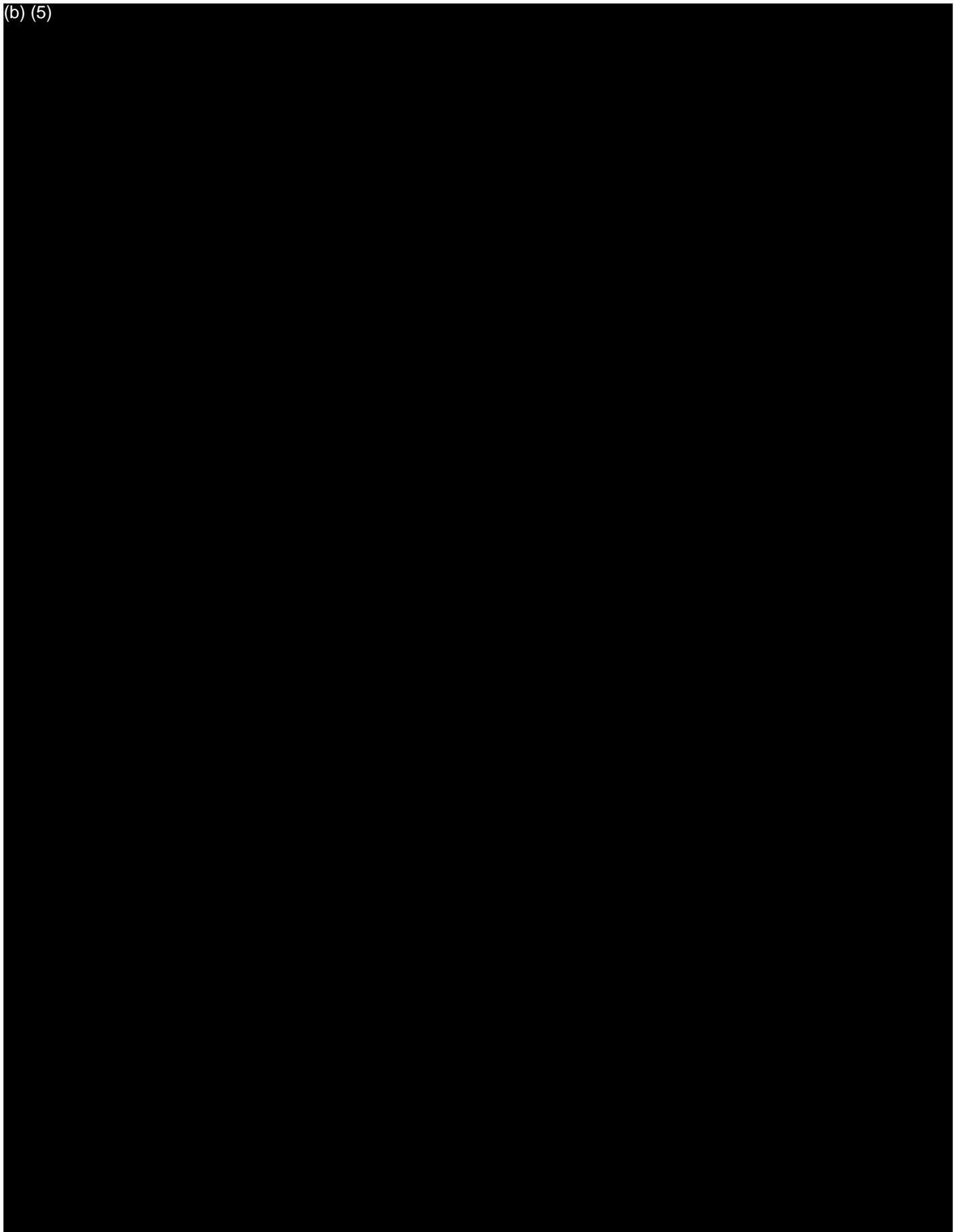
Anticipated Reaction:

Increasing the fees for immigration benefits is never very popular with the immigrant community. However, CIS maintains the discretion to waive fees on a case-by-case basis pursuant to 8 CFR 103.7(c).

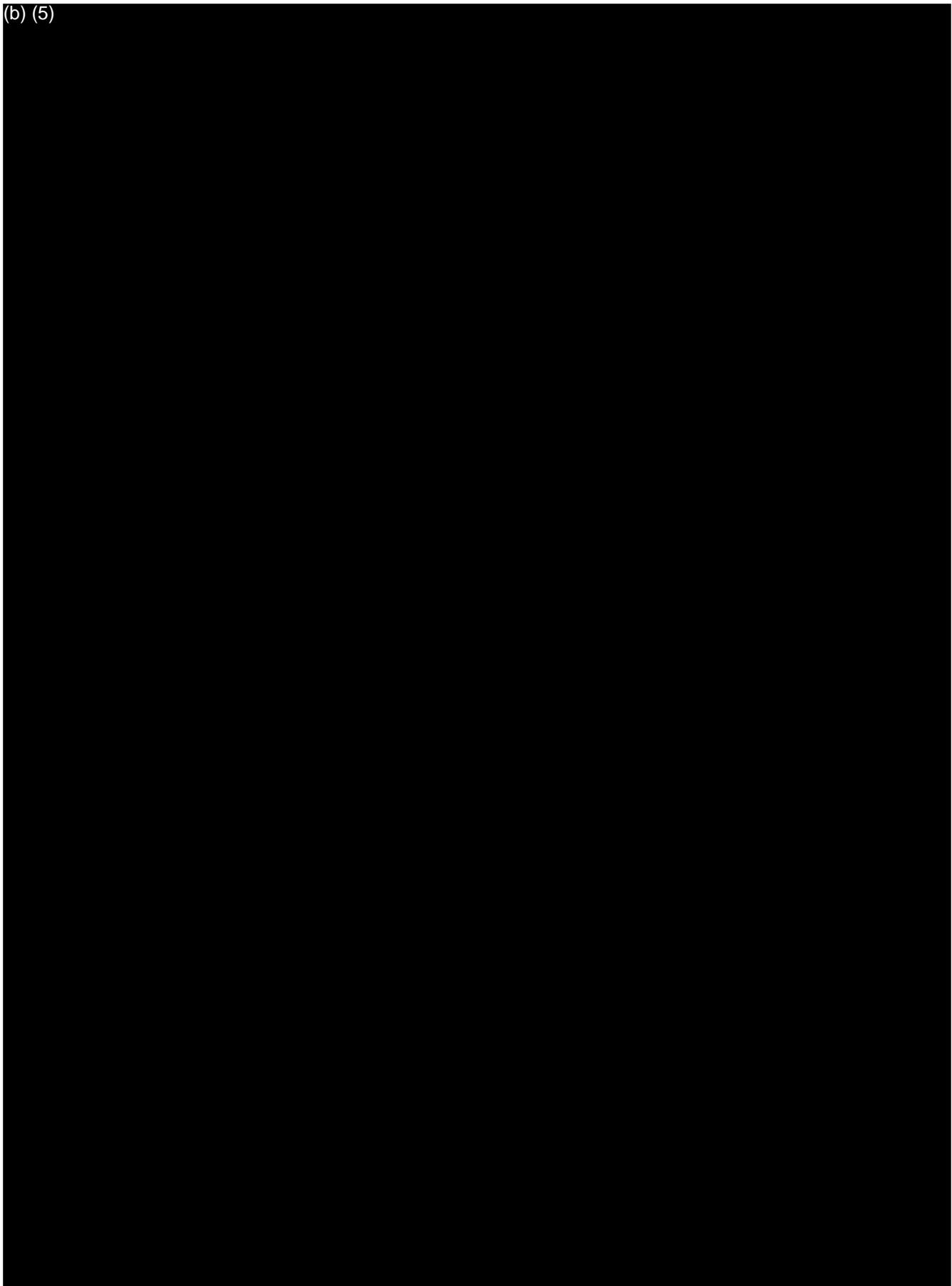
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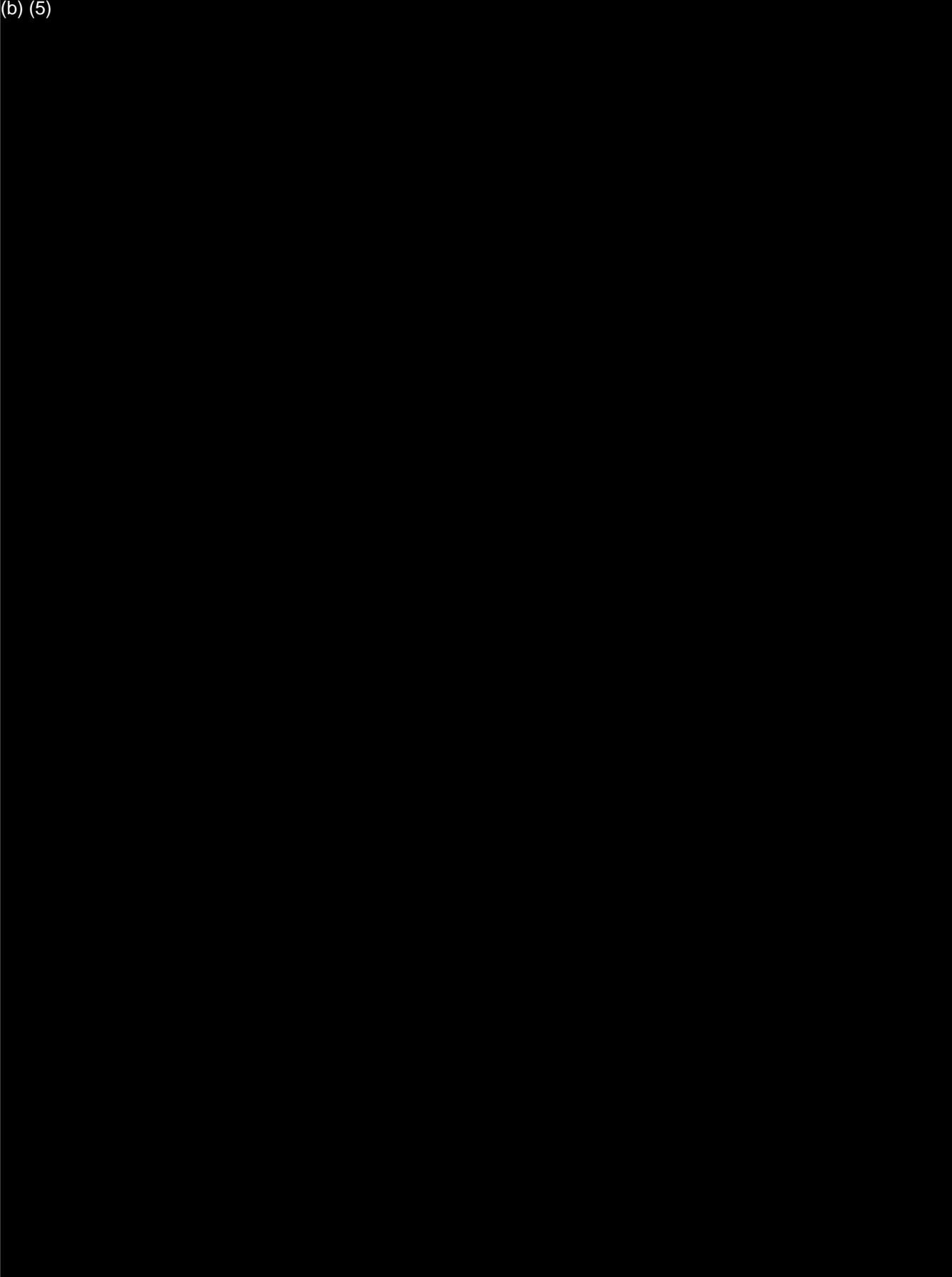
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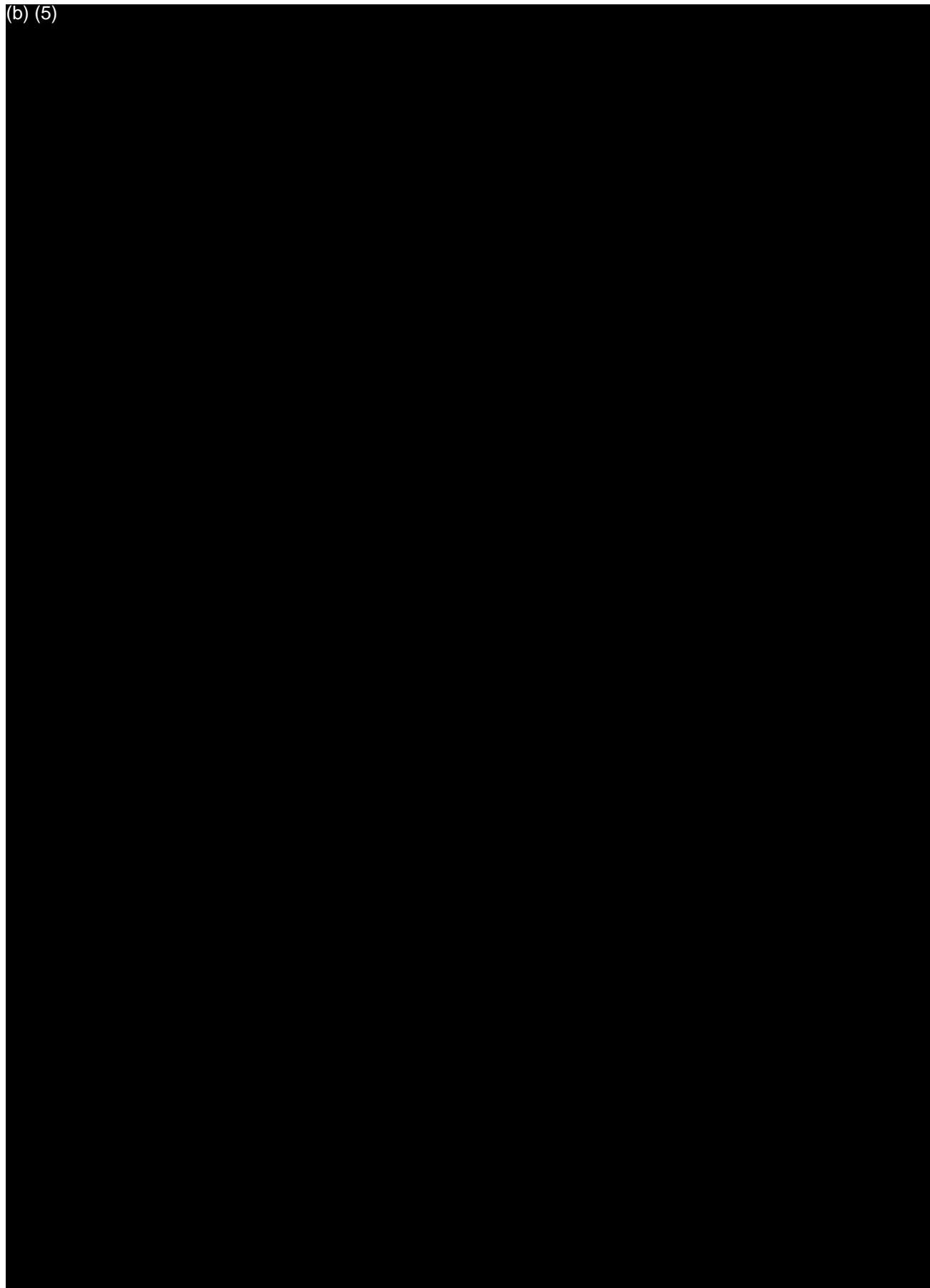
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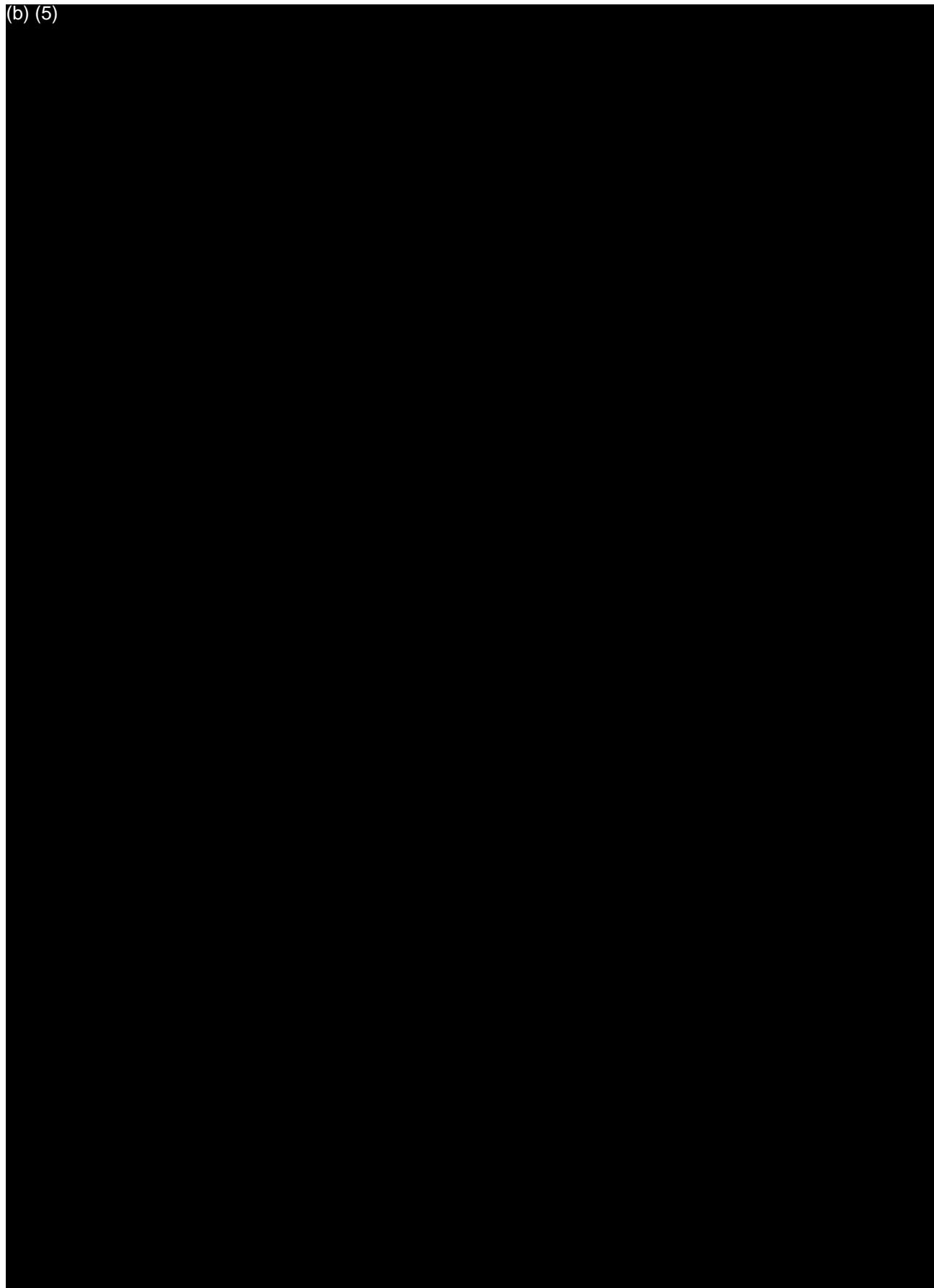
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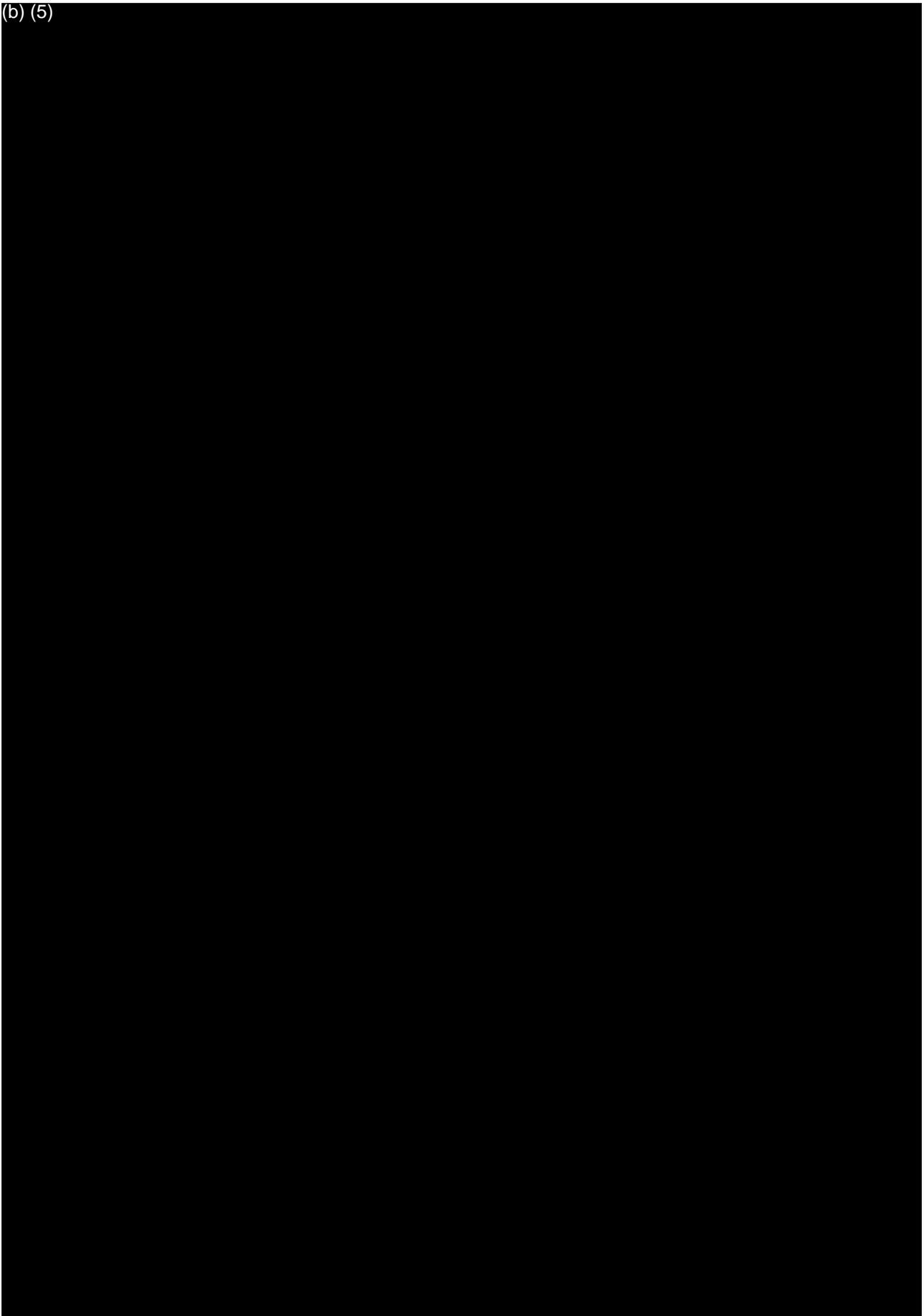
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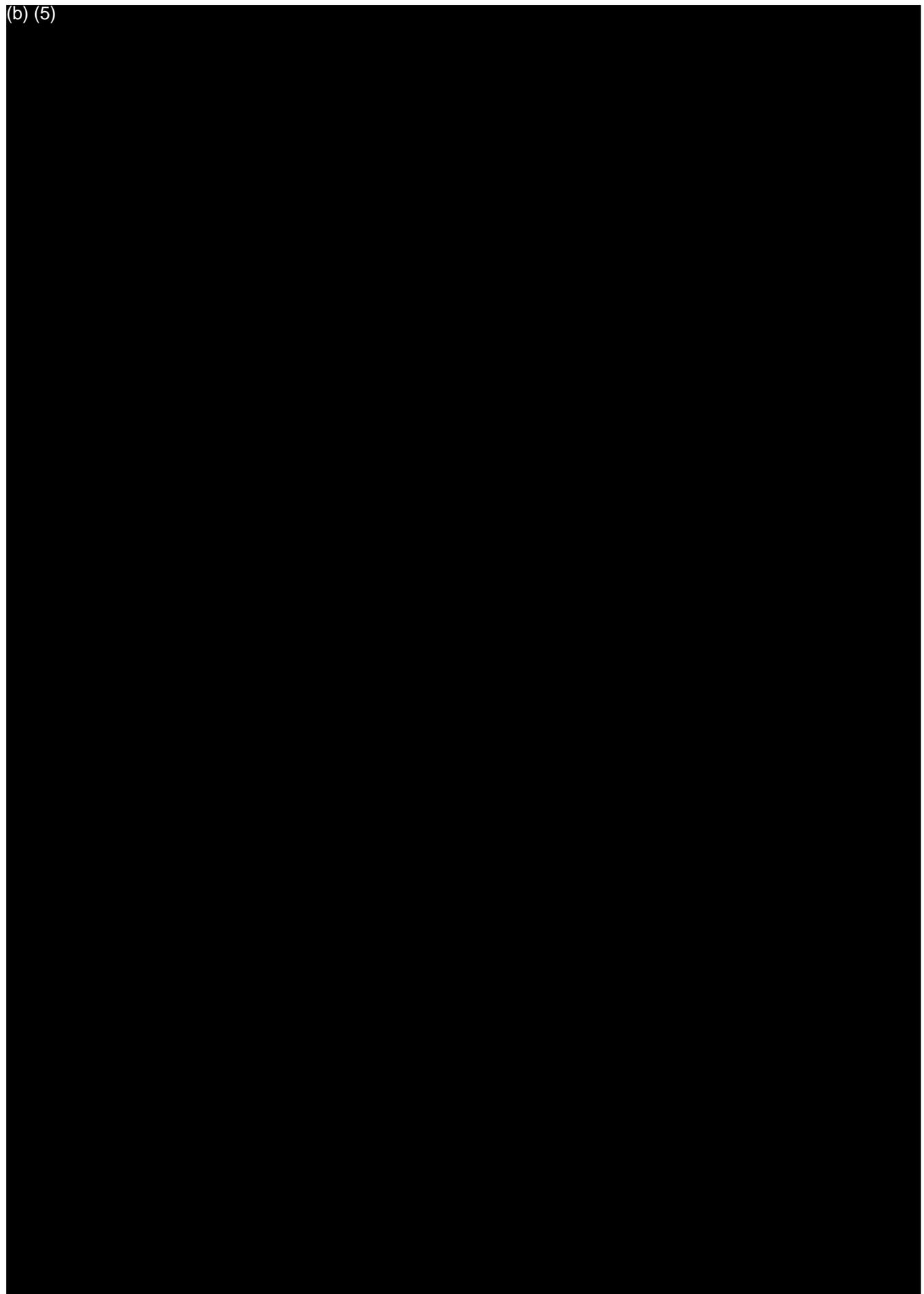
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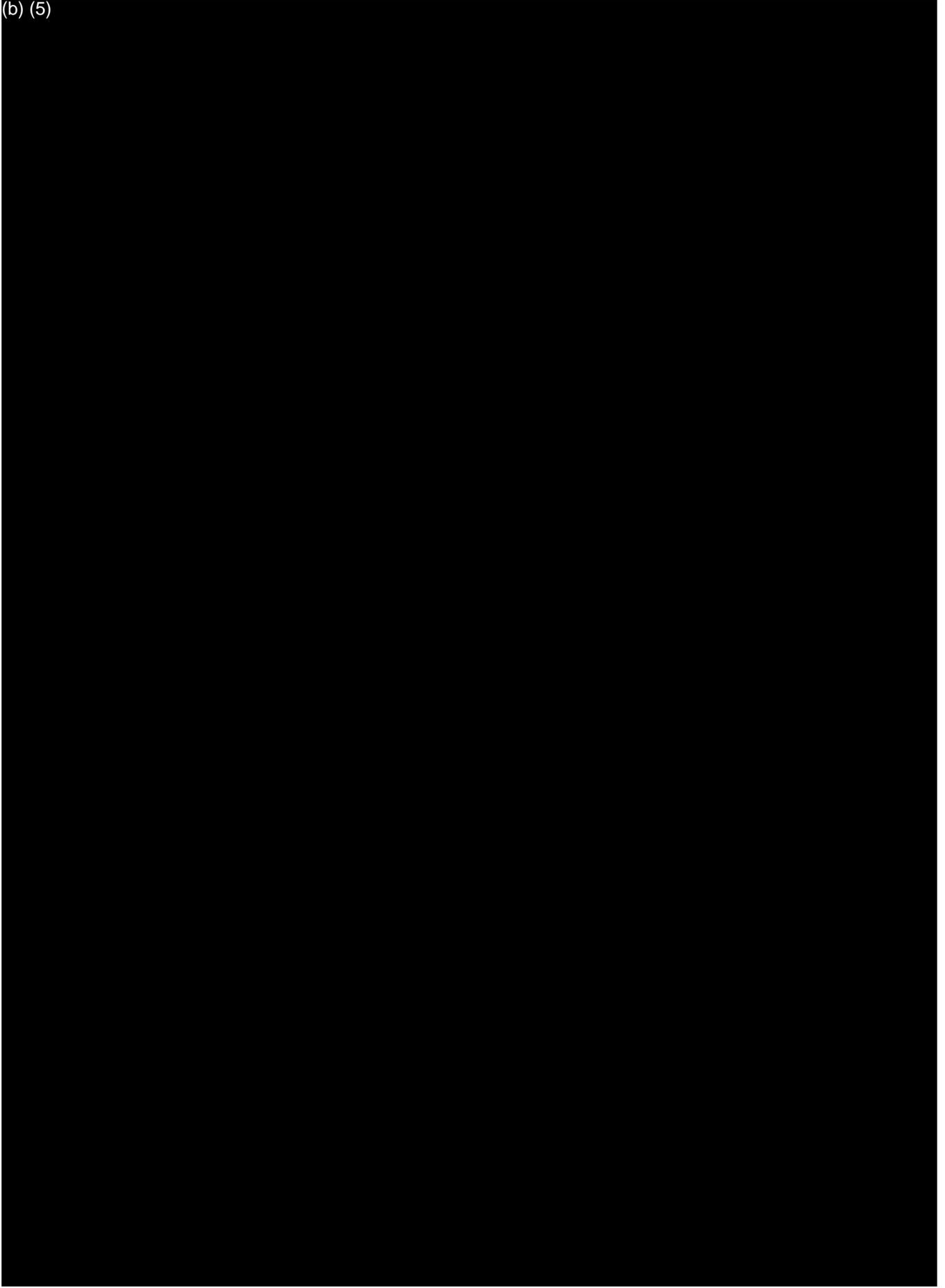
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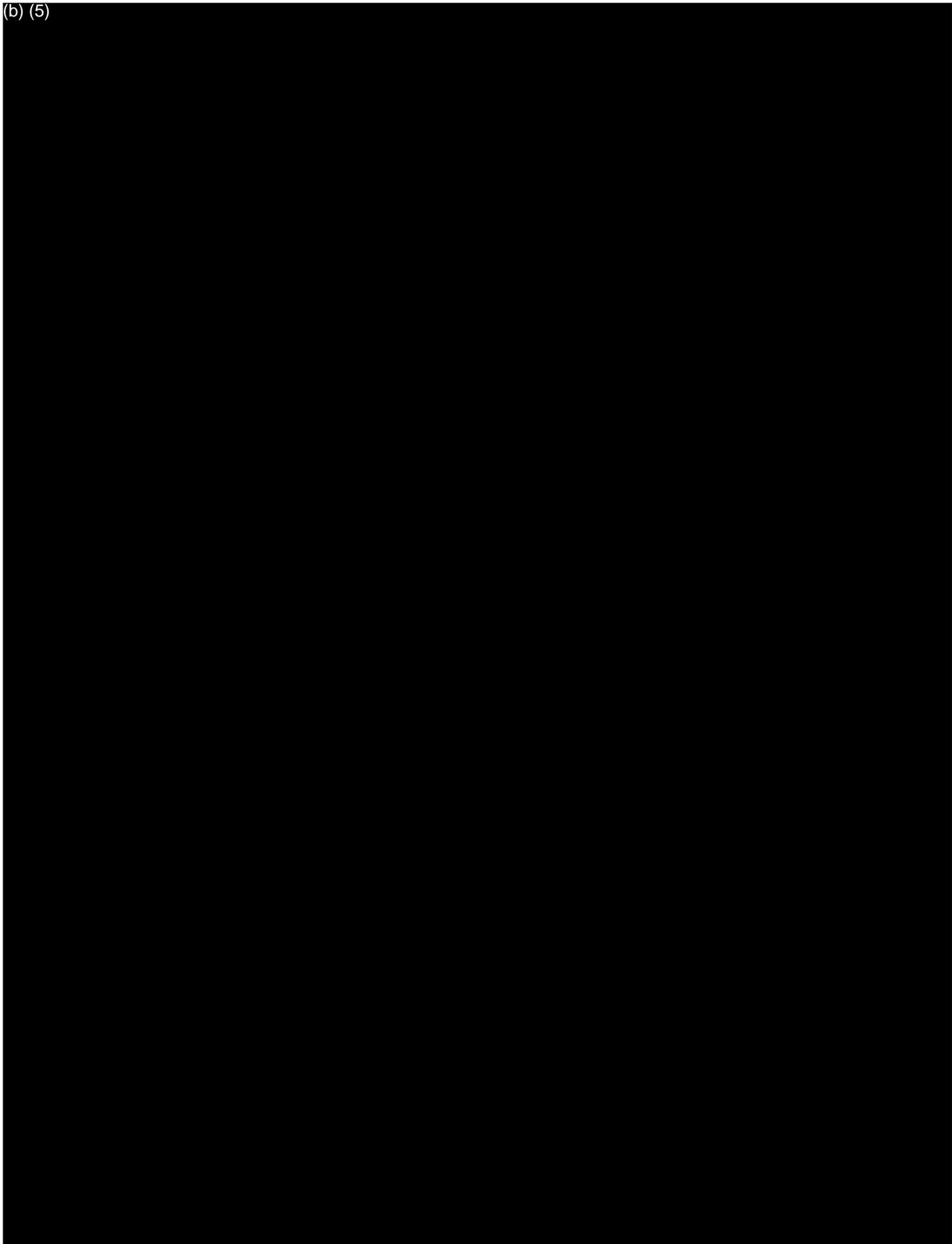
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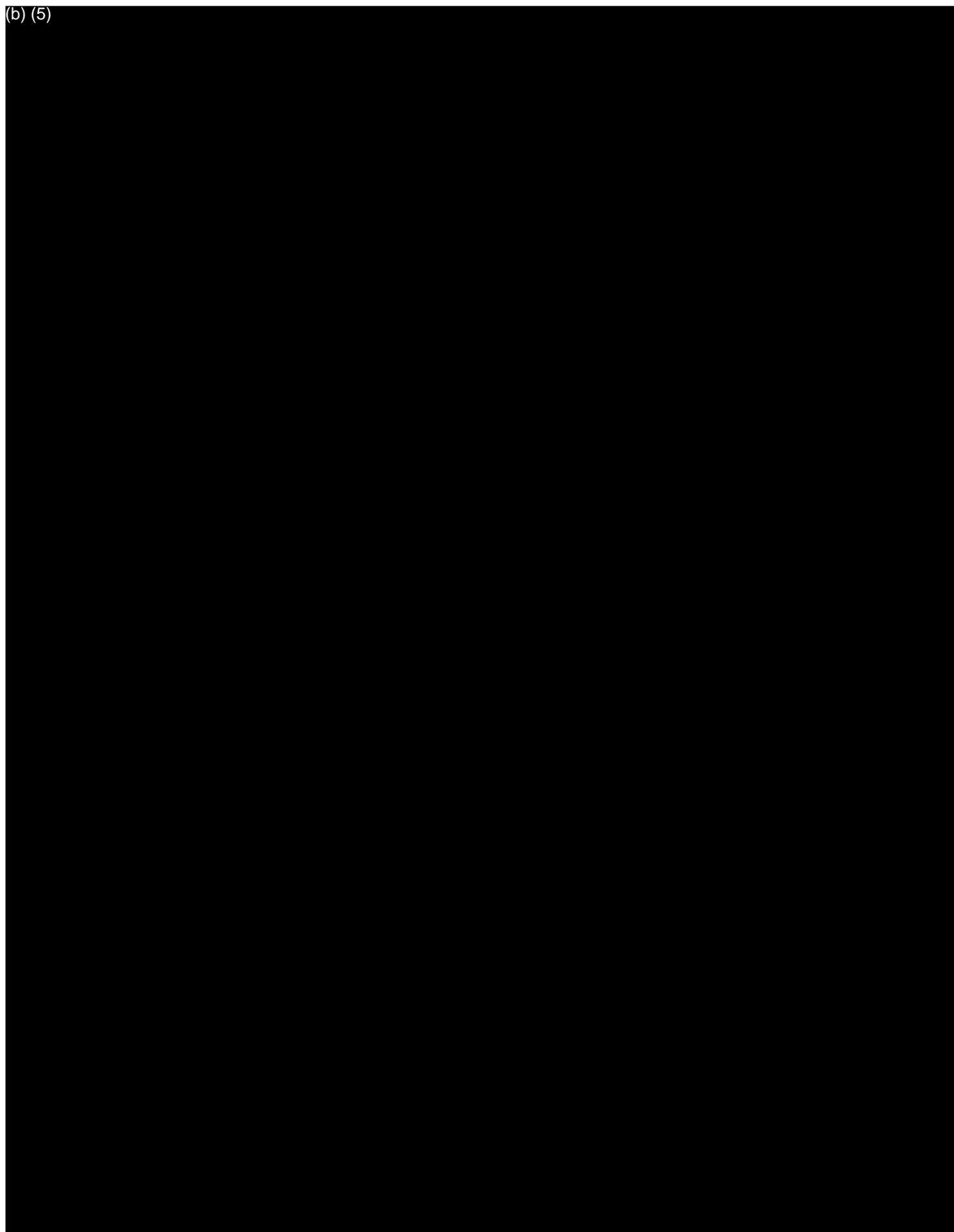
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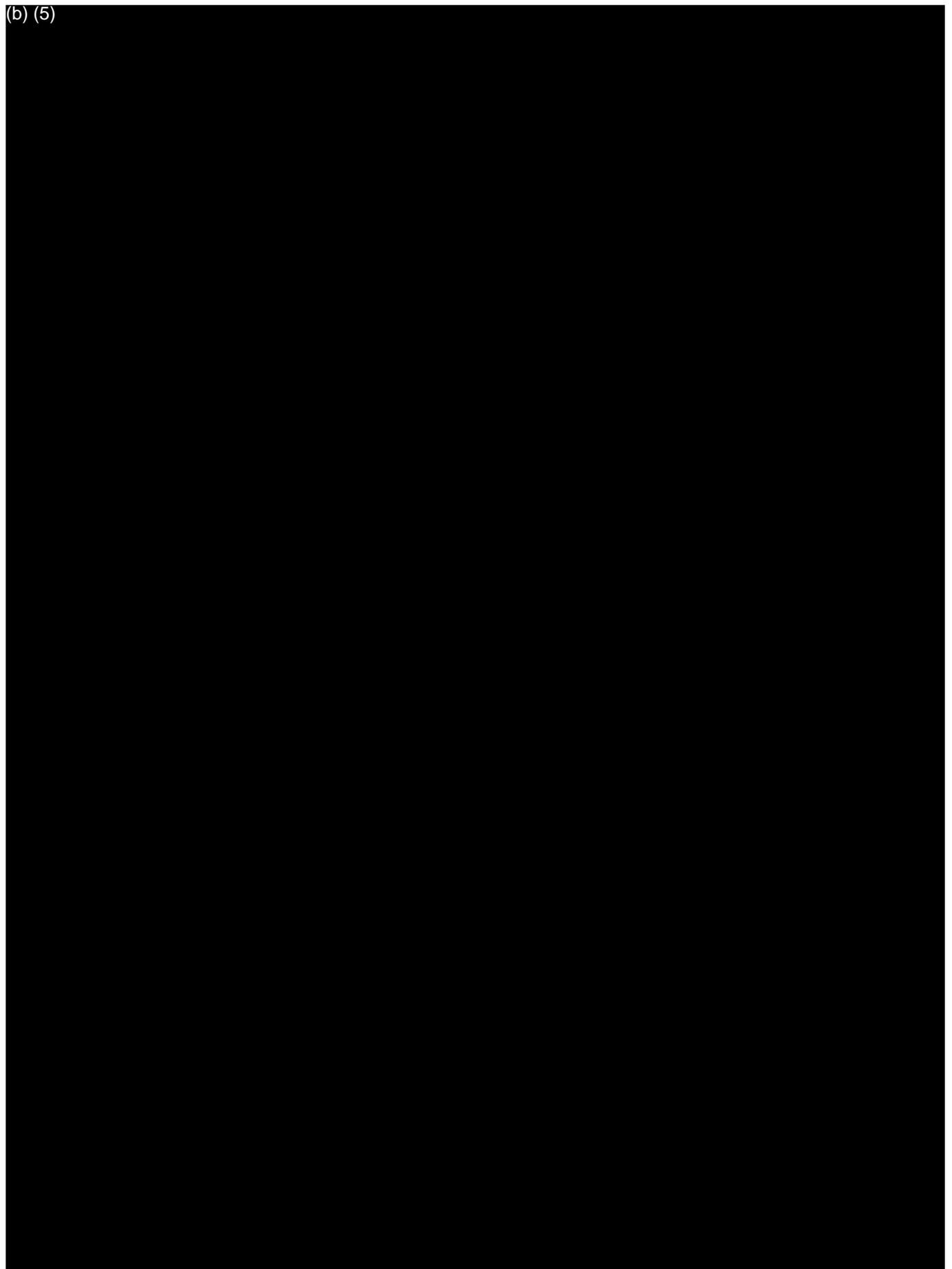
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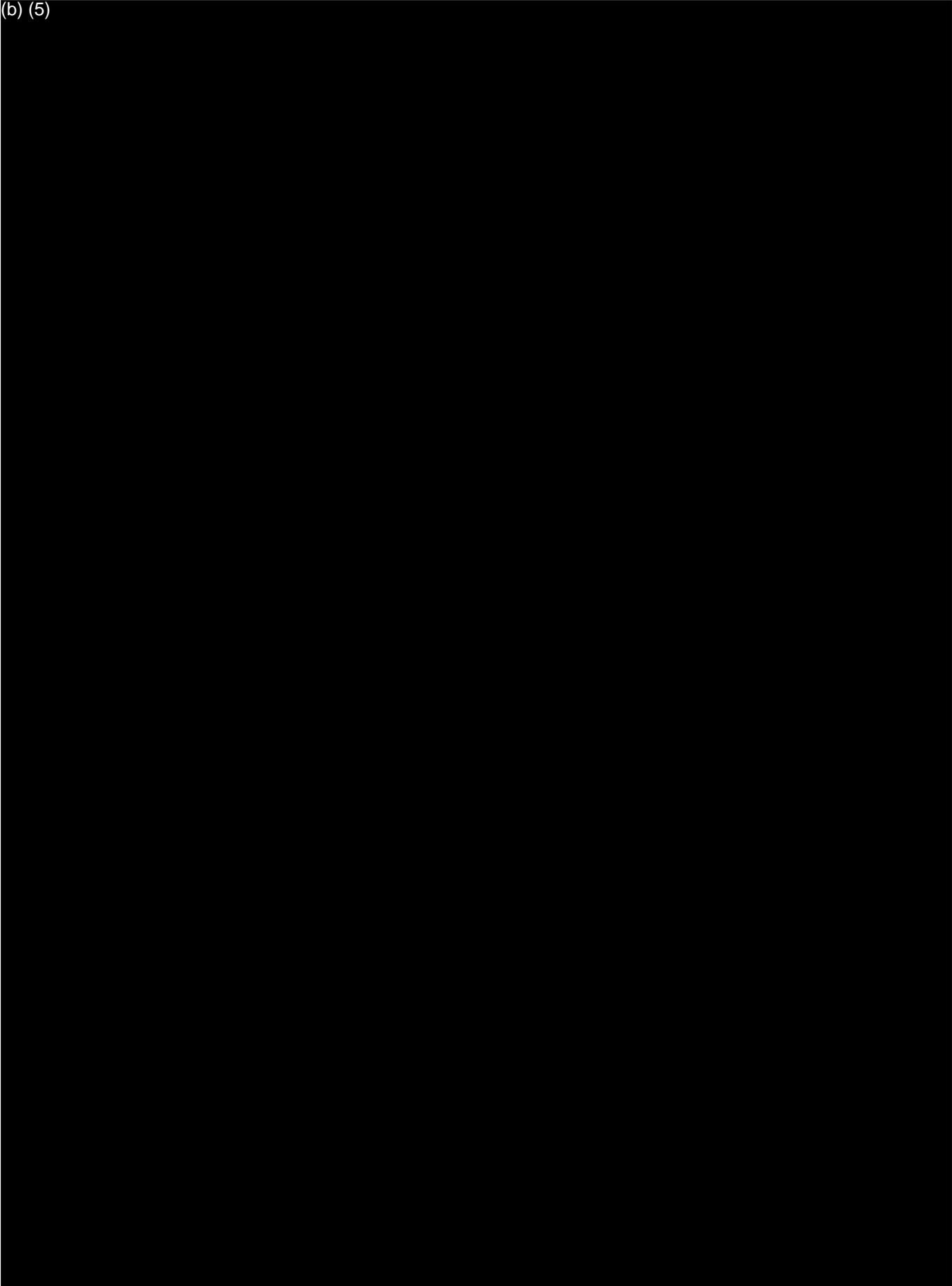
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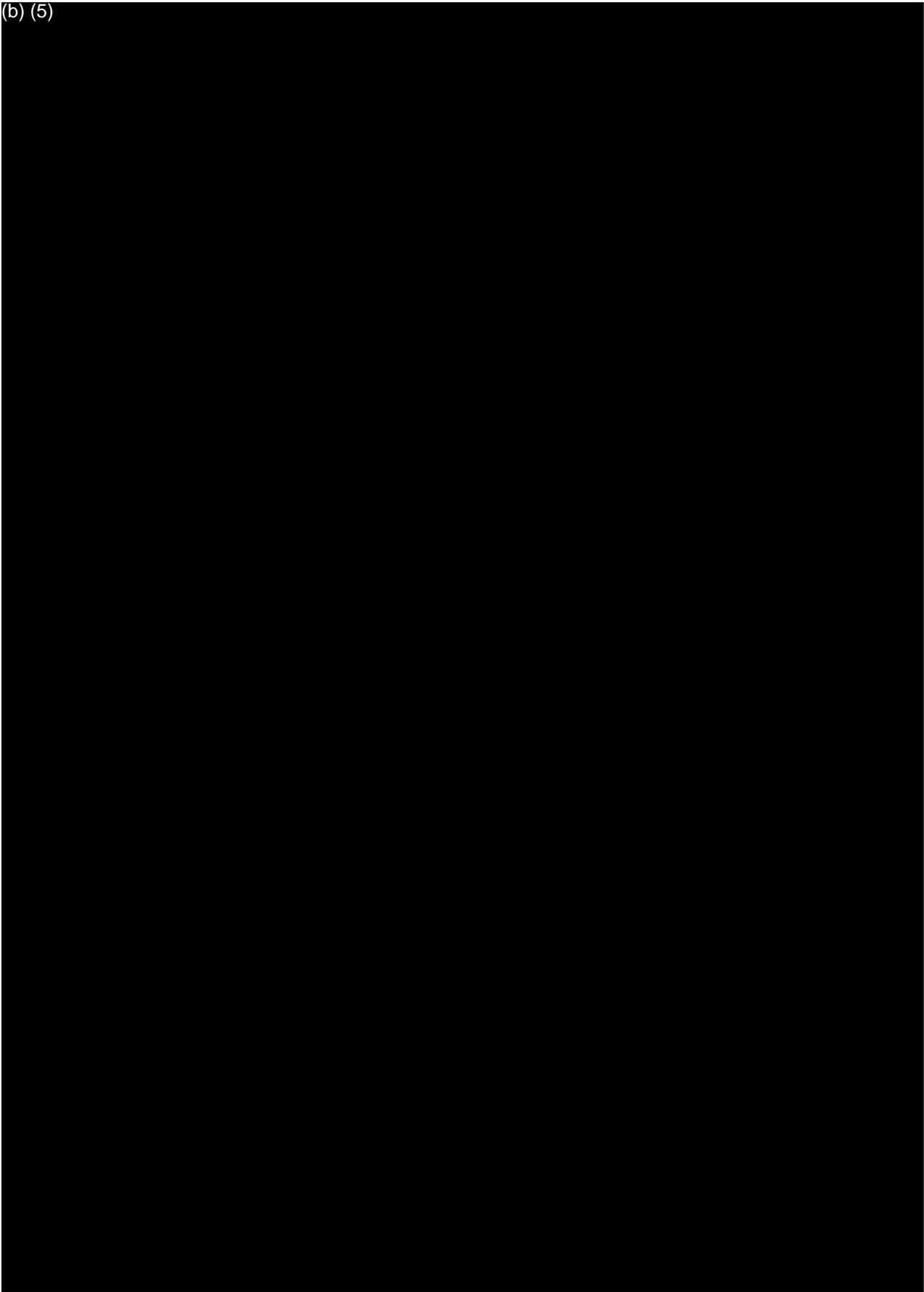
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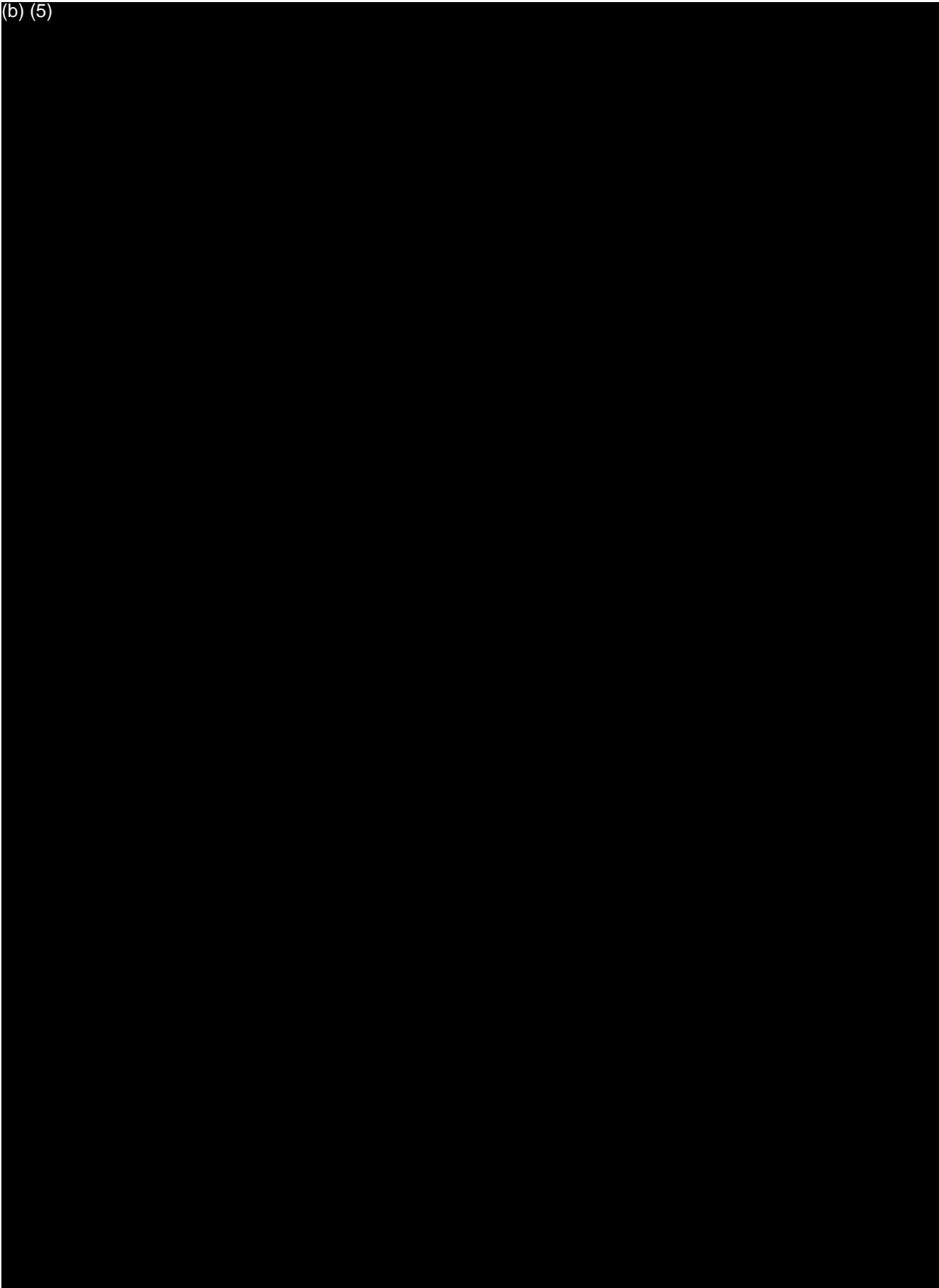
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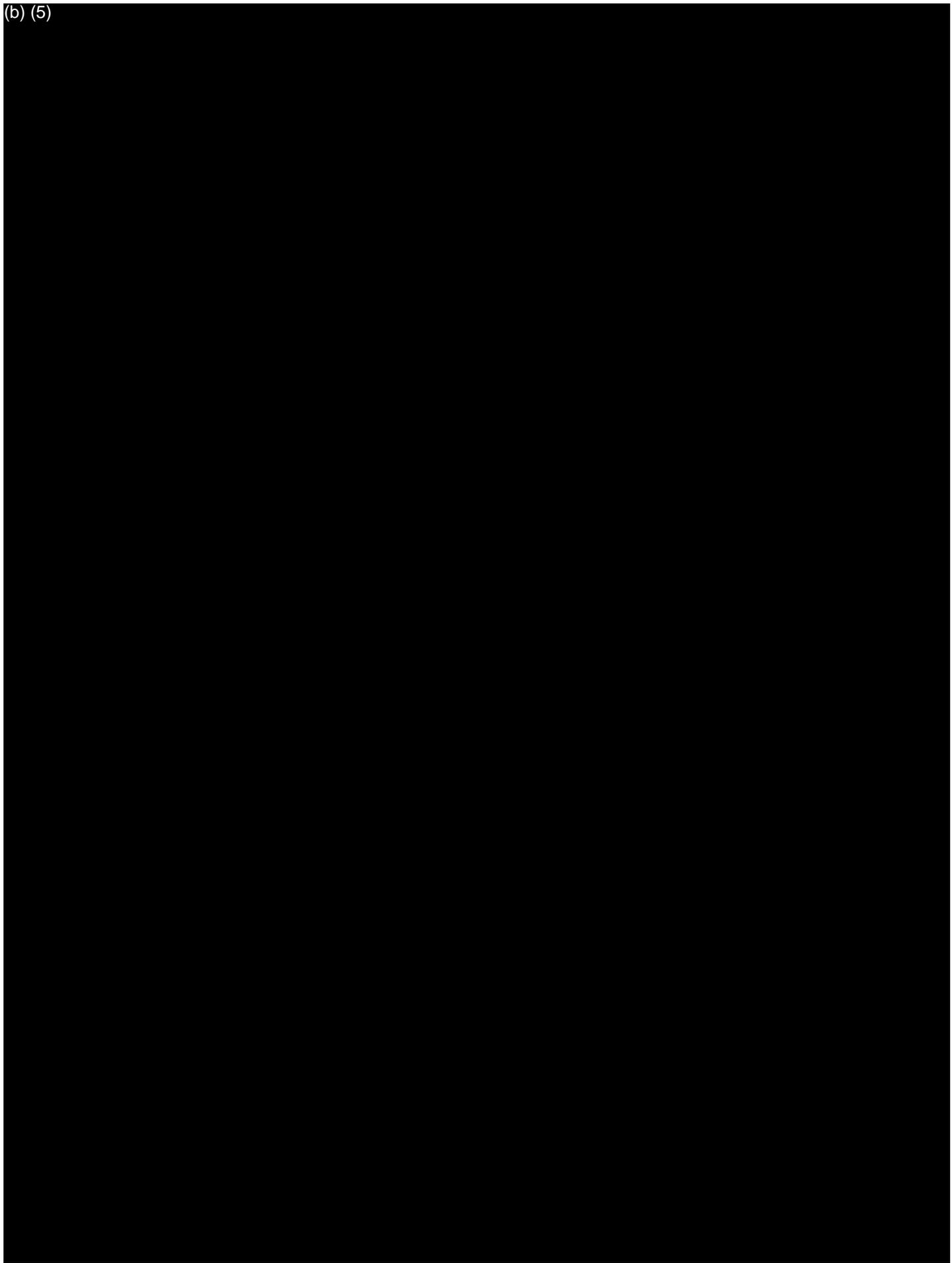
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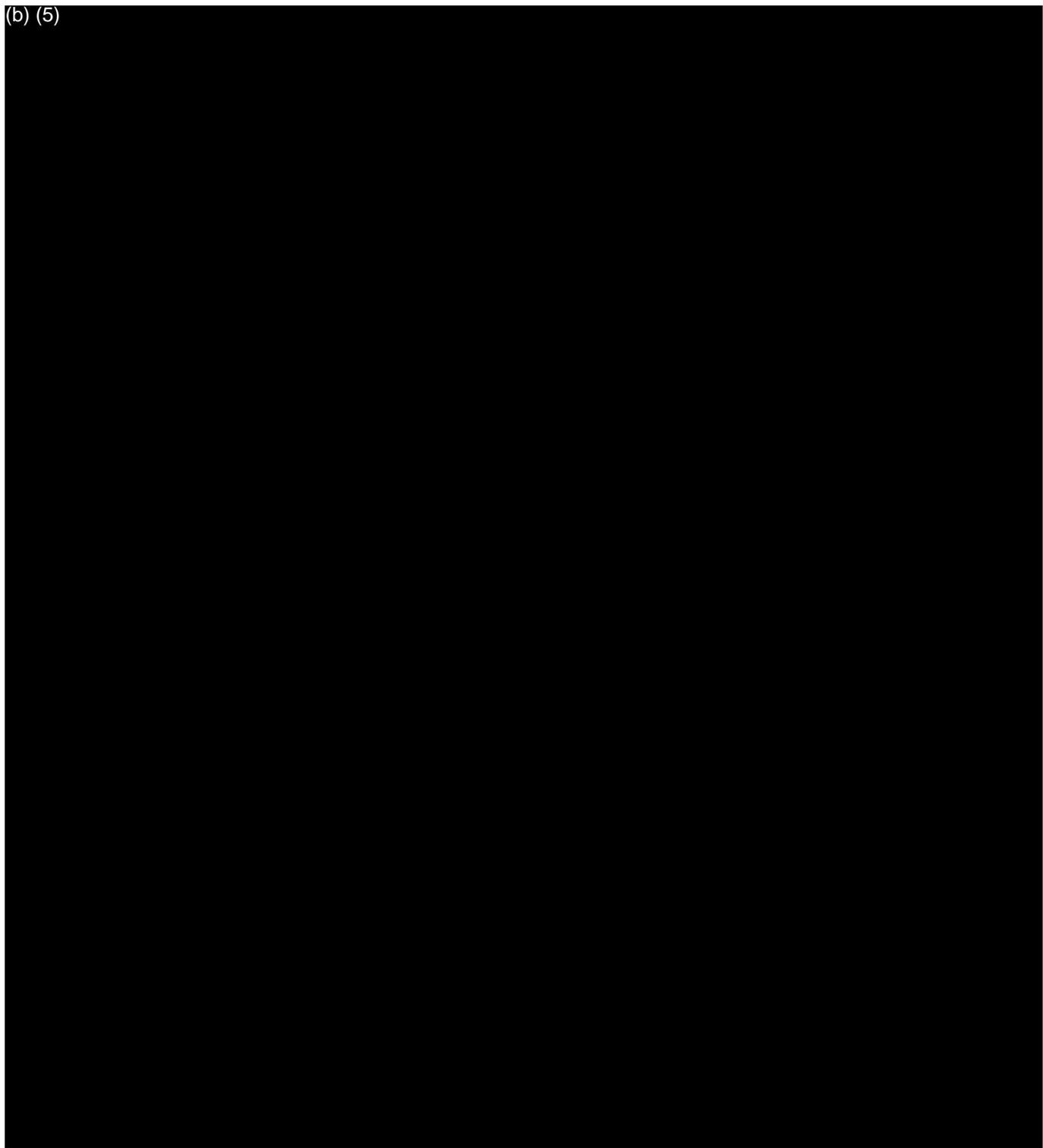
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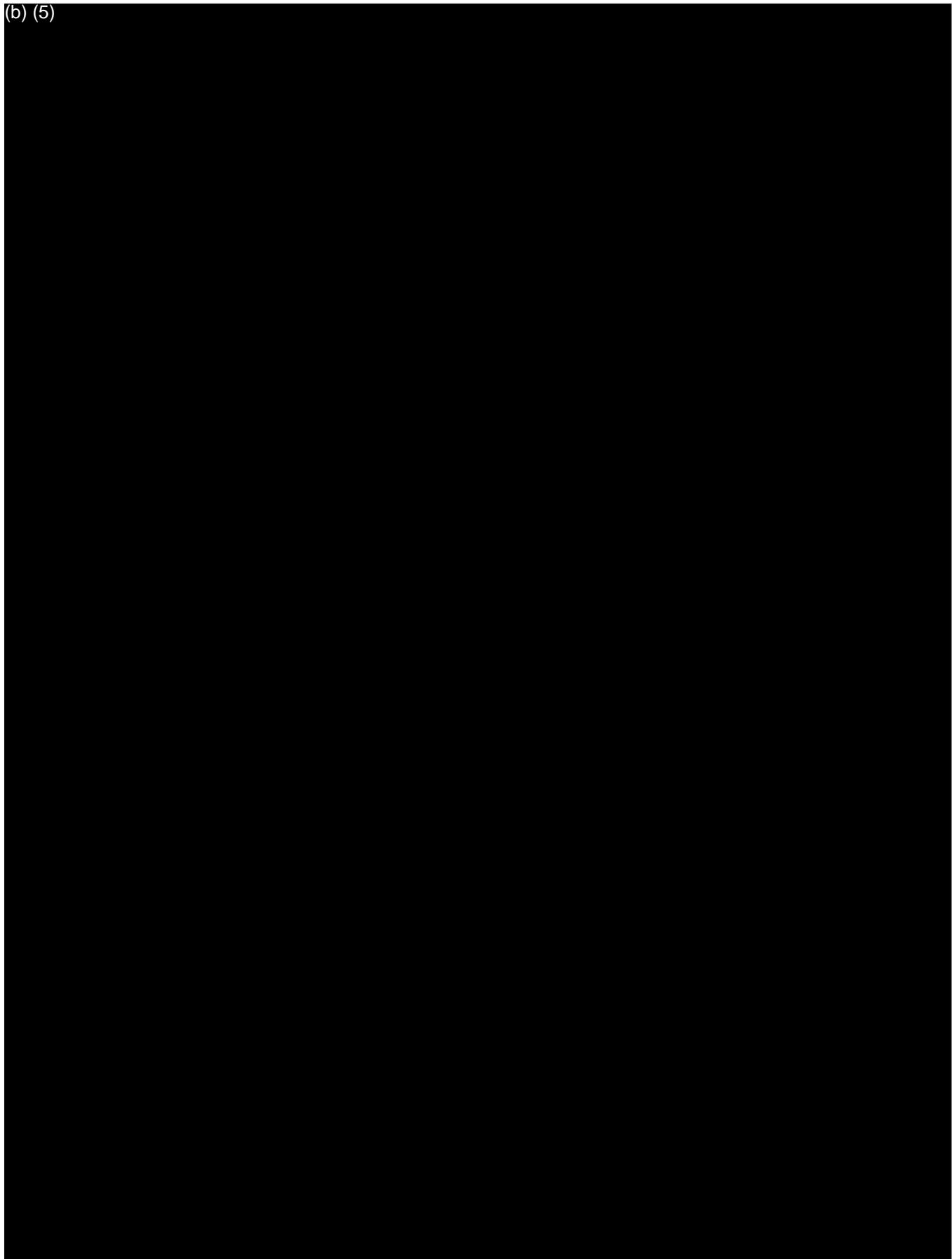
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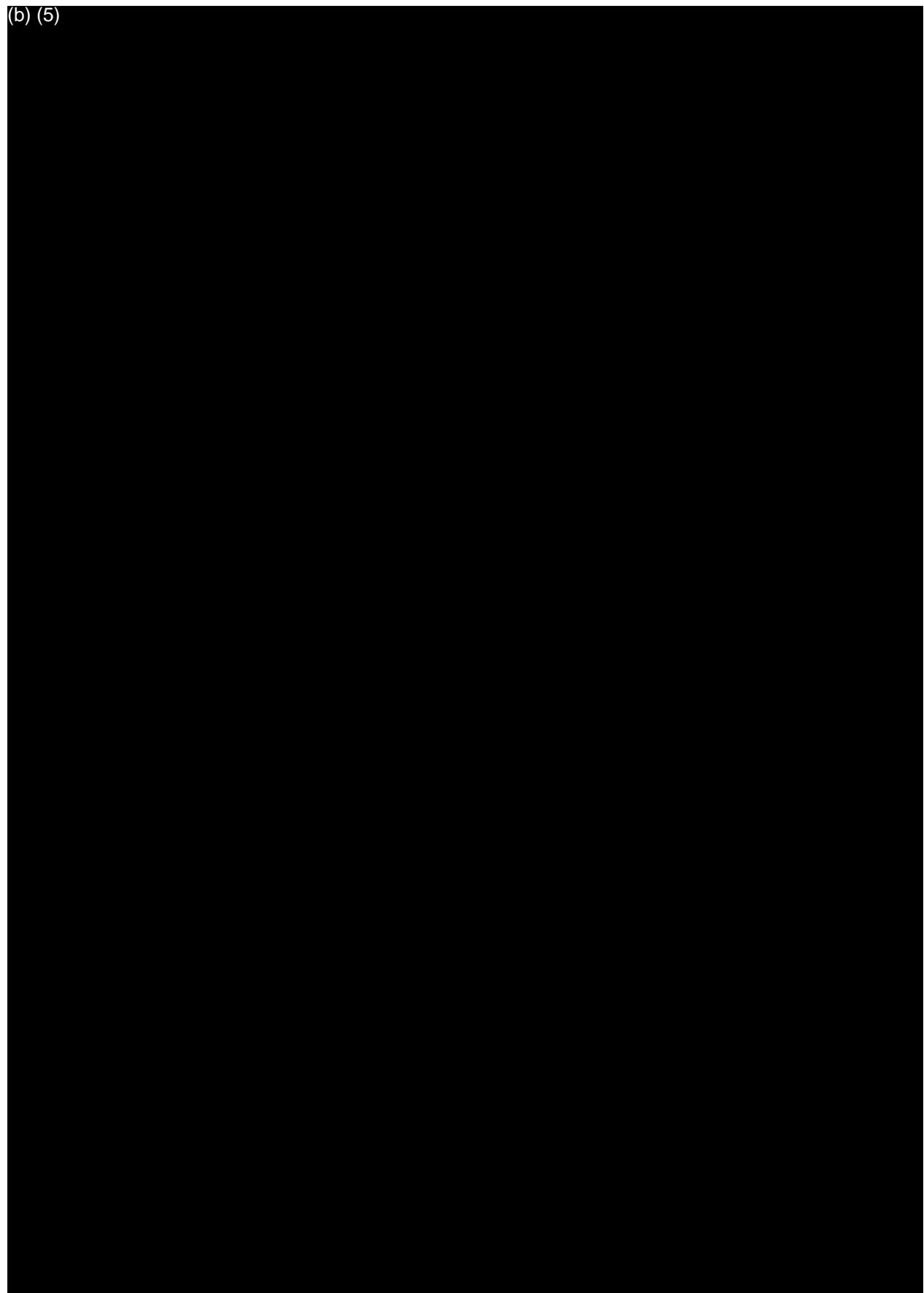
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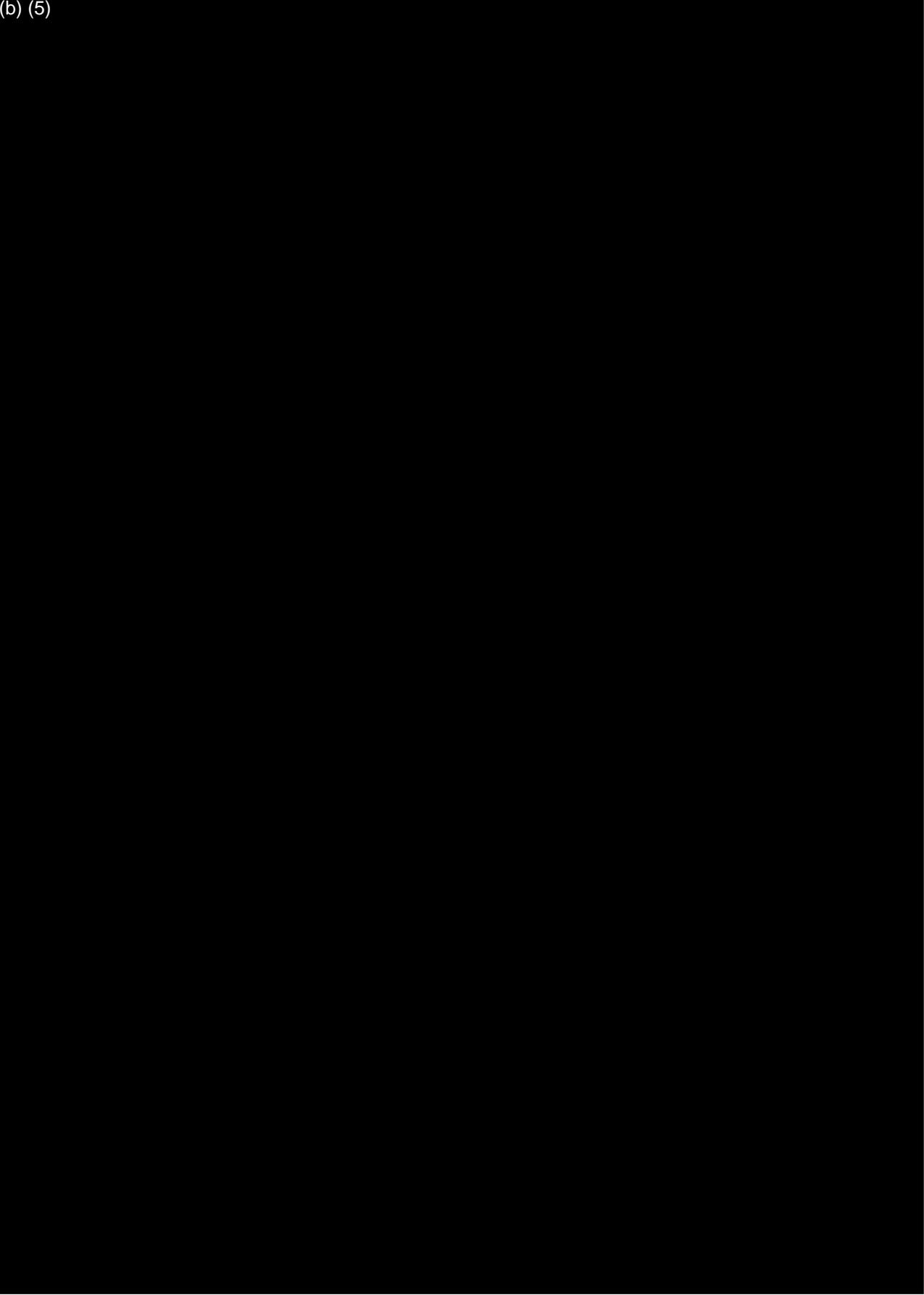
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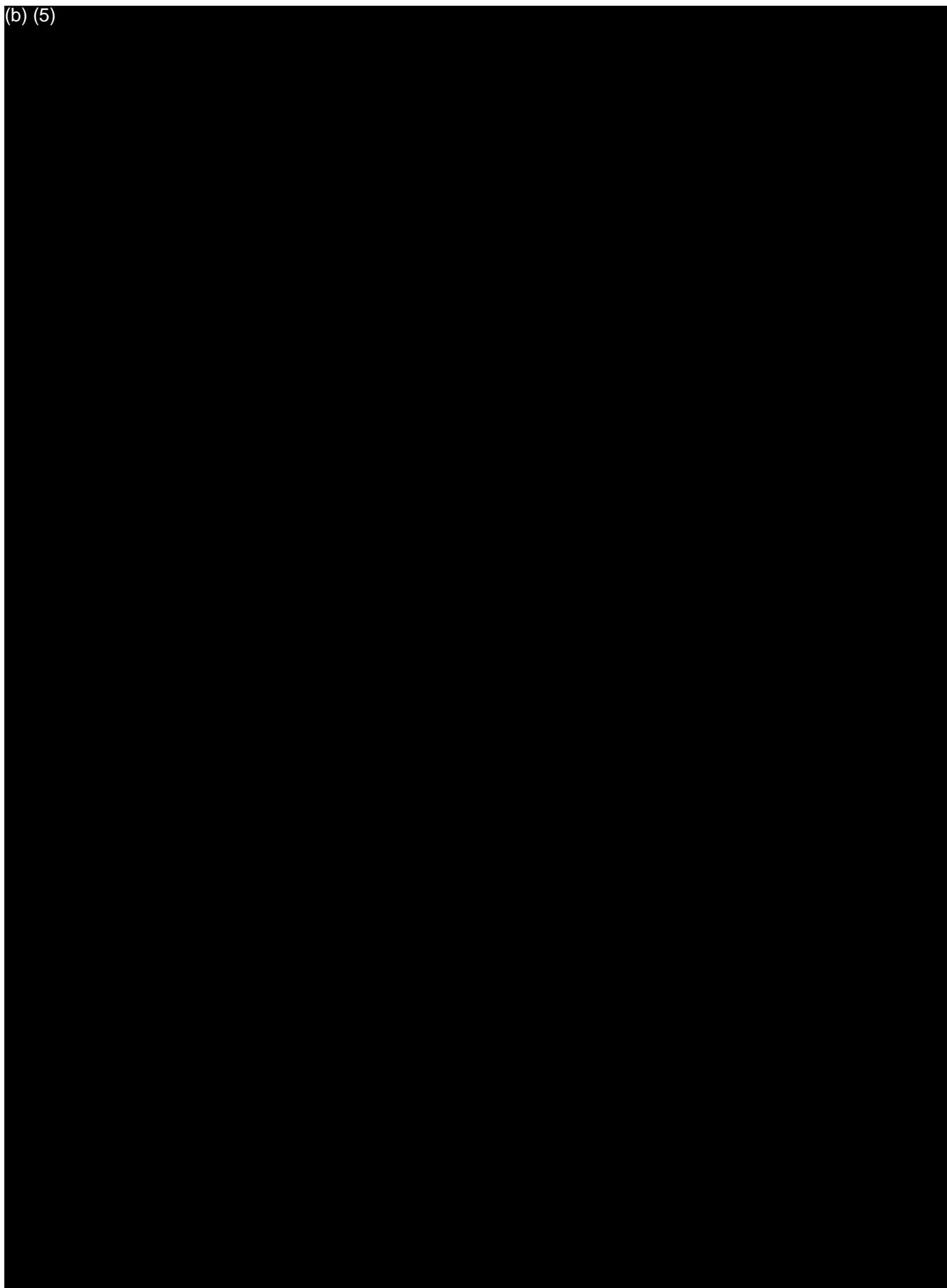
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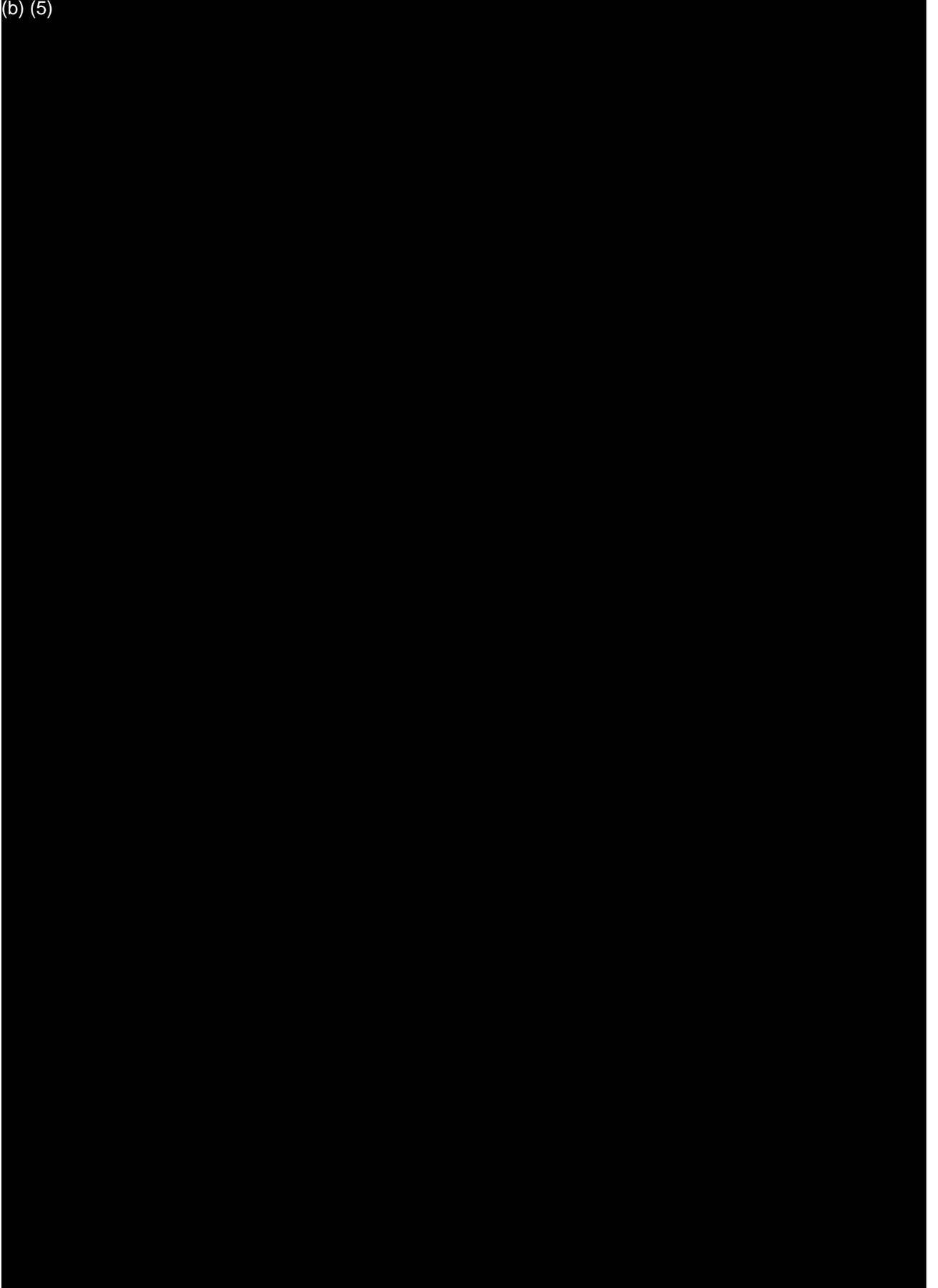
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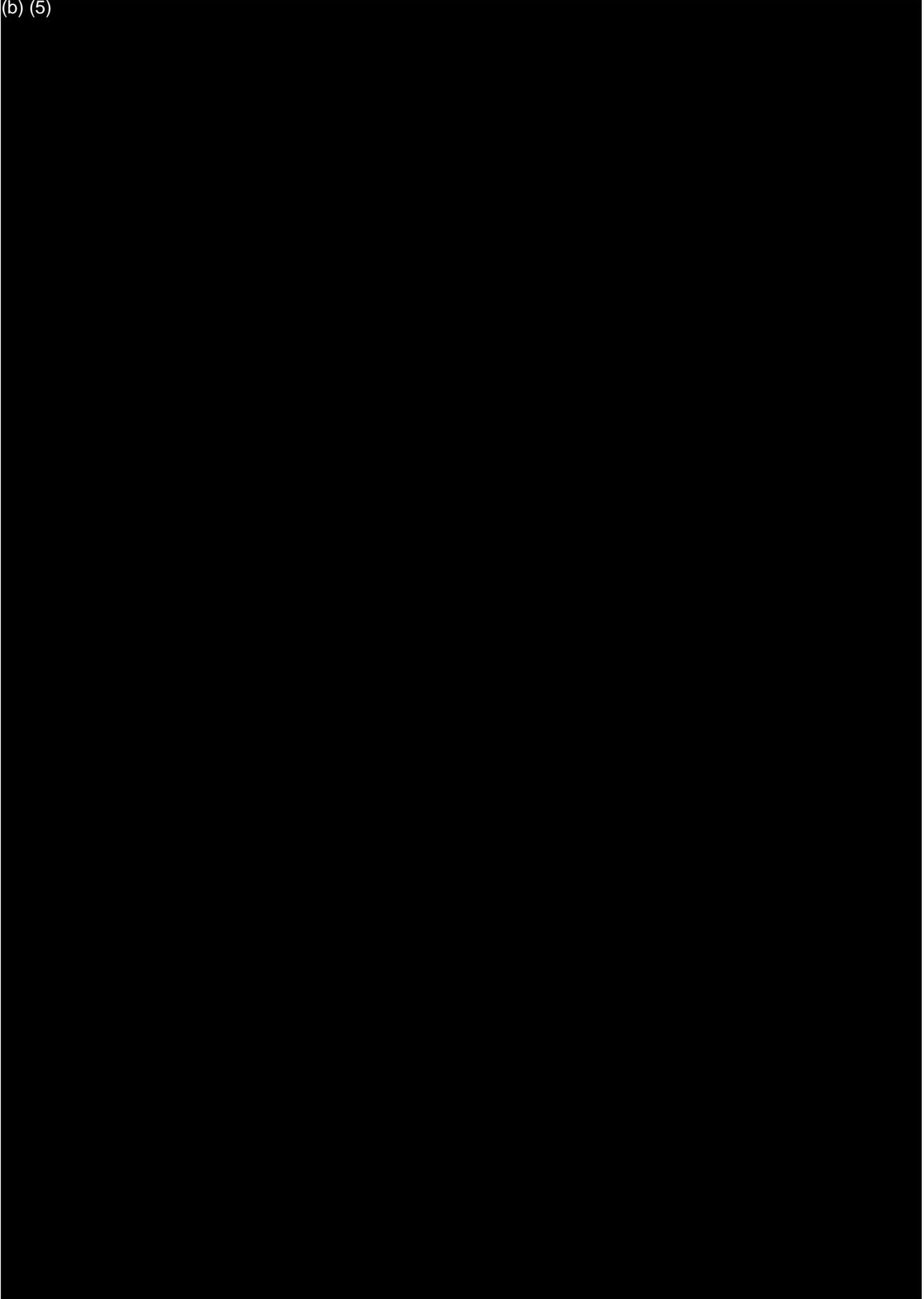
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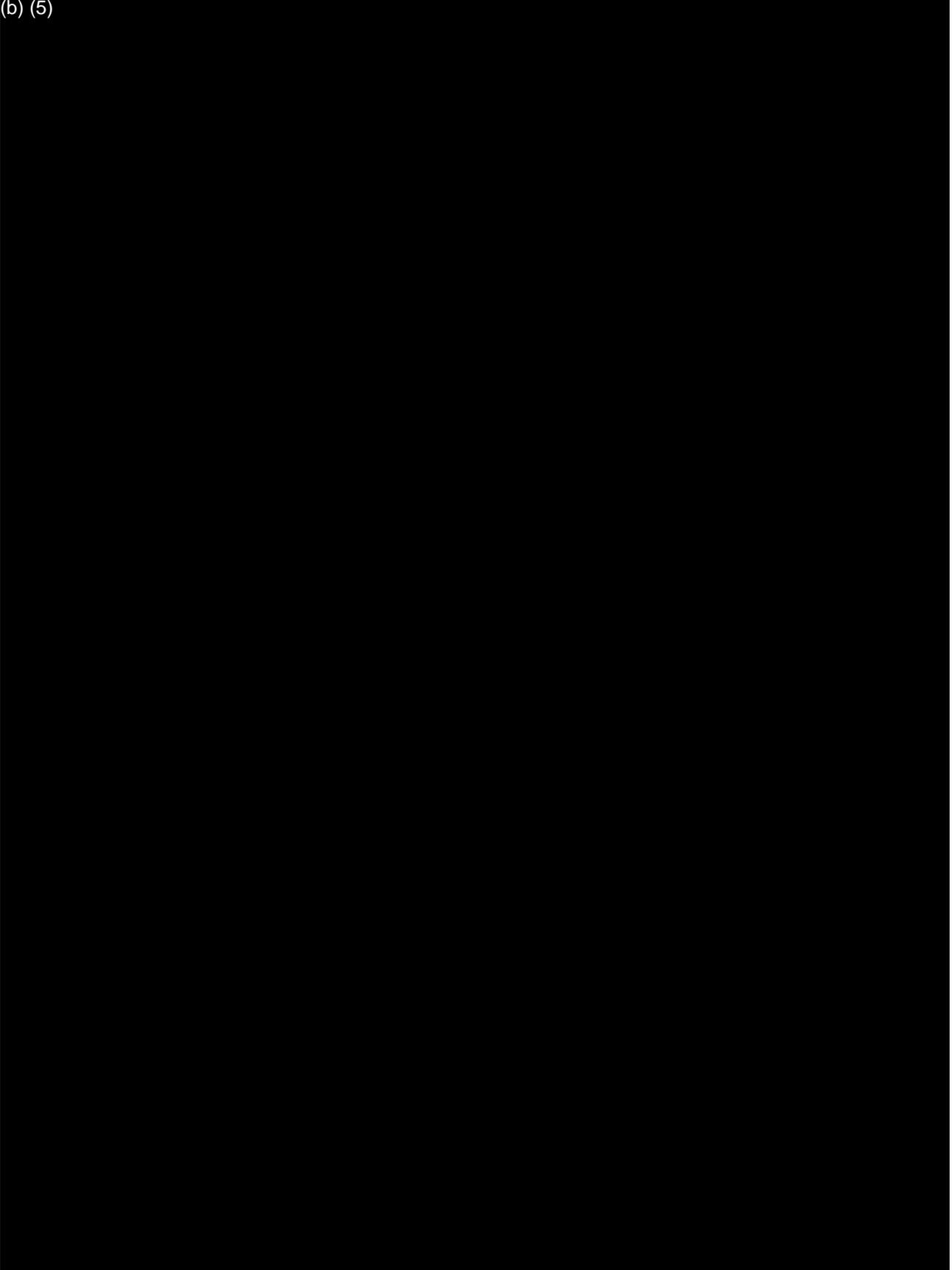
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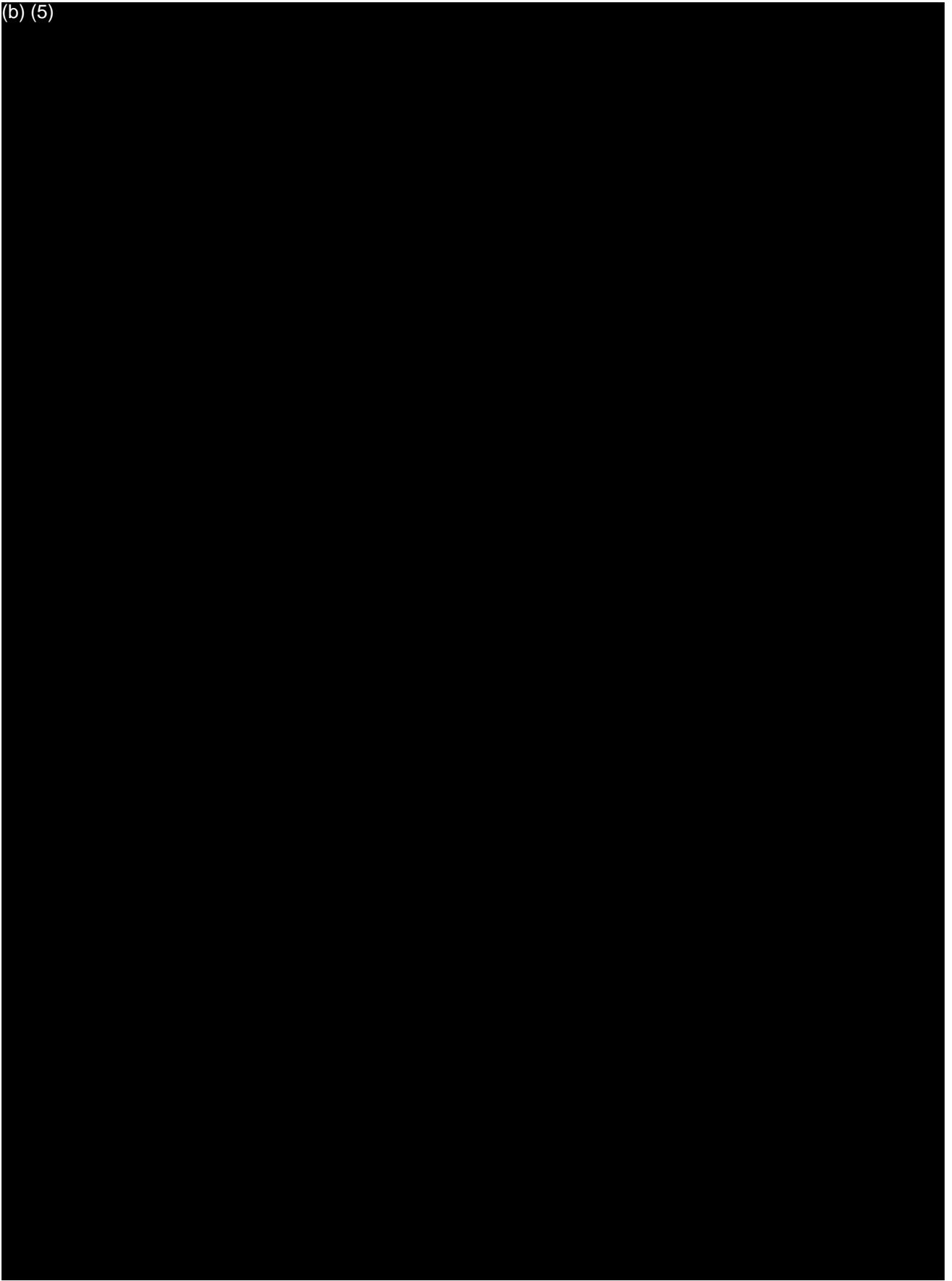
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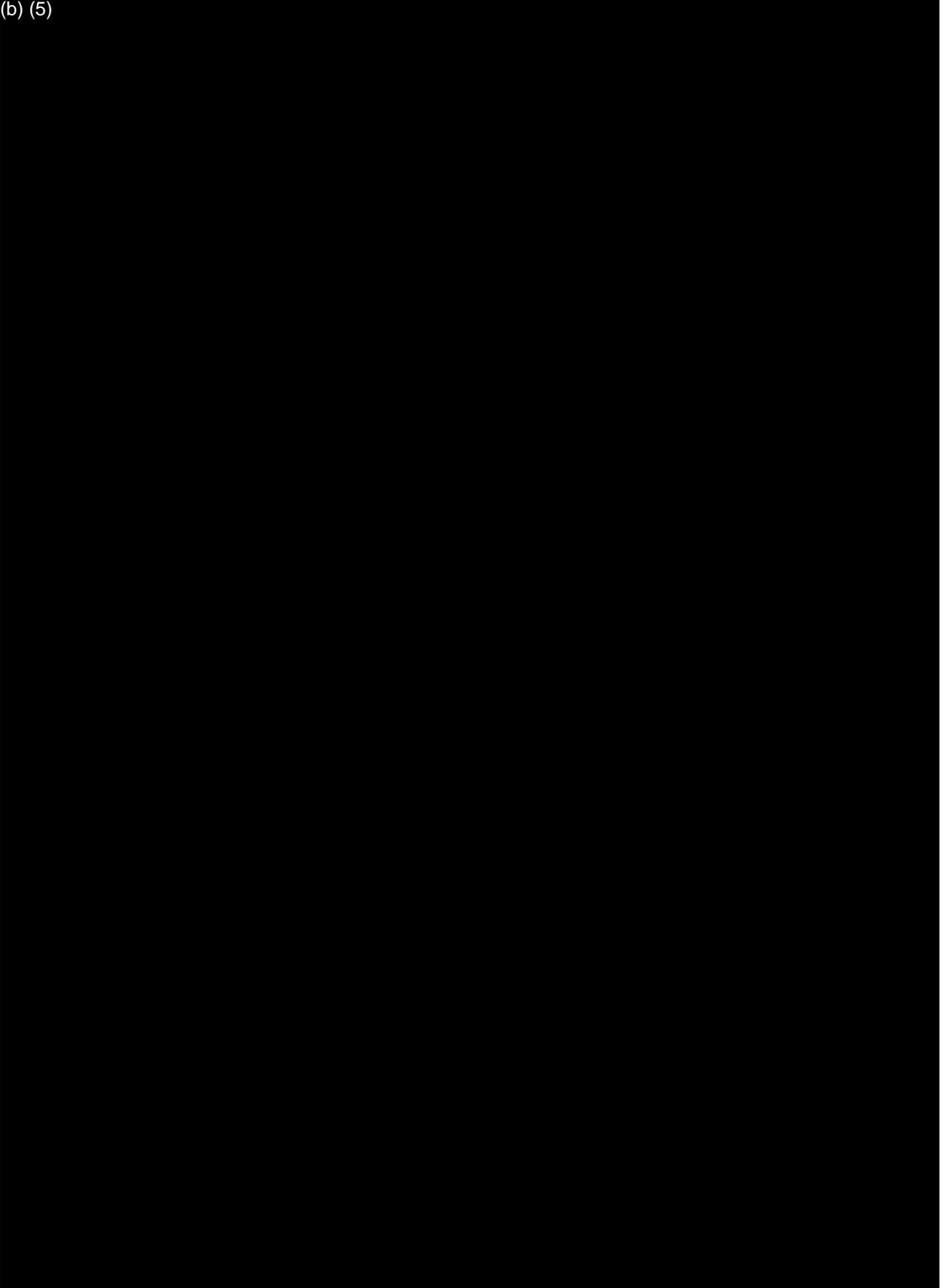
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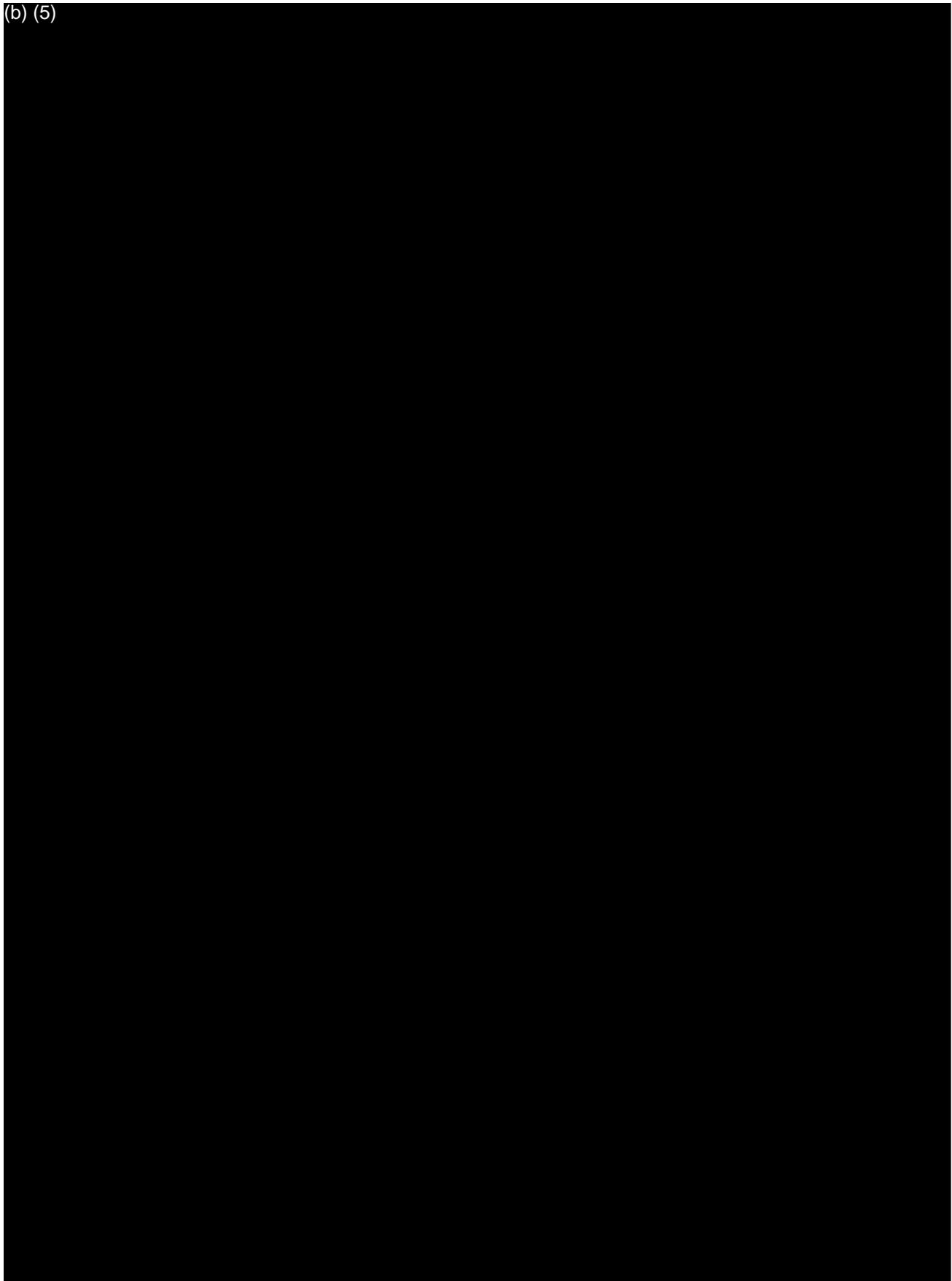
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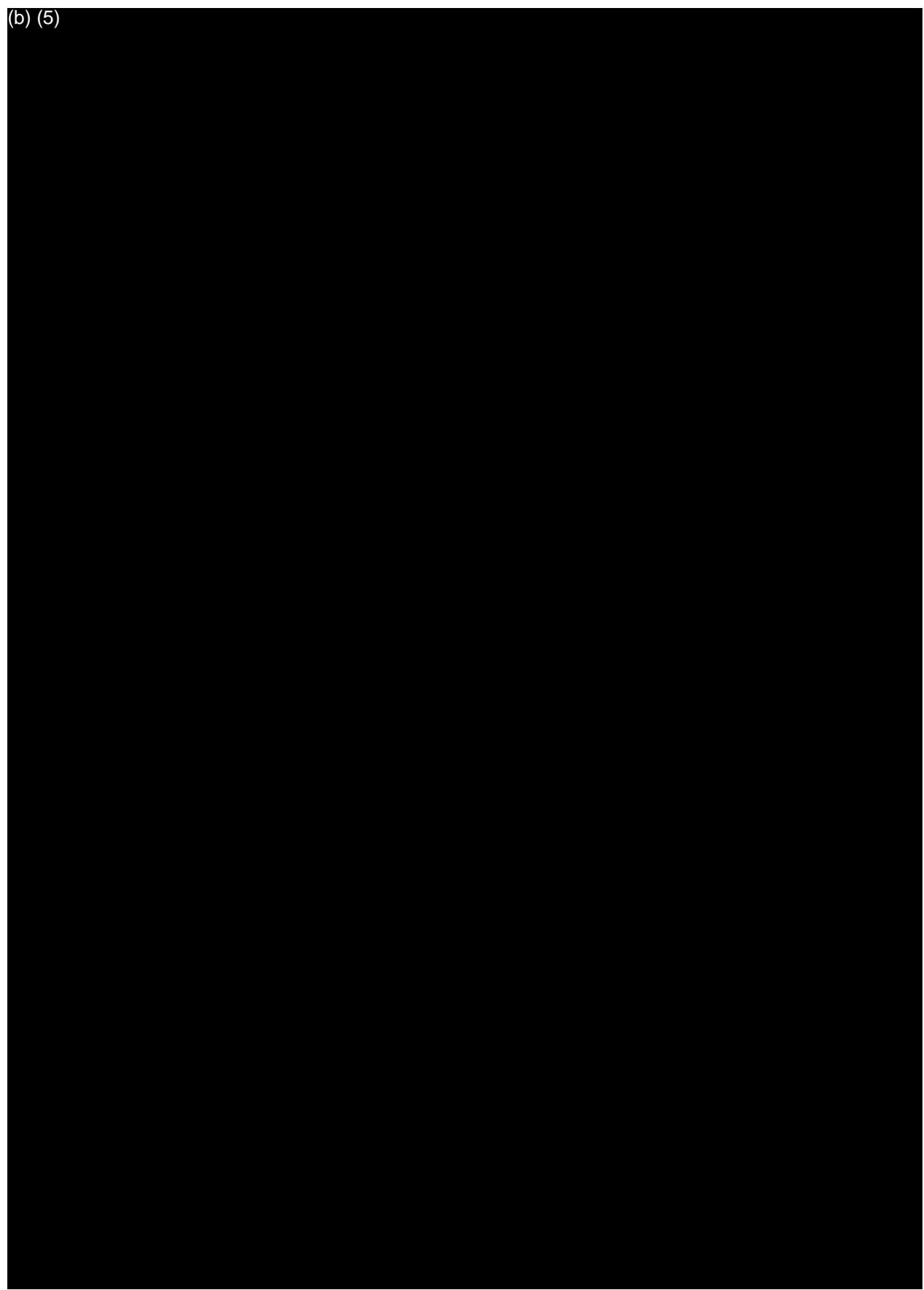
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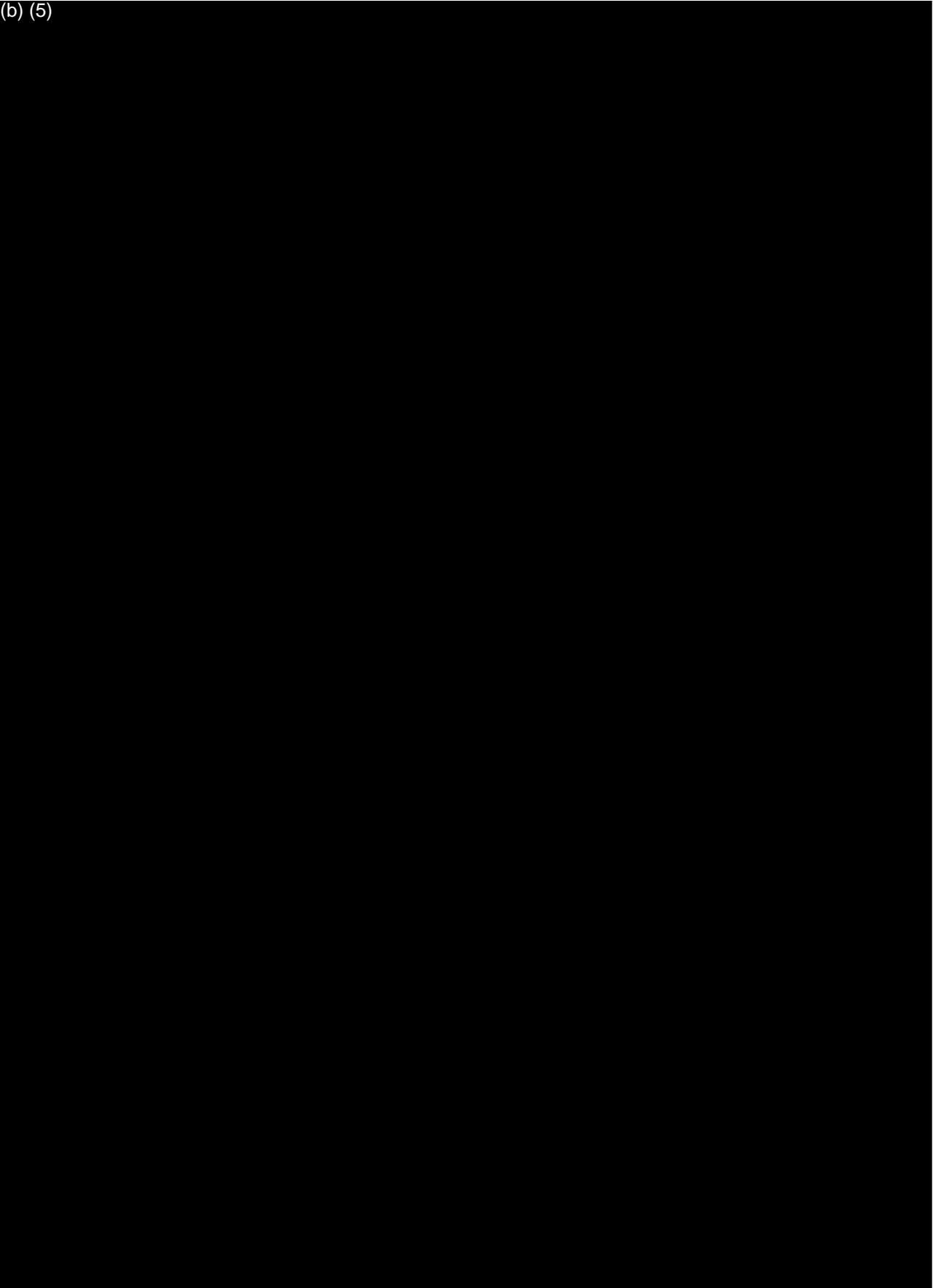
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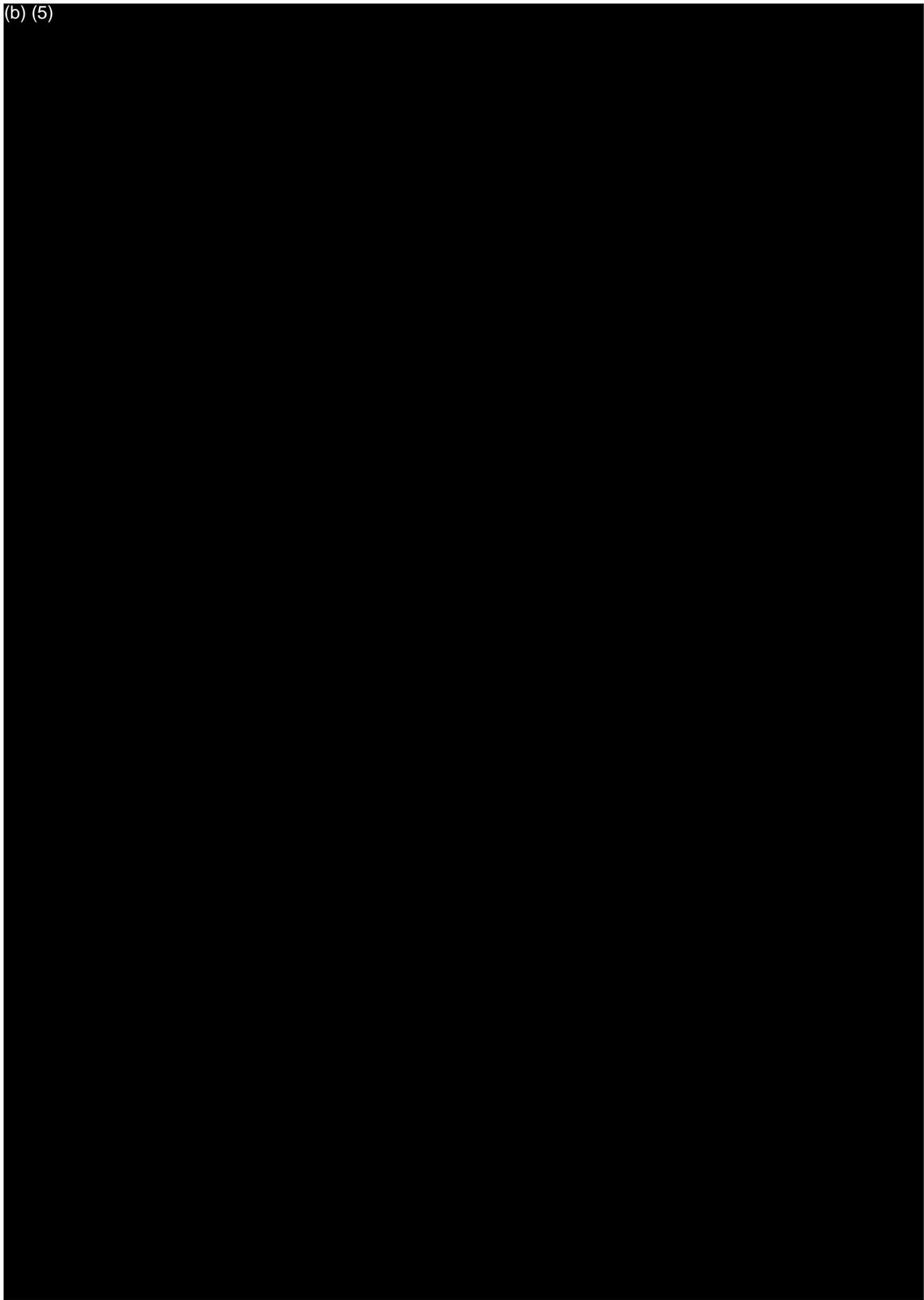
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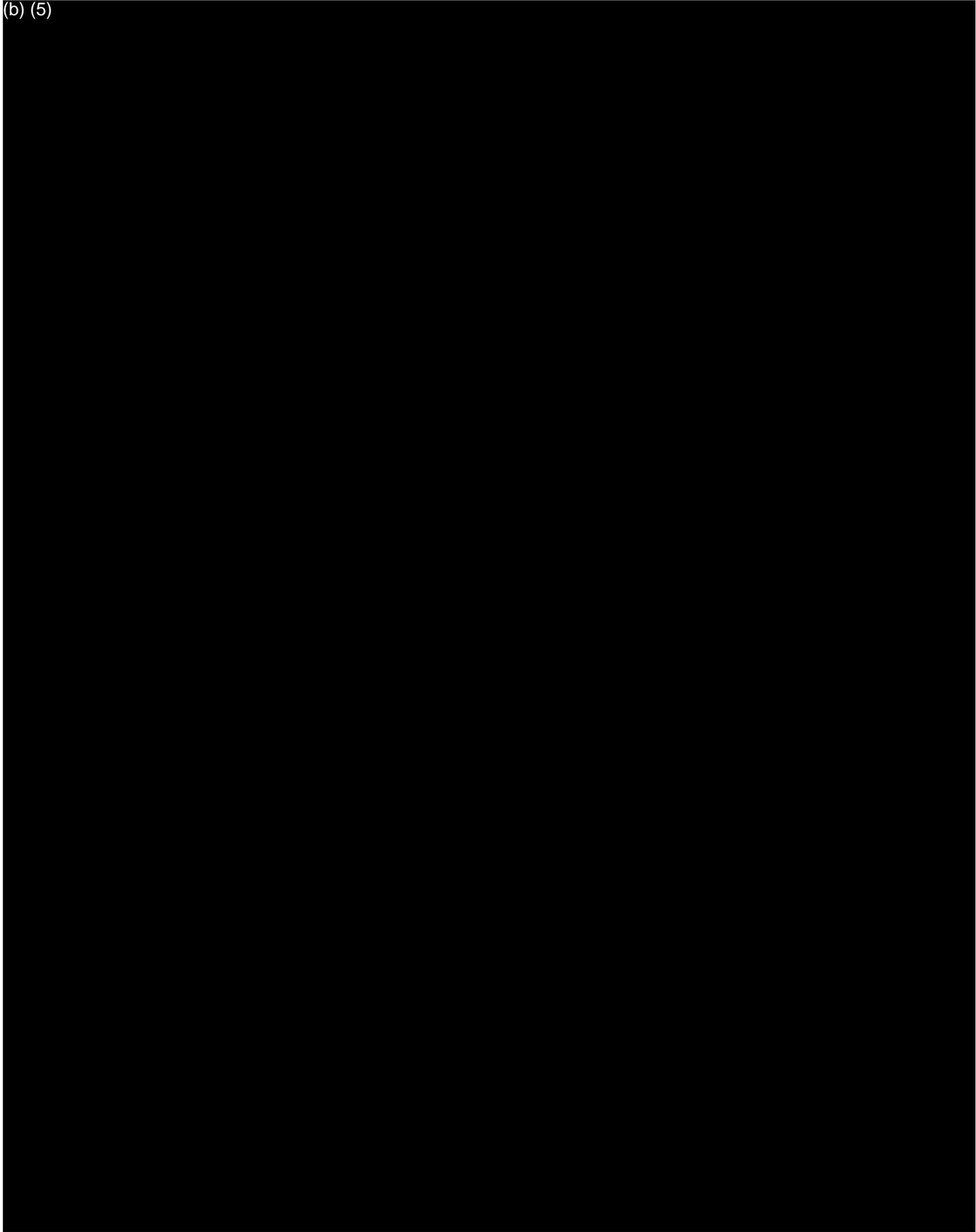
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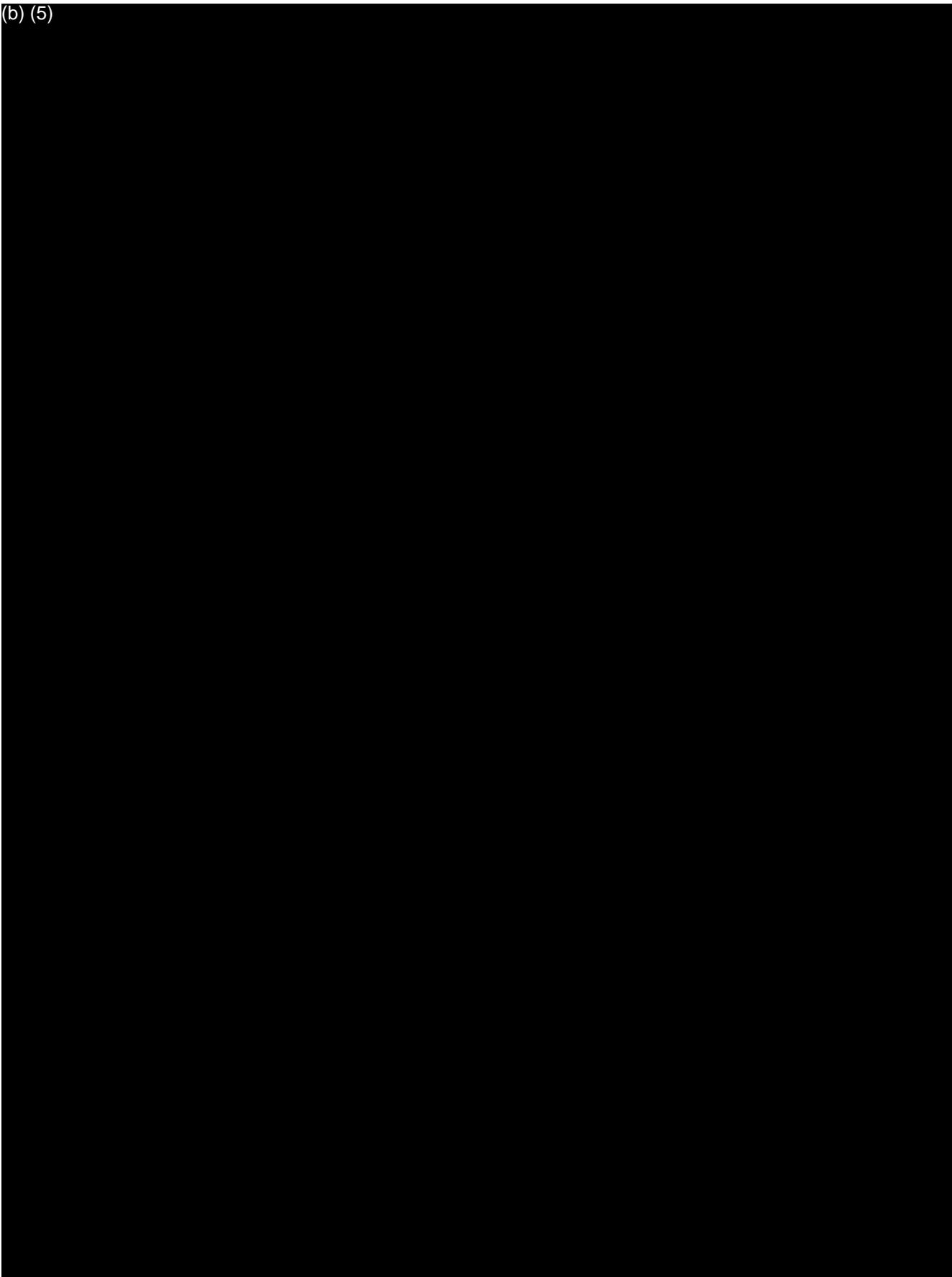
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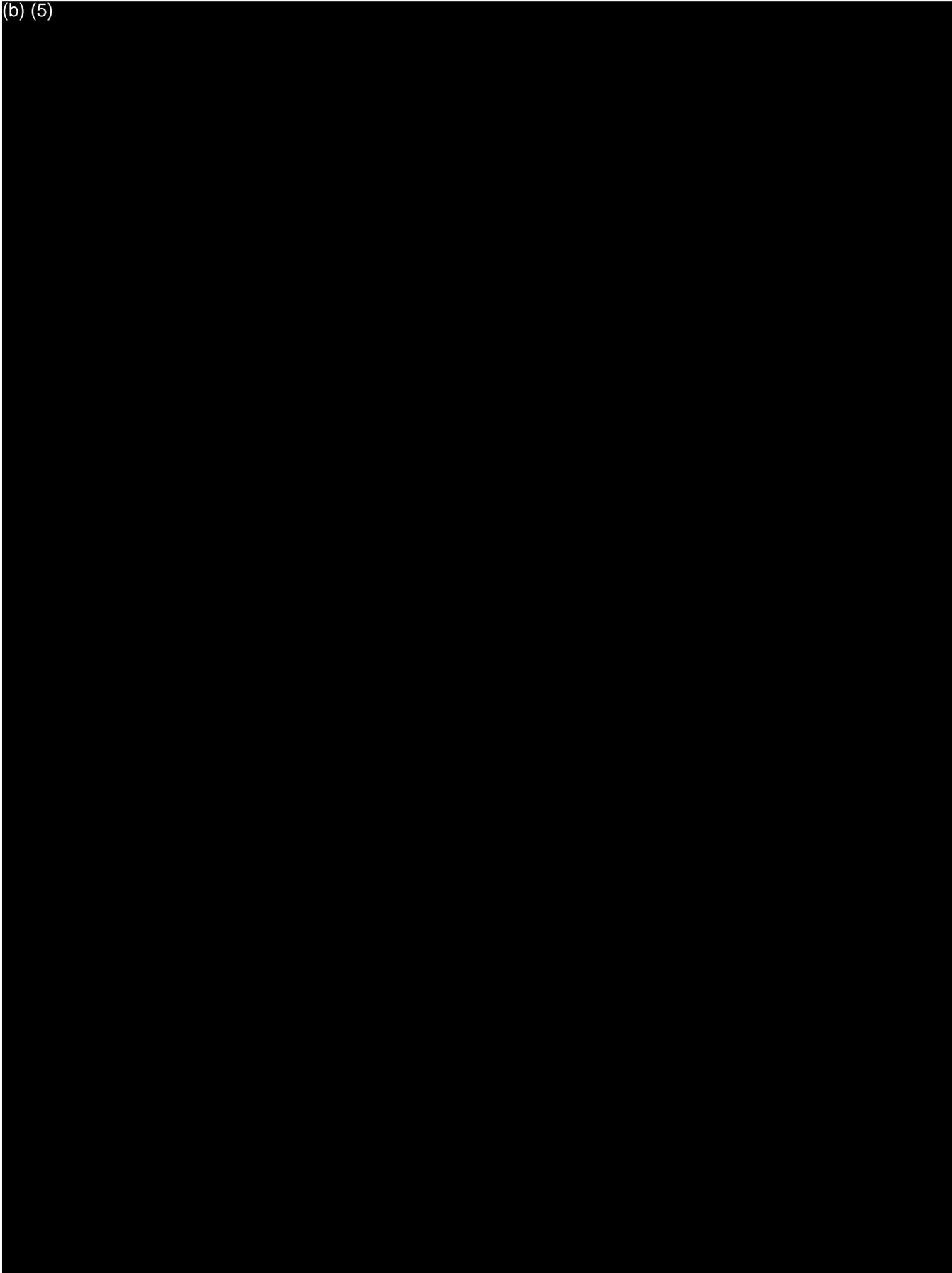
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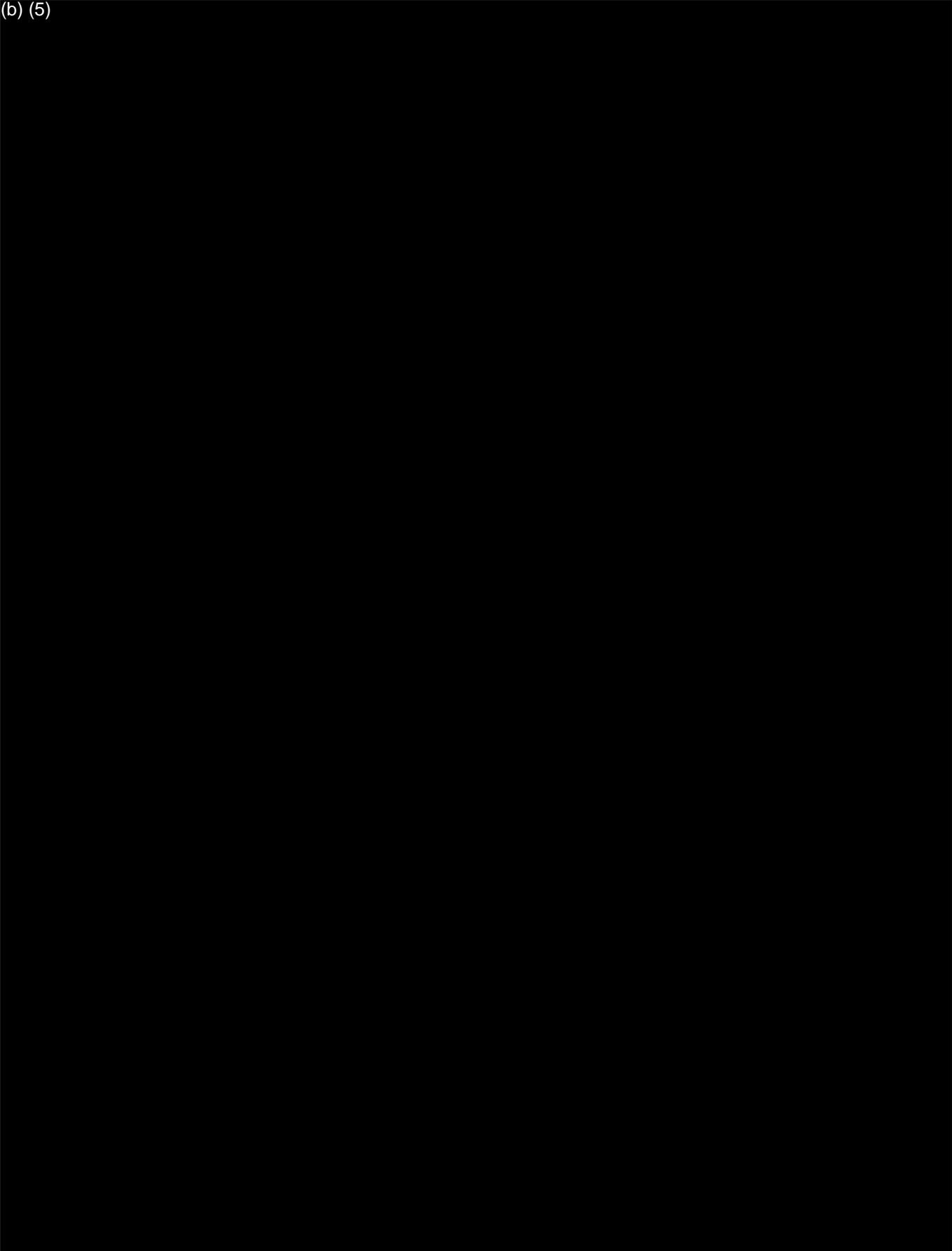
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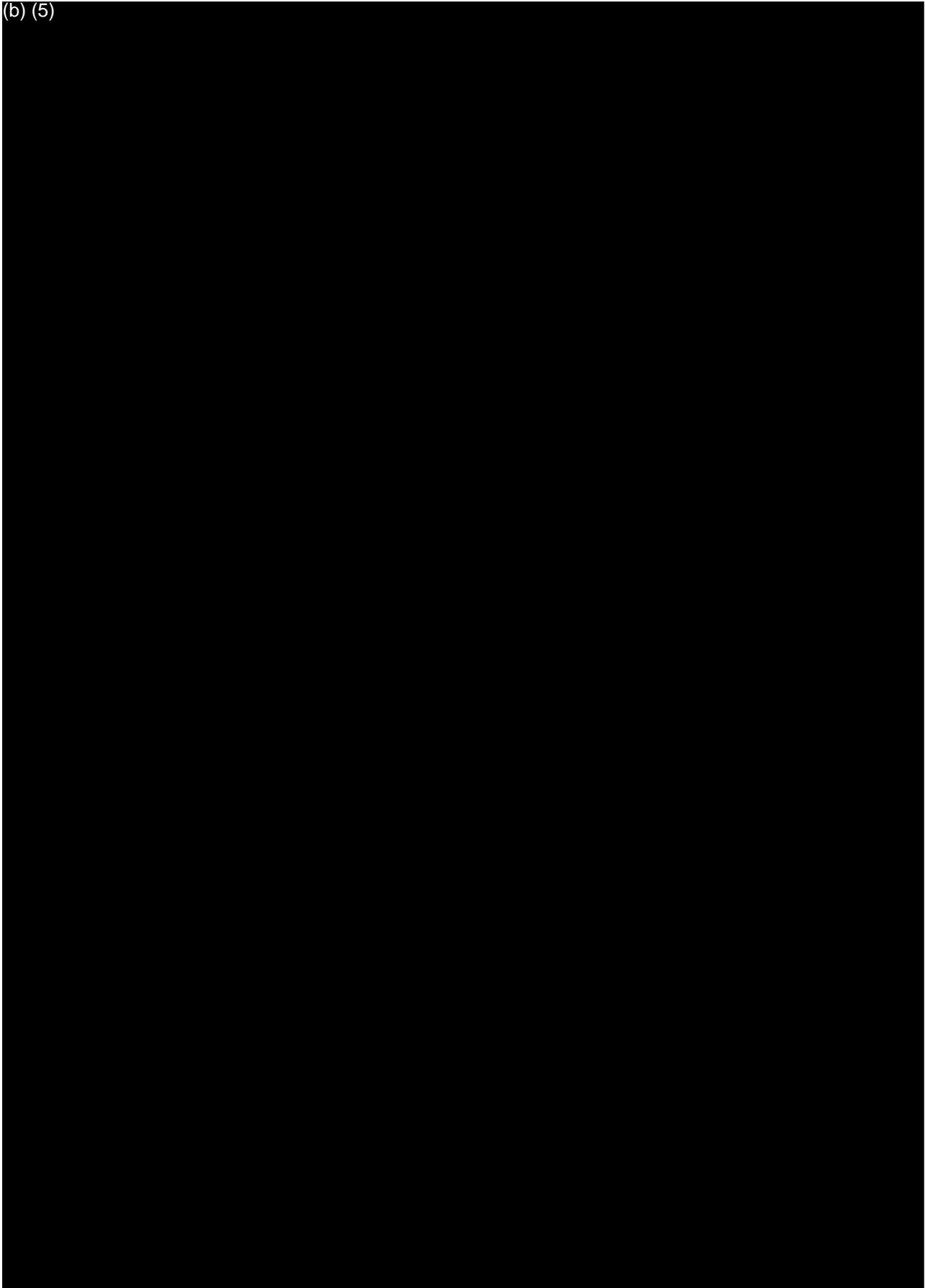
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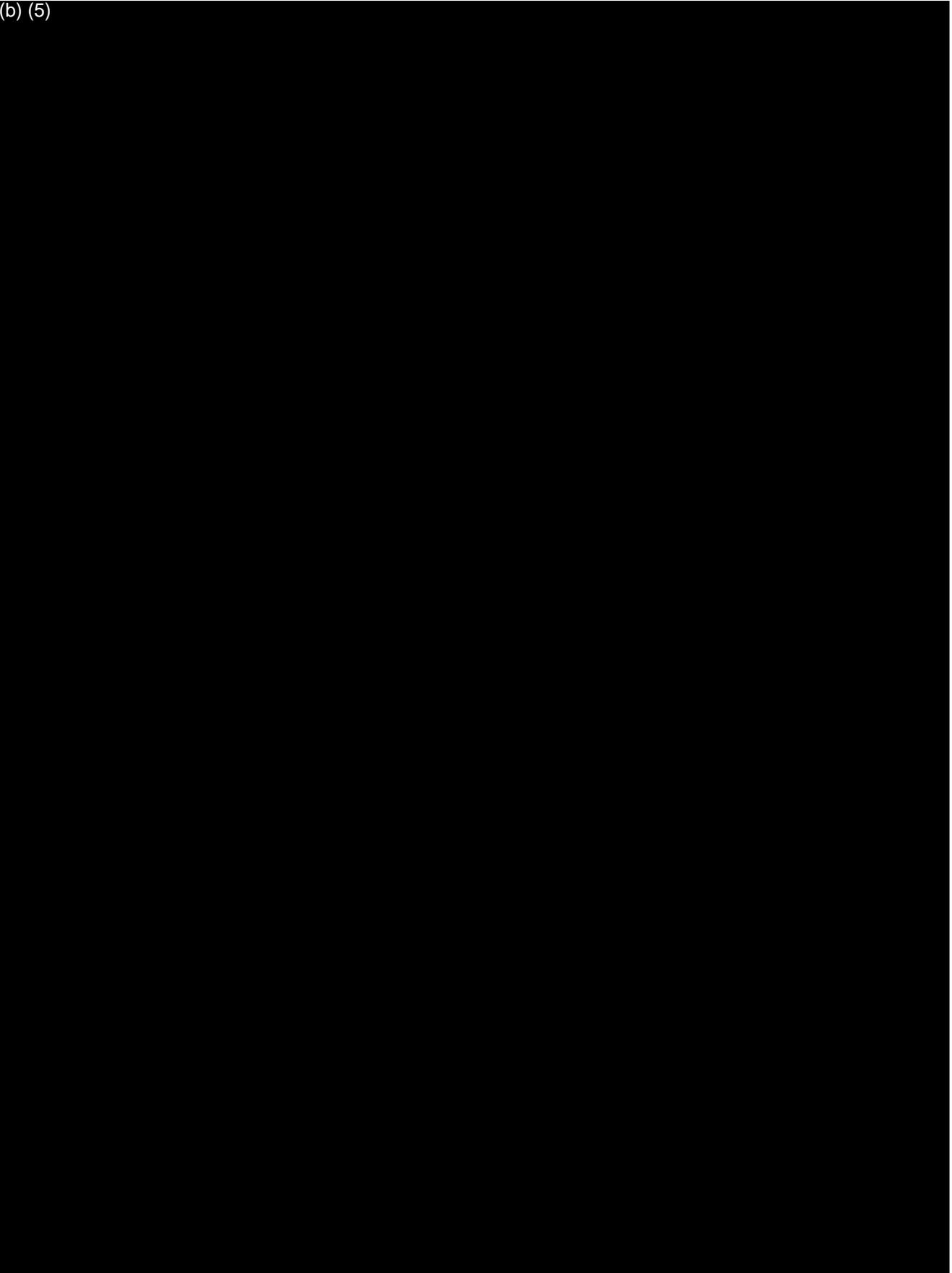
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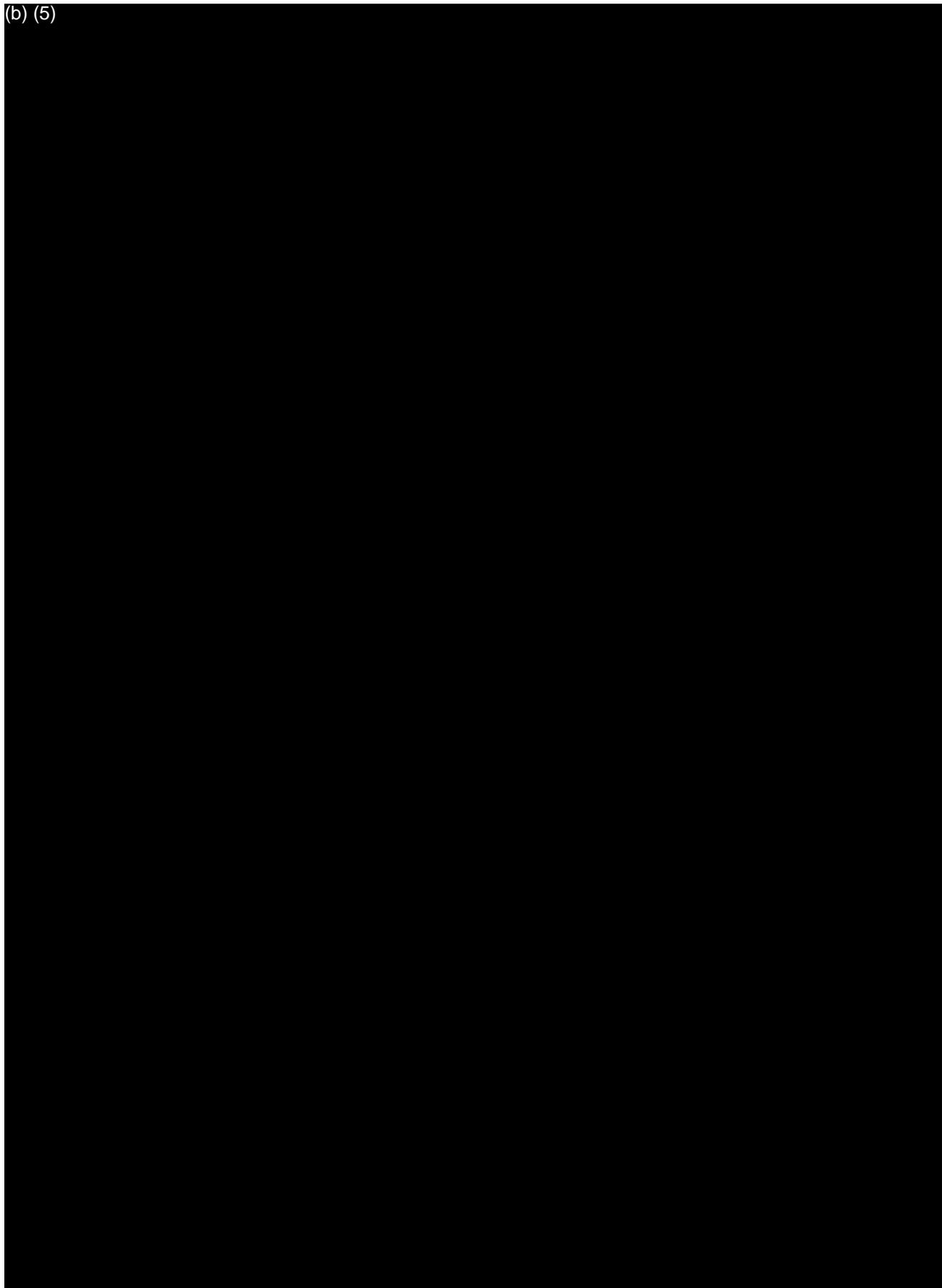
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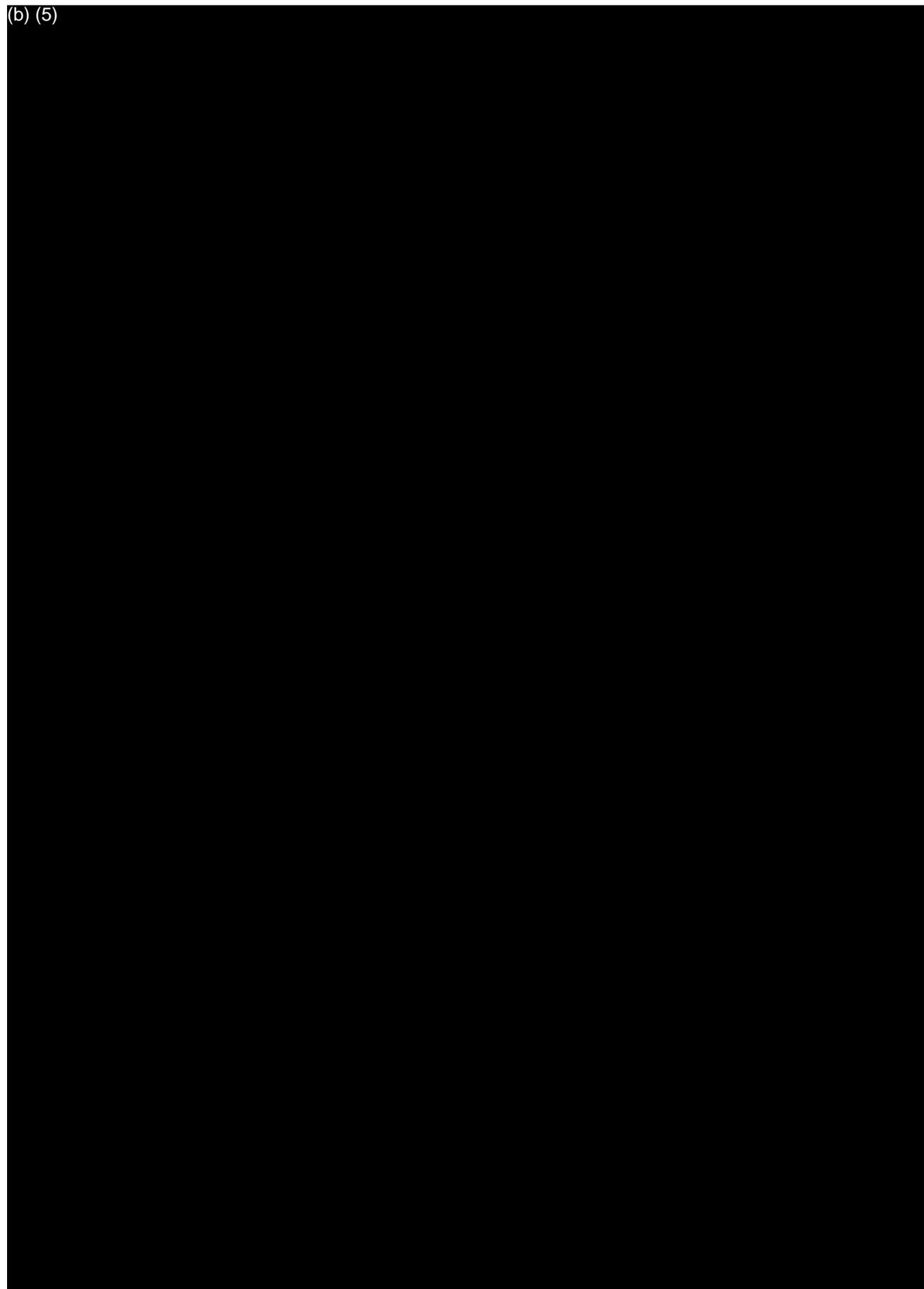
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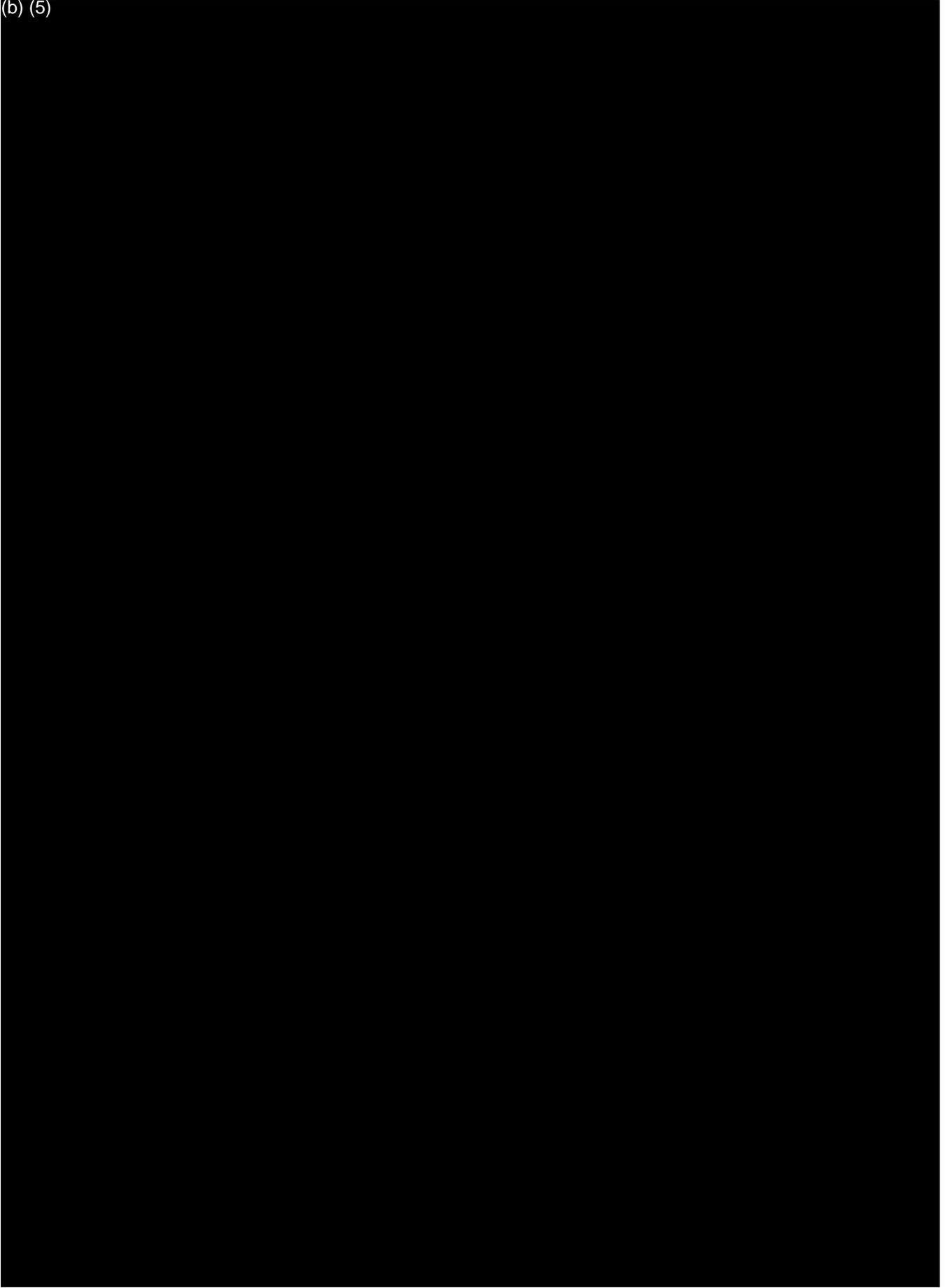
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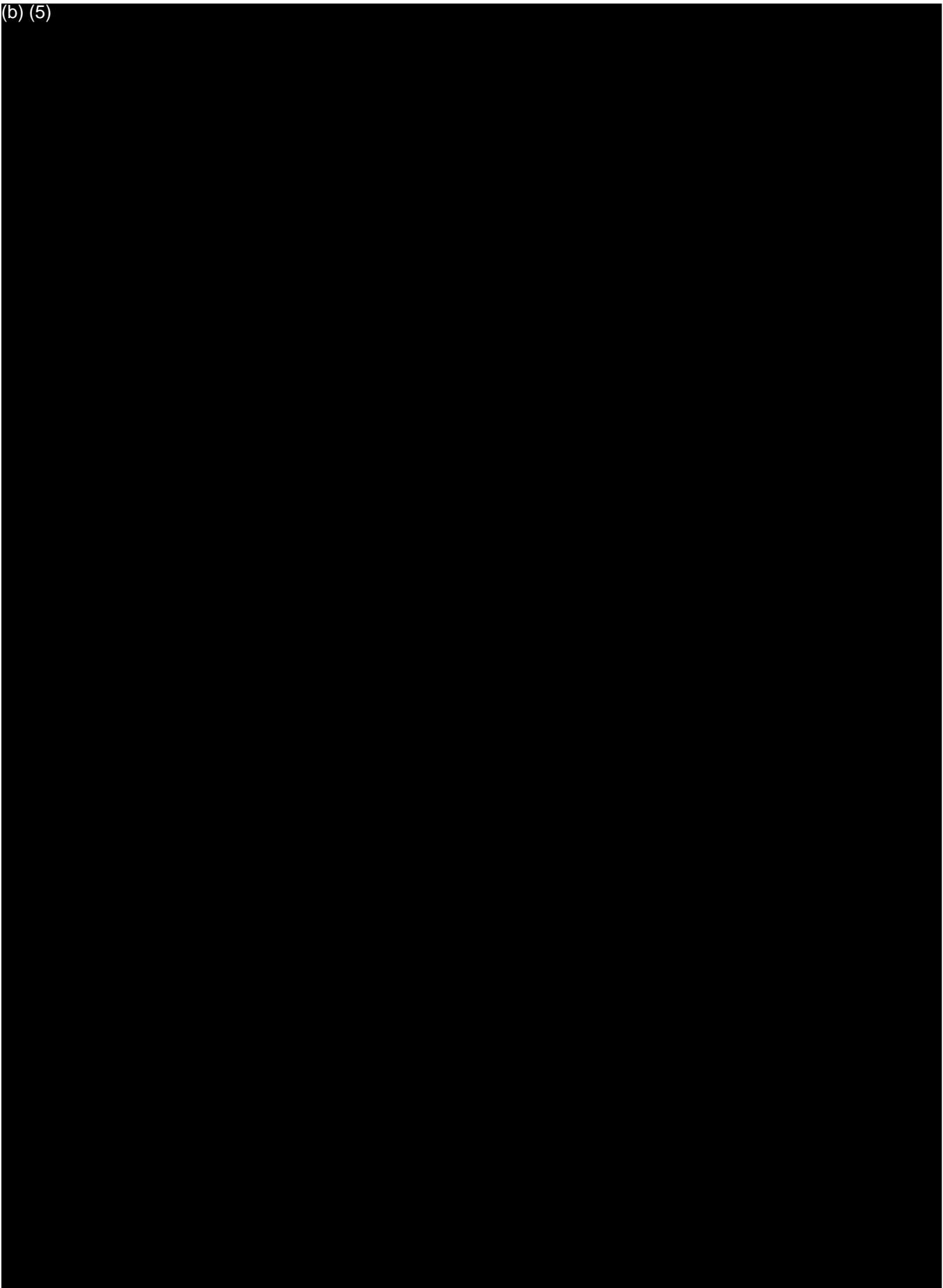
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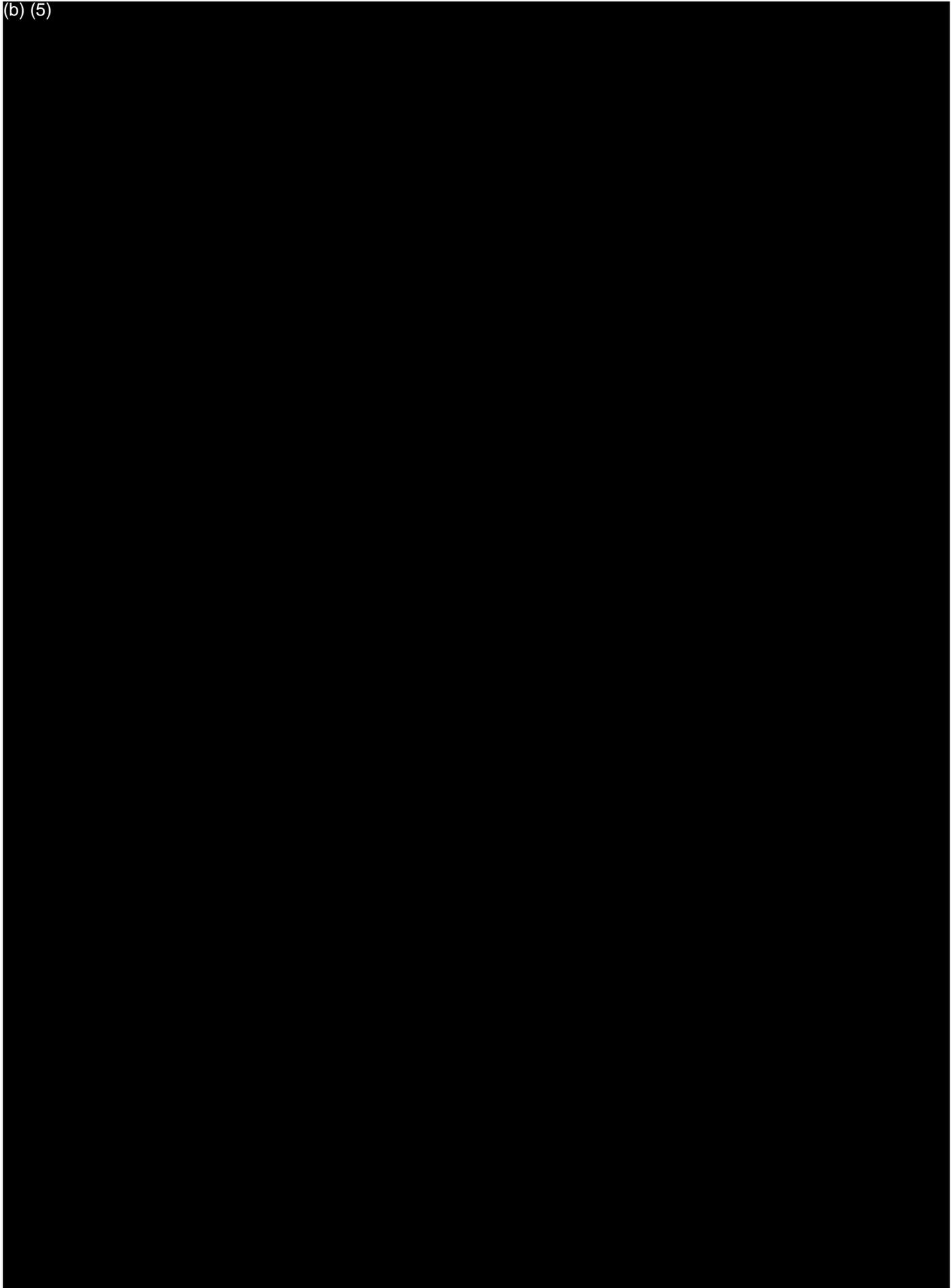
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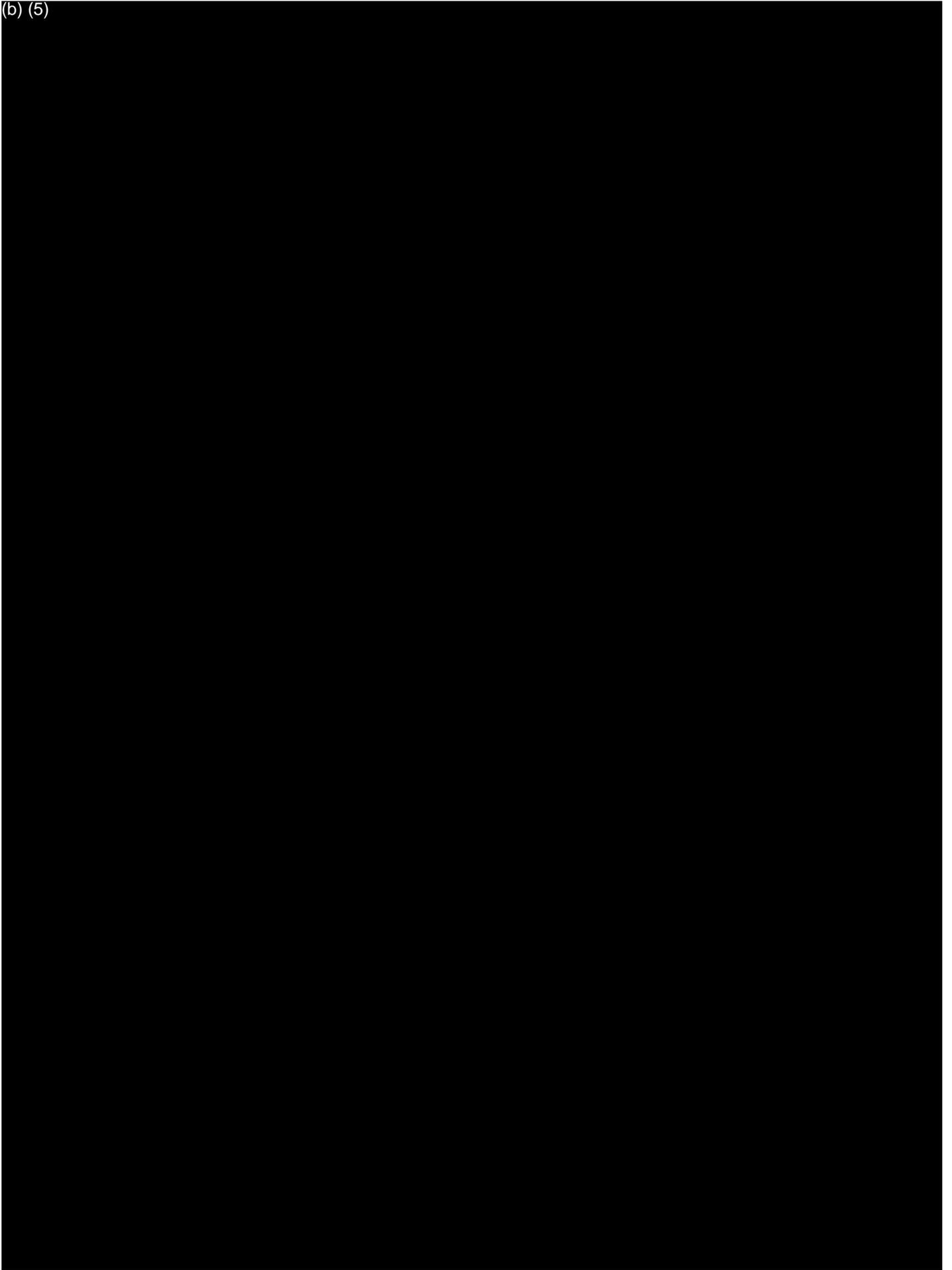


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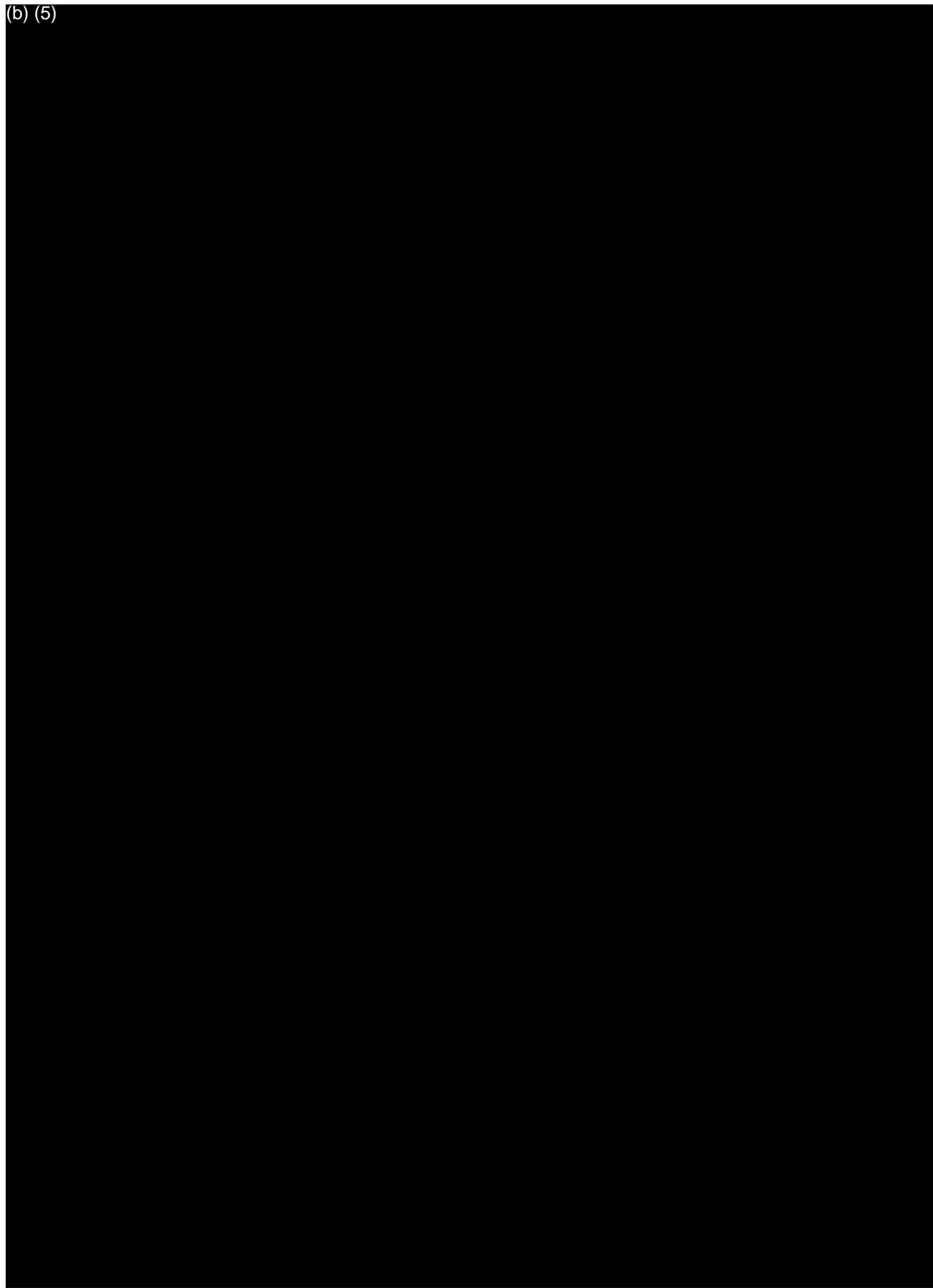


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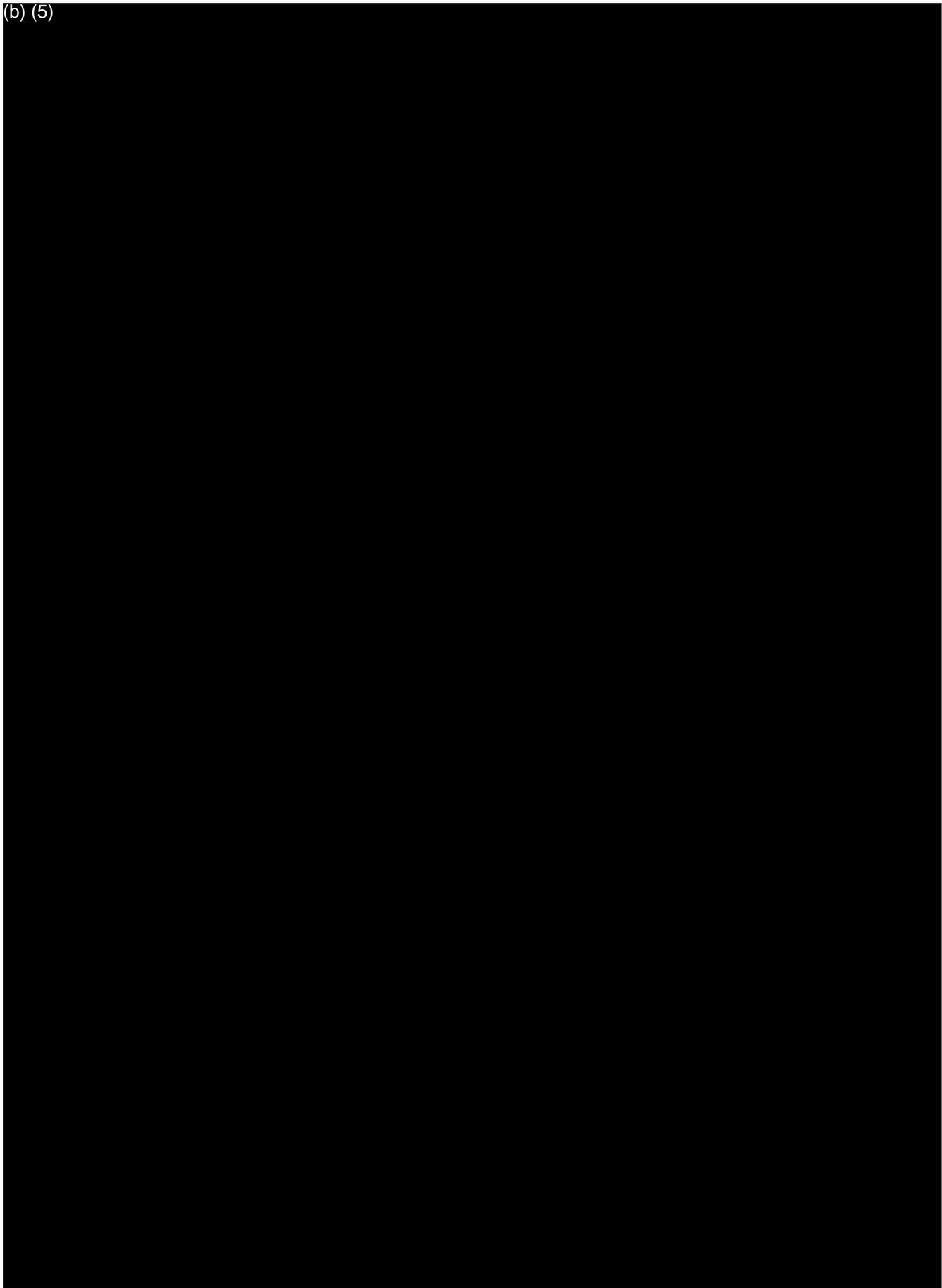




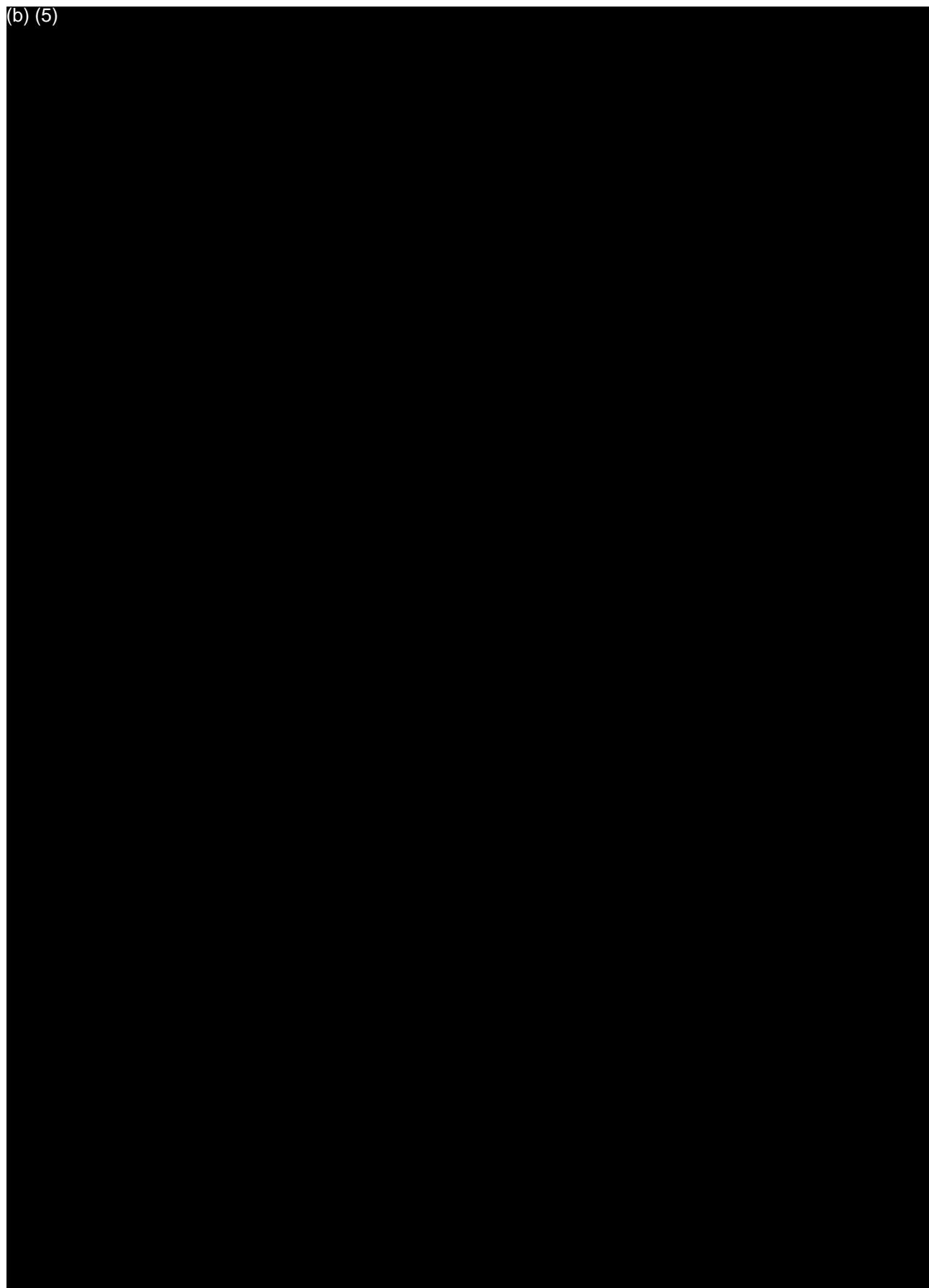
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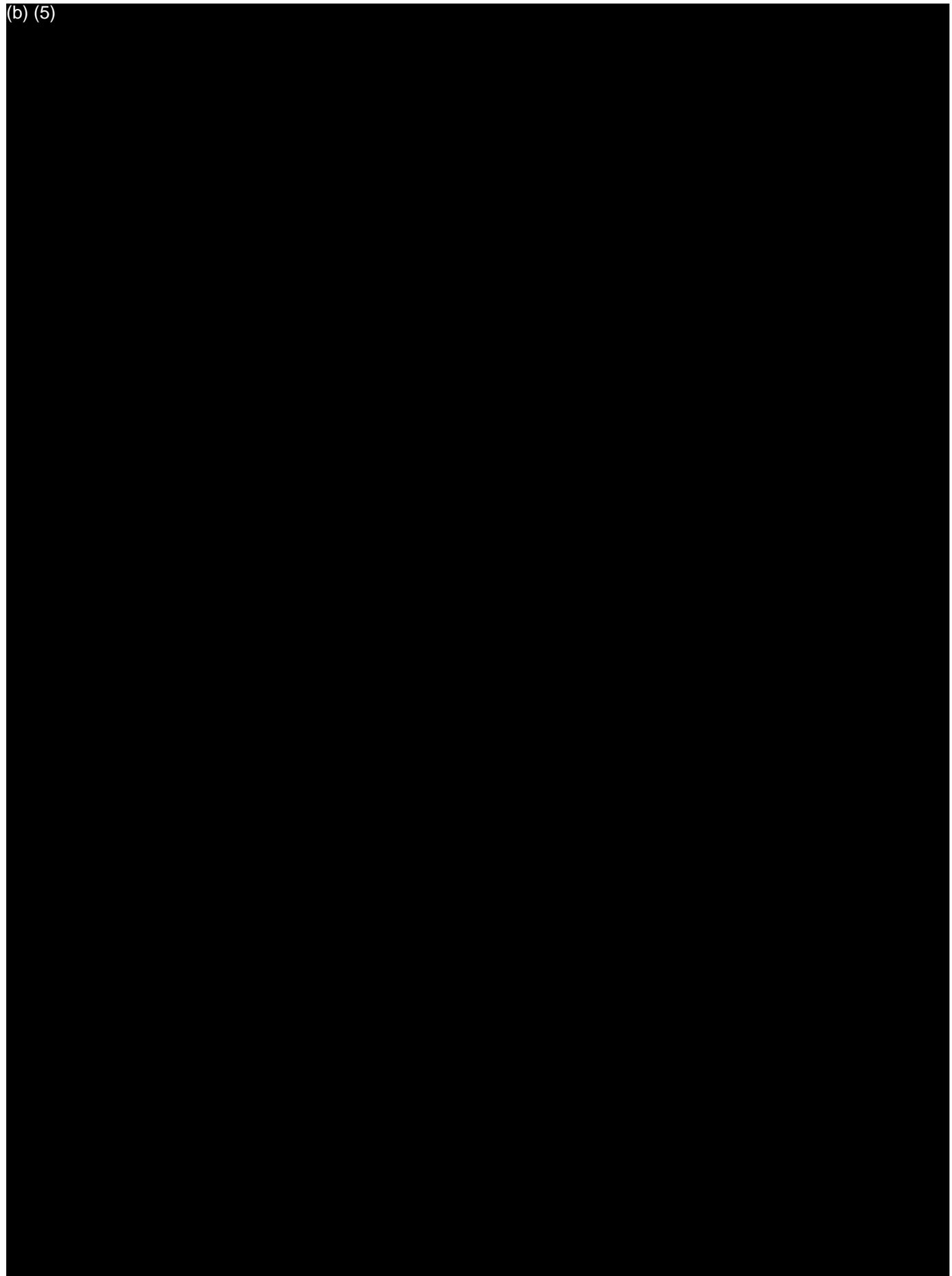
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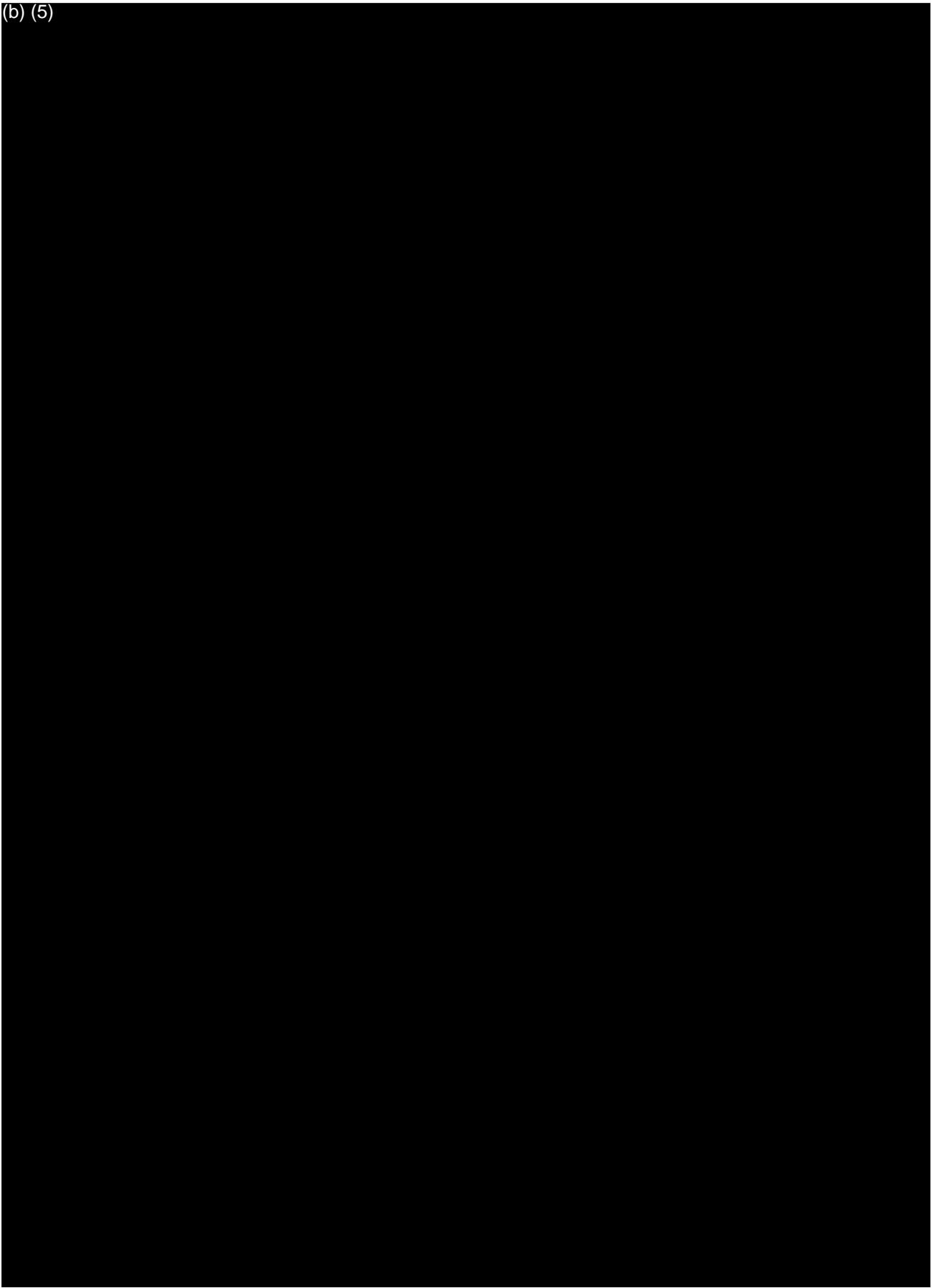
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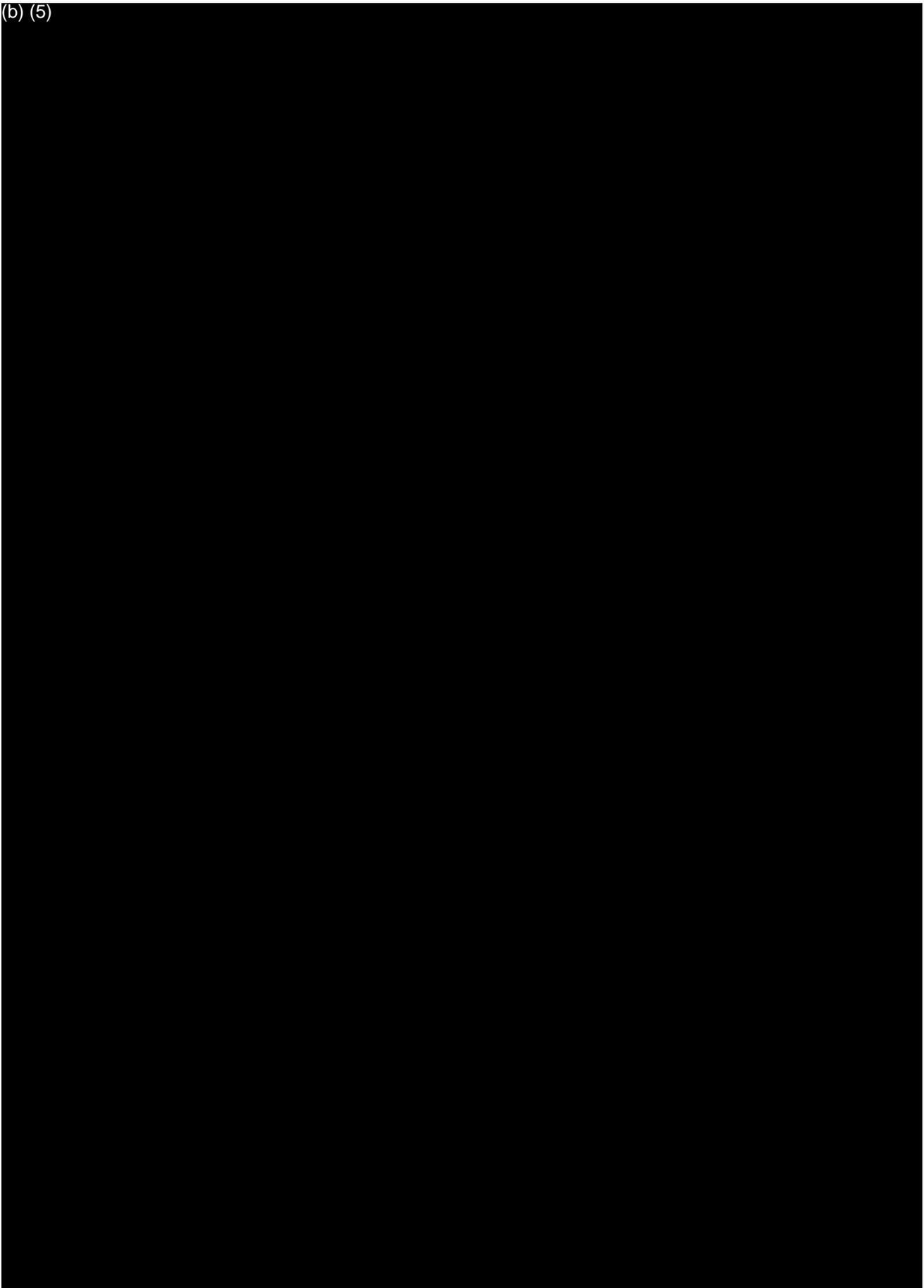
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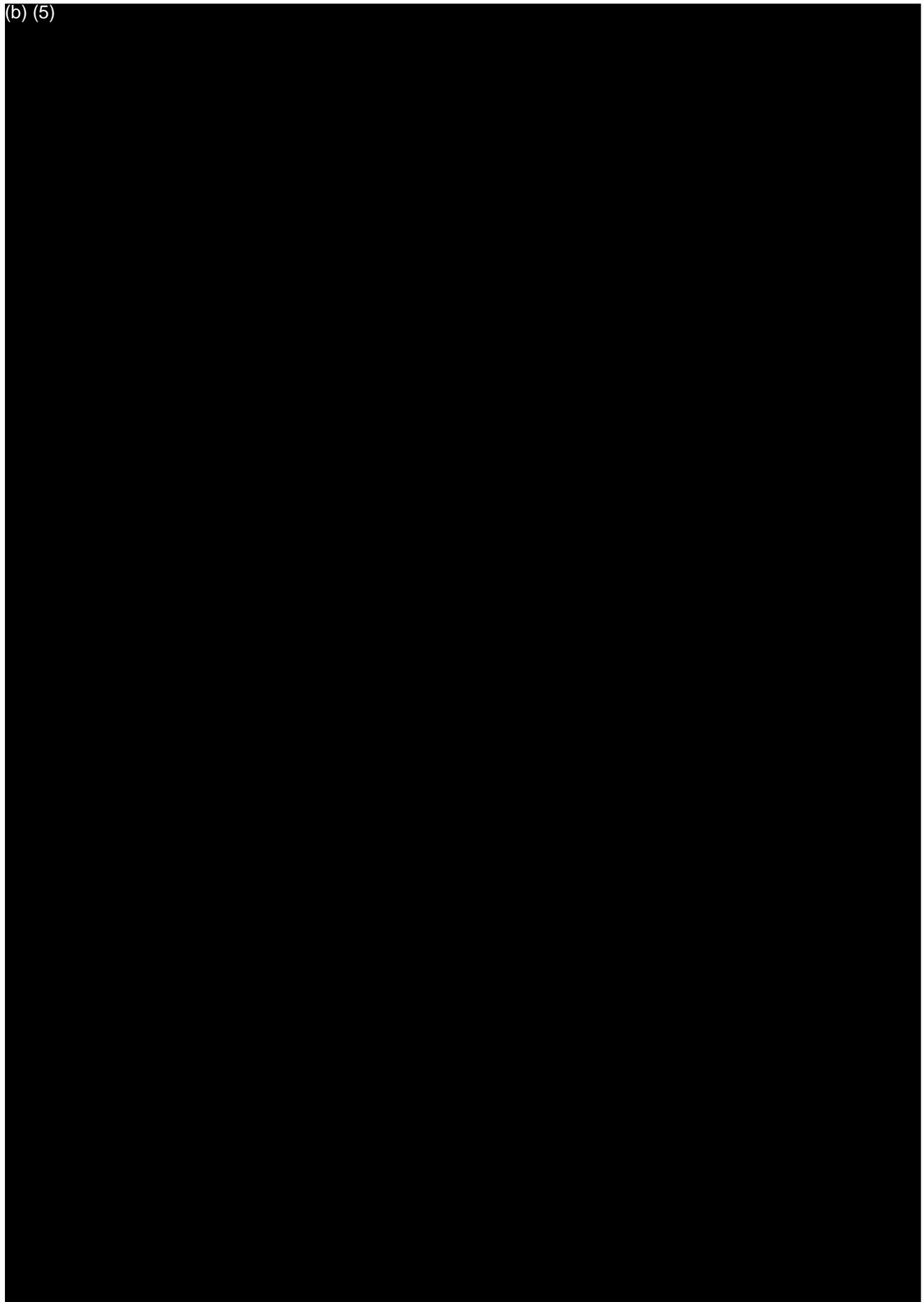
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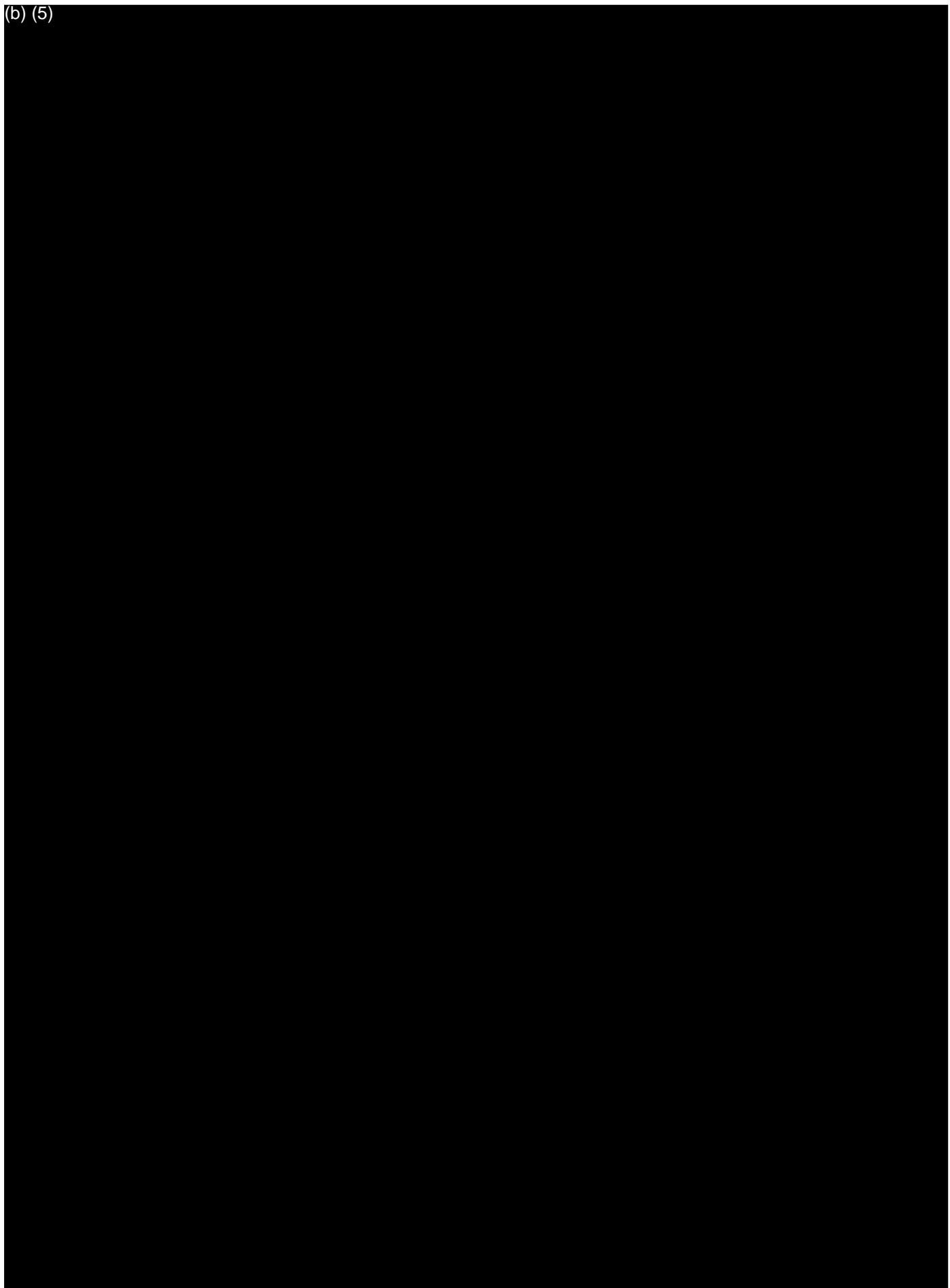
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DEPARTMENT OF HOMELAND SECURITY

United States Citizenship and Immigration Services

8 CFR Part 103

CIS No. 2393-06

Docket No. USCIS-2006-0044

RIN 1615-AB53

**Adjustment of the Immigration and Naturalization Benefit Application and Petition
Fee Schedule**

AGENCY: United States Citizenship and Immigration Services, DHS.

ACTION: Final rule.

SUMMARY: This rule adjusts the fee schedule for U.S. Citizenship and Immigration Services (USCIS) immigration and naturalization benefit applications and petitions, including non-immigrant applications and visa petitions. These fees fund the cost of processing applications and petitions for immigration benefits and services, and USCIS' associated operating costs. USCIS is revising these fees because the current fee schedule does adequately reflect current USCIS processes or recover the full costs of services provided by USCIS. Without an immediate adjustment of the fee schedule, USCIS cannot provide adequate capacity to process all applications and petitions in a timely and efficient manner. In addition, the revised fees will eliminate USCIS' dependency on revenue from interim benefits, temporary programs, and premium processing fees. This rule also merges fees for certain applications and petitions so applicants and petitioners will only have to pay a single fee. In addition, the rule expands the classes of aliens that

will be exempt from paying filing fees for certain immigration benefits, and modifies the criteria for waiving the filing fee due to an individual’s inability to pay. Based on comments received by USCIS during the public comment period, this rule changes the fees for adjustment of status applications, and the fee waiver and exemption eligibility criteria for several immigration benefits. This final rule will provide sufficient funding for USCIS to meet national security, customer service, and processing time goals, and to sustain and improve service delivery.

DATES: This rule is effective [Insert date 60 days from date of publication in the FEDERAL REGISTER]. Applications or petitions mailed, postmarked, or otherwise filed, on or after [Insert date 60 days from date of publication in the FEDERAL REGISTER] must include the new fee.

FOR FURTHER INFORMATION CONTACT: Paul Schlesinger, Chief, Budget Division, Office of Planning, Budget and Finance, United States Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW, Suite 4052, Washington, DC 20529, telephone (202) 272-1930.

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SUPPLEMENTARY INFORMATION:

List of Acronyms and Abbreviations

- ABC — Activity-Based Costing
- BSS — Biometrics Storage System
- CBP — Customs and Border Protection
- CIS — Citizenship and Immigration Services
- CFR — Code of Federal Regulations
- DHS — Department of Homeland Security
- DDC — United States District Court for the District of Columbia
- EAD — Employment Authorization Document
- EO — Executive Order
- FBI — Federal Bureau of Investigation
- FDNS — Fraud Detection and National Security
- FR — Federal Register
- FY — Fiscal Year
- GAO — Government Accountability Office
- GDP — Gross Domestic Product
- HSA — Homeland Security Act
- ICE — Immigration and Customs Enforcement
- IEFA — Immigration Examinations Fee Account
- INA — Immigration and Nationality Act
- INS — Immigration and Naturalization Service
- IOAA — Independent Offices Appropriation Act
- LPR — Legal Permanent Resident

OIG — Office of Inspector General

OMB — Office of Management & Budget

OPT — Optional Practical Training

PPBS — Planning Programming Budgeting System

PRA — Paperwork Reduction Act

RIN — Regulation Identification Number

SBA — Small Business Administration

SSA — Social Security Administration

TPS — Temporary Protected Status

UMRA — Unfunded Mandates Reform Act

USC — United States Code

USCIS — United States Citizenship and Immigration Services

VAWA — Violence Against Women Act

ZBB — Zero Based Budget

I. BACKGROUND.

On February 1, 2007, U.S. Citizenship and Immigration Services (USCIS) published a notice of proposed rulemaking (NPRM or proposed rule), at 72 FR 4888, proposing to adjust USCIS' immigration and naturalization benefit fee schedule. USCIS' current fee schedule does not establish a level of funding sufficient to fully fund USCIS operations, allow for future requirements, ensure adequate staffing, or provide USCIS with funding sufficient technological capabilities to continue or improve timely and efficient processing of immigration benefits. The fees that fund the IEFA were last updated on October 26, 2005, but merely to adjust the existing fee schedule to reflect

inflation. See, 70 FR 56182 (Sept. 26, 2005). The last comprehensive fee review was conducted in fiscal year 1998 by the Immigration and Naturalization Service (INS). *See* 63 FR 1775 (Jan. 12, 1998) (proposed rule); 63 FR 43604 (Aug. 14, 1998) (final rule fee adjustment).

In 2004, the Government Accountability Office (GAO) reported that the fees collected by USCIS were insufficient to fund USCIS operations. GAO, Immigration Application Fees: Current Fees are Not Sufficient to Fund U.S. Citizenship and Immigration Services' Operations (GAO-04-309R, Jan. 5, 2004). GAO recommended that USCIS “perform a comprehensive fee study to determine the costs to process new immigration applications.” Id. at 3. In response to GAO’s recommendations, USCIS undertook a comprehensive fee review to revise its application and petition fees to ensure full recovery of its operational costs.

As discussed in the NPRM, the Immigration and Nationality Act of 1952 (INA), as amended, provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including the costs of providing similar services without charge to asylum applicants and certain other immigrants. INA section 286(m), 8 U.S.C. 1356(m). The INA also states that the fees may recover administrative costs as well. Id. The fee revenue collected under INA section 286(m) remains available to provide immigration and naturalization benefits and the collection of, safeguarding of, and accounting for fees. INA section 286(n), 8 U.S.C. 1356(n).

USCIS must also conform to the requirements of the Chief Financial Officers Act of 1990 (CFO Act), 31 U.S.C. 901-03. The CFO Act requires each agency's Chief

Financial Officer (CFO) to “review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value.” *Id.* at 902(a)(8). This final rule reflects recommendations made by the DHS CFO and USCIS CFO as required under the CFO Act.

Office of Management and Budget (OMB) Circular A-25 establishes Federal policy regarding fees assessed for Government services and the basis upon which federal agencies set user charges sufficient to recover the full cost to the Federal Government. OMB Circular A-25, User Charges (Revised), section 6, 58 FR 38142 (July 15, 1993). Under OMB Circular A-25, the objective of the United States Government is to ensure that it recovers the full costs of providing specific services to users. Full costs include, but are not limited to, an appropriate share of—

(a) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;

(b) Physical overhead, consulting, and other indirect costs, including material and supply costs, utilities, insurance, travel and rents or imputed rents on land, buildings, and equipment; and,

(c) Management and supervisory costs.

Full costs are determined based upon the best available records of the agency. *Id.*; see also OMB Circular A-11, section 31.12 (June 30, 2006) (Fiscal Year (FY) 2008 budget formulation and execution policy regarding user fees), found at http://www.whitehouse.gov/omb/circulars/a11/current_year/a11_toc.html. When

developing fees for services, USCIS also looks to the Federal Accounting Standards Advisory Board (FASAB) which defines “full cost” to include “direct and indirect costs that contribute to the output, regardless of funding sources.” Federal Accounting Standards Advisory Board, Statement of Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government 36 (July 31, 1995). To obtain full cost, FASAB identifies various classifications of costs to be included, and recommends various methods of cost assignment. *Id.* at 33-42.

USCIS entered supporting fee review documentation for this rulemaking and its methodology, including budget methodology analyses and regulatory flexibility analyses, into the public docket. See www.regulations.gov, docket number USCIS-2006-0044. A more detailed discussion of USCIS’ fee review can be found in the proposed rule for this rulemaking action at 72 FR 4888.

II. FINAL RULE.

This fee rule sets out fees to recover the full costs of USCIS operations. Without these fee adjustments, USCIS will not be able to maintain critical business functions, properly address fraud and national security issues, or process incoming applications and petitions in a timely manner. The revised fee schedule will close existing funding gaps and allow USCIS to take specific and demonstrable steps to strengthen the security and integrity of the immigration system, improve customer service, and modernize business operations. The fee revenue generated by the revised fee schedule will support increased security and fundamentally transform and automate USCIS business operations, all of which will greatly strengthen the ability of USCIS to perform its mission and place

USCIS in a better position to support possible future legislative reforms. This fee rule assumes that no new appropriation will be enacted.

This final rule largely implements the fee structure described in the proposed rule. USCIS did make some adjustments to the fee schedule in the final rule based on public comments received by USCIS. This rule also expands the proposed fee waiver policy to include additional classes of applicants and petitioners who may apply for a waiver of certain application and petition fees for certain services. The rationale for each change is discussed in the section of the rule that discusses comments on that issue. The specific changes made are summarized as follows.

A. Form I-485 “Application to Register Permanent Residence or Adjust Status.”

In the proposed rule, the proposed fee of \$905 for a Form I-485 “Application to Register Permanent Residence or Adjust Status” was based USCIS’ projected overall cost of processing the average application, regardless of the applicant’s age. Under the final rule, the standard fee for filing a Form I-485 by an individual will be \$930; the fee for a child under the age of fourteen years will be \$600 when submitted concurrently for adjudication with the application of a parent or guardian under sections 201(b)(A)(i), 203(a)(2)(A), or 203(d) of the INA. The comments received on this issue and the rationale for making this change are discussed in section below.

B. Intercountry adoptions.

In the proposed rule, the proposed fee of \$670 for filing an Application for Advance Processing of Orphan Petition (Form I-600A) was based on USCIS’ projected overall cost of processing the average application. This final rule does not change that

proposed fee, retaining it at \$670. However, the final rule provides that no new fee is charged for the first extension of the approval of an Application for Advance Processing of Orphan Petition. Therefore, this rule provides that no fee will be required when a Form I-600 for a child has not yet been submitted to USCIS for adjudication in connection with an approved Application for Advance Processing of Orphan Petition. The request from the applicant for an extension of the approval must be in writing and received by USCIS prior to the expiration date of approval indicated on the Notice of Favorable Determination Concerning Application for Advance Processing of Orphan Petition, Form I-171H. This no charge extension is limited to only one occasion. A complete application and fee must be submitted for any subsequent application.

This final rule also provides that no biometric service fee will be charged for an update of an approved Application for Advance Processing of Orphan Petition. Section III.D.4. below discusses the comments received in this area and the reasons for making this change.

C. Fee waivers and exemptions.

The final rule alters what was proposed in the NPRM regarding fee waivers in three important ways:

- Permits an application for a fee waiver for Application for Adjustment of Status, for T visa holders, U visa holders, and VAWA self petitioners.
- Provides that a “Special Immigrant – Juvenile” will not be charged a fee for submitting the appropriate Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).
- Permits waiver of the biometric fee.

These three changes represent a significant expansion of the fee waiver policy from what was proposed and will ensure that many applicants or petitioners, who may have faced financial hardship as a result of these fees, may now have that hardship alleviated. Section III.E. of this rule supra discusses these changes and the comments received in this area more fully.

D. Miscellaneous changes and corrections.

In addition to the changes previously discussed, the final rule makes clarifying changes to the regulatory text in the proposed rule. As a result of a comment, USCIS found that the fee schedule contained a form that was no longer being used. As a result, references to the entry for Form I-506 “Application for Change of Nonimmigrant Classification,” are removed by this rule. Second, the explanation of the fee for a Motion (Form I-290B) was found to be outdated in that the section had not been updated to comport with changes that had been made to 8 CFR part 242 and 8 CFR 1003.8. This rule also clarifies that fee to reflect current procedures and policies and the applicability of the Form I-290B Motion fee.

III. PUBLIC COMMENTS ON THE NPRM.

USCIS provided a 60-day comment period in the proposed rule and received more than 3,900 comments.¹ USCIS received comments from a broad spectrum of individuals and organizations, including refugee and immigrant service and advocacy organizations, public policy and advocacy groups, State and local governmental entities, educational and other not for profit institutions, labor organizations, corporations, and individuals. Many comments addressed multiple issues. USCIS received hundreds of comments

¹ All comments may be reviewed at the Federal Docket Management System (FDMS) at <http://www.regulations.gov>, docket number USCIS-2006-0044. The public may also review the docket upon request by contacting USCIS through the contact information listed in this rule.

through many distinct form letters and mass mailings that were identical or nearly identical in content. Many comments provided variations on the same substantive issues.

The comments ranged from strongly supportive of the increased fees to strongly critical. Many comments provided critiques of the methodology and the proposed fee schedule; some suggested alternative methods and funding sources.

USCIS also invited the public to access the commercial software utilized by USCIS in executing the budget methodology and developing the proposed rule to facilitate public understanding of the fee modeling process explained in the supporting documentation. 72 FR 4889. USCIS received no requests for such access to the modeling program.

On February 14, 2007, the House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and Immigration Law heard testimony from the USCIS Director on the fee proposal during the public comment period. USCIS has included an unofficial transcript of that hearing in the docket. *See, Proposal to Adjust the Immigration Benefit Application and Petition Fee Schedule, 110th Congress, 1st Sess. (Feb. 14, 2007).*

USCIS leadership met with stakeholders and conducted “question and answer” sessions during the public comment period at various cities throughout the United States, including: Washington, D.C.; Los Angeles, California; New York, New York; Chicago, Illinois; Detroit, Michigan; Boston, Massachusetts; San Francisco, California; San Jose, California; Dallas, Texas; Phoenix, Arizona; and Denver, Colorado. Participants were encouraged to submit written comments on the rule.

USCIS considered the comments received, the congressional hearing transcript, the content of the public meetings, and all other materials contained in the docket in preparing this final rule. Throughout the comment period, USCIS conducted a “rolling” review process. Comments were reviewed as soon as practical after receipt and re-reviewed in light of subsequent comments. The review process was very resource intensive and it permitted USCIS to develop a continuous understanding of the issues presented and maturation of consideration of the issues most commonly presented.

A number of comments were not relevant to the substance of the proposed rule and criticized the rule for not addressing other immigration law issues. Many of these comments suggested changes in the immigration laws of the United States that must be addressed to the United States Congress, including comprehensive immigration reform. Many commenters suggested changes in the substantive regulations implementing the immigration laws by USCIS, United States Customs and Border Protection (CBP), United States Immigration and Customs Enforcement (ICE), and other agencies. These comments are beyond the scope of this rulemaking.

The final rule does not address comments seeking changes in United States statutes, changes in regulations or applications and petitions unrelated to or not addressed by the proposed rule, changes in procedures of other components within the Department of Homeland Security (DHS) or other agencies, or the resolution of any other issues not within the scope of the rulemaking or the authority of DHS.

The public may also review the docket upon request by contacting USCIS through the contact information listed in this rule

A. General Comments.

Numerous comments supported the rule, although many of those were qualified by expectations that the fee increase will result in better service. Many of these comments emphasized that the costly delays in case processing are far more expensive to applicants and petitioners than the cost of the discrete filing fee. Others emphasized that filing fees are often a small portion of the total cost incurred by an individual or family immigrating to the United States.

In addition, many comments criticized the level of fees and the amount of the fee increase. A significant number of comments criticized the proposed fee schedule, suggested that the fee increase would impede immigration, or argued that specific fees should not be increased at all or not by the amount proposed. Many commenters disagreed with the budget decision to fund USCIS entirely from fees and argued that USCIS should seek an appropriation from Congress.

B. Relative Amount of Fees.

A significant number of commenters argued that the proposed fees were too low. Some expressed general concerns about immigration levels. Others argued that fees should be high enough to cover all immigration related costs, not simply application and petition processing and related USCIS costs, so taxpayers are not asked to pay for someone entering, residing, or seeking services in the United States.

1. Recovery of additional costs and enhancements.

Many comments suggested that even greater increases could be used to further improve customer service, stating that this result would reduce the perceived need for an individual to seek the assistance of an attorney to understand and navigate the immigration benefits application and petition process. Other comments suggested that

fees should not be based on USCIS' costs of administration, but on the value of the benefit received by the applicant (e.g., United States citizenship). Additionally, some comments pointed out that many aliens make large payments to those who help them enter the United States illegally, suggesting that this demonstrated the willingness to pay more to enter and remain in this country legally or illegally.

Some comments supporting the proposed fees, or even higher increases, asserted that the fee increases are not significant when viewed in a broader context. Some cited the value of naturalization relative to the cost. Others noted that most people must be permanent residents for five years before they can apply for United States citizenship and the proposed fee requires saving less than \$10 per month toward that goal. Other examples were also cited, including the fact that a petition for a relative, fiancé, or orphan is a very small part of the total cost of bringing that person to the United States.

The filing fees proposed and established under this rule are significantly higher than applicants and petitioners pay today. These fees, however, are based only on the costs of operating USCIS.

Several comments suggested that the fee increases were overdue and should have been implemented long ago. These commenters agreed with the proposed rule that the fee increases were necessary to increase the effectiveness of USCIS services. They recommended quick implementation of this rule so USCIS could begin making the planned improvements to its operations as soon as possible. USCIS agrees. As stated in the proposed rule, the current fee schedule does not generate enough revenue for USCIS to even process the current volumes of applications and petitions. As the Director of USCIS stated in his testimony before Congress on February 14, 2007, USCIS intends to

implement this fee increase in the summer of 2007 so that it can begin its efforts to reduce average application processing times. This plan was also stated in the USCIS press release of January 31, 2007. USCIS plans to begin collecting these new fees in order to begin fully recovering its costs and obtaining the resources necessary to timely process applications. Thus, the commenters' suggestions are being recognized, but they are in line with original plans of USCIS.

Specific comments suggested that the application fee for a Petition for a Nonimmigrant Worker, Form I-129 (Nonimmigrant Worker Petition), which is filed by businesses seeking to allow aliens to work in the United States, should be increased. According to these comments, higher fees should offset or alleviate the stress that these workers placed on the infrastructure of the United States, increased demand for governmental services, impact on the American labor market, reduced opportunities for citizens, and lowered salaries for American workers. Similarly, some comments suggested that a portion of fees should reimburse States for providing job training programs.

In many respects, the comments requesting that USCIS increase fees further reflect a position on the broader issue of immigration policy. However, the purpose of filing fees and the IEFA is not to directly influence or compensate for the overall effect of immigration policy. Filing fees are not designed to function like tariffs and generate general revenue to support broader policy decisions, or like fines to deter certain behaviors. The filing fees are not intended to influence public policy in favor of or in opposition to immigration, limit immigration, support broader infrastructure, or impact costs beyond USCIS.

Other comments suggested that increasing specific fees, such as for an Application To Extend/Change Nonimmigrant Status, Form I-539, would serve as a deterrent to reinstatement applications and, instead, cause more aliens to remain in the United States longer than their period of authorized stay.

After considering these suggestions, USCIS has decided to continue to follow the President's FY 2007 Budget call for USCIS to reform its fee structure, and the GAO recommendation that USCIS, "perform a comprehensive fee review to determine the costs to process new immigration applications." This rule is designed to establish fees sufficient to reimburse the full, necessary, ongoing, and projected costs of processing immigration benefit applications and petitions and the related operating costs of USCIS.

While USCIS has authority to collect fees for certain broader costs of administering the Nation's immigration system, it has chosen to structure the fees to only recover the full cost of operating USCIS. USCIS believes that this decision is the most consistent with broader Administration policy on user fees and the intent of Congress in the enactment of, and amendments to, section 286(m) of the Immigration and Nationality Act (INA), 8 U.S.C. 1356(m). Accordingly, USCIS has not changed fees based on these comments.

2. Proposed fees are unreasonably high.

The largest number of comments opposed the proposed fee increases in general terms or highlighted particular applications and petitions and argued that the proposed fee increases would effectively exclude aliens generally, or groups of aliens, from immigration benefits and services. Some suggested that fee increases send the wrong message to people who are attempting to comply with the immigration benefit process

and United States immigration laws in good faith, and that higher fees may discourage legal immigration while encouraging aliens to attempt to enter the United States and work illegally. These comments reflect another specific position on the larger issues of immigration law and policy that aliens should be induced to immigrate to the United States. As noted above in relation to the opposite position, the purpose of the fee schedule is not to establish policy, but to recover the costs necessary to operate USCIS. Accordingly, the final rule does not adjust the fee schedule in response to these comments.

A portion of these comments argued that the fee increases would result in a decrease in applications and petitions. Contrary to the opinions expressed, USCIS records do not reflect any empirical evidence suggesting a long-term reduction in the demand for immigration benefits resulting from fee increases. While fees at an extremely high level could be a factor in whether or not someone files an application with USCIS, neither past fee increases nor the incremental increases in this rule begin to approach the level necessary to have any significant impact on the demand for USCIS benefits. USCIS acknowledges that short-term increases in applications and petitions occur after a fee increase has been announced, followed by short-term decreases in demand immediately after the fee increases become effective. This fluctuation is a normal result of an increase in the cost of any service, whether governmental or private. Generally, applicants and petitioners with the ability to file do so before fees increase. Individuals logically choose to pay a lower price for a service if and when available. However, USCIS records indicate that demand returns to normal shortly the effective date of a fee increase. When the Immigration and Naturalization Service (INS) conducted the last

comprehensive fee review in FY 1998 and fees increased, on average, more than in this rule, the demand for immigration benefits remained fairly constant shortly thereafter. Anyhow, the fees collected by USCIS are generally felt to be only a portion of the total expenses incurred by a typical applicant.

These comments infer that these temporary fluctuations undercut the stability of the funding stream to be generated by the proposed fees. USCIS acknowledges that slight fluctuations will occur and will be reflected in the funding stream, but these fluctuations are not significant enough, in the context of the overall USCIS budget, to adversely affect services.

3. Improve service, reduce inefficiencies.

a. Service improvement and fees.

Many comments noted lengthy waiting times to process immigration benefit applications and petitions and highlighted the need to improve overall customer service. These comments suggested that, regardless of whether the proposed fees were justified, applicants and petitioners should not be asked to pay the full fee increase until USCIS improves service. Others suggested that even if fees were increased before service level improvements were made, there should be detailed commitments to service level improvements to ensure increased revenues are used to improve service.

Some comments stated that USCIS has increased fees before with the promise of enhanced services, but never fully delivered on that promise. Other comments indicated that the proposed rule does not outline an overall strategic plan for improvements, with measurable benchmarks and tangible goals for implementing the needed upgrades, or a specific timeline or completion schedule to assure interested parties that these

improvements will actually be accomplished. One commenter complained that customer service and processing backlogs have not improved enough to justify such a steep fee increase.

These comments illustrate the main distinction between the revised fee schedule and current one in that the current fee schedule does not reflect the existing costs of performance. The current fee schedule does no more than sustain USCIS operations and provide for delivery of benefits at an unacceptable level. Historically, USCIS balanced resource requirements to allocate insufficient revenues from a fee structure that did not recover full costs. The new fee structure is designed to maintain sufficient capacity to meet appropriate performance standards and goals, while sustaining performance through investments to deliver continuous improvements into the foreseeable future. USCIS acknowledges the commenters' concerns, and believes that these concerns will be satisfied, at least in part, after implementation of the new fee structure.

USCIS is required by law to review its fees at least once every two years. 31 U.S.C. 902(a)(8). USCIS has established a dedicated staff in its Office of Planning, Budget, and Finance to conduct future comprehensive analyses. USCIS is firmly committed to seeking improved ways of doing business and reengineering processes in order to contain costs. The new fee structure will enable USCIS to make improvements that may ultimately help avoid future increases and possibly reduce USCIS costs. Process improvements implemented over the past several years, as well as projected productivity increases, are taken into account in the current fee review, keeping fees lower than they might otherwise have been. Future productivity enhancements will produce lower costs per unit that will be reflected in future price adjustments.

The fees are based on the costs necessary to sustain the processing of applications and petitions. If fees collected remain below processing costs, the imbalance will, as it has in the past, result in a backlog. Backlogs mean customers will not receive the benefits and services for which they have applied in a timely manner. A structural deficit between costs and fees will also mean USCIS cannot effectively sustain operations because of insufficient capital to invest in improvements. Over time, a structural deficit between costs and fees will create and accelerate the growth of backlogs and deteriorate service levels. Delays caused by the inability to meet demand resulting from fees set below cost often have far more impact on the person than the discrete application or petition fee.

The proposed fee adjustments and this final rule reflect these concerns. Over the past several years, USCIS received appropriated funds as a temporary subsidy from Congress to help offset some of the imbalance between costs and fees. These appropriations have helped USCIS substantially reduce processing times and meet the President's goal of a six-month or less processing time for nearly all immigration benefit applications and petitions. By the end of FY 2006, the application and petition backlog had fallen from a high of 3.8 million cases in January 2004 to less than 10 thousand. The total volume of pending cases is currently less than the backlog was at its height, which shows real and substantial progress.

USCIS has also made many customer service improvements, including, but not limited to, expanding online capabilities (such as online filing, change of address and case status updates), INFOPASS appointments (providing the ability to go online to make, cancel, or reschedule appointments with a USCIS Immigration Information

Officer), and introducing a broad range of fact sheets to help the public understand various benefits, eligibility criteria, and USCIS procedures. These improvements were made prior to the proposed fee increase. With the revenue generated from the new fee schedule, USCIS will be able to deliver significant additional improvements. Until USCIS aligns its fees with costs, however, it will be unable to afford sufficient capacity to process incoming applications and petitions, resulting in backlogs.

b. Inefficiency in business-related visas.

Some comments highlighted particular inefficiencies and suggested that correcting these would mitigate the need for fee increases. An example of inefficiency mentioned by many commenters was the long processing delays for employment-based visa categories, including the immigrant employment-based classifications and the nonimmigrant classifications such as the temporary employee H nonimmigrant visa, and the intra-company transferees L nonimmigrant visa.

USCIS acknowledges that it does not always quickly and efficiently process the Immigrant Petition for Alien Worker, Form I-140 (Alien Employee Petition) for firms requesting USCIS approval to hire a foreign worker. Processing delays result from a number of factors that are beyond the control of USCIS, including extensive Federal Bureau of Investigation (FBI) name checks and retrogression of petition priority dates caused by over-subscription of the applicable visa categories. The solutions suggested by one commenter, however, such as mandatory processing times, automatic fee refunds, or automatic approval, would neither improve efficiency nor result in shorter processing time. The suggestion that delays result in refunds would merely cause more delays. Employers may use the premium processing service, if applicable, to obtain faster

processing of certain employment-based petitions and applications, a process that may alleviate the commenters' concerns.

The national interest is not served by automatically determining the eligibility and suitability of persons immigrating to the United States. Each applicant or petitioner must prove his or her eligibility for the benefit sought. While a backlog still exists, USCIS has achieved an average processing time for an Alien Employee Petition as of January 2007 of less than 135 days per case, which represents fifteen days faster than five years ago, but with a much higher current monthly volume. With the additional USCIS resources from this updated fee schedule, performance will be enhanced even further.

c. Multiple biometric data requests.

Many commenters pointed to the fact that applicants or petitioners must provide biometric data more than once. Some commenters considered the expiration of fingerprints submissions to be inefficient. Others suggested that it was inefficient for USCIS to again request fingerprints when they apply for sequential benefit applications. USCIS agrees that an applicant should not be required to provide biometric data multiple times for a single application. USCIS is developing the Biometrics Storage System (BSS) which will allow the re-use of fingerprints and, if an application or petition has not been adjudicated within the fifteen month validity period, USCIS will be able to simply re-submit the stored fingerprints to the FBI, without any involvement of the applicant or petitioner. See 72 FR 17172 (Apr. 6, 2007) (establishing a new system of records). Also, as a matter of policy, when an application remains pending, USCIS does not charge the applicant the biometric fee again because of a processing delay at USCIS.

In the revised fee structure, the biometric fee is not simply a fee for biometric collection or the USCIS cost of the applicant or petitioner appearing at an Application Support Center. The biometric fee also covers some costs associated with the use of the collected biometrics for FBI and other background checks. Thus, an applicant will pay the biometric fee whenever he or she files another application that requires the collection, updating, or use of biometrics for background checks. At that point, USCIS can verify the identity of the applicant by comparing the newly collected biometrics with those previously submitted, providing an important security enhancement. USCIS believes that this new process may result in some decreases in costs which may offset the costs of background checks incorporated into the biometric fee, and has already factored this impact into the fee structure along with projected efficiency increases.

d. Petitions for aliens of extraordinary ability or performers.

USCIS received many comments requesting improved efficiency in the processing of visa petitions for aliens of extraordinary ability in science, art, education, business, or athletics, and their spouses and/or children (the O visa category), or aliens coming to the United States temporarily to perform at a specific athletic competition or as a member of a foreign-based entertainment group (the P visa category). Many O and P petitions are submitted on relatively short schedules, i.e. the individual/group is scheduled to visit the United States in the near future for a specific event.

These commenters stated that lengthy and uncertain O and P visa processing periods complicated booking foreign artists for performances and requested the implementation of a thirty-day maximum processing period. This issue is not germane to

this rule; however, because of the volume of comments received, a brief response is provided.

The USCIS receipt notice received by an applicant after filing states that the application will be processed in 30-120 days, but that time is a standardized estimate for all O and P applications for many types of performers and organizations. Still, USCIS does everything in its control to adjudicate these petitions within 60 days. In spite of this fact, cases may be delayed by a number of causes that are beyond USCIS control, most commonly a lack of response to USCIS inquiries by the sponsoring organization, labor unions and other representatives, and the prospective visa recipient. For planning purposes, current estimates of various visa classification processing times and processing dates are posted on the USCIS website.

USCIS recently published a final rule to permit petitioners to file O and P nonimmigrant petitions up to one year prior to the need for the alien's services. 72 FR 18856 (April 17, 2007). Although that rule will not resolve all of the commenters' concerns, the longer filing window will better assure O and P petitioners that they will receive a decision on their petitions in a timeframe that will allow them to secure the services of the O or P nonimmigrant when such services are needed. USCIS suggests, however, that the nature of the O and P visa classifications creates a need to carefully plan performances and book entertainment acts. Fees collected after publication of this rule will be used to cover USCIS costs and will assist in more reliable and consistent adjudication of all applications and petitions, including O and P visa petitions.

e. Pre-screening applications and petitions for lawful permanent residence.

One commenter supported the recommendation of the USCIS Ombudsman to require a comprehensive prescreening of Applications to Register Permanent Residence or Adjust Status, Form I-485, prior to filing. Citizenship and Immigration Services Ombudsman, Annual Report to Congress, 50-55 (June 29, 2006) (Recommendation 27). Recognizing that adoption of a prescreening process would reduce revenues, the commenter posited that it would instead promote efficiency and integrity, and enhance security.

USCIS is committed to a process that handles cases efficiently and effectively, meeting all quality requirements in a way that protects the national security and public safety of the United States. USCIS cannot, however, agree with this recommendation at this time. The suggestion for “up-front processing” is very similar to a process that came to be known as “front-desking” – a procedure followed by the INS in which employees were instructed to review certain applications in the presence of the applicant to correct facial deficiencies, incomplete responses or errors before accepting the application for filing. Front-desking effectively precluded administrative and judicial review because there was no formal denial to appeal – only a return of an uncorrectable document. Reno v. Catholic Social Services, 509 U.S. 43 (1993). Legitimation of the concept of up-front processing would require a fundamental change in the regulations administered by USCIS and goes well beyond the scope of this rulemaking. USCIS will not adopt this proposal as a part of this rulemaking.

f. Transformation project and premium processing.

Some comments requested more information on transformation plans and how premium processing revenues will be spent. Others suggested that premium processing

be expanded. Another commenter suggested that transformation from a paper to electronic process would create excessive costs and burdens that would create financial and paperwork barriers to citizenship.

As required by statute, premium processing revenues are deposited in the IEFA and will be fully isolated from other revenues and devoted to the extra services provided to premium processing customers, and to broader investments in a new technology and fully isolated from other revenues and devoted to the extra services provided to premium processing customers, and to broader investments in a new technology and business process platform to radically improve USCIS capabilities and service levels. INA Section 286(u), 8 U.S.C. 1356(u). USCIS has recognized that its existing technology has not kept pace with changing demands and additional requirements placed upon USCIS. Since the previous fee structure was retrospective and did not include funds for real investments to sustain and improve USCIS infrastructure, business choices have been limited to those that can be supported by existing technology or no technology.

The premium processing fee (\$1,000) is statutorily authorized for employment based applications and petitions. USCIS is only authorized to adjust this fee for inflation as set by the Consumer Price Index. INA section 286(u), 8 U.S.C. 1356(u). USCIS cannot expand the premium processing fee or the applications and petitions available for premium processing beyond the statutory limitations.

USCIS plans to transform the current paper based process into an electronic adjudicative process. This transformation will allow USCIS to better detect and deter those who seek to do harm or violate the laws of the United States, while facilitating benefits processing for eligible, low-risk persons.

USCIS acknowledges that the transition from a paper-based to an electronic adjudication system carries with it certain burdens, but believes the benefits of the new process will outweigh those costs. The new adjudicative process will enable USCIS to enhance national security, improve customer service, and increase efficiency by increasing its ability to share data with immigration partners, improving security by uniquely identifying individuals, improving system integrity by creating customer accounts, and providing a single worldwide case management system. Nonetheless, as some commenters pointed out, not all applicants will have access to the Internet or other electronic means of submission. For those individuals, paper submissions will remain an option.

g. Actions planned to improve efficiency.

USCIS believes that, while sustainability of its operations focused on continuous improvement is important, so is real and substantive near-term improvement. USCIS structured the revised fee schedule to allow it to commit to specific substantial improvements over the next two years.

USCIS is committed to substantial reductions in processing times by the end of FY 2008 for four key applications: (1) Application to Renew or Replace a Permanent Resident Card, Form I-90 (Application for LPR Card); (2) Application to Register Permanent Residence or Adjust Status, Form I-485 (Adjustment of Status Application), for someone already in the United States; (3) Immigrant Petition for Alien Worker, Form I-140 (Alien Employee Petition), the petition for an employer to sponsor a foreign worker for permanent residence based on its job offer; and (4) Application for Naturalization, Form N-400 (Naturalization Application), the petition to become a United States Citizen

through naturalization. These four applications and petitions represent almost one-third of the USCIS total workload. By the end of FY 2008, USCIS plans to reduce processing times for each of these cases by two months, from six months to four months (naturalization processing will be reduced from seven months to five months when the ceremony at which a person takes the oath of allegiance is included as part of the process). Thus, applicants and petitioners will see a significant improvement in the first full fiscal year following these fee adjustments. Further, as also indicated in the proposed rule, USCIS is committed to a twenty-percent average reduction in case processing times by the end of FY 2009, which will extend improvements in processing times and service delivery across the spectrum of applications and petitions.

The proposed fee structure commits USCIS to real improvements as it is not built simply on today's productivity rates, but on anticipated increases in productivity (four percent for the Adjustment of Status Application, and two percent for all other products. USCIS is accountable for these productivity increases in order for fees to support operations as intended.

Another commenter suggested that hiring more permanent employees would improve USCIS efficiency. USCIS agrees. As presented in the President's FY 2008 Budget, USCIS plans to add 1,004 Adjudication Officers and support staff. However, twenty percent of the new staff will be other than permanent employees. Most of that staff will handle application and petition volume surges, a critical resource to ensure that the backlog does not increase due to sudden and unpredictable workload increases. However, the comment is not related to the fee schedule and does not suggest any changes to the final rule.

One commenter questioned how quickly USCIS will be able to implement all of the resources outlined in the additional resource requirements. The commenter also questioned whether USCIS took into consideration ongoing expenses versus one-time expenses. USCIS has factored into the fee schedule the appropriate start up costs. USCIS did differentiate one-time costs versus recurring costs in its fee calculations. For example, one-time costs such as background investigations and computer equipment for new hires were included in the FY 2008 costs, but not in the FY 2009 costs. These calculations are accurately identified in the fee review supporting documentation.

4. Increases relative to time.

Some comments suggested that some fees were excessive for certain applications and petitions relative to the time it takes to process the application or petition. As mentioned above and in the proposed rule, the primary basis of the USCIS fee model is the administrative complexity, which is the amount of time that it takes to process a particular kind of application or petition (identified as “Make Determination” activity in the proposed rule). The calculation also factors in other direct costs, such as the cost of manufacturing and delivering a document when that is part of the processing of a particular benefit.

In addition to these costs, the fee calculation model factors in the full costs of USCIS operations, including services provided to other applicants and petitioners at no charge, overhead costs (e.g., office rent, equipment, and supplies) associated with the adjudication of the application or petition, and other processing costs. These latter costs include responding to inquiries from the public (“Inform the Public” activity), application and petition data capture and fee receipting (“Inform the Public” activity), conducting

background checks (“Conduct Interagency Border Inspection System Checks” activity), the acquisition and creation of files (“Review Records” activity), preventing and detecting fraud (“Fraud Prevention and Detection” activity), and when applicable producing and distributing secure cards (“Issue Document” activity). In total, all application and petition fees include a total of \$72 in “surcharges” to cover these overhead costs that cannot be assigned to a specific benefit application or petition, and to recover asylum and refugee processing costs, fee waivers, and costs for classes of visas made exempt from fees.

5. Increases relative to other standards.

Many commenters suggested that the fee average or weighted average fee increases were out of line with, for example, the Social Security Administration’s (SSA) 2007 basic cost of living increase, the increase in the Gross Domestic Product (GDP), or the federal General Schedule salary increase. USCIS appreciates the concerns expressed, but these external indicators of costs are not comparable with USCIS’ costs. For example, SSA’s basic cost of living increase is a benefit increase tied to inflation, whereas the USCIS fees recover all of the costs of operating USCIS, including enhancements required to meet congressional mandates, improve efficiency, detect fraud, secure the immigration system, and to consolidate elements such as federal salary increases into base costs. The real GDP or “real gross domestic product,” on the other hand, is an estimate of the output of goods and services produced by labor and property located in the United States by the United States Department of Commerce Bureau of Economic Analysis. GDP bears no relation to the cost models that must generate the fees to be charged by USCIS.

Many commenters stated that the increase in the fee for the Form N-565, “Application for Replacement Naturalization/Citizenship Document,” from \$220 to \$380, was unreasonable when compared with replacement of other documentation. Most of these commenters compared the fee for replacing a citizenship certificate with replacing a Social Security Card, which the Social Security Administration provides for free, or replacing state documents (e.g. drivers licenses) that many states provide for a nominal charge.

Replacement of a social security card, driver’s license, voter registration card, or passport is substantially different from replacement of a certificate of citizenship. USCIS incurs substantial costs in determining the validity of the naturalization for which the certificate was issued before it can issue a new certificate. As stated in the proposed rule and above, this fee schedule is based on the relative complexity of adjudication of a benefit application and reflects the average relative cost of adjudication of all such applications. The fees charged for replacing secure documents reflect the full costs incurred by USCIS in replacing those documents. Regardless of the type of change requested, USCIS must obtain the original records and issue a new certificate after the appropriate review and decisions. Charging \$380 for adjudication of Form N-565 for an infant may recover more fees than that specific adjudication may require, however, \$380 fails to recover the resources expended to determine the validity of the more complicated applications such as in the case of an adult who requires significant background investigation. Therefore, the Form N-565 fee was not adjusted from what was proposed.

Other comments stated that some fees should reflect validity periods with lower fees for benefits with shorter validity periods. This argument is similar to that advanced

by many who advocated higher fees — that the fees should not be based just on costs, but on the real or perceived value of the benefit. USCIS’ methodology is based on the complexity of the adjudication, not the validity period. USCIS establishes maximum allowable time periods that may pass between its approving a benefit and the applicant’s receipt of the benefit based on the type of case and how passage of time influences the need for updates in the information used to make the determination. The approval validity period is not designed to generate revenue through unnecessary repeat filings. USCIS believes that the current methodology is fair and complies with Federal fee guidelines. Decreasing the fee for applications for benefits with shorter validity would only shift costs to other immigration benefit applications and petitions based on considerations that are not applicable. The comment will not be adopted.

6. Grandfathering.

Some comments recommended phasing in the fee increase over a period of years, or fixing fees at current levels for those who already applied for one or more immigration benefits in the past, effectively grandfathering fees for those who are already in the USCIS system. Deferring fee increases would directly result in service delays. In addition, setting fees lower for any class of applicants or petitioners would merely transfer costs to other applicants. Thus, USCIS has not incorporated these recommendations.

7. Budget decisions necessary to administer immigration benefits.

Many comments highlighted a critical aspect of the fee structure – operations must be sustainable. The real cost of processing a type of application or petition is more than the discrete cost of processing a particular individual case today. It includes the cost

of sustaining operations and making investments to continually improve service delivery and performance. The proposed fee structure is designed to meet performance standards and make continuous improvements through investments in training to ensure a high performance workforce, facilities to provide services that are more accessible to our customers, systems to support operations and performance, and resources to improve quality and performance management. These goals are consistent with the principles of Office of Management and Budget (OMB) Circular A-25, User Charges (Revised), 58 FR 38142 (July 15, 1993) (A-25).

8. Reorganization.

Another commenter suggested that efficiency could be improved by reorganizing USCIS in accordance with the recommendations of the USCIS Ombudsman. USCIS has recently reorganized its functions (see 71 FR 67623) and expects this reorganization to provide greater efficiency once it has gained traction. Those expectations were incorporated into the proposed rule and this final rule.

C. Alternative sources of funding.

Many comments did not dispute the methodology and costs, but asserted that applicants and petitioners simply should not be required to bear the burden of these fee increases. Many pointed to the benefits of immigration and assimilation and argued that because the United States benefits as a whole from immigration, as a matter of public policy, immigrants should not bear the entire cost of processing. Many asserted that USCIS should find ways to keep fees down, even if it means operating at a deficit. Others suggested substituting appropriated monies for user fees to offset particular fees or activities or subsidize general USCIS operations.

1. Appropriated funds.

Many comments recommended that USCIS seek appropriated funds to close funding gaps, meaning that taxpayers should subsidize particular applications and petitions, certain processes, activities not directly related to the adjudication of the particular kind of application or petition, or fees in general. Some highlighted the public good and positive impact resulting from immigration, naturalization, or certain procedures (i.e., background checks) and argued that the public good merited the use of tax dollars to offset costs. Many comments suggested that appropriations be used to either subsidize specific benefit application or petition fees or all fees in general. Some comments suggested that fees should be the last recourse for funding immigration services; that is, USCIS should be required to have exhausted all possible means of seeking appropriated funds before imposing fee increases. One commenter faulted USCIS for not engaging Congress to cooperatively work on this issue. Others suggested funds be appropriated for discrete purposes to offset the cost of a particular activity associated with case processing or overall management of USCIS.

Other comments point out that section 286(m) of the INA, 8 U.S.C. 1356(m), authorizes the recovery of the full cost of providing immigration and naturalization services, including services provided without charge to many applicants. These comments point out, however, that section 286(m) does not mandate full cost recovery, and that USCIS still has the option of seeking appropriations and choosing to recover less than full cost through user fees. Some commenters urged support for specific legislation that would alter the fee development process or affect this specific fee review process.

Finally, one commenter suggested that USCIS use appropriated funds to fund unusual or atypical expenses from its fee calculation. The commenter suggested that these infrastructure costs represent an “investment” that should not be funded by current immigration and naturalization applicants and must not be included in the fee calculation.

These comments go beyond the scope of the regulation and raise questions of whether Congress should alter the immigration laws of the United States or appropriate general funds for USCIS. In effect, these comments suggest that USCIS should take other actions outside the rulemaking and the authorization for this rulemaking under INA section 286(m) and (n), 8 U.S.C. 1356(m) and (n).

Law and policy have long supported the proposition that the costs of providing immigration benefits should be borne by those applying for those benefits. Thus, in this final rule, USCIS is adopting a fee schedule to recover its costs through user fees. While it is true that Congress has enacted intermittent appropriations to subsidize the operations of USCIS, the President’s budget for FY 2008 does not request such an appropriated subsidy, except specific funds for expansion of an employment verification program. Even if an appropriation were to be requested, receipt of sufficient funds (without adjusting the fee schedule) to cover the costs of USCIS operations may be doubtful. USCIS must fund the services it provides through the legal means at its disposal. Deferring the recovery of full costs while USCIS explores other funding options will delay service delivery to applicants and petitioners.

Congress may appropriate funds for USCIS operations and to alter the authorization for promulgation of this fee schedule. However, those actions lie outside the scope of this rule and USCIS will not take actions in contravention of the President’s

2008 Budget Request. If Congress alters the statutory authorization or enacts an appropriation, USCIS will make the appropriate adjustment to the fee schedule at that time.

2. Finding other revenue sources.

Some comments suggested funding USCIS through fines assessed against employers who hire aliens who are not authorized to work in the United States. Other comments suggested a variation on the methodology, such as charging employers more than individuals or charging additional fees at the time of naturalization.

USCIS is statutorily barred from using these sources of funds. Unless specified in law, all fines and penalties under the immigration laws become miscellaneous United States Treasury receipts and are deposited into the general fund, not the IEFA. INA section 286(c), 8 U.S.C. 1356(c). The Treasury will specifically distribute certain fines to specific agencies. For example, the Treasury distributes fines collected under the fraud prevention and detection provisions of INA section 214(c)(12) and (13), 8 U.S.C. 1184(c)(12) and (13), directly to DHS and the Departments of State and Labor for specific purposes. INA section 286(v), 8 U.S.C. 1356(v).

USCIS believes that the methodology used to develop these fees – a methodology based on the complexity of the specific application or petition - is the most appropriate process to equitably allocate costs and provide long-term stable and reliable funding. Part of USCIS' funding problem has been reliance on temporary funding sources, including appropriated funding. This new fee schedule will establish a more stable source of funding. As the number of applications and petitions increases, USCIS will be

better able to respond to increasing workload changes and will no longer be compelled to sacrifice customer service or rely on unreliable funding sources.

D. Comments on specific benefit applications and petitions and their fees.

Many comments that suggested that USCIS seek appropriated funds or other subsidies, or other means to reduce fees from the proposed levels, also emphasized issues and impacts related to particular applications and petitions. The fee development methodology is sensitive to the costs of adjudicating each type of application or petition based on the complexity of adjudicating it.

1. Naturalization Application.

The fee for the Naturalization Application generated a large number of comments from a wide spectrum of commenters. The proposed rule would raise this fee from \$400 to \$595, excluding the required biometrics fee, or a 49 percent increase. Many comments highlighted the public interest in promoting citizenship and recommended reducing this fee.

USCIS understands the sentiment expressed by the commenters that becoming a citizen of the United States is an honor to be cherished. USCIS disagrees with the commenters who suggested that the proposed fee increase is inconsistent with our tradition of welcoming and integrating immigrants and that increasing the fee would send the wrong message to intending citizens.

The fee for a Naturalization Application is established at \$595 in this final rule and properly reflects the intensive scrutiny with which a request for such an honor should be reviewed. Naturalization applicants, who are initially found eligible, must be examined under oath to assure compliance with the many requirements for citizenship

under the INA including competency in English, knowledge and understanding of United States Government and history, physical presence and maintenance of resident status in the United States, and facts and conduct reflecting their moral character and attachment to the United States Constitution and law. 8 U.S.C. 1401 et seq.

In adjudicating some naturalization applications, USCIS adjudicators must resolve complex subsidiary applications for certain exemptions, such as the Application to Preserve Residence for Naturalization Purposes, Form N-470, or the Medical Certification for Disability Exceptions, Form N-648 (which is processed and adjudicated without charge). Further, criminal and national security record checks are required for naturalization applications and may require the involvement of numerous USCIS personnel. In addition, the naturalization adjudication process may require multiple interviews, and solicitation and consideration of additional evidence bearing on eligibility. Finally, in the event of an adverse decision on the application or petition, the applicant is entitled to request a new hearing by a different adjudicator. All of these factors are reflected in the fee charged to recover the cost of adjudication.

Two factors in the final rule mitigate this fee increase and are discussed more fully in section III of the preamble. First, the final rule maintains the current USCIS policy of permitting naturalization applicants to request an individual fee waiver. In determining inability to pay, USCIS officers consider all factors, circumstances, and evidence supplied by the applicant including age, disability, household income, and qualification within the past 180 days for a federal means tested benefit, as well as other factors associated with each specific case. For those applicants not granted a fee waiver, USCIS will charge a fee of \$595 for processing naturalization applications. Additionally,

the cost of fingerprints has been reduced slightly, resulting in a decreased overall cost for naturalization applicants. Accordingly, USCIS has determined that the effort and resources expended to process Naturalization Applications justifies this level of fee increase.

2. Form I-485 -Application to Register Permanent Residence or Adjust Status.

Many comments emphasized the overall size of the proposed increase for the Adjustment of Status Application from \$325 to \$930, or 186 percent. Most of the proposed fee increase for the Form I-485 was driven by the packaging or “bundling” of related benefits with no separate fee. As indicated in the proposed rule, factoring in separate fees, applicants typically pay for additional services related to the Form I-485 for which they will no longer pay separately. In this rule, after consolidating the fees for the Adjustment of Status Application and the requests for interim benefits that previously required additional fees, the increase in the fee from \$870 to \$1,010 (18%), including the biometric fee, is significantly below the average increase for all fees.

A few comments suggested that incorporating the fee for Form I-765, “Application for Employment Authorization,” and the fee for Form I-131, “Application for Travel Document,” into the Form I-485 should only be an option. USCIS issues an Employment Authorization Document (EAD) to the alien after it approves an Application for Employment Authorization. An alien submits a Form I-131 to apply for a travel document, reentry permit, refugee travel document, or advance parole. EAD and travel documents are commonly referred to as “interim benefits.”

These commenters suggested that children may not need or desire travel documents or work authorization, so the fee for an Adjustment of Status Application should be consequently reduced for a child or a family. Other comments suggested that, like refugees, asylees should not be required to pay the portion of the new Adjustment of Status Application fee attributable to the interim benefits, because eligibility to work is inherent in their status. Finally, several commenters suggested that USCIS apply the fee consolidation for the Adjustment of Status Application, Application for EAD, and Application for Travel Document to all currently pending Adjustment of Status Applications.

This final rule makes no adjustment to what was proposed in the NPRM as a result of these comments. USCIS determined that a change in the fee schedule was not justified because a type of applicant mentioned by the commenters may not need or want interim benefits. Neither does this rule adopt the suggestion to process Applications for EADs or Applications for Travel Documents for currently pending Adjustment of Status Applications without fee. USCIS records indicate that most applicants who initially choose not to apply for an EAD or travel documents soon do so because they find that they need interim benefits almost immediately. As for asylees and refugees, asylees are authorized to work, but must provide an EAD to employers as proof that they are authorized to work in the United States. The fees collected by USCIS for EAD applications fund the costs incurred by USCIS for issuing the EADs. USCIS incurs costs for adjudicating the EAD which is a different issue from an asylees authorization to work incident to asylee status. Further, although refugees are not required to submit a fee for their initial Adjustment of Status Application, they are required to pay the fee for an

Application for EAD or for the Application for Travel Document to request a refugee travel document. Providing multiple fee options based on who typically requests interim benefits, when records indicate that the vast majority of applicants do request interim benefits, would be too complicated and costly for USCIS to administer. Applicants with a pending Adjustment of Status Application who did not pay a fee that incorporates the cost of an Application for EAD and an Application for Travel Document must continue to file separate interim benefit applications with the appropriate fee for each service.

A number of comments pointed out that the packaging of these services and the fee increase means that the total fees a family will pay for concurrently filed Adjustment of Status Applications will increase substantially, and argued for some form of family cap on the total fee to be collected. These commenters pointed out that the child fee level under the fee schedule was almost one-third lower than the adult fee, but the \$100 difference under the proposed fees represents only an eleven percent differential between an adult and a child's Adjustment of Status Application fees. These comments added that this effect exacerbated the impact of the fee changes on families. Other commenters were concerned that, while refugees are charged no fee for their Adjustment of Status Applications, the proposed rule provides that asylees must pay a fee for an Adjustment of Status Application and suggested that this treatment was disparate.

USCIS seriously considered the suggestion that it institute a maximum fee for a family where several members submit simultaneous Adjustment of Status Applications (family cap). USCIS analyzed a number of scenarios to determine at what level a family cap would not result in a significant transfer of the direct costs for adjudicating Adjustment of Status Applications for entire large families to individuals or smaller

families. USCIS also weighed whether or not to transfer the costs of adjudicating Adjustment of Status Applications for large families to only other adjustment of status applicants or to all other benefit applications. Unfortunately, USCIS was unable to determine the size of the family at which it was no more administratively burdensome to process an Adjustment of Status Application for an additional relative when processing multiple simultaneous family applications. In the end, USCIS determined that the policy or humanitarian considerations inherent in the decisions made in this final rule to allow additional fee waivers is not sufficiently prevalent in the case of family Adjustment of Status Applications to warrant a family cap, absent such data on the requisite burden based on size.

As pointed out by some comments, the fee for the Adjustment of Status Application was \$325 for aliens fourteen years of age or older, but for aliens under fourteen years of age, the fee was \$225. This amounted to a 31 percent difference in the base filing fee. Therefore, in response to comments on the subject, USCIS conducted an analysis of Adjustment of Status Applications to determine whether there was an actual difference in the average time it takes to process the average Adjustment of Status Application filed by someone under the age of fourteen versus the time it takes to process a case filed by someone over the age of fourteen. As discussed below, USCIS determined that there was a difference in the relative adjudicative burden for an adult versus a child for concurrently filed Adjustment of Status Applications where the child is a derivative of the adult or the child's status is based on the same legal authority as the adult. This calculation was consistent with the methodology employed by the proposed

rule in that an identifiable adjudication was segregated and the relative complexity of processing the benefit for a subset was determined.

USCIS has determined that a discount for adjudication of a child is only appropriate in the case of an Adjustment of Status Application. The Adjustment of Status Application is unique in that it is the only benefit that requires adjudication of a distinct and separate application for a child, although it can be submitted simultaneously with other family members. There is no other benefit that requires submission of a separate application from family members, but allows the family members to submit them concurrently for processing. Similarly, besides children, there are no other subgroups of applicants for adjustment of status who possess qualities that would provide for segregation of relative adjudicative complexity that would provide sufficient data for a separate fee calculation. Therefore, beyond reducing Adjustment of Status Application fees for children, USCIS will not provide any discount for families based on size, and USCIS has decided to base Adjustment of Status Application fees on the direct costs associated with that service.

Nonetheless, in response to these comments, USCIS evaluated the difference in actual processing time and costs associated with the “Make Determination” activity for Adjustment of Status Applications. While the proposed fee for an Adjustment of Status Application was based on the overall cost of processing the average application, regardless of the applicant’s age, the large majority of Adjustment of Status Applications are filed by persons fourteen or older. And, as pointed out by some comments, the current fee structure has a 31 percent difference in the base filing fee paid by someone under age fourteen relative to someone over age fourteen. USCIS conducted an analysis

of Adjustment of Status Applications submitted concurrently as part of an application from a family and found that there is a 35 percent difference in the average time it takes to process an Adjustment of Status Application filed by someone under fourteen years of age versus the time it takes to process a case filed by someone age fourteen or older. Applying this difference to the fee model reduces the fee for an Adjustment of Status Application for a family member under age fourteen from \$805 to \$600, and adjusts the fee for family members age fourteen and older to \$930. This change and its impact are discussed more fully below in section III of this preamble.

With regard to the different treatment for refugees and asylees, the exception for a fee for refugees is based on the requirement that a refugee must apply for adjustment of status within one year of admission as a refugee. INA section 209(a), 8 U.S.C. 1159(a). Further, while refugees have been affirmatively invited by the United States Government to come to the United States for permanent resettlement, asylees have sought admission of their own accord and requested to be allowed to stay. While USCIS agrees that both asylees and refugees should receive full protection from persecution, it is a reasonable policy choice to be more generous in awarding immigration benefits to those who are invited. Nonetheless, in response to comments on this subject, USCIS has decided to allow asylees to request a waiver of the Adjustment of Status Application fee on an individual basis. This change is addressed in more detail below section III of the preamble, the discussion of changes made in this final rule from what was proposed.

3. Employment authorization for students.

Many educational institutions and their representatives submitted nearly verbatim comments on the proposed fee increase for an Application for EAD. These commenters

expressed significant concerns about the size of the fee and its effect on the limited financial capability of most international students in F visa status and their ability to apply for work authorization when they choose to participate in the Optional Practical Training (OPT) program. These comments noted that international students on F-1 visas are limited to 20 hours per week of on-campus employment and the money to pay the Application for EAD fee will curtail their ability to buy food and pay rent. Similarly, these same commenters, for the most part, expressed general concerns about the immigration benefit application expenses for international students and their family members, who typically are of limited means.

For international students, F-1 status allows a student to remain in the United States as long as they are a properly registered full-time student. To maintain full-time status, a student must take at least four courses per semester at the undergraduate level, and depending on the academic program, three or four courses per semester at the graduate level. Also, under F-1 status, a student may work part-time in an on-campus job and in a “practical training” job directly related to the student’s field of study for 12 months during or after the completion of studies. The OPT program mentioned by the commenters grants temporary employment authorization that provides F-1 students with an opportunity to apply knowledge gained in the classroom to a practical work experience off campus. To be eligible for OPT, a student must have been in full time student status for at least one full academic year preceding the submission of their application for OPT, be maintaining valid F-1 status at the time of the application, and intend to work in a position directly related to his or her major field of study.

The United States places a very high value on attracting international students and scholars to this country. The contributions to the academic experience for all students provided by the existence of a diverse international student body are invaluable. The resources that are devoted to delivering immigration benefits to deserving students show the importance of this goal to USCIS and the significance placed on that program. USCIS also understands that international students already face significant hurdles, including financial hurdles, which is why the fee structure consolidated fees, where consolidation made sense, and kept fees to a minimum. Nonetheless, substantial resources are expended by USCIS for adjudication of the student's eligibility for employment documents and the fee for an Application for EAD was established based on those needs. Further, while USCIS acknowledges that the salaries provided by OPT are helpful, the emphasis of OPT is on training the student in their field of study, not as a source of income. To that end, the \$340 cost of requesting an Application for EAD is a very small portion of the total expenses incurred by an alien pursuing his or her studies in the United States. EAD applicants may request an individual fee waiver based on inability to pay. For Applications for EAD submitted that are not granted a fee waiver, USCIS will charge a fee of \$340 for processing based on the effort and resources expended to process this benefit.

4. Application for Advance Processing of Orphan Petition.

Many comments focused specifically on the fees for a Petition to Classify Orphan as Immediate Relative, Form I-600, and an Application for Advance Processing of Orphan Petition, Form I-600A. Several comments suggested that USCIS should reduce the fee and offer fee waivers for orphan petitions. These commenters effectively request

that USCIS shift the costs of this program to other immigration benefit applications and petitions.

Adjudicating orphan petitions involves some of the most complex decision-making within immigration services because adjudication of Forms I-600 and I-600A requires knowledge of many state adoption regulations and statutes and foreign country adoption requirements. Each petition must be accompanied by a home study, background checks, and evidence that must be carefully examined. Approval of parents as suitable to adopt is time sensitive as a result of the potential changes that may occur in a household that may impact the suitability of the home for an adopted orphan, such as loss of a job or divorce. Such changes often prevent reconsideration of the parents' petition. As a result of this approval expiration period, currently set as eighteen months, prospective adoptive parents must submit a new petition and all supporting documents if they wish to continue with the adoption process if they have not been matched with a child. USCIS sometimes works with a case for months, involving frequent contact with adoption agencies, social workers, and prospective adoptive parents. Finally, international orphan adoption adjudications require an investigation and information verification, and may require travel. This fee increase will allow USCIS to automate case management of adoption cases, further reducing any real or perceived delays in the manual, paper-based process currently in place.

Orphan petitioners must attest that the beneficiary will not become a public charge in order to be approved as a suitable adoptive parent. Further, the orphan petition fee is a small part of what a United States citizen petitioner chooses to accept as part of the overall process and cost of adopting a child from overseas and raising that child. The

financial circumstances required to be eligible for this benefit directly contradict the rationale for shifting costs related to these applications to others, or for offering a waiver of the fee because of inability to pay.

A significant number of comments suggested that USCIS mitigate the cost by extending the validity of approved orphan petitions and the results of background checks. Commenters complained that processing in the country from which the child comes often takes longer than the current approval validity, which creates re-work and additional fees. The length of the validity of the approval of any petitioner or applicant for a benefit was not mentioned in the proposed rule and cannot be amended by this final rule. Thus, these comments are beyond the scope of this rule.

The final rule provides, as does the current USCIS fee schedule, that when more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required. No fee is collected on additional siblings because USCIS determined that processing efficiencies provided by the ability to adjudicate two siblings simultaneously did not justify an additional fee. However, in the case of multi-child simultaneous petitions when the orphans are not siblings, USCIS requires separate fees for each child because of the processing requirements of determining eligibility of each child.

Since a large number of commenters ardently mentioned this issue as part of their comments, USCIS has decided to allow a prospective adoptive parent to receive one extension of the approval of advance processing of orphan petition at no charge. Prospective adoptive parents who have not found a suitable child for adoption, as evidenced by their failure to submit a Form I-600 after approval of their Form I-600A,

will be allowed to request one extension of the approval without charge, including the biometric fee. This final rule does not change the proposed fee of \$670. However, this rule provides that no fee will be required when a Form I-600 for a child has not yet been submitted to USCIS for adjudication in connection with an approved Application for Advance Processing of Orphan Petition. The request from the applicant for an extension of the approval must be in writing and received by USCIS prior to the expiration date of approval indicated on the Notice of Favorable Determination Concerning Application for Advance Processing of Orphan Petition, Form I-171H. This no charge extension is limited to only one occasion. A complete application and fee must be submitted for any subsequent application. This final rule also provides that no biometric service fee will be charged for an update of an approved Application for Advance Processing of Orphan Petition. The same limitations apply.

USCIS determined that the costs of processing an initial extension were minimal when it results only from the parents' inability to match with a child within the first approval period and the update process begins before expiration actually occurs. A full fee will be charged, however, for adjudicating a new application when a child has not been matched after the first extension (the second approval period). Because of the length of time involved (three years) and the need for substantial updates, the second update often involves the same complexity as the initial application. Similarly, when the approval expires and a new application is submitted as a result of the first child selected by the prospective adoptive parents not being adopted (denial of Petition to Classify Orphan as Immediate Relative (Form I-600)), the resources expended to adjudicate the first Petition to Classify Orphan as Immediate Relative require a new fee for beginning

the process anew for a new orphan from the same country or a different foreign country as the first application.

5. Entrepreneurs.

One commenter, representing an association of affected individuals, claimed that the fee for the Immigrant Petition by Alien Entrepreneur, Form I-526, is incorrect because this benefit is only adjudicated at USCIS service centers, not at USCIS local offices as stated in the proposed rule. In addition, the commenter stated that USCIS has not shown why the percentage increase for the Immigrant Petition by Alien Entrepreneur (for EB-5 status) filing fees should be higher than others, especially when compared to the Petition by Entrepreneur to Remove Conditions (Form I-829). The commenter stated that their experience was that petitions to remove conditions generally should take less time to adjudicate the original entrepreneur petition, which has a lower proposed fee. USCIS recognizes that the Immigrant Petition by Alien Entrepreneur is indeed adjudicated at local offices. USCIS service centers will refer certain cases to local offices for interview. The volumes related to the Immigrant Petition by Alien Entrepreneur, however, are relatively small (three percent), and therefore the cost impact is minimal.

The Immigrant Petition by Alien Entrepreneur and the Petition By Entrepreneur to Remove Conditions are two of the more labor intensive petitions that USCIS processes, as evidenced by the high completion rates in the proposed rule. As stated in the proposed rule, the more complex an immigration or naturalization benefit application or petition is to adjudicate, the higher the unit costs. Although the completion rates for the entrepreneur petition and the petition to remove conditions are approximately the same, the fees are substantially different because the costs are being spread across a

smaller number of petitions (600 for immigrant entrepreneur petitions compared to 45 for Petitions By Entrepreneur to Remove Conditions) resulting in a higher unit cost for the petition to remove conditions. USCIS explained this reasoning in the proposed rule and it remains valid.

6. Effect on availability of skilled workers.

Some commenters specifically argued that an increase in fees will deter employers from seeking skilled workers from outside the United States to fill gaps in the workforce, adversely affecting the competitiveness of the United States. USCIS disagrees with the notion that an increase in fees will deter skilled workers from employment in the United States. There is no evidence suggesting that fee increases deter skilled workers from coming to the United States, as these comments suggested. In most employment-based visa categories, the demand for immigrants greatly exceeds the maximum number of visas permitted each year under the INA. For example, applications for H-1B visas exceeded the FY 2007 statutory cap on the first day that applications were accepted.

USCIS expects substantial demand for these visas to continue following the implementation of this rule. Similarly, there is no evidence suggesting a direct correlation between a fee increase of this magnitude for immigration benefits and illegal immigration, as some comments have suggested.

One commenter, representing an association of agricultural employers, claimed that the proposed fee for the Nonimmigrant Worker Petition is unfair because the cost to adjudicate this benefit varies greatly depending on the type of petitioner. The commenter suggested that H-2A employers are subsidizing the other, more complicated petitions of

this form type. USCIS recognizes that some adjudications within a particular form type are more expensive than others, and that the more complex petitions are subsidized by the simpler ones since the fee is calculated as an average. While USCIS understands the position of this commenter, it would be far too complex and expensive to administer a fee schedule based on the type of applicant or petitioner within a particular benefit. USCIS disagrees with this recommendation as it would further increase fees to recover the additional costs necessary to administer this change.

E. Fee waivers and exemptions.

A number of comments focused on applicants or petitioners who would not be required to pay a filing fee for immigration benefits, relating to fee exemptions for classes of applicants or petitioners and requests for fee waivers due to inability to pay, as set forth in 8 CFR 103.7(c). Some comments argued that class fee exemptions and fee waivers should be further limited because they simply transfer costs to other applicants or petitioners. Others argued that fee waivers should be granted on a far wider basis. In response to comments, USCIS reconsidered the fee waiver provisions of the proposed rule.

A fee waiver based on inability to pay requires that other applicants or petitioners pay for the same service and for a portion of the fee being waived for that applicant or petitioner. Fee waivers represent approximately one percent of the total applications and petitions filed with USCIS each year.

Many comments implied that waiving fees in such a small percentage of cases suggests that the current fee waiver policy is far too stringent, and should be liberalized rather than further restricted. However, while the number of fee waivers USCIS grants

represents a small percentage of total filings, USCIS has historically granted most of the fee waiver requests received. Another reason why the number of fee waivers may be seen by some as low is that individual fee waivers are granted in addition to fee exemptions granted to certain classes of individuals. Taken together, on a transactional basis, USCIS does not collect a fee in over seven percent of the cases received.

Excluding business petitions to bring in foreign workers, nonimmigrant matters where the aliens must be able to support themselves to be eligible for status, and cases involving international travel, fee waivers represent over eight percent of the remaining workload. Given the complexity of asylum and refugee processing, from a workload perspective, fee waivers represent well over 10 percent of the remaining effort.

In addition, any fee under Temporary Protected Status (TPS) is limited by statute to \$50. INA section 244(c)(1)(B), 8 U.S.C. 1254a(c)(1)(B). USCIS has historically waived the filing fee for TPS status. 8 CFR 244.20.

1. T, U, or VAWA, and Adjustment of Status Applications.

USCIS proposed to exempt certain classes of aliens from paying a filing fee where it believes that the incidence of fee waivers due to inability to pay would be very high. In the proposed rule, USCIS proposed to expand the class fee exemptions to three small volume programs: victims of human trafficking (T visas), victims of violent crime (U visas), and Violence Against Women Act (VAWA) self petitioners. See INA sections 101(a)(15)(T) or (U), 8 U.S.C. 1101(a)(15)(T) and (U), and Public Law 109-162, secs. 811 – 817, 119 Stat. 2960, 3057 (Jan. 5, 2006). Those programs involve the personal well being of a few applicants and petitioners, and the decision to waive these fees reflects the humanitarian purposes of the underlying authorizing statutes. The final rule

maintains this blanket fee exemption because the blanket exemption is consistent with the legislative intent to assist persons in these circumstances. Anecdotal evidence indicates that applicants under these programs are generally deserving of a fee waiver. Thus, USCIS determined that these programs would likely result in such a high number of waiver requests that adjudication of those requests would overtake the adjudication of the benefit requests themselves.

After reviewing the potential numbers of such applicants, USCIS has determined to allow an application for fee waiver for these classes of aliens when filing an Adjustment of Status Application. USCIS has made this determination for all of the reasons stated above, but tempered by the fact that an application to adjust status can not be filed for a significant time after the alien has been granted a T, U, or VAWA status. Accordingly, this rule provides that a Form I-485 may be subject to a fee waiver when the person's eligibility for adjustment of status stems from asylum status, 'T' status (victims of human trafficking), U status (victims of violent crime who assist in the prosecution), self petitioners under the Violence Against Women Act, or where by law the person otherwise is not required to demonstrate that he or she will not become a public charge, including but not limited to, Adjustment of Status Applications for Special Immigrant – Juveniles, or based on the Cuban Adjustment Act, Haitian Refugee Immigration Fairness Act, and the Nicaraguan Adjustment and Central American Relief Act. This final rule does not expand fee waiver eligibility further in adjustment of status cases. The changes made to the fee waiver and exemption eligibility criteria did somewhat increase fee waiver and exemption costs, but this had no impact on the

resulting fee schedule given the insignificant volume numbers associated with the affected applications and petitions.

2. Special immigrant – juvenile.

A number of commenters suggested that Special Immigrant – Juveniles” also should be exempt from certain fees. A “Special Immigrant – Juvenile” is an immigrant under the age of 21, unmarried, who is a ward of a court in the United States (for the most part State courts) or eligible for long-term foster care or in custody of a state agency, and judicial proceedings have determined that it would not be in that Special Immigrant – Juvenile’s best interests to be returned to his or her home country.

USCIS has determined that a fee exemption for this petition would be consistent with the exemptions granted for other classes of aliens and the humanitarian purpose of the statute. Therefore, the final rule exempts “Special Immigrant – Juveniles” from the fee for submitting a Petition for Amerasian, Widow(er), or Special Immigrant, Form I-360 (Form I-360). This new fee exemption is in addition to making the change from the proposed rule to provide that a Special Immigrant – Juvenile may apply for an individual waiver of the fee for an Adjustment of Status Application.

3. Biometric fee.

Numerous comments suggested that the fee for submitting biometrics was a burden for those aliens with an inability to pay. In response, USCIS conducted an analysis of the costs to USCIS if such waivers were allowed. As with any other waiver, the loss of that fee would necessarily be spread across all other benefit applications and petitions, having the potential to increase those fees.

To analyze this issue, USCIS determined the total number of requests for waivers received in FY 2006, the number of fee waivers approved, and the number approved that were for applications where biometrics were required. USCIS determined that, had the biometric fee been waived for those applicants or petitioners whose waiver request for the underlying application or petition was approved, the associated costs for collecting the biometrics spread across all paying applicants would have added only one dollar to the biometric collection fee. Because all fees are rounded to the nearest \$5 increment, the model showed that continuing a waiver for biometric would result in no increase. Therefore, USCIS decided to accept the commenters' suggestion. This final rule provides discretion to USCIS officials to waive the biometric fee, following the same general guidelines as used to consider all other requests for fee waivers such as financial hardship.

Beyond these limited programs, and those for asylees and refugees, USCIS has decided not to shift the costs of processing any other specific immigration benefit applications and petitions to others. These three changes to the fee waiver and exemption policy from what was proposed are discussed more fully in section III.

F. Authority to collect fees.

Some comments suggested that the proposed rule exceeded USCIS' statutory authority to collect fees. Some comments suggested that administrative and overhead costs were not related to the provision of services and should be excluded. Other comments suggested that enforcement costs should be excluded from the fees, while others posited that all of the enforcement costs of immigration and law enforcement agencies should be recovered by fees. Underlying these comments is the issue of

compliance with the authorizing statute and internal Executive Branch guidance. On the other hand, one commenter particularly noted that while USCIS is permitted to fund all of its operations from fees, there is no statutory mandate requiring it to do so. These comments raise the issue of the general structure of the fee account, and whether user fees can legally recover certain costs. Accordingly, a more detailed explanation of the legislative authority and management guidance is provided.

1. Authority under the INA.

Before the IEFA was created in 1988, all activities related to case processing were funded by appropriations. Public Law 100-459, sec. 209, 102 Stat. 2186 (Oct. 1, 1988). While fees were charged prior to 1988, the fees were treated as miscellaneous receipts of United States Treasury and deposited in the general fund; those fees were not available to USCIS for expenditure. The fee account was created to provide an alternative to appropriations. As many of the comments stated, the law does not preclude the use of appropriations to subsidize fee receipts to fund operations. In the absence of appropriations, however, the only funding source is fee revenue. The FY 2008 budget is based on user fee funding for USCIS operations (other than expansion of employment verification) and will fund all other USCIS operations from fee receipts. Accordingly, the proposed rule was issued in conjunction with the FY 2008 budget proposal.

Section 286(m) of the Act, 8 U.S.C. 1356(m), provides that the United States may collect fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including the costs of providing similar services without charge to asylum applicants and certain other immigrants:

Notwithstanding any other provisions of law, all adjudication fees as are designated by the [Secretary] in regulations shall be deposited as offsetting receipts into a

separate account entitled "Immigration Examinations Fee Account" in the Treasury of the United States, ...: Provided further, That fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.

Under this authority, user fees are employed not only for the benefit of the payor of the fee and any collateral benefit resulting to the public, but also provide a benefit to certain others, particularly asylum applicants and refugees, and others whose fees are waived.

2. General Authority for Charging Fees.

Comments suggested that only the activities directly relating to specific adjudications should be charged to those who apply for the benefit. These comments rely on statutory authority separate from the authority for these fees. The general authority for the federal government to collect fees stems from the Independent Offices Appropriation Act, 1952 (IOAA), 31 U.S.C. 9701(b). Under the IOAA, a "value" to the recipient is a key threshold factor and the costs of "public interest" have been effectively included within the fees. National Cable Television Ass'n v. United States, 415 U.S. 336 (1974); FPC v. New England Power Co., 415 U.S. 345 (1974); Seafarers Internat'l Union v. Coast Guard, 81 F.3d 179, 183 (D.C. Cir. 1996). In New England Power Co., the Supreme Court held that the IOAA authorizes "a reasonable charge" to be made to "each identifiable recipient for a measurable unit or amount of Government service or property from which [the recipient] derives a special benefit." 415 U.S. at 349 (quoting Bureau of the Budget Circular No. A-25 (Sept. 23, 1959)). Such fees may be assessed even when the service redounds in part to the benefit of the public as a whole. National Cable Television Ass'n, 415 U.S. at 343-44. So long as the service provides a special benefit

above and beyond that which accrues to the public at large to a readily-identifiable individual, the fee is permissible. New England Power, 415 U.S. at 349-51 & n. 3.

Prior to the enactment of section 286(m) of the INA, fees charged for immigration services were governed by the IOAA and were judicially reviewed under the IOAA. A more elementary cost analysis than that currently used was upheld by the courts. Ayuda, Inc. v. Attorney General, 661 F. Supp. 33 (D.D.C. 1987), aff'd, 848 F.2d 1297 (D.C. Cir. 1988). As the Court of Appeals in Ayuda stressed, the procedures were “triggered only at the instance of the individual who seeks, obviously, to benefit from them.” 848 F.2d at 1301.

The United States is a nation largely built by immigrants and immigration continues to refresh this country. Accordingly, USCIS agrees that there is a certain undeniable public interest in immigration. The costs reflected in the proposed fees exist, however, because applicants and petitioners seek immigration benefits and services. There are also public interests in discrete processes such as background checks. Background checks are an integral part of determining the applicant’s eligibility for a benefit, and thus, their costs are appropriate for full recovery through a fee. Were it not for the underlying application or petition for immigration benefits, these specific security checks would not have been conducted.

USCIS authority under section 286(m) of the INA is an exception to any limitation of the IOAA. 31 U.S.C. 9701(c). The relevant, second proviso was added to the INA after the Court of Appeals decided Ayuda under the IOAA. Public Law 101-515, sec. 210(d)(1), (2), 104 Stat. 2120, 2121 (Nov. 5, 1990). The statutory provisions in section 286(m) of the INA are broader than the IOAA, authorizing USCIS to recover the

full cost of providing benefits and ensuring sufficient revenues to invest in improved service and technology. Even though the requirements of the IOAA do not apply in developing these fees, USCIS is mindful of the need to explain the process to the general public. Cf. Engine Manufacturers Assoc. v. EPA, 20 F.3d 1177 (D.C. Cir. 1994).

3. Surcharge for asylum, refugee and fee waiver/exemption costs.

Some comments questioned whether fees should include the surcharge for services USCIS provides without fee or where it waives a fee, and asserted that these costs should not be transferred to other applicants. Pursuant to section 286(m) of the INA, USCIS does include these surcharges in other application and petition fees.

USCIS could charge a specific fee to apply for asylum and that fee would be limited to the “costs in adjudicating the applications.” Section 208(d)(3) of the INA, 8 U.S.C. 1158(d)(3). The humanitarian nature of the asylum process, and the same reasons comments suggest in opposing fee increases for Adjustment of Status Applications from asylees to that of lawful permanent residence (see section III. x, above), gives USCIS good reason not to exercise this authority. USCIS has never charged fees for applications for asylum (Form I-589). For the same reasons, asylum applicants are exempt from the requirement to submit the fee for fingerprinting with the application for asylum. 8 CFR 103.2(e)(4)(ii)(B).

4. OMB Circular A-25.

The fact that a process benefits the public interest as well as a private party does not mean that process cannot be funded by a user fee. Rather, when the service enables the beneficiary to obtain more immediate or substantial gains or values than those that accrue to the general public, a user fee is appropriate. The entire legal immigration and

citizenship process, with respect to both grants of benefits and denials for national security or other reasons, is one that benefits the public as well as private interests, but focuses on the adjudication of eligibility for individual benefits. A fee-based structure is appropriate even when the public as a whole benefits. As OMB Circular A-25 makes clear, “when the public obtains benefits as a necessary consequence of an agency’s provision of special benefits to an identifiable recipient (i.e., the public benefits are not independent of, but merely incidental to the special benefits), an agency need not allocate any costs to the public and should seek to recover from the identifiable recipient either the full cost to the Federal Government of providing the special benefit or the market price, whichever applies.” OMB Circular A-25, ¶ 6.a.3. Accordingly, the proposed fees do not conflict with the guidance in OMB Circular A-25.

Moreover, OMB Circular A-25 is one of a series of circulars, bulletins and memoranda issued by OMB for the internal management of the Executive Branch. To be transparent, the circulars and agency use of the circulars are often publicly spelled out in regulations and other public statements. In this case, as with any fee rule of this nature and magnitude, the proposed rule and this final rule have been considered by OMB and other Executive offices in accordance with the appropriate Executive Orders, including Executive Order 12866, as amended, and other management instructions and directives

While section 286(m) of the INA is a separate authority for the cost analysis and fees, as stated earlier, USCIS follows the procedures outlined in OMB Circular A-25 and standard accounting procedures as discussed in the proposed rule to the extent that they are applicable. Further, the “full cost” concept also includes the amount required to

manage USCIS or “overhead.” The proposed rule described the types of costs that USCIS considered as overhead when determining the proposed fee levels.

One commenter provided a detailed but limiting analysis of USCIS’ authority under section 286(m) of the INA, 8 U.S.C. 1356(m), suggesting that “full cost” was more limited than suggested in the proposed rule and limited to specific “activities,” and suggesting that most of the enhancements fell outside USCIS authority to recover as fees. USCIS disagrees.

Section 286(m) permits USCIS wide latitude in determining the degree to which fees will be used to support operations. USCIS, in conjunction with DHS and OMB, has determined that fees should recover all, but not more, than the cost of operation for USCIS. Accordingly, the Administration has not requested an appropriation for USCIS, except specific funds for expansion of an employment verification program.

The “full cost” of services may be interpreted, and USCIS interprets the full cost of services to mean all of the support costs for such service within USCIS. The activities that may be included are not strictly those with a direct effect on a specific application or petition, but may include those activities that support the determination, including determining whether fraud is being perpetrated against the immigration system and providing public information to help improve understanding of both the specific applications and petitions and the manner in which immigration benefits are adjudicated. Accordingly, USCIS believes that all of the costs identified in the proposed rule may be recovered through fees.

Finally, the costs of all of the 27 identified enhancements may be recovered. Some of these enhancements are designed to comply with Congressional mandates for

the operation of the government; others are designed to ensure that USCIS operates securely and efficiently. While these costs and many other enhancements could be the basis for disagreement, USCIS acts within its discretion to account for them within the fees to be charged.

5. Homeland Security Act.

A commenter suggested that the proposed rule, if promulgated in final form, exceeded the authority provided to DHS in the Homeland Security Act of 2002 (HSA), Public Law 107-296, 116 Stat. 1135 (Nov. 26, 2002). In particular, the commenter suggested that the division of functions between USCIS under section 451 of the HSA (6 U.S.C. 271) and the then-Under-Secretary for Border and Transportation Security under section 441 of the HSA (6 U.S.C. 251), required a more limited scope for USCIS fees, excluding any law enforcement or national security functions under the Fraud Detection and National Security operations.

Another commenter suggested that USCIS authority was even more restricted to the functions of the former Adjudications Branch of the INS that were transferred to DHS. By contrast, another commenter conceded that while USCIS is permitted to fund all of its operations from fees, there is no statutory mandate requiring it to do so.

DHS disagrees with these suggested restrictions and agrees that it may fund, as a matter of discretion, all of USCIS operations, or more, from fees. Congress provided the Secretary with reorganization authority to allocate or reallocate functions within DHS. HSA, section 872, 6 U.S.C. 452. The division of functions transferred by the HSA is subject to the direction and management of the Secretary. HSA sections 101, 102, 6

U.S.C. 111, 112. Accordingly, the Secretary may adjust the functions within USCIS or across component lines as appropriate.

The reorganization of functions within USCIS to create the FDNS was a consolidation of specific previous functions to streamline operations. Accordingly, USCIS disagrees that the inclusion of FDNS in the fee calculation is inappropriate and will continue to fund that function through fees.

Accordingly, this final rule establishes a level of fees sufficient to recover the full cost of operating USCIS. The rule has not been amended to include other costs that could be legally charged or to exclude any costs of operating USCIS.

G. Methods used to determine fee amounts.

The cost of providing the right benefit to the right person in an appropriate amount of time without compromising security is a complex, carefully administered process. The fees promulgated in this final rule reflect the costs resulting from the complexity of the various immigration benefits that USCIS administers and the costs of the large number of benefits provided for which there is no charge. By recovering the full cost of doing business, the revised fee schedule will enable USCIS to reduce application and petition processing times and improve customer service, and in the long run, make the legal immigration process more secure, efficient, and welcoming to all immigrants.

1. USCIS costs.

A number of comments questioned or asked for additional information on the methodology used to determine USCIS costs. Others questioned the costs and calculations provided in the proposed rule, while some requested an invoice that details

the costs of services. USCIS is making no changes to the final rule as a result of these comments.

Detailed information on the methodology and the cost components and calculations was provided in the proposed rule and remains on the docket of this rule, and will be provided directly by USCIS upon request. The underlying supporting elements, such as independent legal requirements, the General Schedule pay scales, or travel reimbursement rates, are all publicly available. In the notice of proposed rulemaking, USCIS offered to provide the public with an opportunity to review the functioning of the computerized cost model used by USCIS through onsite viewing on its computer system. While USCIS cannot provide complete access to the computer software purchased under license, USCIS' fee determination is, within reason, an open process, and a summary of how calculations were made and results achieved were available for review upon request. USCIS did not receive any requests to access the modeling program.

Finally, preparation of an "invoice" would be an additional administrative task that would itself add to the costs to be recovered by the fees. The United States does not prepare such documents beyond the warrants, journals, ledgers, and books of account required to be prepared and preserved by law and Executive policy. See, e.g. OMB, Financial Reporting Requirements, OMB Circular A-136 (rev. July 24, 2006).

2. Alternative budget modeling.

Several commenters suggested that USCIS consider alternative budget modeling. One commenter suggested using a "zero-based budget" to determine application and petition fees, stating that the enacted FY 2007 IEFA budget used by USCIS could involve inefficient expenditures that waste time and money and disserve immigrants and families

who have filed applications or petitions. A “zero-based budget,” or ZBB, is a planning tool in which each expenditure must be justified and analyzed. The United States attempted ZBB in the late 1970s. The first requirements for the calculation of a “current services” baseline were enacted in the early 1970s, and a variety of concepts and measures have been employed, including ZBB. USCIS concedes, however, that the baseline has serious technical flaws, which compromise its ability to serve as a neutral measure. ZBB, like other systems such as Planning-Programming-Budgeting System (PPBS), can be a useful tool, but requires defined decision units that, for a service organization like USCIS, would mean a complete time and motion study of every activity, which would be very labor intensive and time consuming and which would be a cost factored into the fee requirements.

The commenters’ concerns about the budgeting methods are addressed in the fee determination and budgeting methodology utilized. The Budget of the United States is developed on a “current services estimates,” or “baseline” budgeting methodology which is designed to provide a neutral benchmark against which policy proposals can be measured. The current services estimates (which include inflation) may only be changed through justification of adjustments and enhancements. Accordingly, consistent with the United States Government budget methodology, USCIS used the FY 2007 congressionally-enacted spending level as a baseline, before subtracting nonrecurring expenses and adding in inflation and additional resource requirements, to calculate application and petition fees. This budget accurately reflects USCIS’ current spending as approved by the Congress.

Consistent with its previous comprehensive fee review, USCIS used the FY 2007 budget as a baseline, before subtracting nonrecurring expenses and adding in inflation and additional resource requirements, to calculate application and petition fees. In addition, prior to the start of FY 2007, USCIS leadership conducted an extensive evaluation of its FY 2007 spending. This level of scrutiny has enabled USCIS to meet several service delivery goals, such as eliminating the application and petition backlog. The scrutiny employed in analyzing the USCIS cost structure and future needs should minimize misused resources. Thus, USCIS disagrees with the assertion that its current expenditures are inefficient.

Another commenter suggested that USCIS use the actual time it took to perform the various immigration adjudication and naturalization activities, with no analysis of whether USCIS could operate its program more efficiently and for a reduced cost to the fee payors, thereby implying that greater efficiencies could be factored into the proposed fees.

USCIS disagrees with this suggestion. To the extent practical, USCIS has factored into the fees those efficiencies that can be predicted (particularly enhancements). USCIS is firmly committed to seeking new ways of doing business and reengineering processes in order to contain costs and pass on the savings to all of our customers, and the new fee structure will enable USCIS to make improvements that will ultimately help reduce USCIS costs. Productivity enhancements that affect hours per completion calculations produce lower cost per unit. Process improvements implemented over the past several years, as well as projected productivity increases, were taken into account in the current fee review, keeping fees lower than they might otherwise have been.

Specifically, this fee increase reflects USCIS' commitment to a projected four percent increase in productivity for Adjustment of Status Application processing, and a two percent increase in productivity for all other applications and petitions. USCIS will remain accountable for these projected productivity increases in order for fees to support operations as intended.

Another commenter expressed concerns about the level of scrutiny in identifying the amount of the additional resource requirements or enhancements. These costs were subject to the same level of scrutiny as all other USCIS costs. The additional resource requirements have been carefully reviewed by both DHS and OMB to ensure accuracy, and are displayed (with assumptions) in the supporting fee review documentation on the docket. USCIS provided this detailed information for transparency purposes to facilitate public scrutiny during the sixty-day public comment period.

3. "Make Determination" activity.

A few commenters questioned the calculation of the "Make Determination" activity cost estimates as well as the volume estimates used in the fee review. As explained in the proposed rule and the fee review supporting documentation, "Make Determination" costs were assigned to the applications and petitions by completion rates (level of effort or complexity) and workload volume. USCIS uses the most current and accurate completion rates and workload volumes provided by the USCIS Performance Analysis System. USCIS adjusts these workload volumes to reflect filing trends in FY 2007 and projected changes for FY 2008/2009. The USCIS Workload and Fee Projection Group leverages a time series model based on a regression analysis over the last 15 years, with the most recent data trends given the greatest weight.

The commenters quoted two particular instances of concern, one being the variance between the Application to Preserve Residence (with a completion rate of 3.39 hours and a make determination cost of \$428) and Form I-360 (with a completion rate of 3.21 hours and a make determination cost of \$2,268); and the other being the variance between the Application To Extend/Change Nonimmigrant Status, Form I-539 (with a completion rate of 1.32 hours at the local office and 0.39 hours at the service center and a make determination cost of \$84) and the Petition to Remove Conditions of Residence, Form I-751 (with a completion rate of 1.36 hours at the local office and 0.46 hours at the service center and a make determination cost of \$210). These variations are driven by the volumes associated with each application. In the first instance, the workload volume of Application to Preserve Residence filings is equal to the fee-paying volume (669), which means that the costs to process these applications are spread to an equal amount of applications for which a fee is received. The fee-paying volume of Form I-360 is much less than the workload volume (4,772 compared to 16,000) resulting in costs being spread to fewer applications and, consequently, a higher Make Determination cost. The second instance is simply a case of costs being spread to a greater number of applications (220,000 for Application To Extend/Change Nonimmigrant Status compared to 143,000 for the Petition to Remove Conditions of Residence) resulting in a lower unit cost. After reviewing these comments, USCIS remains convinced that the calculations are correct.

One commenter also questioned why the costs for an Application for EAD are significantly higher than the Application for LPR Card (Form I-90) costs, when Application for EAD completion rates for local offices, service centers, and National Benefits Center are lower than the Application for LPR Card completion rates. As stated

in the proposed rule, \$11.5 million in Application Support Center contract costs directly support processing an Application for LPR Card. Therefore, this cost comparison cannot be fairly analyzed by solely looking at the completion rates at local offices, service centers, or the National Benefits Center since a significant portion of the work is performed outside these offices.

4. Activity-based costing.

A few commenters claimed that USCIS' activity-based costing analysis was flawed since USCIS included completion rates, for example, for local offices that no longer have jurisdiction or responsibility to process certain form types (e.g., Nonimmigrant Worker Petition (Form I-129), Petition for Alien Fiance(e) (Form I-129F), Alien Employee Petition (Form I-140), Application To Extend/Change Nonimmigrant Status (Form I-539), Petition by Entrepreneur to Remove Conditions (Form I-829)), and service centers, for example, who do not have jurisdiction or responsibility to process the Application to Preserve Residence. While it is true that certain USCIS offices have primary jurisdiction over particular form types, it is not uncommon for form types to be processed at other USCIS offices for various reasons. For example, service centers will refer cases to local offices for interview. These volumes, however, are relatively small, and, therefore, the cost impact is minimal. For example, of the 439 Application to Preserve Residence filings processed in FY 2006, USCIS processed 427 (or 97 percent) at local offices and 12 (or 3.0 percent) at service centers.

A commenter questioned why the Naturalization Application is filed at service centers, but no completion rate data is provided for service center processing. Completion rate data is displayed for local offices instead of service centers for this

benefit because the local offices perform the adjudication. Using completion rate data for benefits that are only received at Service Centers and not adjudicated would not be accurate.

Another commenter suggested that it is simply not credible that local offices spend an average of two hours processing each Alien Employee Petition, when service centers only spend 52 minutes on an Alien Employee Petition. For various reasons, more complex cases are referred to local offices for an interview, explaining why the completion rate varies from service center to local office. However, as previously stated, the volumes are relatively small for these cases, and therefore the cost impact is minimal.

A commenter also questioned the increased fee for the Application for EAD, stating that the proposed fee is inaccurate given that USCIS implemented a new policy to no longer issue interim EADs at local offices. Because local offices have higher completion rates than other offices for this benefit, the commenter stated that the fee should be re-calculated and reduced. Although USCIS has implemented a new policy to no longer issue interim EADs at local offices, the practice of where the adjudication takes place has not changed. Local offices will continue to adjudicate Application for EAD filings and, therefore, USCIS believes the fee is accurate as stated in the proposed rule.

5. Calculating specific processing requirements.

One commenter remodeled the costs for the fee increase for an Adjustment of Status Application and questioned the 66 percent fee increase calculation after consolidating the fees for the Application for EAD that previously required additional fees. The commenter stated that if the Adjustment of Status Application processing time is seven months as stated in the proposed rule, then applicants pay for only one

Application for EAD and one Adjustment of Status Application, for fees of \$675, not what USCIS assumed for two Applications for EAD and one Adjustment of Status Application, for fees of approximately \$800. The processing times identified in the proposed rule represent the processing times for applications and petitions which are within USCIS control. When including the volume of Adjustment of Status Applications that are not within USCIS control, the processing times for the Adjustment of Status Applications in total are closer to one year. With a processing time of one year, the average applicant normally would pay for two employment authorizations, not one. Therefore, the USCIS calculation is correct.

6. Overhead charges.

One commenter questioned the methodology behind incorporating overhead costs into the processing costs for each application and petition, suggesting that these costs are not connected to actually moving an application or petition forward. The goal of the fee review is to recover the resources necessary to fund the full cost of processing immigration benefit applications and petitions for which USCIS charges a fee, plus the cost of similar services provided at no cost. Overhead items, such as the rent necessary to house Adjudication Officers, are vital to the operation of USCIS and are not a means for hiding expenditures, as suggested. These costs were spread in a pro rata fashion to the processing activities based on the number of government employees and the specific schedules of required space. That is, the more government staff time associated with a processing activity, the higher the overhead costs associated with that activity. Further detail of the overhead cost calculation, including the number of government staff per

office and the identification of overhead items, are provided in the fee review supporting documentation available on the docket.

7. Recovering deficit from current operations.

One commenter addressed the fact that USCIS is losing money on each application and petition now being filed in advance of the increase and questioned whether the increase in fees was intended to recover these losses. The fee increase is not intended to recover the losses currently being sustained by USCIS. USCIS is currently closing a funding gap created by the insufficiency of the fee schedule by relying on spending cuts to critical programs and services, premium processing revenues, interim benefit revenues, and revenues from temporary programs to fund base operations. The fees are designed to recover the costs of operations in the future and are not retroactive. The fees to be collected under this rule are not intended for retiring any accumulated deficits.

The commenter also noted the decrease in the projected number of Application for LPR Card filings and the recent surges in Naturalization Application filings. The commenter expressed concern that USCIS did not explain the projected decline in Application for LPR Card filings and wanted to know the impact if volumes declined more than what was projected in the fee review (e.g., Naturalization Applications). As identified in the workload assumptions of the fee review supporting documentation, the decline in projected Application for LPR Card filings is due to the increase in projected Naturalization Application filings. Projections are not expected to vary widely from those in the fee review. Regardless, USCIS' new fee model enables USCIS to adjust fees in a timely manner and USCIS plans to continuously review fees. If unforeseen costs or

volumes result in fees that are not recovering full costs, a new fee schedule may be proposed before the fee review that is required by OMB Circular A-25 and law to be undertaken in two years.

8. Charging a flat fee.

At least one commenter suggested that USCIS should change its methodology and charge the same fee amount regardless of the complexity of the immigration benefit. Fees based on the complexity of the application or petition are consistent with standard cost accounting practices and are also consistent with USCIS' past fee setting practices. USCIS does not agree that charging the same fee, regardless of the benefit, is a better methodology. USCIS believes that applicants and petitioners should generally pay a reasonable fee commensurate with the level of effort required to adjudicate such application or petition.

9. Financial audits.

Some commenters suggested that USCIS' costs should be subject to an audit. Federal law already requires an annual audit of financial activity, including cost, revenues, and payments for all executive agencies. 31 U.S.C. 3521, 7501 – 7506. USCIS costs are included in DHS's financial statements. The DHS Office of Inspector General (OIG) employs an independent public accounting firm to audit all DHS and component financial statements. In addition, GAO and OIG conduct reviews of the effectiveness and efficiency of USCIS programs and operations, providing recommendations for improvements.

10. Acceptance of electronic payment options.

Several comments recommended USCIS accept credit cards for all filings, both for convenience and also to let filers take advantage of the credit aspect of the card, to pay the amount to their credit card vendor over time, pointing out that this would slightly soften the impact of the new fees. USCIS plans to expand electronic payment acceptance over time as it shifts receipting of applications and petitions to other platforms such as lockboxes operated by the Department of the Treasury.

11. Other USCIS fees.

One commenter questioned whether USCIS is fully accounting for all its other fee revenues. The commenter noted an additional \$44 million in fee revenues from other accounts as noted in the FY 2006 budget request, and asked specifically about disposition of the money from the anti-fraud fee under section 286(s) of the INA, 8 U.S.C. 1356(s). As noted in the proposed rule, in addition to the IEFA, USCIS receives fee funding from several smaller, specific accounts, such as the H-1B Nonimmigrant Petitioner Account under section 286(s) of the Act, 8 U.S.C. 1356(s), and the Fraud Prevention and Detection Account under section 286(v) of the Act, 8 U.S.C. 1356(v), which this proposed rule does not affect.

In FY 2006, the Congress enacted \$31 million for activities funded from the Fraud Prevention and Detection Account. The requested amount is set by statute providing USCIS with one-third of the fees collected for the H1-B, H2-B, and L visas and applied to fraud prevention and detection activities. The proposed rule addresses the costs of processing immigration and naturalization benefit applications and petitions, biometric services, and associated support services of the IEFA, which is in addition to the costs for activities funded from the Fraud Prevention and Detection Account.

IV. Statutory and Regulatory Reviews.

A. Regulatory Flexibility Act.

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601(6), USCIS examined the impact of this rule on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act, 15 U.S.C. 632), a small not-for-profit organization, or a small governmental jurisdiction (locality with fewer than fifty thousand people). USCIS determined which entities were small by using the definitions supplied by the Small Business Administration. The size of the companies was determined by using the ReferenceUSA databases at <http://www.referenceusa.com/>. Below is a summary of the small entity analysis. A more detailed analysis is available in the rulemaking docket.

Individuals rather than small entities submit the majority of immigration and naturalization benefit applications and petitions. Entities that would be affected by this rule are those that file and pay the fees for certain immigration benefit applications on behalf of an alien. These applications include the Nonimmigrant Worker Petition and the Alien Employee Petition. USCIS conducted a statistically valid sample analysis of applicants of these application types to determine if this rule has an economically significant impact on a substantial number of small entities.

Out of the 439,000 applications filed in FY 2005 for these application types, USCIS first identified the minimum sample size that was large enough to achieve a 95 percent confidence level. This sample size was identified as 383 (out of a total of 149,658 unique entities that filed applications in FY 2005). USCIS then randomly

selected 653 entities, of which 561 or 86 percent were classified as small entities.

Therefore, USCIS determined that a substantial number of small entities are impacted by this rule. This determination was not updated based on FY 2006 or FY 2007 applications since programs have not substantially changed and the percentage of applicants who are small business is expected to remain fairly constant.

USCIS then analyzed the economic impact on small entities of this rule by: (1) identifying the number of applications filed by the small entities having sales revenue data identified by the random sample and (2) multiplying the number of applications by the fee increase associated with the applicable application types in order to estimate the increased annual burden imposed by this rulemaking. Once USCIS determined the additional cost of this rulemaking on the randomly selected small entities, USCIS divided this total increased cost by the annual sales revenue of the entity. By comparing the cost increases imposed by this rulemaking with the sales revenue of the impacted small entities, USCIS was able to understand the economic impact of this rule on the individual small entities USCIS has sampled. Using the ReferenceUSA database of business information, USCIS was able to identify annual sales revenue estimates for 273 of the 561 small entities previously sampled. Of the 273 small entities, 213 or about 78 percent of the small entities exhibited an impact of less than one tenth of one percent of sales revenue, and all of the small entities sampled exhibited an impact of less than one percent of total revenue. A simple (non-weighted) average of the 273 small entities equated to an overall impact of only six one hundredths of one percent of sales revenue. Therefore, USCIS believes that a substantial number of small entities are not significantly impacted economically by this rule.

One comment was received on the USCIS determination that a substantial number of small entities are not significantly impacted economically by this rule. First, the commenter suggested that the sample size used to make this determination was too small to provide an accurate picture of the rule's impact on small firms. Second, the commenter suggested that USCIS failed to consider that many firms pay for an alien's individual immigration benefit application fee in addition to those incurred by the business.

The sample size used by USCIS was statistically valid to allow USCIS to estimate the rule's impact on small entities. In the initial regulatory flexibility analysis, USCIS determined that 86 percent of the affected entities were small entities using SBA classifications. Eighty-six percent represents a significant majority. More importantly, USCIS compared the cost increases imposed by this rulemaking with the sales revenue of the impacted small entities and determined that the rule would, on average, have an impact of only 0.063 percent of sales revenue.

The commenter is correct that USCIS did not consider the effect on firms that choose to pay alien's individual immigration benefit application fee to induce the alien to accept a position with their firm. The Immigration Benefit Application and Petition Fee Schedule is established based on the assumption that an individual alien will pay his or her own application or petition fees and does not impose any regulatory requirement on a firm to pay fees for their employees. A business may choose to assist an employee in that manner; however, since it is not a direct cost imposed by USCIS on the firm, it was not a consideration for the analysis of the impacts of this rule.

The employment-based visa programs of USCIS are predominately used by small businesses, 86 percent as determined by the initial regulatory flexibility analysis. After the changes made in this rule, the participating firms will still be predominantly small. Nonetheless, while a significant number of small businesses are affected, USCIS has determined that the effects on these small businesses are not sufficiently significant to exceed this rule's benefits or require adjustments in the rule's requirements based on the size of a petitioner's business. If fee discounts or exceptions were allowed for employment-based immigration benefits based on firm size, the predomination of small firms in the programs would result in the small percentage of larger firms that participate being required to pay an inordinate portion of the costs of adjudicating employment-based immigration petitions. Further, USCIS has determined that, even for a small entity, the amount of the fees established in the USCIS Immigration Benefit Application and Petition Fee Schedule are so small as to impose no significant financial or compliance burden on such firms.

In summary, although the analysis shows that this rulemaking would affect a substantial number of small entities, the economic impact of this rule was found to be negligible. This rule has been reviewed in accordance with 5 U.S.C. 605(b), and the Department of Homeland Security certifies that this rule will not have a significant economic impact on a substantial number of small entities. Thus, USCIS is required to take no steps to minimize or mitigate the effects of this rule on small entities.

B. Unfunded Mandates Reform Act of 1995.

The Unfunded Mandates Reform Act of 1995 (UMRA) requires certain actions to be taken before an agency promulgates any notice of rulemaking "that is likely to result

in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of one hundred million or more (adjusted annually for inflation) in any one year.” 2 U.S.C. 1532(a). While this rule may result in the expenditure of more than one hundred million by the private sector annually, the rulemaking is not a “Federal mandate” as defined for UMRA purposes, 2 U.S.C. 658(6), as the payment of application and petition fees by individuals or other private sector entities is, to the extent it could be termed an enforceable duty, one that arises from participation in a voluntary Federal program, applying for immigration status in the United States. 2 U.S.C. 658(7)(A)(ii). Therefore, no actions were deemed necessary under the provisions of the UMRA.

C. Small Business Regulatory Enforcement Fairness Act of 1996.

This rulemaking is a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rulemaking will result in an annual effect on the economy of more than \$100 million, in order to generate the revenue necessary to fully fund the increased cost associated with the processing of immigration benefit applications and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to other immigrants, as specified in the regulation, at no charge. The increased costs will be recovered through the fees charged for various immigration benefit applications.

D. Executive Order 12866.

This rule is considered by the Department of Homeland Security to be an economically significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review. The implementation of this rule would provide USCIS

with an additional \$1.081 billion in FY 2008 and FY 2009 in annual fee revenue, based on a projected annual fee-paying volume of 4.742 million applications/petitions and 2.196 million requests for biometric services, over the fee revenue that would be collected under the current fee structure. This increase in revenue will be used pursuant to subsections 286(m) and (n) of the Act, 8 U.S.C. 1356(m) and (n), to fund the full costs of processing immigration benefit applications and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to other immigrants at no charge. If USCIS does not adjust the current fees to recover the full costs of processing immigration benefit applications, USCIS will be forced to enact significant spending reductions resulting in a reversal of the considerable progress it has made over the last several years to reduce the backlog of immigration benefit applications and petitions, to increase the integrity of the immigration benefit system, and to protect national security and public safety. The revenue increase is based on USCIS costs and projected volumes that were available at the time the rule was drafted. USCIS has placed in the rulemaking docket a detailed analysis that explains the basis for the annual fee increase. Accordingly, this rule has been reviewed by the Office of Management and Budget.

In response to the proposed rule, one commenter expressly questioned the rule's benefit and cost analysis. This commenter stated that USCIS had not conducted a sufficient analysis of the costs, benefits, and, foreseeable consequences of the fees proposed. The commenter is correct that USCIS is required under Executive Order 12866 to perform an analysis of this benefits and costs of this rule that complies with OMB Circular A-4, Regulatory Analysis (09/17/2003) (A-4). However, as A-4 states,

“There are justifications for regulations in addition to correcting market failures. A regulation may be appropriate when you have a clearly identified measure that can make government operate more efficiently.” The need for this final rule is not based on economics or a failure of the private markets to address a problem but, rather, on enhancing the ability of USCIS to advance its goal of improving the delivery of immigration programs. This rule is intended to correct breakdowns in the delivery of immigration benefit programs that have occurred as a result of the currently inadequate fee schedule. Further, as A-4 states, “It will not always be possible to express in monetary units all of the important benefits and costs.” The net economic effects of this rule are difficult if not impossible to determine.

The public policy rationale behind the United States immigration policies are well known and the benefit of immigrants to the United States and its citizens are enormous, as reiterated in the thousands of comments received on the proposed rule. As stated throughout the proposed rule and repeated often in this final rule, the fees established by this rule are necessary to update and modernize the USCIS infrastructure. The fee amounts comport with methodology required by OMB and meet both government and private sector standards. Also, while an equilibrium analysis has not been performed, the demand for immigration benefits obviously and greatly exceeds the availability of such benefits. Thus, these fees will have no impact on application volumes or any other public behavior. If USCIS can cover its expenses, delays in processing benefits and complaints about USCIS service will abate. That is a tangible and noticeable benefit. Thus, the benefits of this rule exceed its costs. OMB has reviewed this rule and concurs in this conclusion.

One commenter stated that USCIS did not consider the potential costs and benefits of pursuing possible alternative funding sources. This comment is similar to many comments suggesting that USCIS must pursue a Congressional appropriation that were addressed earlier. With regard the analysis of the benefits or pursuing alternative funding sources, these comments are beyond the scope of the regulation. USCIS is limited to this rulemaking as an affirmative source of addressing shortfall in its revenues under section 287(m) of the INA, 8 U.S.C. 1356(m). If Congress provides funds for USCIS operations, that benefit, especially as it relates to persons who pay fees, is self evident. An in-depth economic analysis is not required for USCIS to recognize that fact. With regard to “benefits of pursuing possible alternative funding,” USCIS sees no benefit and only costs to be realized from such a pursuit. Congress is well aware of the funding scheme described in this rule. Further, appropriated funds, donations, endowments, grants, royalties, or any alternative method of funding would gladly be accepted and put to good use by USCIS in administering its programs should they be forthcoming. The proposed rule and this rule do not suggest otherwise.

E. Executive Order 13132.

This rulemaking will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Homeland Security has determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988.

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act.

Under the Paperwork Reduction Act of 1995, Public Law 104-13, 109 Stat. 163 (1995) (PRA), all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rulemaking does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

The changes to the fees will require minor amendments to applications and petitions to reflect the new fees. In addition, this rule anticipates (but is not dependent on) consolidating the Application for Travel Document and Application for EAD into the Application of Adjustment of Status since applicants will not be required to file three separate application types in order to apply for adjustment of status, travel documents, and employment authorization. This change will reduce paperwork burdens on these applicants. The necessary revisions to the approved information collection burden for any new or revised applications will be submitted to OMB for approval before being issued for use by USCIS as required under the PRA and 5 CFR 1320.

Since the forms will be amended to reflect the new fees, USCIS will submit the appropriate Change Worksheets OMB 83-Cs to OMB to reflect the additional costs.

List of Subjects in 8 CFR Part 103

Administrative practice and procedures; Authority delegations (government agencies); Freedom of Information; Privacy; Reporting and recordkeeping requirements; and Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552(a); 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107-296, 116 Stat. 2135 (6 U.S.C. 1 et seq.); E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

2. Section 103.7 is amended by:

- a. Removing the entries for “Form I-506” and “Form I-914” in paragraph (b)(1);
- b. Revising the entries for the following forms in paragraph (b)(1); and by
- c. Adding paragraph (c)(5).

The revisions read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

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Biometric Fee. For capturing biometric information. A service fee of \$80 will be charged for any individual who is required to have biometric information captured in connection with an application or petition for certain immigration and naturalization benefits (other than asylum), and whose residence is in the United States. Extension for Intercountry adoptions: If applicable, no biometric service fee is charged when a written

request for an extension of the approval period is received by USCIS prior to the expiration date of approval indicated on the Form I-171H if a form I-600 has not yet been submitted in connection with an approved I-600A. This extension without fee is limited to one occasion. If the approval extension expires prior to submission of an associated Form I-600, then a complete application and fee must be submitted for a subsequent application.

* * * * *

Form I-90. For filing an application for a Permanent Resident Card (Form I-551) in lieu of an obsolete card or in lieu of one lost, mutilated, or destroyed, or for a change in name—\$290.

* * * * *

Form I-102. For filing a petition for an application (Form I-102) for Arrival/Departure Record (Form I-94) or Crewman's Landing Permit (Form I-95), in lieu of one lost, mutilated, or destroyed—\$320.

Form I-129. For filing a petition for a nonimmigrant worker—\$320.

Form I-129F. For filing a petition to classify a nonimmigrant as a fiancée or fiancé under section 214(d) of the Act—\$455; no fee for a K-3 spouse as designated in 8 CFR 214.1(a)(2) who is the beneficiary of an immigrant petition filed by a United States citizen on Form I-130.

Form I-130. For filing a petition to classify status of an alien relative for issuance of an immigrant visa under section 204(a) of the Act—\$355.

Form I-131. For filing an application for travel document—\$305.

Form I-140. For filing a petition to classify preference status of an alien on the basis of profession or occupation under section 204(a) of the Act—\$475.

Form I-191. For filing an application for discretionary relief under section 212(c) of the Act—\$545.

Form I-192. For filing an application for discretionary relief under section 212(d)(3) of the Act, except in an emergency case, or where the approval of the application is in the interest of the United States Government—\$545.

Form I-192. For filing an application for discretionary relief under section 212(d)(3) of the Act, except in an emergency case, or where the approval of the application is in the interest of the United States Government—\$545.

Form I-193. For filing an application for waiver of passport and/or visa—\$545.

Form I-212. For filing an application for permission to reapply for an excluded, deported or removed alien, an alien who has fallen into distress, an alien who has been removed as an alien enemy, or an alien who has been removed at government expense in lieu of deportation—\$545.

* * * * *

Form I-290B. For filing an appeal from any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction—\$585 (the fee will be the same when an appeal is taken from the denial of a petition with one or multiple beneficiaries, provided that they are all covered by the same petition, and therefore, the same decision).

Form I-360. For filing a petition for an Amerasian, Widow(er), or Special Immigrant—\$375, except there is no fee for a petition seeking classification as: an

Amerasian; a self-petitioning battered or abused spouse, parent, or child of a United States citizen or lawful permanent resident; or a Special Immigrant - Juvenile.

Form I-485. For filing an application for permanent resident status or creation of a record of lawful permanent residence—\$930 for an applicant fourteen years of age or older; \$600 for an applicant under the age of fourteen years when submitted concurrently for adjudication with the Form I-485 of a parent and the applicant is seeking to adjust status as a derivative of the parent, based on a relationship to the same individual who provides the basis for the parent’s adjustment of status, or under the same legal authority as the parent; no fee for an applicant filing as a refugee under section 209(a) of the Act. No additional fee will be charged for a request for travel document (advance parole) or employment authorization by an applicant who has paid the Form I-485 application fee, regardless whether or not the Form I-131 or Form I-765 is required to be filed by such applicant to receive these benefits.

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Form I-526. For filing a petition for an alien entrepreneur—\$1,435.

Form I-539. For filing an application to extend or change nonimmigrant status—\$300.

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Form I-600. For filing a petition to classify an orphan as an immediate relative for issuance of an immigrant visa under section 204(a) of the Act. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—\$670.

Form I-600A. For filing an application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—\$670. No fee is charged if Form I-600 has not yet been submitted in connection with an approved I-600A if a written request from the applicant for an extension of the approval has been received by USCIS prior to the expiration date of approval indicated on the Form I-171H. This extension with no fee is limited to one occasion. If the I-600A approval extension expires prior to submission of an associated Form I-600, then a complete application and fee must be submitted for any subsequent application.

Form I-601. For filing an application for waiver of ground of inadmissibility under section 212(h) or (i) of the Act. (Only a single application and fee shall be required when the alien is applying simultaneously for a waiver under both those subsections.)—\$545.

Form I-612. For filing an application for waiver of the foreign-residence requirement under section 212(e) of the Act—\$545.

Form I-687. For filing an application for status as a temporary resident under section 245A(a) of the Act. A fee of \$710 for each application or \$570 for each application for a minor child (less than eighteen years of age) is required at the time of filing with the Department of Homeland Security. The maximum amount payable by a family (husband, wife, and any minor children) shall be \$1,990.

Form I-690. For filing an application for waiver of a ground of inadmissibility under section 212(a) of the Act as amended, in conjunction with the application under sections 210 or 245A of the Act, or a petition under section 210A of the Act—\$185.

Form I-694. For appealing the denial of an applications under sections 210 or 245A of the Act, or a petition under section 210A of the Act—\$545.

Form I-695. For filing an application for replacement of temporary resident card (Form I-688)—\$130.

Form I-698. For filing an application for adjustment from temporary resident status to that of lawful permanent resident under section 245A(b)(1) of the Act. For applicants filing within thirty-one months from the date of adjustment to temporary resident status, a fee of \$1,370 for each application is required at the time of filing with the Department of Homeland Security. The maximum amount payable by a family (husband, wife, and any minor children (under 18 years of age living at home)) shall be \$4,110. For applicants filing after thirty-one months from the date of approval of temporary resident status, who file their applications on or after July 9, 1991, a fee of \$1,410 (a maximum of \$4,230 per family) is required. The adjustment date is the date of filing of the application for permanent residence or the applicant's eligibility date, whichever is later.

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Form I-751. For filing a petition to remove the conditions on residence, based on marriage—\$465.

Form I-765. For filing an application for employment authorization pursuant to 8 CFR 274a.13—\$340.

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Form I-817. For filing an application for voluntary departure under the Family Unity Program—\$440.

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Form I-824. For filing for action on an approved application or petition—\$340.

Form I-829. For filing a petition by entrepreneur to remove conditions—\$2,850.

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Form N-300. For filing an application for declaration of intention—\$235.

Form N-336. For filing a request for hearing on a decision in naturalization proceedings under section 336 of the Act—\$605.

Form N-400. For filing an application for naturalization (other than such application filed on or after October 1, 2004, by an applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service, for which no fee is charged)—\$595.

* * * * *

Form N-470. For filing an application for benefits under section 316(b) or 317 of the Act—\$305.

Form N-565. For filing an application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343(c) of the Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(b) of the Act—\$380.

Form N-600. For filing an application for a certificate of citizenship under section 309(c) or section 341 of the Act—\$460, for applications filed on behalf of a biological child and \$420 for applications filed on behalf of an adopted child.

Form N-600K. For filing an application for citizenship and issuance of certificate under section 322 of the Act—\$460, for an application filed on behalf of a biological child and \$420 for an application filed on behalf of an adopted child.

* * * * *

Form I-290B Motion. For filing a motion to reopen or reconsider any DHS decision in any type of proceeding over which the Executive Office for Immigration Review does not have jurisdiction. This fee shall be charged whenever a motion is filed to reopen or reconsider a single decision, whether it applies to one or multiple beneficiaries—\$585.

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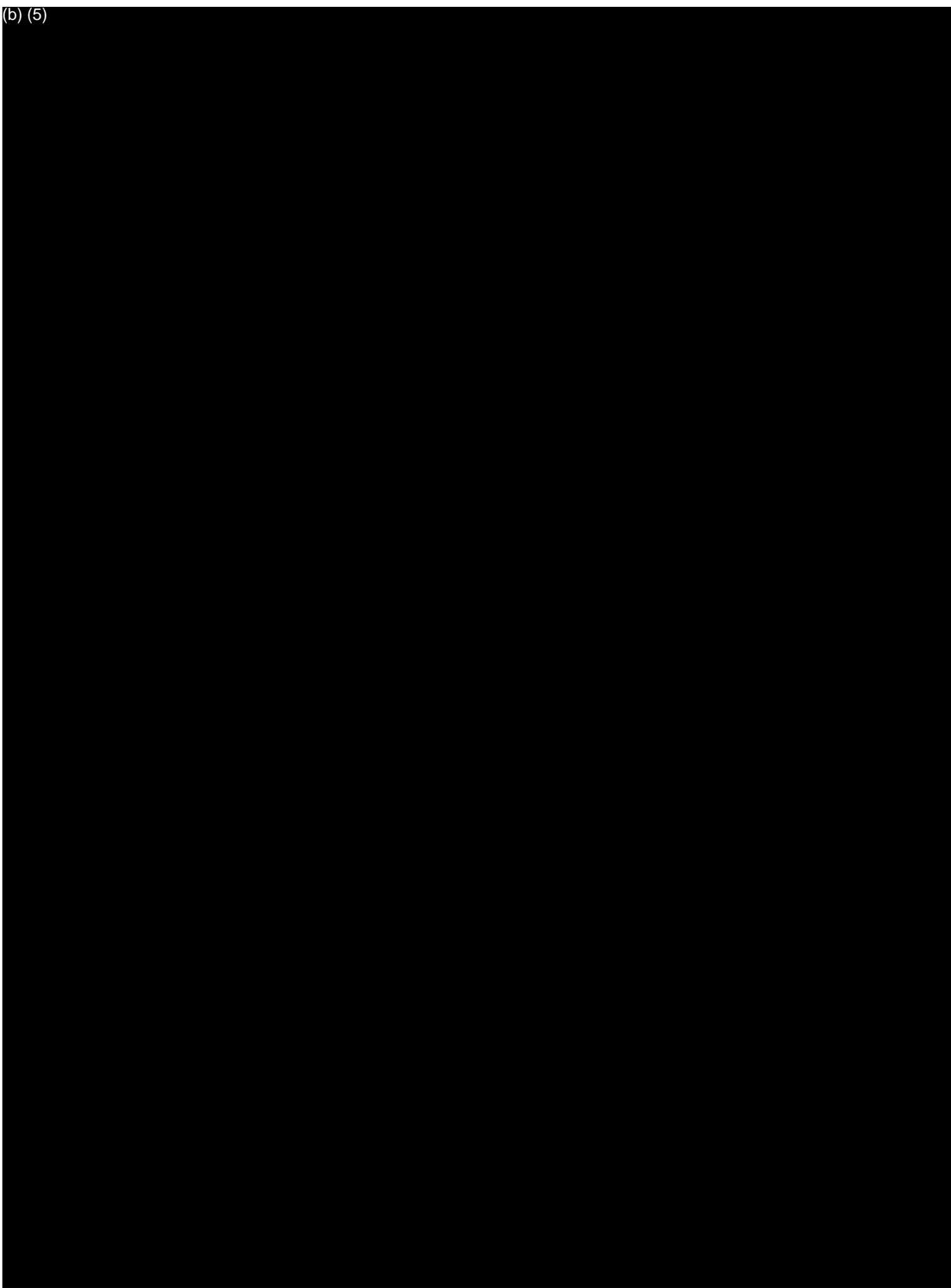
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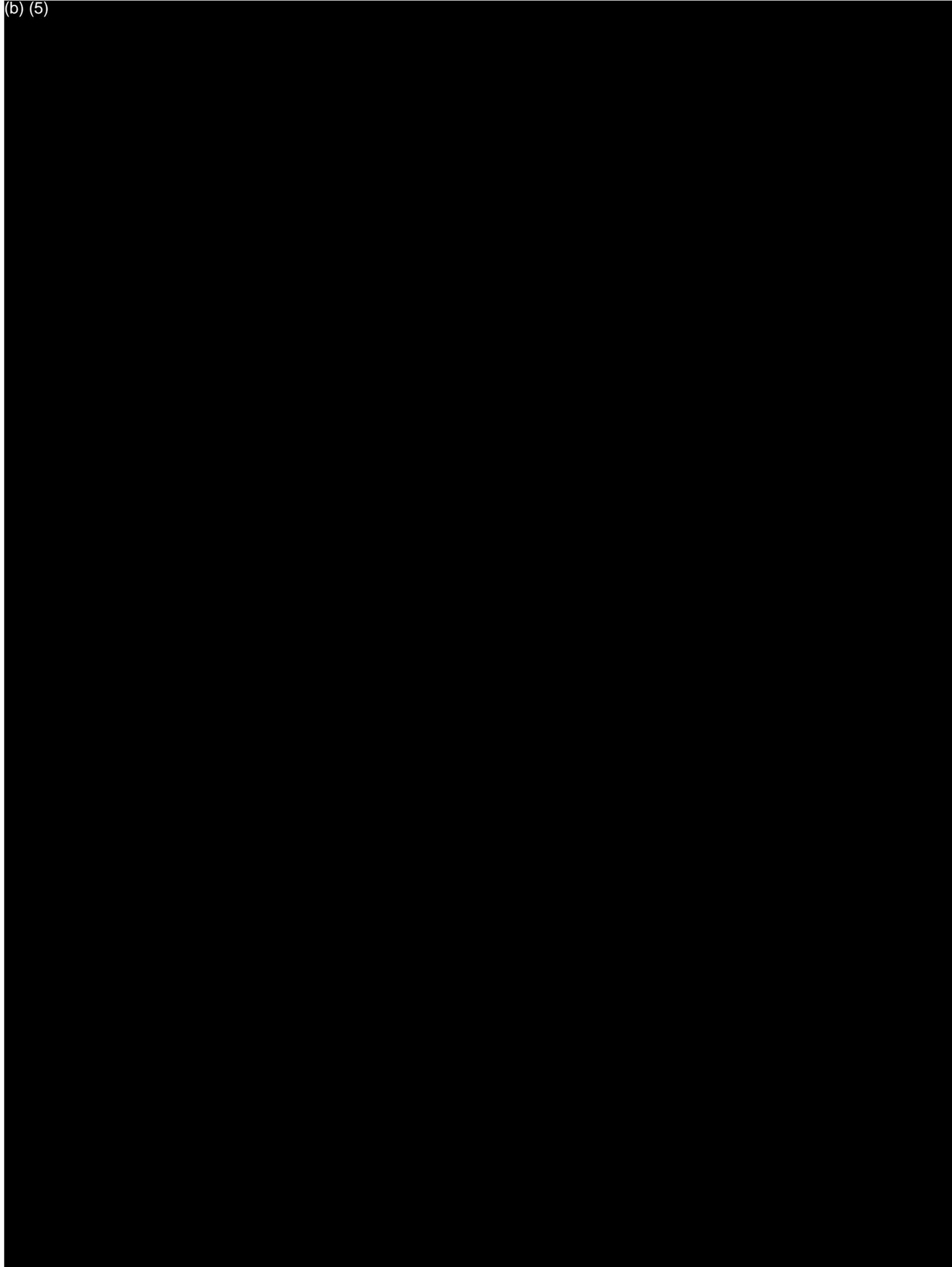
(5) No fee relating to any application, petition, appeal, motion, or request made to United States Citizenship and Immigration Services may be waived under paragraph (c)(1) of this section except for the following: Biometrics, Form I-90; Form I-485 (only in the case of an alien in lawful nonimmigrant status under sections 101(a)(15)(T) or (U) of the Act); an applicant under section 209(b) of the Act; an approved self-petitioning battered or abused spouse, parent, or child of a United States citizen or lawful permanent resident; or an alien to whom section 212(a)(4) of the Act does not apply with respect to adjustment of status); Form I-751; Form I-765; Form I-817; Form N-300; Form N-336; Form N-400; Form N-470; Form N-565; Form N-600; Form N-600K; and Form I-290B and motions filed with United States Citizenship and Immigration Services relating to the specified forms in this paragraph.

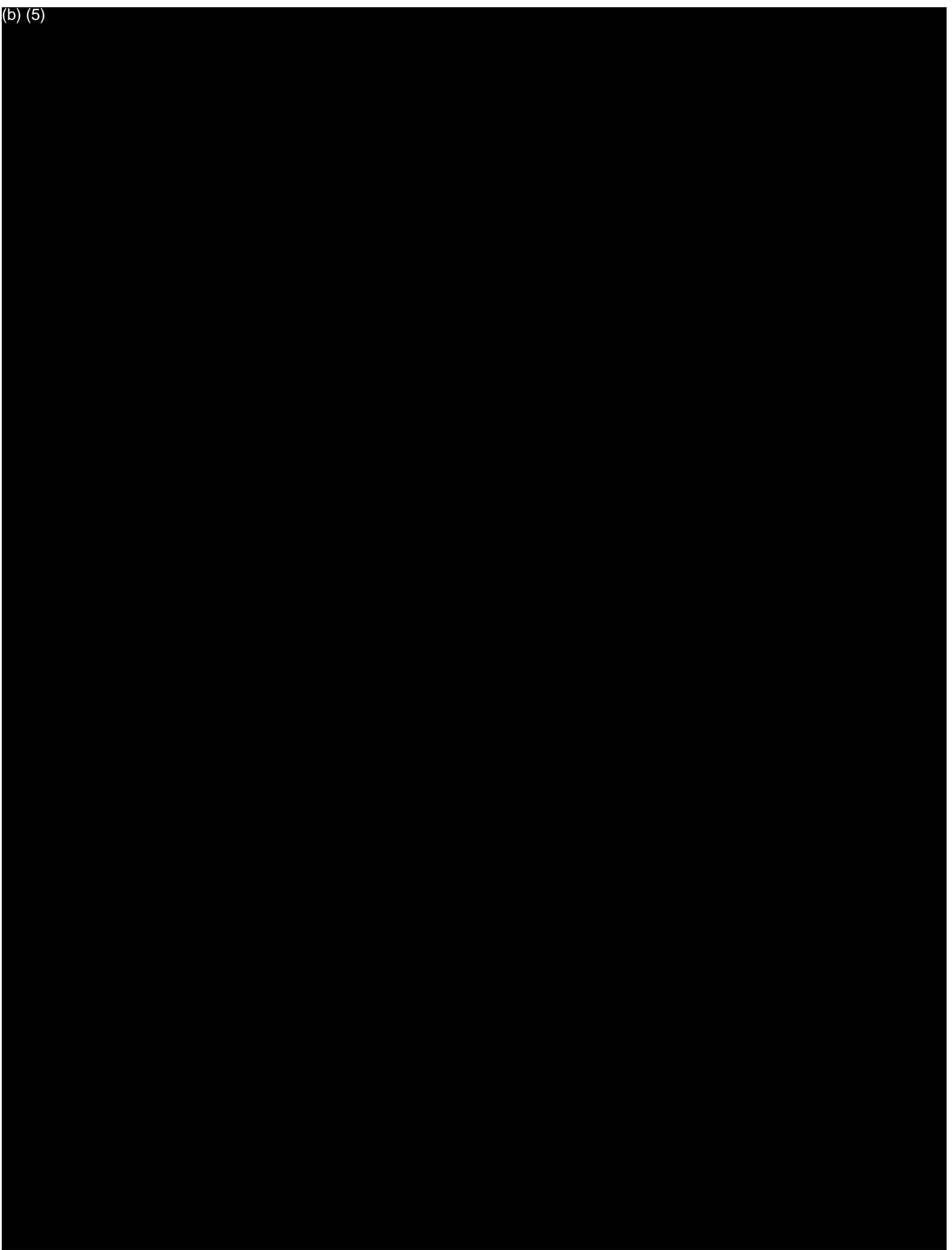
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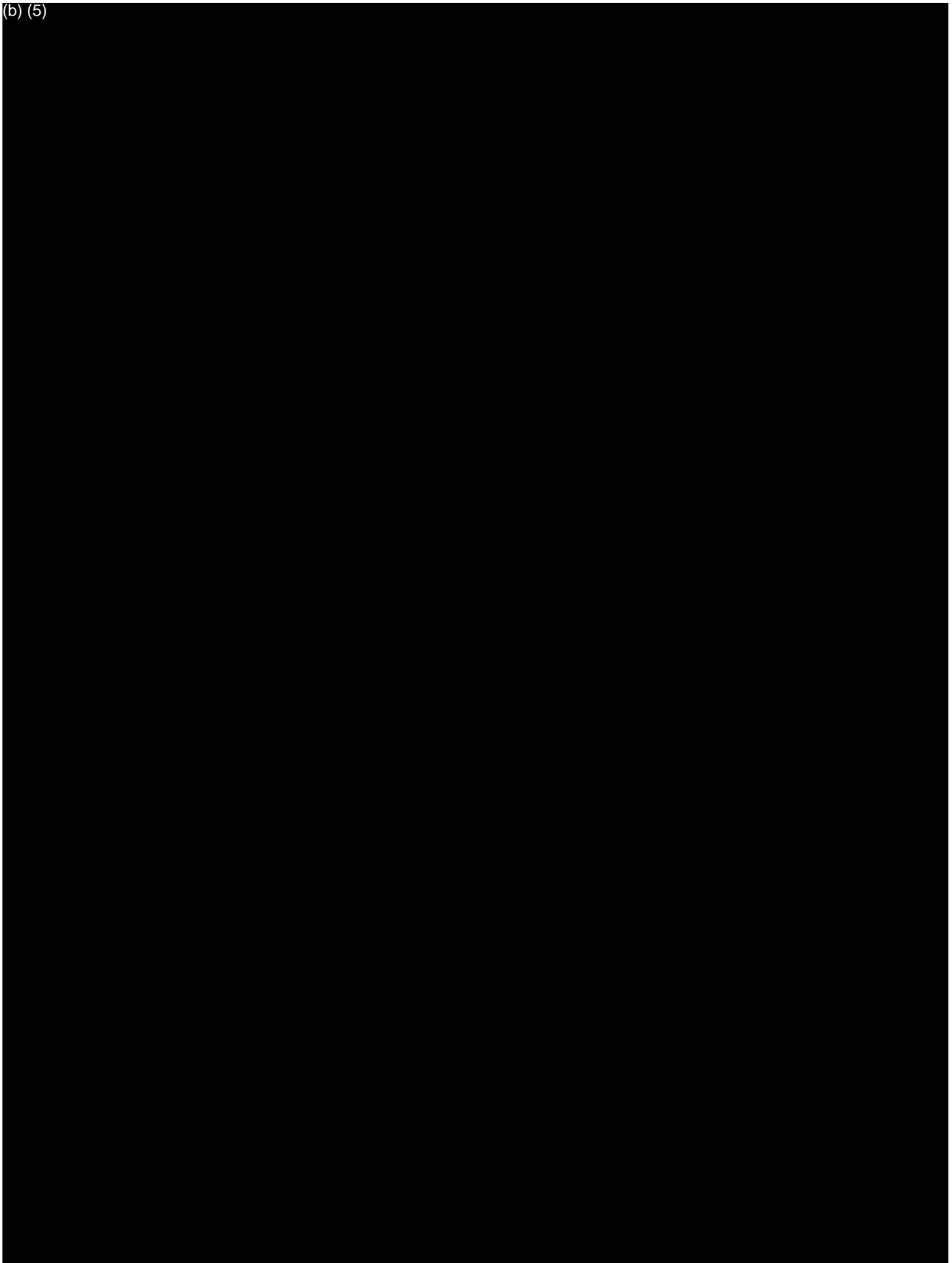
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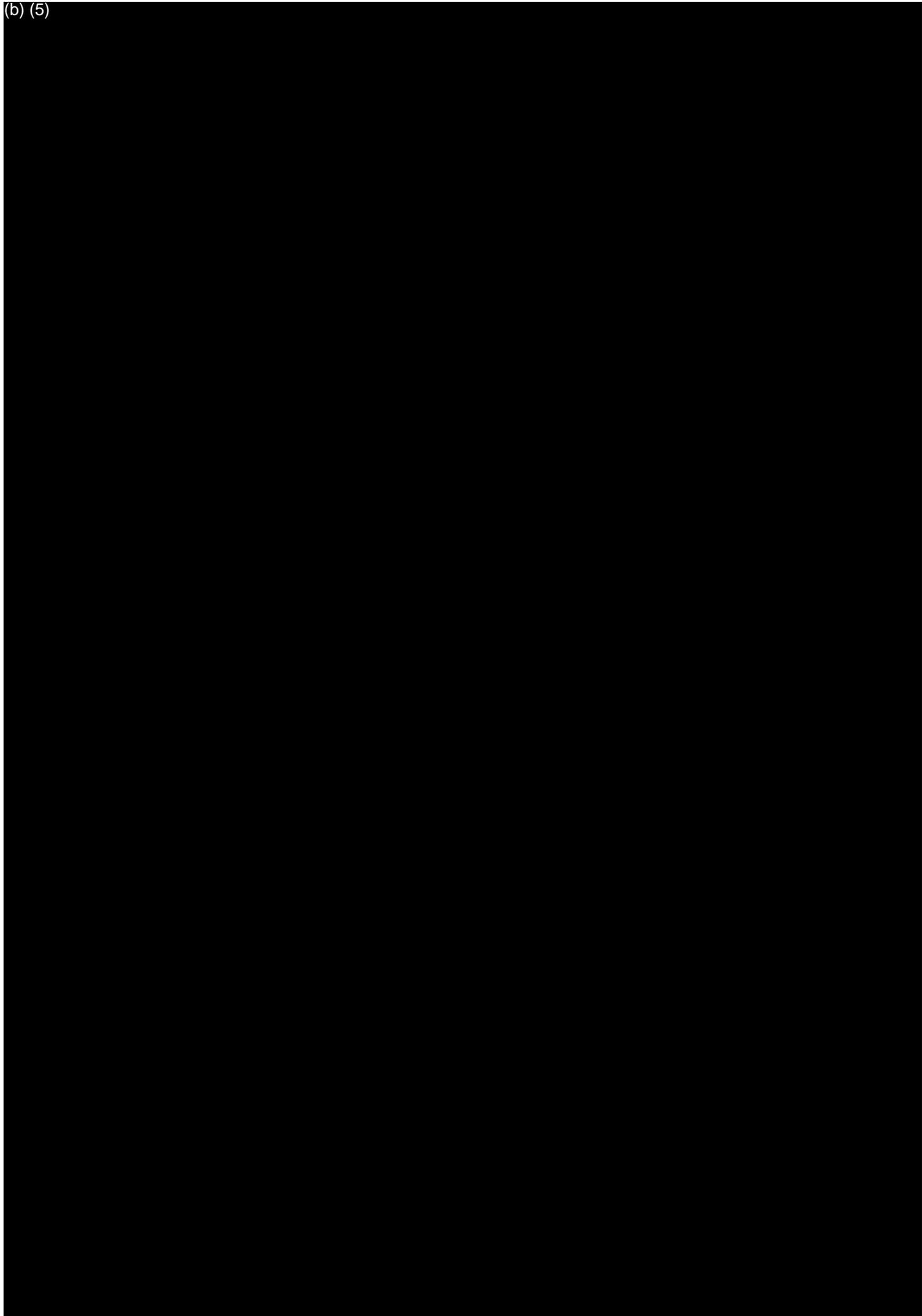
Michael Chertoff,
Secretary.

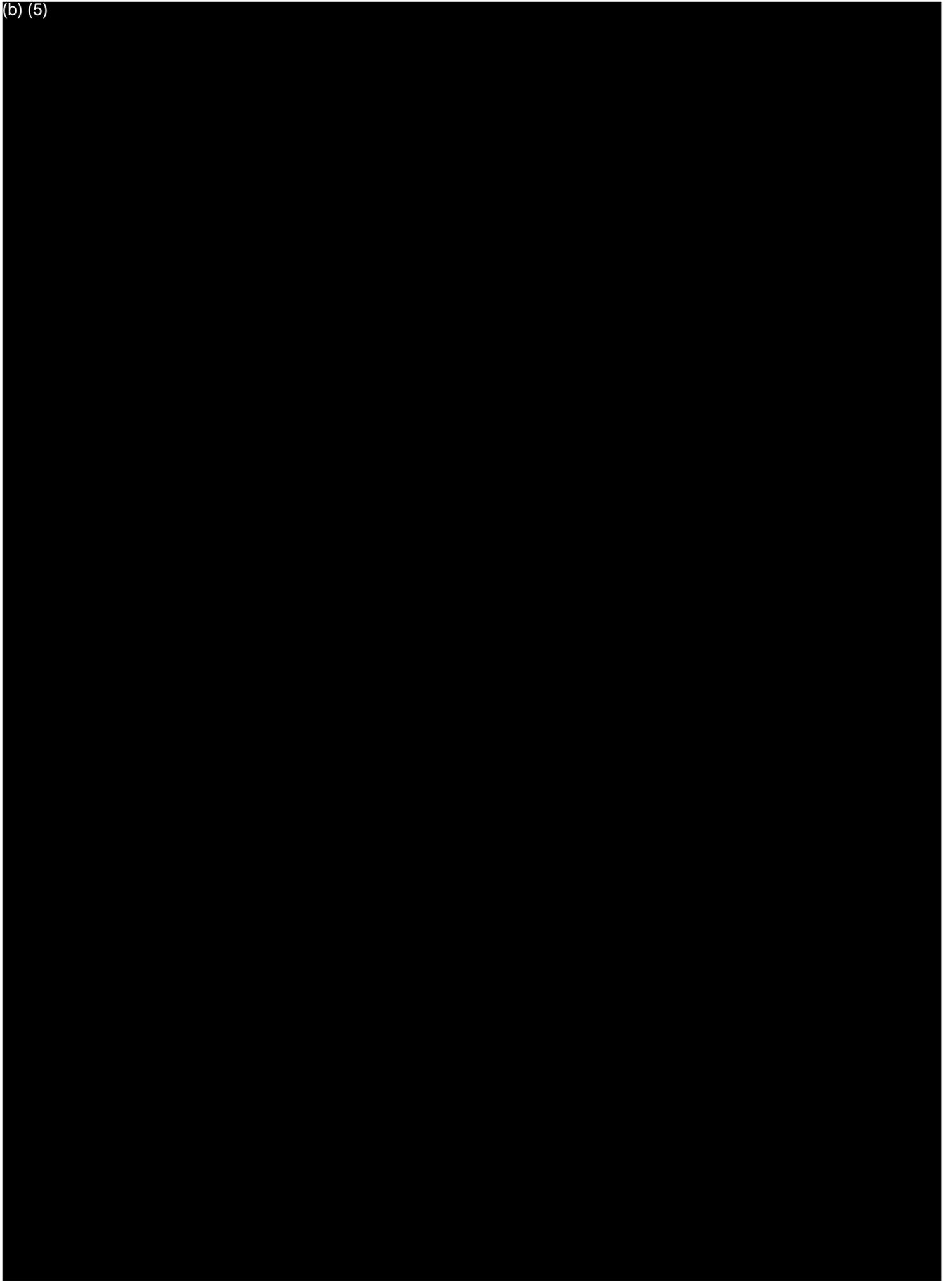


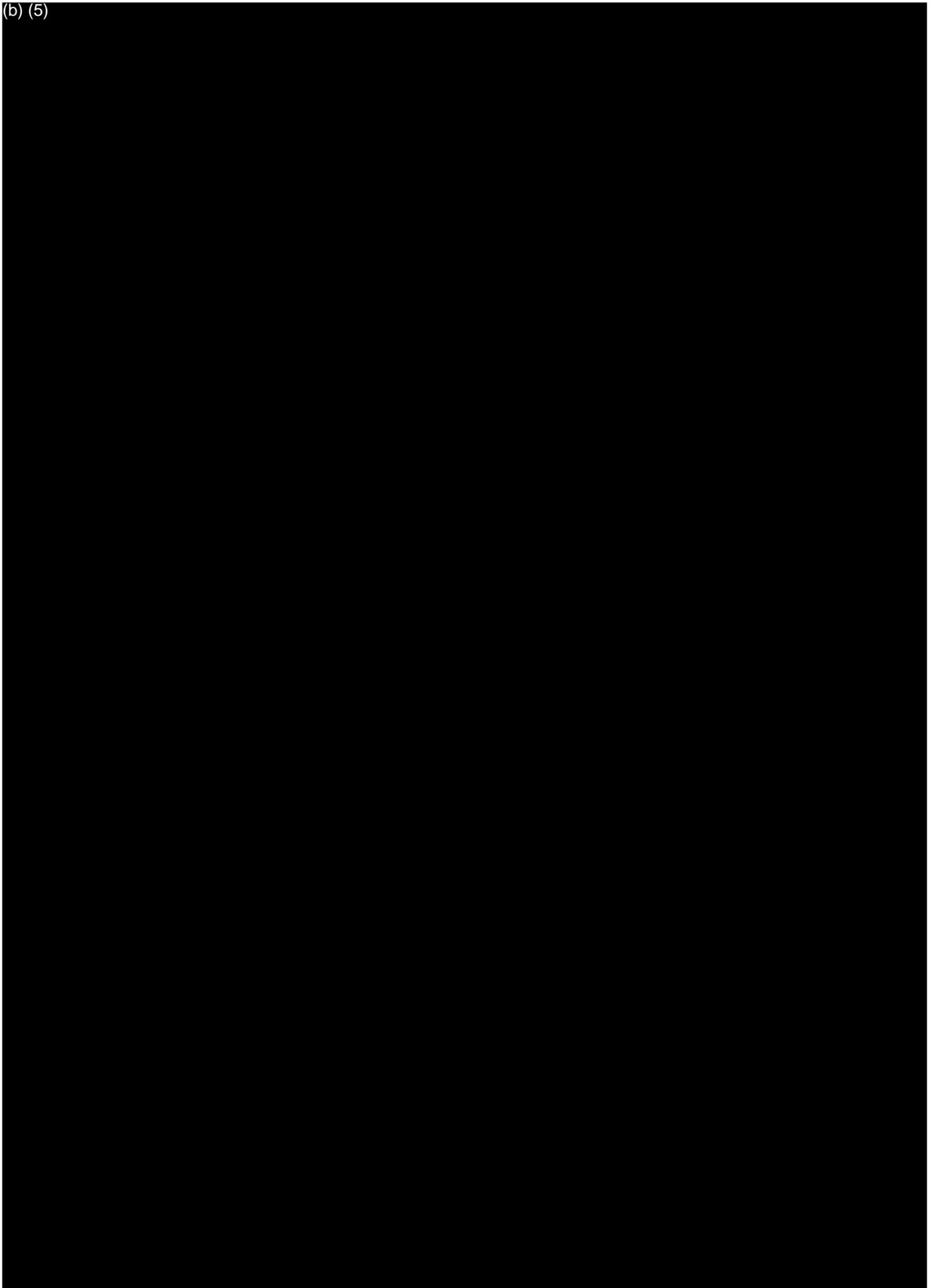


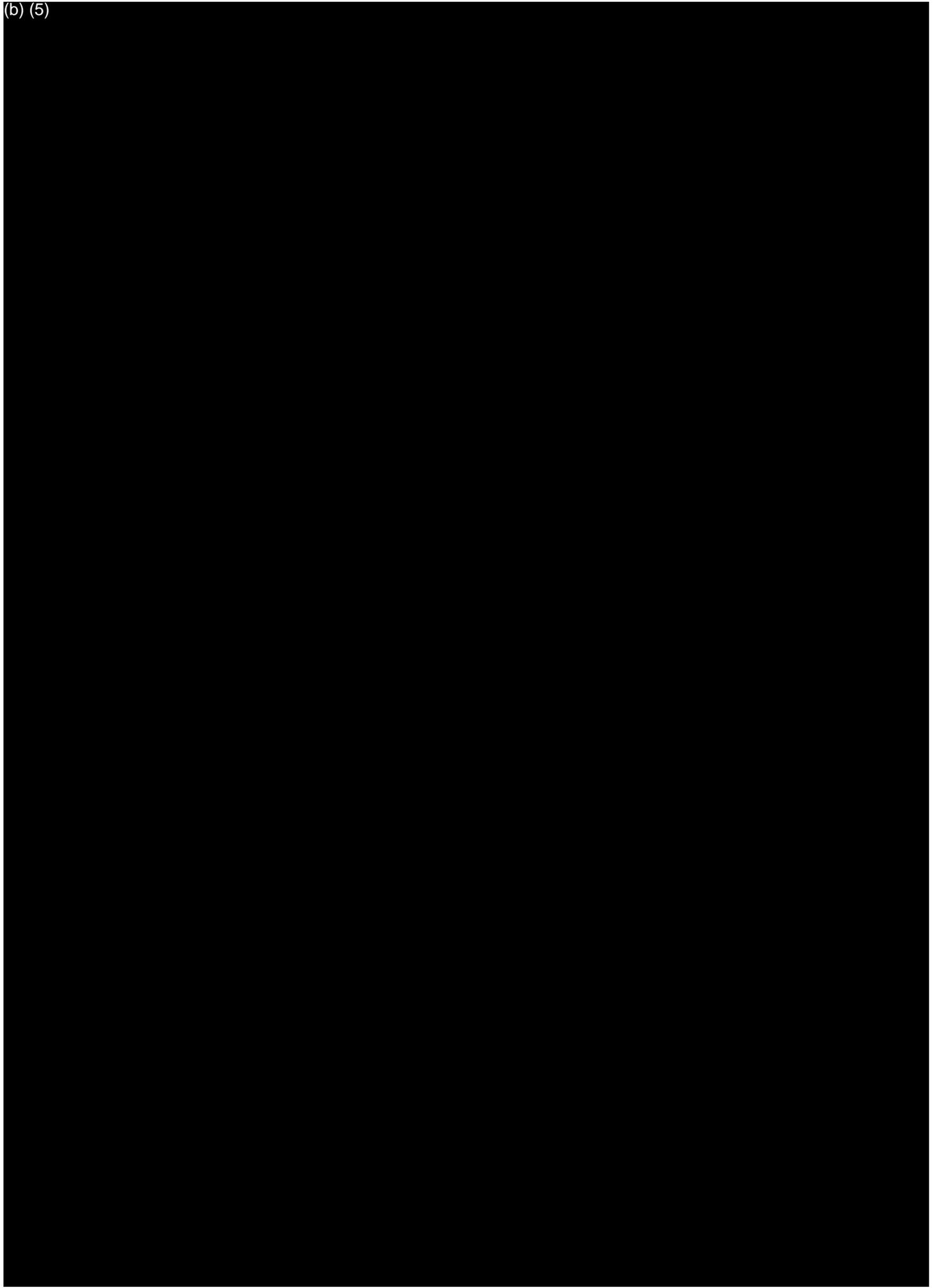


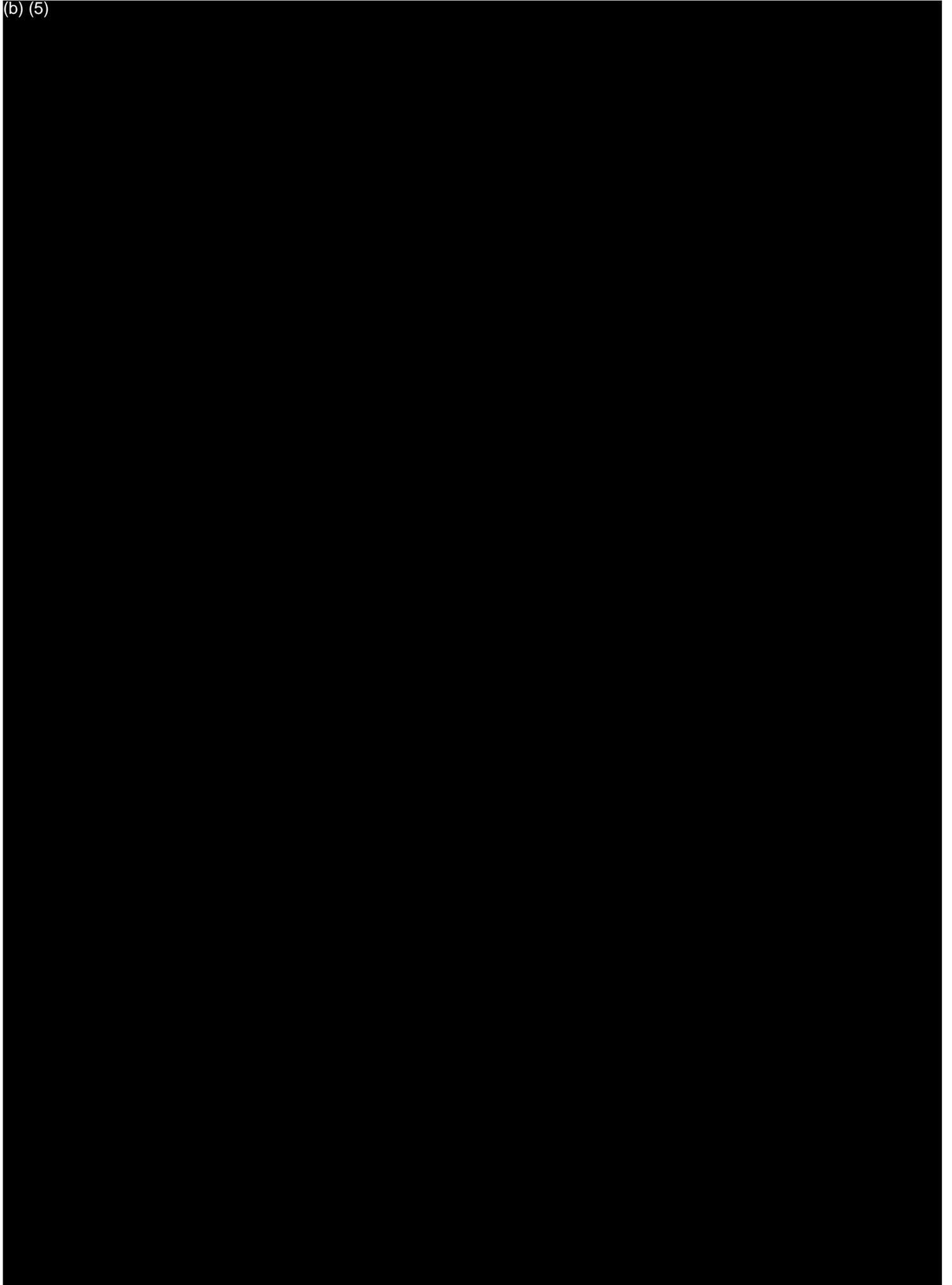


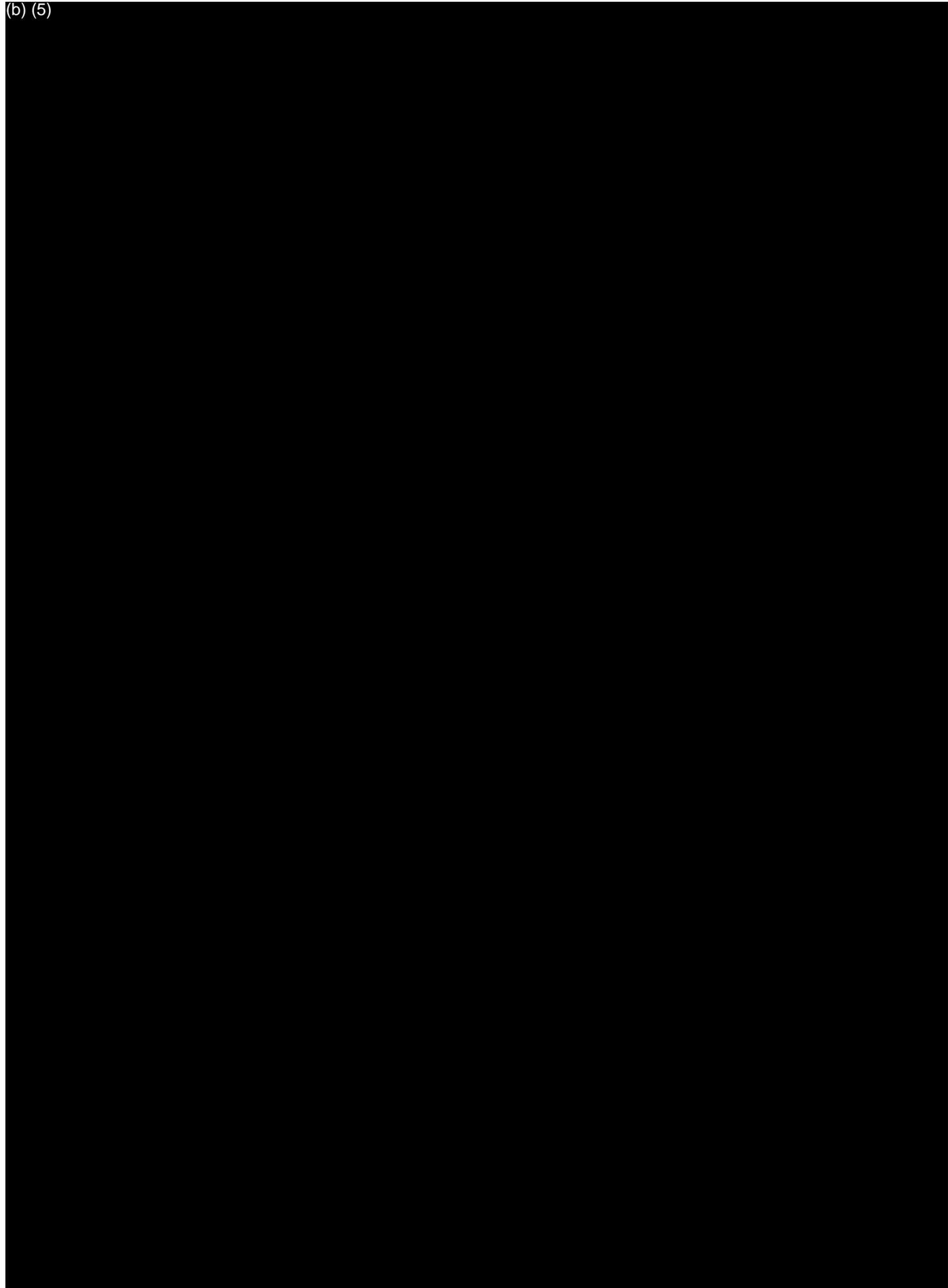


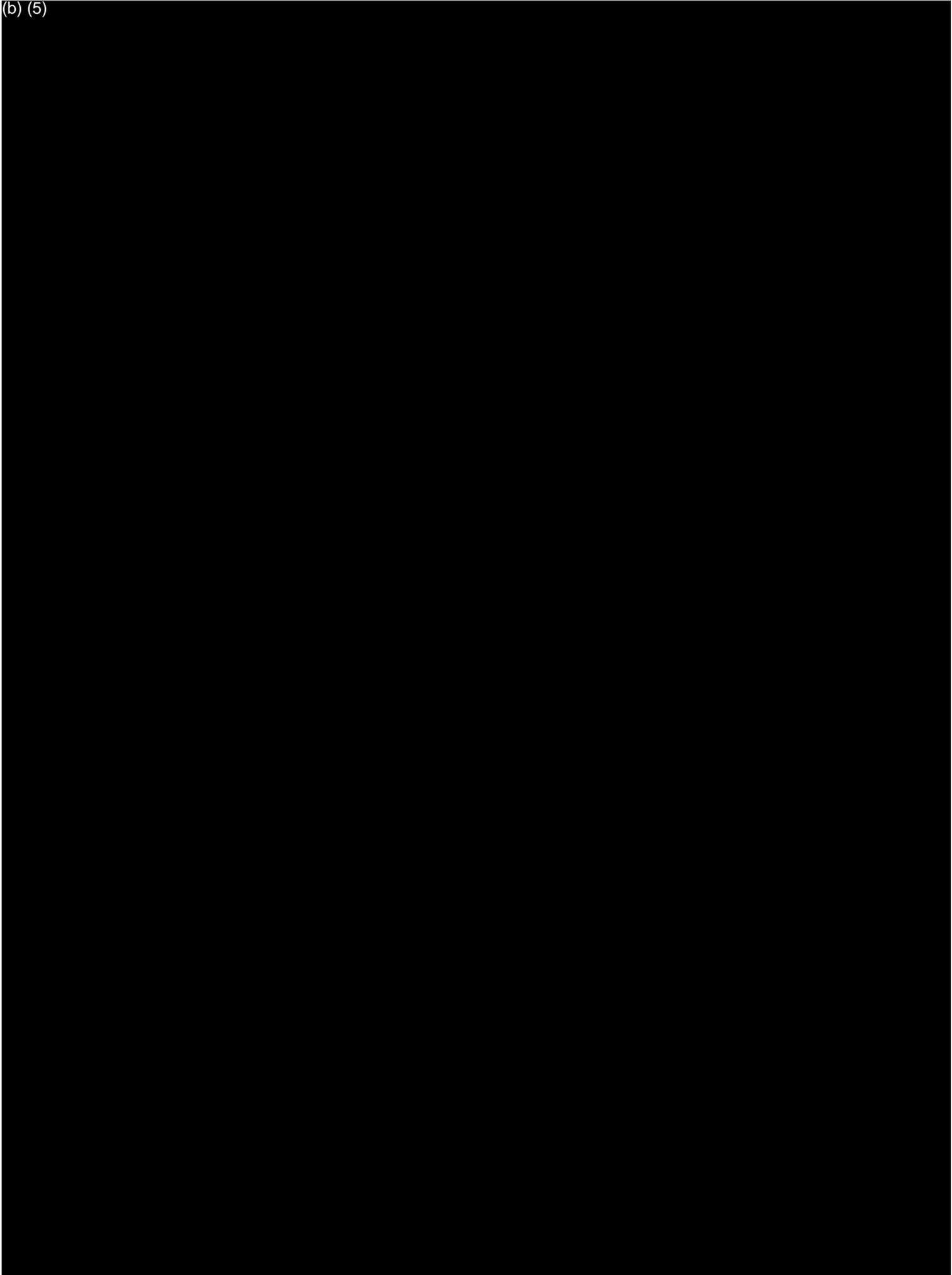


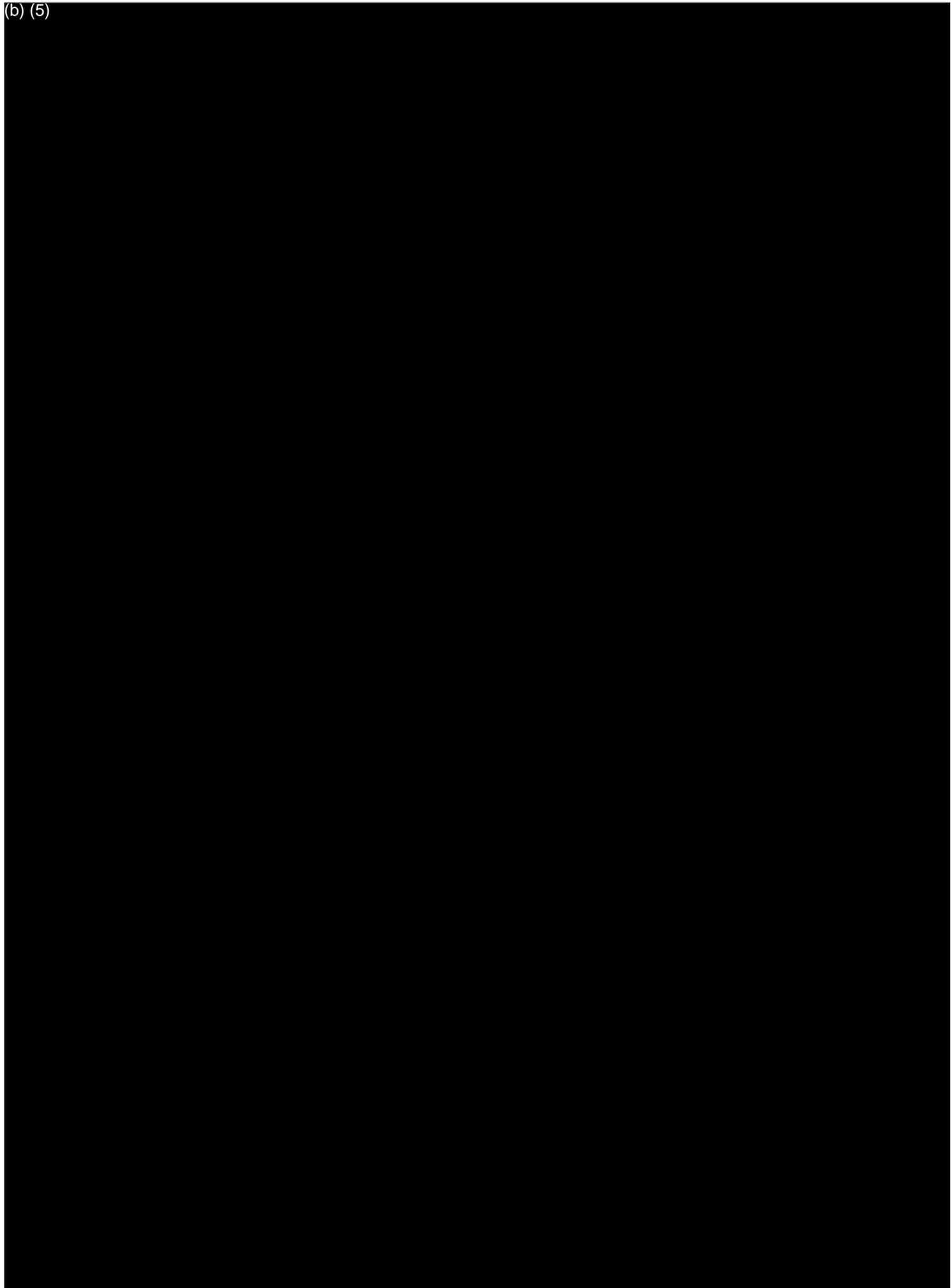












BILLING CODE: 4410-10

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

8 CFR Part 103

CIS No. 2393-06

DHS Docket No. USCIS-2006-XXXX

RIN 1615-AB53

Adjustment of the Immigration Benefit Application/Petition and Biometric Fee Schedule

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes to adjust the immigration benefit application and petition fees of the Immigration Examinations Fee Account (IEFA), and the biometric fee for applicants/petitioners who apply for certain immigration benefits for the fiscal year (FY) 2008 and FY 2009 biennial period. Fees collected from persons filing these benefits are deposited into the IEFA and used to fund the full cost of processing immigration benefit applications/petitions, biometric services, associated support services, and the cost of providing similar services to asylum and refugee applicants and certain other immigrants at no charge. The fees that fund the IEFA were last updated on October 26, 2005, solely to reflect an increase in costs due to inflation. U.S. Citizenship and Immigration Services (USCIS) conducted a comprehensive review of the resources and activities funded by the IEFA and has determined that the current fees do not reflect current processes and do not recover the full costs of services. The authority

provided by section 286(m) of the Immigration and Nationality Act permits USCIS to recover the full costs of providing all immigration adjudication and naturalization services, including those services provided to individuals other than those paying fees. This rule proposes to adjust the immigration benefit application and petition fee schedule by an average of \$155, from an average of \$230 to \$385, and increases the biometric fee by \$30, from \$70 to \$100, in order to ensure sufficient funding to process incoming applications/petitions and biometric services while ensuring national security, enhancing customer service, and maintaining standard processing time goals in Fiscal Years 2008 and 2009. Without the additional fee revenues, USCIS would be forced to reduce the level and extent of services, resulting in a reversal of the considerable progress it has made over last several years to reduce the backlog of immigration benefit applications and petitions. If such reductions are necessary, USCIS will not curb any security-related activities in an effort to remain solvent.

DATES: Written comments must be submitted on or before [Insert date 60 days from date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS-2006-XXXX by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS-2006-XXXX on your correspondence. This mailing address may

also be used for paper, disk, or CD-ROM submissions.

- Hand Delivery/Courier: Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. Contact Telephone Number (202) 272-8377.

FOR FURTHER INFORMATION CONTACT: Paul Schlesinger, Chief, Office of Budget, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, N.W., Suite 4052, Washington, DC 20529, telephone (202) 272-1930.

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I. Public Participation.

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. U.S. Citizenship and Immigration Services (USCIS) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the

most assistance to USCIS in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and DHS Docket No. USCIS-2006-XXXX for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected at the Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529.

II. Under what legal authority does U.S. Citizenship and Immigration Services charge fees?

The Immigration and Nationality Act (INA) provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including the costs of providing similar services without charge to asylum applicants and certain other immigrants. 8 U.S.C. 1356(m). The INA also states that the fees may recover administrative costs as well. Id. This revenue remains available to provide immigration and naturalization benefits and the collection, safeguarding, and accounting for fees. Id. at 1356(n).

U.S. Citizenship and Immigration Services (USCIS) must also conform to the requirements of the Chief Financial Officers Act of 1990 (CFO Act), Public Law 101-576, 104 Stat. 2838 (1990) (codified at 31 U.S.C. 901-903). Section 205(a)(8) of the CFO Act requires each agency's Chief Financial Officer to "review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising

those charges to reflect costs incurred by it in providing those services and things of value.” 31 U.S.C. 902(a)(8).

III. What federal cost accounting and fee setting standards and guidelines were used in developing these fee changes?

The authority provided by section 286(m) of the INA permits USCIS to recover the full costs of providing all immigration adjudication and naturalization services, including those services provided to individuals other than those paying fees. When developing fees for services, USCIS also looks, to the extent applicable, to the cost accounting concepts and standards recommended by the Federal Accounting Standards Advisory Board (FASAB). The FASAB was established in 1990, and its purpose is to recommend accounting standards for the Federal Government. The FASAB defines “full cost” to include “direct and indirect costs that contribute to the output, regardless of funding sources.” Federal Accounting Standards Advisory Board, Statement of Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government 36 (July 31, 1995). To obtain full cost, FASAB identifies various classifications of costs to be included, and recommends various methods of cost assignment. *Id.* at 36-42. Full costs include, but are not limited to, an appropriate share of:

- (a) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;
- (b) Physical overhead, consulting, and other indirect costs, including material and supply costs, utilities, insurance, travel and rents or imputed rents on land, buildings, and equipment; and,
- (c) Management and supervisory costs.

Full costs are determined based upon the best available records of the agency.

IV. How is the processing of immigration benefit applications/petitions and biometric services funded and supported?

In 1988, Congress established the Immigration Examination Fee Account (IEFA). See 100 Public Law 459, 209, 102 Stat. at 2203. Since 1989, fees deposited into the IEFA have been the primary source of funding for providing immigration and naturalization benefits, and other benefits as directed by Congress. In subsequent legislation, Congress directed that the IEFA fund the cost of asylum processing and other services provided to immigrants at no charge. See 101 Public Law 515, 210(d)(2), 104 Stat. at 2121. Consequently, the immigration benefit application fees were increased to recover these additional costs. The current immigration benefit application and petition fees are based on the review implemented in FY 1998, adjusted for cost of living increases and other factors; the fees were last adjusted for cost increases due solely to inflation effective October 25, 2005. 70 FR 56182.

With reference to the biometric service fee, the Department of Justice Appropriations Act, 1998, Public Law No. 105-119, 111 Stat. 2440, 2448 (1997), required the former Immigration and Naturalization Service (INS), with limited exceptions, to prepare all fingerprint cards used to conduct Federal Bureau of Investigation (FBI) criminal background checks on individuals applying for certain benefits under the INA. This legislation also authorized the former INS to charge a fee for this fingerprinting service. Id. The fees are deposited into the IEFA established by 8 U.S.C. 1356(m)-(p). On March 29, 1998, the former INS began charging \$25 for the fingerprinting service. The former INS later adjusted the fee to \$50 (February 19, 2002) to recover the full costs of providing the fingerprinting service. The biometric fee was last adjusted on April 30, 2004 to \$70. 69 FR 20528.

A. Sufficiency of the Current Fee Schedule

In FY 2008 and FY 2009, the USCIS may experience a shortfall of revenue to expenses in the IEFA because the current fees, which were last revised in October 2005, do not recover the full cost of processing immigration benefit applications/petitions and biometric services outlined in the FY 2007 President's Budget plus inflation for the FY 2008/2009 biennial period, and additional resource requirements that the fees should recover in order for the agency to fulfill its mission responsibilities. Based on the current average application/petition fee of \$230 and biometric fee of \$70, and a projected application/petition fee-paying volume of 5.27 million and biometric service volume of 2.2 million, immigration benefit application/petition and biometric fees will generate \$1.401 billion in annual revenue for the FY 2008 and FY 2009 biennial period. For the same period, the estimated annual cost of processing immigration benefit applications/petitions and biometric services is \$2.287 billion. This would cause an annual shortfall of revenue to expenses of \$886 million, of which \$449 million is additional resource requirements. In this rule, USCIS is assuming the implementation of new immigration benefit application and petition fees for services performed, but not currently charged. These new fees, representing \$87 million of the \$886 million shortfall, will be established in separate rulemakings.

This rule is necessary to align the fees with the most current processes and ensure sufficient funding to process incoming applications/petitions and biometric services while ensuring national security, enhancing customer service, and maintaining standard processing times in Fiscal Years 2008 and 2009. Without these additional fee revenues, USCIS would be forced to enact significant spending reductions in order to remain solvent, resulting in a reversal

of the considerable progress it has made over the last several years to reduce the backlog of immigration benefit applications and petitions. If such reductions are necessary, USCIS will not curb any security-related activities in an effort to remain solvent.

The main factors that have contributed to the insufficiency of the immigration benefit application/petition and biometric fee are: 1) Declining application and petition volumes associated with efficiencies attributed to successful backlog elimination efforts, and temporary immigration benefit programs that are projected to conclude in the near future; (these volume declines are offset by projected volume increases as discussed in the section entitled “Projected Increases in Application/Petition and Biometric Services”), 2) Increased costs per the FY 2007 President’s Budget as a result of USCIS transitioning to a fully fee-funded agency after FY 2006 with the conclusion of appropriated backlog elimination funds, additional national security responsibilities post September 11, 2001, additional resource requirements associated with being a stand alone agency separate and apart from former INS counterparts, and increased costs due to inflation for the FY 2008/2009 biennial period; 3) Declining fee revenues associated with prior immigration legislation and premium processing services; and 4) Increased resource requirements, above and beyond what was presented in the FY 2007 President’s Budget, for various activities that are critical to USCIS’ mission, including fraud prevention and detection, training, information technology, and office rents. These decreases are offset partially by projected increases in applications/petitions and biometric services discussed below.

Declining application/petition volumes – USCIS projects a significant decrease in volumes associated with “interim benefits” due to the success of USCIS’ backlog elimination efforts. Interim benefits are temporary benefits associated with the Form I-765, Application for

Employment Authorization, and Form I-131, Application for Travel Document (Advance Parole only), that are issued to individuals while their application for Adjustment of Status or “green card” (Form I-485, Application to Register Permanent Status or Adjust Status) is pending. As USCIS is set to achieve a cycle time of 6 months or less for Adjustment of Status Applications, the volume of interim benefit applications received will significantly decline. USCIS’ analysis of interim benefits associated with a pending Form I-485 identified a total decrease over the next several years of 725,000 applications (450,000 Form I-765’s and 275,00 Form I-131’s), for a total decline in fee revenues of \$128 million (450,000 multiplied by the current \$180 Form I-765 fee, and 275,000 multiplied by the current \$170 Form I-131 fee).

In addition, USCIS is projecting that the Temporary Protected Status Program for re-registrants of certain nationalities could conclude at some time in the near future, and therefore will see declining volumes in the Form I-821 (Application for Temporary Protected Status), Form I-765, and associated biometric services. As such, USCIS projects a decrease in volume of 334,823 for each of these benefits (except there is no fee charged for the Form I-821 for re-registrants), for a total decline in fee revenues of \$84 million (334,823 multiplied by the current \$180 Form I-765 fee, and 334,823 multiplied by the \$70 biometric fee). USCIS does not anticipate any significant new Temporary Status populations at this time.

USCIS is also projecting the conclusion of volume associated with the Form I-881, Nicaraguan Adjustment and Central American Relief Act – Suspension of Deportation or Application Special Rule. This program provides a benefit for a finite group of people; the vast majority of this limited group includes Guatemalans and Salvadorans who entered the United States prior to 1991 and who have a pending asylum application that was filed by specified

deadlines in 1995 and 1996. Nearly all qualifying individuals and their dependents were adjudicated for NACARA 203 benefits prior to FY 2006. USCIS projects that there will be no filings in FY 2008 and 2009, for a volume decline of 23,082 (from 23,082 in FY 2005 to zero), for a decline in fee revenues of \$8.0 million (23,082 multiplied by the current \$285 Form I-881 fee, and 23,082 multiplied by the \$70 biometric fee).

This equates to an overall decrease in fee revenues of \$220 million. A summary of all volume changes is summarized in Tables 8 and 10.

Increased Costs – In the FY 2007 President’s Budget, USCIS projects increased costs for the IEFA as compared to FY 2005 actual costs mainly in the areas of payroll, office rents, and two of its largest contracts - the mail, file, fee receipting, and data entry contract at the Service Centers, and the Application Support Center contract for biometrics capture. These items were funded in FY 2006 and FY 2007 via short-term fee revenues that will no longer recur after FY 2007. These short-term fee revenues include a temporary program for the recall of green cards without expiration dates, and the expansion of the premium processing program.

In the area of payroll, most of the \$77 million increase (\$727,600,000 - \$650,402,835) from FY 2005 to FY 2007 is associated with requirements outlined in a Staffing Allocation Model (SAM) that addresses how many and where staff (e.g. Adjudication Officers) are needed to align with projected workloads (incoming applications and petitions) in maintaining standard processing times. This is the first time USCIS performed such an analysis, and is an improvement over the last comprehensive fee review in FY 1998. In FY 1998, the immigration benefit application backlog actually grew in the same year that it enacted significant across-the-board fee increases. The main cause for the growth in the backlog was that USCIS was not

recovering the resources necessary to process incoming workload – it solely recovered the resources that were in place at that time. Other significant payroll increases are associated with the National Security and Records Verification Directorate which was created to strengthen the USCIS mission and enhance national security and the integrity of the legal immigration system. Other smaller payroll increases were associated with Headquarters offices that were either newly created or expanded due to the requirements of being a stand alone agency separate and apart from its former INS components, including the Office of Security and Investigations (OSI), the Equal Employment Opportunity Office, the Office of Administration, the Office of Policy and Strategy, the Office of Planning, Budget, and Financial Management, the Office of the Chief Counsel, and the Office of the Chief Information Officer. In the area of rent, most of the \$73 million increase from FY 2005 to FY 2007 projected rent costs is associated with the conclusion of appropriated funding after FY 2006, whereas \$40 million was covered through appropriated funding in FY 2005, and the remainder associated with increased cost requirements mostly due to being a stand alone agency from former INS where co-located facilities with former INS components no longer exist. With respect to USCIS' largest contract, the mail, file, fee receipting, and data entry contract, most of the \$74 million increase from FY 2005 actual costs to FY 2007 projected costs is associated with the conclusion of appropriated funding after FY 2006, whereas \$53 million was covered through appropriated funding in FY 2005 and the remainder mostly associated with costs for increased security enhancements after September 11, 2001 which required additional handling procedures for all applications and petitions. Finally, for the Application Support Centers, whose responsibilities include the electronic capture of biometric information (fingerprint, photograph, signature), most of the \$41 million increase from

FY 2005 actual costs to FY 2007 projected costs is associated with the conclusion of appropriated funding after FY 2006, whereas \$27 million was covered through appropriated funding in FY 2005 and the remainder associated with fully funding the contract for the entire fiscal year (the contract was not fully funded in FY 2005), as well as increased costs associated with additional capacity requirements at many Application Support Centers to meet backlog elimination goals. The above mentioned cost increases total \$256 million, with other miscellaneous cost increases and decreases throughout the IEFA resulting in a \$15 million net cost decrease. This equates to an overall \$250 million cost increase.

The following table identifies the \$250 million in increased costs for the IEFA, comparing FY 2005 actual IEFA spending, by program, to the projected spending based on the FY 2007 President’s Budget Request (dollars in thousands).

Table 1

Program	Actual FY 2005	Projected FY 2007	Dollar Difference
Adjudication Services	\$1,167,608	\$1,375,000	\$207,392
Information and Customer Services	\$126,172	\$144,000	\$17,828
Administration	\$215,776	\$241,000	\$25,224
Total Budget	\$1,509,556	\$1,760,000	\$250,444

USCIS then identified spending items in the FY 2007 President’s Budget that would not recur after FY 2007. The one significant spending item that was identified was for \$8.5 million associated with the expansion of Application Support Centers for additional workload associated with a temporary program for the recall of green cards without expiration dates. This reduced the increased costs from \$250 million to \$241.5 million, and the FY 2007 President’s Budget estimate from \$1.760 billion to \$1.751.5 billion.

USCIS then adjusted the FY 2007 President's Budget for the FY 2008 and FY 2009 biennial period by pay (Federal employee payroll and benefits) and non-pay (contracts, utilities, rent, etc.) inflation factors using projected levels issued by the Office of Management and Budget (OMB) used in implementing OMB Circular A-76 (Performance of Commercial Activities). OMB Circular A-76 publishes the inflation factors used in calculating pay and non-pay increases contained in the President's annual budget request.

Using \$1,751,500,000 as the base, USCIS applied the FY 2008 pay inflation factor of 4.8% to the pay portion of the FY 2007 budget (\$727,600,000) and the non-pay inflation factor of 2.2% to the adjusted non-pay portion of the FY 2007 budget (\$1,023,900,000). The pay inflation of \$34,924,800 and non-pay inflation of \$22,525,800 was then added to the FY 2007 base to equate to a FY 2008 pay of \$762,524,800 and non-pay of \$1,046,425,800 for a total projected FY 2008 budget of \$1,808,950,600. USCIS then applied the FY 2009 pay inflation factor of 4.8% to the pay portion of the FY 2008 budget (\$762,524,800) and the non-pay inflation factor of 2.1% to the adjusted non-pay portion of the FY 2008 budget (\$1,046,425,800). The pay inflation of \$36,601,190 and non-pay inflation of \$21,974,942 was then added to the FY 2008 budget to equate to a FY 2009 pay of \$799,125,990 and non-pay of \$1,068,400,742 for a total projected FY 2009 budget of \$1,867,526,732. Averaging the FY 2008 adjusted budget with inflation of \$1,808,950,600 and the FY 2009 adjusted budget with inflation of \$1,867,526,732 equated to \$1,838,238,666 for the FY 2008 and FY 2009 biennial period. The net increase for inflation is \$86.7 million in increased costs for the IEFA, which equates to a \$328.7 million (\$242 million plus \$86.7 million) overall cost increase from FY 2005 to the FY 2008 and FY 2009 biennial period.

The following table summarizes the \$328.7 million in increased costs for the IEFA, comparing FY 2005 actual IEFA spending, by program, to the projected spending for the FY 2008 and FY 2009 biennial period (dollars in thousands).

Table 2

Program	Actual FY 2005	Projected FY 2008/2009	Dollar Difference
Adjudication Services	\$1,167,608	\$1,435,544	\$267,936
Information and Customer Services	\$126,172	\$151,987	\$25,815
Administration	\$215,776	\$250,707	\$34,931
Total	\$1,509,556	\$1,838,238	\$328,682

USCIS will also need to recover the costs associated with the difference between the actual IEFA spending in FY 2005 of \$1,509,556,375 and the amount of actual fee revenues generated in FY 2005 of \$1,507,393,038 in order to recover the full costs of actual IEFA spending in FY 2005. The \$2,163,337 shortfall in FY 2005 between revenues and expenses is an additional cost that will need to be recovered through the immigration benefit application and petition fees. This increases the costs to \$330.9 million (\$328.7 million plus \$2.2 million).

Finally, USCIS offset the above mentioned cost increases with fee increases implemented post FY 2005. This included fee increases for inflation effective October 25, 2005, as well as the fee increase for the appeals and motion fees effective September 28, 2005. 70 FR 50954. The fee increases equated to an additional \$37 million in annual fee revenues, and effectively reduced the total increased costs to \$294 million (\$330.9 million less \$37 million).

Declining fee revenues – The Legal Immigration Family Equity Act and Amendments (LIFE Act), enacted on December 21, 2000, extended section 245(i) adjustment of status through April 30, 2001. With this legislation, certain aliens could apply for adjustment of status under

Section 245(i) of the Immigration and Nationality Act by paying a \$1,000 penalty fee, in addition to the base application fee. USCIS has seen decreased revenues each year from this benefit, and projects that the revenues will conclude in the near future. USCIS projects a decrease of \$24 million in projected penalty fees from FY 2005 levels.

In addition, USCIS projects declining fee revenues from the Premium Processing Service due to the success of USCIS' backlog elimination and projected Business Transformation efforts. Over the last few years, USCIS has relied on premium processing revenues to recover the costs of processing immigration benefit applications and petitions. There are two problems associated with this: 1) USCIS should only be using the revenues for premium service and infrastructure improvements as outlined in USC 1356(u), and 2) this source of revenue is projected to decline as USCIS continues to become more efficient, and can no longer be relied upon as a stable source of revenue for recurring expenses. As such, USCIS projects a decrease of \$139 million in premium processing revenues from FY 2005 levels. In the instance that premium processing revenues continue to be collected (as may be the case if applicants continue to use the service even though the regular service is expeditiously processed and USCIS expands the premium service to additional employment based applications and petitions), USCIS will leverage the net fee revenues received for non-recurring infrastructure investments to continue to improve the efficiency and effectiveness of USCIS operations.

This equates to a total decline of fee revenues in the amount of \$163 million.

Additional Resource Requirements – USCIS also identified \$449 million in additional resource requirements above and beyond what was presented in the FY 2007 President's Budget plus inflation for the FY 2008/2009 biennial period, necessary to meet its mission

responsibilities. This included funds necessary to: 1) Enhance fraud prevention and detection efforts (170 staff, \$31 million); 2) Process Freedom of Information Act requests (103 staff, \$11 million); 3) Transfer records to the National Archives and Records Administration (0 staff, \$3.415 million); 4) Provide Change of Address (AR-11) data entry services (0 staff, \$1.2 million); 5) Enhance quality assurance program (43 staff, \$9.7 million); 6) Establish a backup card production facility (4 staff, \$36.7 million); 7) Provide additional training for Adjudication Officers (136 staff, \$24 million); 8) Enhance existing card production program (0 staff, \$4.418 million); 9) Enhance mail and file room support for the Administrative Appeals Office (0 staff, \$129 thousand); 10) Enhance the training program for all USCIS employees to foster organizational individual achievement by promoting continuous learning (9 staff, \$37.943 million); 11) Conduct policy evaluation and research (0 staff, \$3.12 million); 12) Enhance internal controls, build a data warehouse for performance information, enhance budget staff, conduct competitive sourcing reviews, and provide additional financial management resources to evaluate and analyze service level agreements under the auspices of the Office of Chief Financial Officer (16 staff, \$2.649 million); 13) Rent and lease acquisition resources (0 staff, \$49.47 million); 14) Fully fund the Human Resources and Occupational Safety and Health Service Level Agreements/Programs (0 staff, \$3.15 million); 15) Enhance resources for the Office of Chief Counsel (30 staff, \$5.857 million); 16) Print and distribute guidebooks for new immigrants and naturalized citizens (0 staff, \$1.9 million); 17) Upgrade and maintain the USCIS information technology environment (98 staff, \$110.8 million); 18) Pay increased costs due to the FBI for background checks (0 staff, \$10.31 million); 19) Fully fund the Cuban Haitian Entrant Program (0 staff, \$14 million); 20) Enhance national security systems and processes (0 staff, \$11.5

million); 21) Establish a compliance function for on-site visits for fraud detection purposes (0 staff, \$8 million); 22) Enhance procurement operations (0 staff, \$1 million); 23) Additional Adjudication Officers associated with increased workload for those applicants and petitioners receiving Notices to Appear before an Immigration Judge (109 staff, \$15.6 million); 24) Additional Adjudication Officers associated with unanticipated surges in workload (204 staff, \$29.3 million); 25) Establish a National Recruitment Program (2 staff, \$2.5 million); 26) Enhance Protective Security Operations (36 staff, \$5.2 million); 27) Enhance Internal Security and Investigative Operations (65 staff, \$11 million); 28) Enhance Emergency Preparedness Operations (6 staff, \$1.4 million); 29) Establish Crisis Management and Information Security Operations (6 staff, \$1.2 million); 30) Enhance technology security operations (2 FTE, \$.5 million); and 31) Enhance Personnel Security Operations (10 FTE, \$1.2 million).

Projected Increases in Application/Petition and Biometric Services – The above-mentioned decreases in fee revenues are offset by a net increase in some projected application/petition and biometric services. Projected volume increases from the FY 2005 levels include an increase in biometric services of an additional 392,239 from FY 2005 levels since USCIS had begun to expand services to include Form I-90's on June 30, 2005. Therefore, USCIS projects this additional amount for the remaining annual period of October thru June, in order to annualize the biometric service volume. This equates to an increase in biometric fee revenues of \$39 million (392,239 times the \$100 proposed biometric fee). In addition, USCIS will be expanding biometric services to the Form I-131 (Refugee Travel Document, Reentry Permit only) and Form I-751 in FY 2007. This equates to an increase in biometric services of \$21 million (205,496 times the proposed \$100 biometric fee). The other projected increases

were associated with previously mentioned new immigration benefit application and petition fees for services performed, but not currently charged. These new fees will be established in separate rulemakings – equating to \$87 million in additional fee revenues.

Other projected increases are the product of projections from the USCIS Workload and Fee Projection Group – similar to the FY 1998 Fee Review. The Workload and Fee Projection Group is composed of subject matter experts throughout the agency and statistical experts from the DHS Office of Immigration Statistics. USCIS leveraged a time series model based on a regression analysis over the last 15 years, with the most recent data trends given the greatest weight. USCIS then adjusted this data based on known or projected program, policy, or other factors that would impact the analysis. The Workload and Fee Projection Group mainly focused on the applications and petitions that compose the majority of the workload. For the other low volume form types, USCIS straightlined actual FY 2005 volumes from PAS (Performance Analysis System) to the FY 2008 and FY 2009 biennial period.

The Workload and Fee Projection Team projected an overall increase of 400,316 in immigration benefit application and petition volumes over FY 2005 levels due to a projected increase in Form I-130's (35,539), Form I-140's (59,996), Form I-90's (2,626), Form N-400's (111,006), less decreases projected in the Form I-485 (43,847), Form I-129 (1,241), and Form I-539 (3,186). With these changes, USCIS also projects an additional 69,785 in corresponding biometric service volume given the increase in Form N-400's (111,006) and Form I-90's (2,626), less the decrease in Form I-485's (43,847). The volume increases multiplied by the proposed fees for these form types equated to an increase in fee revenues in the amount of \$93 million.

This equates to an overall increase in projected application/petition and biometric

services of \$240 million.

The following table summarizes the \$886 million overall shortfall (dollars in thousands):

Table 3

Category	Amount
Declining Application/Petition Volumes	\$220,000
Increasing Costs	\$294,000
Declining Fee Revenues	\$163,000
Additional Resource Requirements	\$449,000
Subtotal	\$1,126,000
Projected Increases in Application/Petition and Biometric Services	(\$240,000)
Total Shortfall	\$886,000

B. Budget Programs Funded through the Immigration Examinations Fee Account

For FY 2007, the IEFA provides approximately 89% of USCIS' funding; funds from the Account are dispersed to every program within the USCIS. The major programs, activities and services funded by the IEFA are discussed below.

Adjudication Services. The Adjudication Services program is the primary program responsible for the processing of immigration benefit applications and petitions while ensuring the security of the immigration system. Through a network of 250 local offices, Application Support Centers, Service Centers, and Asylum offices, the program funds the timely and quality processing of: 1) *Family-based petitions* - facilitating the process for close relatives to immigrate, gain permanent residency, work, etc.; 2) *Employment-based petitions* - facilitating the process for current and prospective employees to immigrate or stay in the U.S. temporarily; 3) *Asylum and Refugee processing* - adjudicating asylum applications and the processing of refugees; and 4) *Naturalization* - processing applications of those who wish to become U.S. citizens.

On average, USCIS annually: 1) processes over 6 million applications and petitions, 2) processes close to 90,000 asylum cases, 3) conducts approximately 70,000 refugee interviews, and 4) conducts the naturalization of approximately half a million new citizens. Each year, millions of people apply for various types of immigration benefits from the U.S. government. Adjudications Officers determine eligibility for a wide variety of benefits. They review applications and often conduct interviews of the applicants. Adjudications Officers have the dual responsibility of providing courteous service to the public while being alert to the possibility of security concerns, fraud, and misrepresentation. District Adjudications Officers are located in offices nationwide. Center Adjudications Officers are located only in the following Service Centers: St. Albans, VT; Lincoln, NE; Irving, TX; and Laguna Niguel, CA.

The Asylum Officer determines if an applicant for asylum satisfies the requirements of the INA. These officers must be knowledgeable of human rights conditions around the world and possess a keen insight into human behavior in order to determine the credibility and consistency of information elicited through interviews they conduct. Positions are located in Asylum Offices throughout the United States. The Asylum Officer Corps and new Refugee Officer Corps also help USCIS leverage specialized resources, including professional interpreters, to deliver timely and accurate provision of legal protection to individuals who have been persecuted and displaced.

In coordination with DHS and other Federal agencies, USCIS combats immigration benefit fraud through the National Security and Records Verification Directorate. USCIS trains FDNS staff to analyze and identify fraud patterns and trends, and document evidence of fraud for administrative action. USCIS will continue to implement fraud detection measures in Service

Centers, field offices, and Refugee and Asylum programs and train adjudications staff to proactively identify fraud/security profiles while considering an application.

The Adjudication Services program receives 94% of its total funding from the IEFA.

Information and Customer Services. Through the Information and Customer Services Program, USCIS reduces the frequency of repeated, redundant applicant contact with USCIS employees, thus improving agency efficiency. USCIS makes it easier for our customers to get the information they need, when they need it through multiple channels of available assistance, including the USCIS website, toll-free call center (National Customer Service Call Center), and face-to-face appointments. On an annual basis, USCIS: 1) serves over 14 million customers via the National Customer Service Call Centers, and 2) serves approximately 5 million customers through information counters at local offices.

Each year millions of people apply for various types of benefits under the INA. The Immigration Information Officers (IIO) provide information about immigration and nationality law and regulations. They assist with a wide variety of requests, including questions on how to complete required forms, and explaining the administrative procedures and normal processing times for each application. IIOs provide a range of customer services, including certain case services and problem resolution assistance on applications and petitions. IIOs also process and make decisions on a limited array of applications and petitions. Positions are located throughout the country in Districts, Sub offices, and Service Centers.

Through the National Customer Service Center's four telephone centers, USCIS provides toll-free nationwide assistance to customers calling from within the United States. Customers can access live assistance from 8:00 AM until 6:00 PM, Monday through Friday. They can also

access recorded information (including information about the status of their specific case) 24 hours a day/7 days a week. Both live and recorded service is available in English and Spanish. Callers from outside the U.S. can access more limited information through a separate toll number.

USCIS receives about 1.7 million direct information and customer service related contacts. Today, over 84% of all information and customer service interactions are self-service. The self-service options give customers new choices that are simpler and more effective to both customers and USCIS. This option also results in significant cost avoidance when compared to what it would cost USCIS to provide live assistance to all customers.

In-person service continues to be a critical component of the USCIS service model. To improve service levels, USCIS has shifted to offering most in-person service by appointment. This has helped mitigate long lines and wait times, and address customer concerns and inquiries.

To more clearly assist and communicate with customers, USCIS has developed a new series of fact sheets focused on particular kinds of customers and services available to them. It will also include a fact sheet focused on customers after they file an application, setting out criteria for case services to do a better job of responding to the questions and concerns of customers.

The Information and Customer Services program receives 52% of its total funding from the IEFA.

Administration. Ten offices provide administrative and mission support to Headquarters offices and USCIS field locations worldwide. The Headquarter offices are composed of: the *Office of Administration* plans, develops, implements, and evaluates agency-wide policies and

procedures for the operation of centrally managed, agency-wide support activities and is responsible for programming, budgeting and oversight for the direct delivery of administrative support to USCIS in the areas of Acquisition, Procurement, Asset Management and Personal Property, Facilities and Real Property, and Logistics; the *Office of Planning, Budget, and Finance* is responsible for planning and budgeting integration, and financial management activities; the *Office of Chief Counsel (principal legal advisor)* consists of dedicated legal divisions advising and representing USCIS Operations both at Headquarters and in the field. Divisions include Adjudications Law, Refugee and Asylum Law, Commercial and Administrative Law, Ethics, Field Operations, Training, and Liaison. Each division is responsible for reviewing, interpreting, and providing legal advice and guidance to USCIS operational components and OCC field staff; the *Office of Citizenship* promotes civic integration and instruction and training on citizenship responsibility for legal immigrants interested in becoming naturalized citizens of the United States, including development of educational materials and community outreach activities; the *Office of Communications* oversees and coordinates communication to both internal and external stakeholders to empower employees with the tools needed to perform their jobs, educate the public regarding USCIS benefits and services, and facilitate consistent messaging and imaging for USCIS; the *Office of Congressional Relations* advises the Director on legislative matters and serves as the primary point of contact for members of Congress and congressional staffers; the *Office of Policy and Strategy* directs, prioritizes, and sets the agenda for agency-wide policy, strategy, and long-term planning activities, as well as for the conduct of research and analysis on immigration services issues; the *Office of Security and Investigations* has a range of responsibilities including

oversight of continuity of operations planning and implementation; secure communications and document storage; agency wide physical and facility security programs; and security awareness training. In coordination with Fraud Detection and National Security Division, OSI has the lead role regarding the *Office of Professional Responsibility* related management inquiries; the *Office of Human Capital and Training* is in charge of human capital policy and operations, and provides continuous professional training and career development to all USCIS employees through a variety of career, executive and managerial development programs. Responsibilities include basic training, training management, training operations, and training support services.

The Administration program receives 100% of its total funding from the IEFA.

V. The Fee Review of Immigration Benefit Applications/Petitions and Biometric Services

The current immigration benefit application and petition fees are based on the FY 1998 Fee Review, adjusted for cost of living increases and other factors. Since costs and processes have changed significantly since the FY 1998 Fee Review, the current fees do not reflect today's costs and processes. A General Accounting Office (GAO) Report in January 2004 on "Immigration Application Fees: Current Fees are Not Sufficient to Fund U.S. Citizenship and Immigration Services' Operations" concluded that the "fees were not sufficient to fully fund USCIS' operations. GAO stated that "in part, this has resulted because 1) the current fee schedule is based on an outdated fee study that did not include all costs of USCIS' operations and 2) costs have increased since that study was completed due to an additional processing requirement and other actions." GAO recommended that USCIS "perform a comprehensive fee study to determine the costs to process new immigration applications." The fee review, which is the basis for the proposed fees in this rule, addresses that recommendation.

In addition, this fee review is based for the first time on a staffing model that is designed to align resources with need to prevent future backlogs. Prior to this analysis, USCIS' distribution of adjudicators across field offices did not match the distribution of workload across field offices. Thus, when USCIS last performed a comprehensive fee review in FY 1998, the agency did not recover the resources necessary to process incoming workload. As a result, the backlog actually increased when the fees were implemented in FY 1998.

This staffing analysis was a recommendation of a GAO report in May 2001 entitled "Immigration Benefits: Several Factors Impede Timeliness of Application Processing." This report recommended that former INS "develop a staffing model for processing naturalization applications and expand the model to include other application types as their processes are reengineered or automated." In a GAO report in November 2005 entitled "Immigration Benefits: Improvements Needed to Address Backlogs and Ensure Quality of Adjudications," GAO stated that "this kind of planning is consistent with the principle of integration and alignment that we have advocated as one of the critical success factors in human capital planning." GAO further stated "as we have previously reported, workforce planning that is linked to strategic goals and objectives can help agencies be aware of their current and future needs such as the size of the workforce and its deployment across the organization. In addition, we have said that the appropriate geographic and organizational deployment of employees can further support organizational goals and strategies."

A. Fee Review Methodology

The USCIS employed an Activity-Based Costing (ABC) methodology to determine the full cost of immigration benefit applications/petitions and biometric services for which a fee is

charged. This is the same methodology used in the FY 1997 Fee Review which is the basis for the current fee structure. ABC is a business management tool that provides insight into the relationship between inputs (resources) and outputs (products and services) by quantifying how work is performed in an organization (activities). ABC is a preferred cost accounting method endorsed by the Federal Accounting Standard Advisory Board (FASAB).

The ABC methodology uses a two-stage approach to assigning costs. The first stage assigns resource costs to activities; the second stage assigns activity costs to products (for the USCIS, the products are the immigration benefit applications/petitions and biometric services for which a fee is charged). To implement this two-stage approach, ABC requires: the identification and definition of the activities involved in processing immigration benefit applications/petitions and biometric services; the examination of budgetary records/execution plans and additional resource requirements to identify the resources required to process immigration benefit applications/petitions and biometric services; the assignment of these resources to the defined activities; and the assignment of activity costs to defined immigration benefit applications/petitions and biometric services for which a fee is charged.

USCIS used commercially available ABC software in computing the immigration benefit application/petition and biometric fees. This software application is designed to assign resource costs through activities to final products (applications/petitions and biometric services). The data entered into the software was tailored to USCIS specifications using the pre-existing software structure. USCIS will update this model on a continual basis with the most up-to-date information for fee review and cost management purposes.

VI. Identifying FY 2008 and FY 2009 Immigration Benefit Application/Petition and

Biometric Service Resources

The first step in implementing an ABC methodology is to identify the appropriate resources and assign these resources to the defined processing activities. Consistent with OMB Circular A-25, USCIS determined that the FY 2007 President's Budget of the IEFA, adjusted for inflation for the FY 2008 and FY 2009 biennial period, plus additional resource requirements, was the best available source of information for determining the full cost of immigration benefit applications/petitions and biometric services. The use of budgetary data is the same source used in the FY 1998 Fee Review which the current fee structure is based.

A. Sources of Cost Information

As discussed earlier, the USCIS must follow Federal guidance in determining its fees for service. Both the FASAB Managerial Cost Accounting Standards and OMB Circular A-25, User Charges, require agencies to base fees on the full cost of the goods or services provided. The FY 2007 President's Budget of the IEFA, adjusted for inflation for the FY 2008/2009 biennial period, plus additional resource requirements, was the basis for determining the full cost of immigration benefit applications/petitions and biometric services. However, one downward adjustment was made to this budget base to arrive at the full cost of immigration benefit applications/petitions and biometric services. This adjustment was for \$8.5 million associated with the temporary expansion of Application Support Centers for additional workload associated with a program for the recall of green cards without expiration dates.

B. Total FY 2008/2009 Immigration Benefit Applications/Petitions and Biometric Service Resources

The total resource base for FY 2008/2009 immigration benefit application/petition and

biometric services is the FY 2007 IEFA Budget, adjusted for temporary programs that will not recur after FY 2007, plus inflation for the FY 2008/2009 biennial period, plus additional resource requirements. The resulting total of \$2.287 billion is the estimated FY 2008 and FY 2009 resources necessary to fund the full cost of processing immigration benefit application/petition and biometric services for which the USCIS charges a fee, plus the cost of similar services provided at no cost. The calculation of total immigration benefit application/petition and biometric service base resources (figures previously referenced in the “Sufficiency of the Fee Schedule” section) is illustrated in Table 4 (dollars in thousands):

Table 4

Resource Base - Processing Immigration Benefit Application/Petition and Biometric Services	
FY 2007 President’s IEFA Budget	\$1,760,000
Less: Temporary Program (Green Card Recall)	<u>(8,500)</u>
FY 2007 Adjusted Budget	1,751,500
Plus: Inflation	86,700
Plus: Additional Resource Requirements	<u>449,000</u>
FY 2008/2009 Biennial Period Resource Base	<u>\$2,287,200</u>

VII. Determining the Amount of FY 2008/2009 Resource Costs Assigned to Processing Activities

This section describes how the amount of FY 2008/2009 resource costs were assigned to processing activities. “Processing activities” represent the full costs of processing immigration benefit applications/petitions and biometric services, less asylum and refugee costs, fee waiver and exempt costs, miscellaneous application and petition fees not assigned to activities, and

additional resources associated with premium processing cases.

A. Asylum and Refugee Surcharge

Of the \$2.287 billion resource base, \$180 million represents the full costs of asylum and refugee operations, or 8%. Congress has authorized USCIS to set its immigration benefit application and petition fees at a level that recovers sufficient revenue to provide asylum and refugee services. The cost of the refugee and asylum programs were allocated to the fee-based immigration benefit applications and petitions as a surcharge, so the applications and petitions reflect the same average unit cost. This is a departure from how the current fees are based since the current asylum and refugee surcharge varies for every application and petition. USCIS decided that this was the best methodology since a case can be made that the asylum and refugee surcharge is unrelated to the complexity of the application/petition, and also to minimize the dollar impact on the more complex applications and petitions.

B. Fee Waiver and Exemption Surcharge

Of the \$2.287 resource base, \$69 million represents the full costs of granting fee waivers and exemptions for applicants and petitioners, or 3%. Congress has authorized USCIS to set its immigration benefit application and petition fees at a level that recovers sufficient revenue to provide services to other immigrants at no charge. Applicants and petitioners are granted fee waivers if they can establish that they are unable to pay the fee. In addition, asylum and refugee applicants are exempt from paying the fee of certain fee-based immigration benefit applications and petitions. This amount also includes fees received from applicants residing in the Virgin Islands of the United States and in Guam (8 USC 1356 (m)) since the fees are paid over to the treasury of the Virgin Islands and to the treasury of Guam. The cost of fee waivers and

exemptions was allocated to the fee-based immigration benefit applications and petitions as a surcharge, so the applications and petitions reflect the same average unit cost. This is a departure from how the current fees are based since the current fee waiver and exemption surcharge varies for every application and petition. USCIS decided that this was the best methodology since a case can be made that the fee waiver and exemption surcharge is unrelated to the complexity of the application/petition, and also to minimize the dollar impact on the more complex applications and petitions.

C. Miscellaneous Application and Petition Fees Not Assigned to Activities

USCIS received a total of \$20 million in miscellaneous fees in FY 2005 that were not assigned to immigration benefit application/petition or biometric service activities. This includes: 1) \$11 million in fees that could not be attributed to any particular application or petition as per fee collection reports (termed “transactions”), 2) \$8 million from applications received by the Executive Office of Immigration Review, and 3) \$1 million in miscellaneous application fees for which USCIS is not proposing a fee increase e.g. Form I-246, Application for Stay of Deportation or Removal; Form N-410, Application for Motion for Amendment of Petition; and Form N-455, Application for Transfer of Petition for Naturalization.

D. Resources Associated With Premium Processing Cases

For premium processing cases, the applicant pays a \$1,000 fee in addition to the processing fee for employment-based applications and petitions. USCIS performed an ABC analysis of processing a Form I-129 premium processing case, and determined that the additional costs of processing these expedited cases (above and beyond the Form I-129 processing costs) to be \$13 million. Therefore, \$13 million was not assigned to the immigration benefit

application/petition or biometric service processing activities.

E. Amount of FY 2008 and FY 2009 Immigration Benefit Application/Petition and Biometric Service Resources Assigned to Processing Activities.

The amount of immigration benefit application/petition and biometric resources that were assigned to processing activities was determined by subtracting from the FY 2008/2009 biennial period resource base the costs attributable to the asylum/refugee services; fee waiver and exemption services; and additional costs associated with premium processing cases. The cost of asylum and refugee services, and fee waiver and exemption services reflect the same average unit cost for every application and petition. The costs associated with miscellaneous applications and petitions and additional premium processing costs were not assigned to processing activities.

The following table summarizes the total of \$2.005 billion assigned to processing activities (dollars in thousands):

Table 5

FY 2008/2009 Resources Assigned to Processing Activities	
FY 2008/2009 Biennial Period Resource Base	<u>\$2,287,000</u>
Less: Asylum and Refugee Services	(180,000)
Less: Fee Waiver and Exempt Services	(69,000)
Less: Miscellaneous Application and Petition Fees	(20,000)
Less: Additional Premium Processing Costs	<u>(13,000)</u>
FY 2008/2009 Resources Assigned to Processing Activities	<u>\$2,005,000</u>

VIII. Defining Immigration Benefit Application/Petition and Biometric Service Processing

Activities

In ABC, activities are the critical link to assigning resources to products (applications/petitions and biometric services for which the USCIS charges a fee). The activities are: *Inform Customers*, involves receiving and responding to customer inquiries through telephone calls, written correspondence, or walk-in inquiries; *Capture Biometrics*, involves the electronic capture of biometric (fingerprint, photograph, signature) information, and background checks performed by the FBI; *Intake*, involves mailroom operations, data capture and collection, file assembly, fee receipting, and file room operations; *Conduct Interagency Border Inspection System (IBIS) Checks*, involves the process of comparing information on applicants, petitioners, beneficiaries, derivatives and household members who apply for an immigration benefit against various Federal lookout systems (IBIS); *Review Records*, involves searching and requesting files; creating temporary and/or permanent alien files, consolidating files, connecting returned evidence with application or petition files, pulling, storing, and moving files upon request, auditing and updating systems on the location of files, and archiving inactive files; *Make Determination*, involves the tasks of adjudicating applications and petitions; making and recording adjudicative decisions, requesting and reviewing additional evidence, interviewing applicants, and consulting with supervisors, legal counsel, and researching applicable laws and decisions on non-routine adjudications; *Fraud Detection and Prevention*, involves activities performed by the Fraud Detection and National Security Office in detecting, combating, and deterring immigration benefit fraud; and, *Issue Document*, involves the tasks of producing and distributing secure cards that identify the holder as an alien and also identifies his/her status or employment authorization.

IX. Assigning Immigration Benefit Application/Petition and Biometric Service Costs to Processing Activities

USCIS leveraged a detailed operating plan that identifies the payroll (pay and benefits, awards, overtime) and non-payroll costs (general expenses, information technology, contracts) associated with each USCIS office, as well as costs that are managed and funded centrally such as rent, information technology operations and maintenance, and service level agreements. The operating plan is a vast improvement over the source of resource data used in the FY 1998 Fee Review where the information was only available at very high levels as proscribed in budget programs.

Each USCIS office was then classified as “overhead” versus “non-overhead.” This was performed since non-overhead cost items can be directly “assigned” to activities based on a relationship that is readily identifiable between the resource item and an activity. For example, an Adjudications Officer performs work under the “Make Determination” activity. Therefore, the costs associated with an Adjudications Officer are directly assigned to this activity.

Overhead cost items are “allocated” to activities since no relationship can be developed between the resource item and the activity. For example, there is no direct relationship between the Office of Planning, Budget, and Finance and the “Make Determination” activity, but clearly USCIS’ financial operations are vital, and as such, the costs can be allocated to the “Make Determination” based on number of staff, dollars, or any other reasonable method.

USCIS defined overhead as “the ongoing administrative expenses of a business which cannot be attributed to any specific business activity, but are still necessary for the business to function.” Examples include the majority of Headquarters functions such as the Office of the

Planning, Budget, and Finance, the Office of the Chief Information Officer, the Office of Chief Counsel, the Congressional Relations Office, and the Office of Policy and Strategy. Field functions classified as overhead include Regional Offices, and support positions such as management, administration, analysts and information technology staff. Centrally managed costs such as rent, information technology operations and maintenance, and service level agreements were also classified as overhead.

Total overhead costs were identified to be \$748 million (of which \$73 million is associated with the asylum and refugee program), which represents 33% of the total resource base. USCIS assessed a total of \$675 million (\$748 million less \$73 million) in overhead costs as a flat percentage of each application/petition and biometric processing activity costs. While the amount of the overhead will vary between processing activities, the percentage of cost is constant.

USCIS reviewed and analyzed the FY 2008/2009 biennial resource base in detail to determine which non-overhead items could be directly traced from the resource base to the immigration benefit application/petition and biometric processing activities. The following depicts the major non-overhead cost items assigned to the immigration benefit application/petition and biometric activities:

Capture Biometrics. Of the \$2.005 billion assigned to immigration benefit application/petition and biometric service processing activities, \$222 million is assigned directly to the “capture biometrics” activity, or 11%. The “capture biometrics” activity includes \$86 million in contract costs and \$13 million in payroll costs (most of which is for Application Support Center managers) of operating the Application Support Centers to electronically capture

applicant's fingerprints, photographs, and signatures, and the associated overhead costs. This activity also includes \$63.6 million in costs paid to the FBI to conduct the appropriate background checks of fingerprints and/or applicant names (depending upon the immigration benefit). This is a change in the manner in which USCIS currently calculates the biometric fee since FBI background check costs were previously included in the immigration benefit application/petition fees. USCIS believes this is a more accurate methodology since there is a direct relationship between the biometric workload and the costs paid to the FBI. In addition, this is a more fair method since applicants now pay for the services they receive, instead of all applicants and petitioners having to bear the costs of FBI background checks as is the case today.

Inform Customers. Of the \$2.005 billion assigned to immigration benefit application/petition and biometric service processing activities, \$195 million is assigned directly to the "Inform Customers" activity, or 10%. "Inform Customers" includes \$54 million for the National Customer Service Center contract and support activities to provide nationwide assistance by telephone to customers calling from within the United States about immigration services and benefits. Most of the \$48 million in payroll costs are for IIO's who assist customers with information necessary to complete required forms and explain the administrative procedures and average cycle times for each application/petition.

Intake. Of the \$2.005 billion assigned to immigration benefit application/petition and biometric service processing activities, \$153 million is assigned directly to the "Intake" activity, or 8%. "Intake" includes \$105 million for activities related to the mail, file, data entry, and fee receipting at USCIS Service Centers. It also includes \$2 million for lockbox activities, which is a bank under contract with the Department of Treasury that performs the electronic fee

receipting, fee deposit, and initial data entry for specific form types.

Conduct IBIS Checks. Of the \$2.005 billion assigned to immigration benefit application/petition and biometric service processing activities, \$25 million is assigned directly to the “Conduct IBIS Check” activity, or 1%. Since July 2002, USCIS has added security checks to the processing of all immigration benefit applications and petitions to help ensure that those who receive immigration benefits have come to join the people of the United States in building a better society and not to do harm. “Conduct IBIS Check” includes \$14 million in payroll costs of Adjudication Officers and other authorized personnel to compare information on applicants, petitioners, beneficiaries, derivatives and household members who apply for an immigration benefit on a USCIS immigration benefit application/petition against various Federal lookout systems.

Review Records. Of the \$2.005 billion assigned to immigration benefit application/petition and biometric service processing activities, \$191 million is assigned directly to the “Review Records” activity, or 10%. “Review Records” includes \$57 million in payroll to oversee records operations (including processing Freedom of Information Act requests) in Headquarters, the National Records Center (a centralized facility for storing alien records), and field offices. This activity also includes a \$21 million records support contract to maintain records at local field offices, and \$15 million in contract support staff in support of the Harrisonburg File Facility for receipt file holdings, and the National Archives and Records Administration contract for the retirement of alien files, among other records activities.

Make Determination. Of the \$2.005 billion assigned to immigration benefit application/petition and biometric service processing activities, \$1.030 billion is assigned

directly to the “Make Determination” activity, or 51%. This activity includes \$361 million in payroll costs for Adjudication Officers and support personnel (e.g. management, clerical, administration, quality assurance, and other analysts), IIO’s directly involved in this activity, \$24 million for the National Benefits Center contract, and \$26 million for the adjudications clerical contract in support of field offices.

Fraud Detection and Prevention. Of the \$2.005 billion assigned to immigration benefit application/petition and biometric service processing activities, \$90 million is assigned directly to the “Fraud Detection and Prevention” activity, or 4%. This activity includes \$43 million in payroll for Immigration Officers and Intelligence Research specialists to detect and combat immigration benefit fraud. The activity also includes \$8 million for a new Compliance Office and \$11.5 million in system enhancements to national security systems and processes as identified under the “Additional Resource Requirements” section.

Issue Document. Of the \$2.005 billion assigned to immigration benefit application/petition and biometric service processing activities, \$99 million is assigned directly to the “Issue Document” activity, or 5%. The “Issue Document” activity involves work performed at centralized facilities to produce secure cards for certain immigration benefits. This includes \$27 million for the Integrated Card Production system, including the contract, consumables, and information and technology operations and maintenance, and \$5 million in payroll costs. The activity also includes \$36.7 million for a backup card production facility as identified under the “Additional Resource Requirements” section.

The FY 2008/2009 resource costs by processing activity are summarized as follows (dollars in thousands).

Table 6

FY 2008/2009 Resource Costs by Processing Activity	Amount
Capture Biometrics	\$222,000
Inform Customers	\$195,000
Intake	\$153,000
Conduct IBIS Checks	\$25,000
Review Records	\$191,000
Make Determination	\$1,030,000
Fraud Detection and Prevention	\$90,000
Issue Document	<u>\$99,000</u>
FY 2008/2009 Resource Costs by Processing Activity	<u>\$2,005,000</u>

X. Identifying Fee-Based Immigration Benefit Application/Petition and Biometric Services

In ABC, the final stage in the process is driving the activity costs to the products. The products are the applications/petitions and biometric services for which USCIS charges a fee. As noted previously, Forms I-821 (Temporary Protected Status) and I-881 (NACARA – Suspension of Deportation or Application Special Rule) are assumed to conclude in the near future and therefore are not included in the list of fee-based applications/petitions. Also, the Form I-905, although identified below, was not included in this fee review since the fee for this form type is newly established and the volume is very low (10). For these form types, the current fee will not change as per this rule. The products are as follows:

Table 7

Form No.	Description
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I-90	Application to Replace Permanent Resident Card
I-102	Application for Replacement/Initial Nonimmigrant Arrival/Departure Record
I-129	Petition for a Nonimmigrant Worker
I-129F	Petition for Alien Fiancé(e)
I-130	Petition for Alien Relative
I-131	Application for Travel Document
I-140	Immigrant Petition for Alien Worker
I-191	Application for Permission to Return to an Unrelinquished Domicile
I-192	Application for Advance Permission to Enter as a Nonimmigrant
I-193	Application for Waiver of Passport and/or Visa
I-212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal
I-290B/Motions	Appeal for any decision other than BIA; Motion to reopen or reconsider decision other than BIA
I-360	Petition for Amerasian, Widow(er), or Special Immigrant
I-485	Application to Register Permanent Residence or to Adjust Status
I-526	Immigrant Petition by Alien Entrepreneur
I-539	Application to Extend/Change Nonimmigrant Status
I-600/600A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing or Orphan Petition
I-601	Application for Waiver on Grounds of Excludability
I-612	Application for Waiver of the Foreign Residence Requirement
I-687	For Filing Application for Status as a Temporary Resident
I-690	Application for Waiver of Excludability
I-694	Notice of Appeal of Decision
I-695	Application for Replacement Employment Authorization or Temporary Residence Card
I-698	Application to Adjust Status from Temporary to Permanent Resident
I-751	Petition to Remove the Conditions on Residence
I-765	Application for Employment Authorization
I-817	Application for Family Unity Benefits
I-824	Application for Action on an Approved Application or Petition
I-829	Petition by Entrepreneur to Remove Conditions
I-905	Application for Authorization to Issue Certification for Health Care Workers
I-914	Application for T Nonimmigrant Status
N-300	Application to File Declaration of Intention
N-336	Request for Hearing on a Decision in Naturalization Procedures
N-400	Application for Naturalization
N-470	Application to Preserve Residence for Naturalization Purposes
N-565	Application for Replacement Naturalization Citizenship Document

N-600/600K	Application for Certification of Citizenship/ Application for Citizenship and Issuance of Certificate under Section 322
Biometric Fee	For Capturing Biometric Information

XI. Assigning Immigration Benefit Application/Petition and Biometric Processing Activity

Costs to Products

The “Capture Biometrics” processing activity was assigned directly to the biometric fee. The other activities represent the basic processing components of all immigration benefit applications and petitions.

In general, the more complex an application, the higher the fee. This is because the largest processing activity cost, “Make Determination,” was assigned to the various immigration benefit applications and petitions by a factor of volume weighted by completion rate (hours per completion). “Volume” is the measure of how many times an activity is performed for a particular product (number of application/petitions and biometrics received in a fiscal year), and “completion rate” measures the average adjudicative time or “level of effort” needed to perform the activity for a particular product, since time is a key factor in determining immigration benefit application and petition fees. The completion rates were based on the most recent data available from the period of April 2005 – March 2006. The exceptions to this general rule that the more complex an application, the higher the fee are when: 1) volumes skew the unit costs (e.g. high volume applications tend to have lower unit costs since fixed costs are allocated over a higher volume base), 2) additional activities were performed, e.g., some applications require the creation of secure cards; and 3) applications and petitions with low volumes were increased only by the average fee increase (discussed later in this rule).

For the processing activities of “Inform Customers,” “Intake,” “Conduct IBIS Check,” “Review Records,” “Fraud Prevention and Detection” and “Issue Document,” the applications and petitions reflect the same average unit processing costs for each activity. This is a departure from how the current fees are based since the current unit processing activity costs varies for every application and petition. USCIS decided that this was the best methodology since a case can be made that these processing activity costs are not particularly driven by the complexity of the application/petition, and also to minimize the dollar impact on the more complex applications and petitions.

A. Volume

The following table identifies the FY 2005 actual volumes, the projected FY 2008/2009 biennial volumes, and the difference (discussed in the “Declining Application/Petition Volumes” section) by application/petition and biometric service. As is the case with the current fee structure, waiver applications (Form I-191, Application for Advance Permission to Return to Unrelinquished Domicile; Form I-192, Application for Advance Permission to Enter as a Non-Immigrant; Form I-193, Application for Waiver of Passport and/or Visa; Form I-212, Application to Reapply for Admission into the U.S. After Deportation; Form I-601, Application for Waiver on Grounds of Excludability; and Form I-612, Application for Waiver of the Foreign Residence Requirement) are combined as “Waiver Applications” for one universal fee for these form types. The volumes for Form I-290B/Motions (Administrative Appeals Office) and Biometric Services (Application Support Centers) are not identified here since specific resources can be directly assigned to these fee-based services, and therefore volumes were not used to allocate costs.

Table 8

Form No.	FY 2005 Actual Volume	FY 2008/2009 Projected Volume	Difference
I-90	699,005	701,631	2,626
I-102	22,218	22,218	
I-129	384,820	383,580	(1,241)
I-129F	63,800	63,800	
I-130	661,502	697,041	35,539
I-131	379,165	104,165	(275,000)
I-140	75,009	135,005	59,996
Waiver Applications	39,306	39,306	
I-360	13,684	13,684	
I-485	629,568	585,721	(43,847)
I-526	332	332	
I-539	223,186	220,000	(3,186)
I-600/600A	30,974	30,974	
I-687	38,769	38,769	
I-690	3,601	3,601	
I-694	409	409	
I-695	132	132	
I-698	881	881	
I-751	117,532	117,532	
I-765	1,744,961	960,138	(784,823)
I-817	5,532	5,532	
I-824	38,307	38,307	
I-829	39	39	
I-881	23,082		(23,082)
I-914	413	413	
N-300	133	133	
N-336	11,089	11,089	
N-400	602,972	713,978	111,006
N-470	556	556	
N-565	28,541	28,541	
N-600/600K	57,931	57,931	

B. Completion Rates

USCIS leveraged “completion rates” to identify the adjudicative time required to

complete specific form types. Completion rates are reflective of what is termed as “touch time” or the time the Adjudication Officer is actually handling or touching the case. It is not reflective of “queue time” or time spent waiting, for example, for additional information or supervisory approval. This is different from cycle time which reflects the total time applicants and petitioners can expect a decision on their case once it is received by USCIS. Even though the completion rates for select applications and petitions have increased since the FY 1998 Fee Review as referenced later in this rule in the “Impact on Applicants and Petitioners” section, cycle times have decreased for the majority of form types, resulting in the aforementioned projected decline in demand for interim benefits and premium processing services.

All Adjudication Officers are required to report this information. In addition to using this data in determining fees, completion rates are a key factor in determining local office staffing allocations to match resources and workload since the type of workload (and amount) dictates the resource requirements. For this reason, the data is scrutinized both at the local office level by management, and at the Performance Management Division (PMD) at the Headquarters level to ensure data accuracy. When the data reported are found to be inconsistent with other offices, or inconsistent with prior reported data, PMD will make contact with the office and make the necessary adjustments. The FY 1998 Fee Review had no choice but to use a method of physical observations (based on a statistically valid sample) since this information was not available at that time. USCIS also places confidence in the data given the consistency of reporting it has witnessed over the last few years – variations in data can be explained. The fact that this information is now available on a continual basis makes it easier for USCIS to update cost information more frequently for fee review and cost management purposes.

District Office, Service Center, and the National Benefit Center completion rates, reflected in terms of hours per completion, are summarized in the following table by application and petition. The completion rates for Form I-290B/Motions (Administrative Appeals Office) and Biometric Services (Application Support Centers) are not identified here since specific resources can be directly assigned to these fee-based services, and therefore they are not necessary to allocate costs.

Table 9

Form No.	District Offices	Service Centers	National Benefit Center
I-90	.12	.19	N/A
I-102	.65	.32	.31
I-129	.15	.41	N/A
I-129F	2.73	.49	.41
I-130	.87	.33	.62
I-131	.50	.22	.13
I-140	2.73	1.06	N/A
Waiver Applications	1.23	1.05	.85
I-360	.89	2.16	N/A
I-485	1.40	.90	1.92
I-526	1.95	6.29	N/A
I-539	1.24	.29	.30
I-600/600A	1.46	N/A	N/A
I-687	3.13	4.70	.20
I-690	2.98	1.11	.25
I-694	.74	.88	N/A
I-695	1.33	.54	N/A
I-698	2.61	2.42	N/A
I-751	1.19	.48	N/A
I-765	.30	.17	.17
I-817	1.65	.61	.60
I-824	.96	.42	.55
I-829	3.18	8.33	N/A
I-914	N/A	3.34	N/A
N-300	1.04	N/A	N/A

N-336	1.39	N/A	N/A
N-400	1.19	N/A	N/A
N-470	1.56	1.00	N/A
N-565	.60	.71	N/A
N-600/600K	.86	1.05	N/A

Note: "N/A" is not applicable.

XII. Determining Fee-Paying Immigration Benefit Application/Petition and Biometric Service Volumes

To calculate unit costs, USCIS identified the number of fee-paying volumes for each application/petition and biometric fee by dividing the actual fee revenues received in FY 2005 by the FY 2005 fee. In the FY 1998 Fee Review, fee revenue information by immigration benefit was not available, and estimates were made to identify the number of fee-paying applications. The "adjustment" column in Table 10 represents the same amount as the "difference" column in Table 8 that calculated the projected volume changes from FY 2005 to FY 2008/2009 (discussed in the "Declining Application/Petition Volumes" section). Also identified are projected volumes for "New Fees" that will be established in separate rulemakings, including the existing Form I-905.

Table 10

Form No.	FY 2005 Fee-Paying Volume	Adjustment	FY 2008/2009 Fee-Paying Volume
I-90	599,391	2,626	602,017
I-102	21,408		21,408
I-129	384,820	(1,241)	383,579
I-129F	63,800		63,800
I-130	661,502	35,539	697,041
I-131	374,616	(275,000)	99,616
I-140	74,678	59,996	134,674
Waiver Applications	39,306		39,306

I-290B/Motions	35,072		35,072
I-360	12,045		12,045
I-485	584,998	(43,847)	541,151
I-526	328		328
I-539	222,668	(3,186)	219,482
I-600/600A	29,146		29,146
I-687	38,714		38,714
I-690	3,601		3,601
I-694	409		409
I-695	86		86
I-698	881		881
I-751	105,880		105,880
I-765	1,622,701	(784,823)	837,878
I-817	5,532		5,532
I-824	38,307		38,307
I-829	21		21
I-881	23,082	(23,082)	
I-914	142		142
N-300	73		73
N-336	11,089		11,089
N-400	575,775	111,006	686,781
N-470	556		556
N-565	27,720		27,720
N-600/600K	57,180		57,180
Subtotal	5,615,527	(922,012)	4,693,515
New Fees		574,126	574,126
Total Applications	5,615,527	(347,886)	5,267,641
Biometric Fee	1,901,674	309,615	2,211,289

XIII. Determining Processing Activity Unit Costs of Immigration Benefit Applications and Petitions

As stated previously, the “capture biometrics” activity relates solely to the Biometrics fee. Table 11 displays the processing activity costs for each application/petition and biometric services by activity (the average application/petition processing activity unit cost is in some cases less than the stated averages when factoring in the volume for new fees that will be

established in separate rulemakings).

Since some low volume form types produced unreasonably high unit costs, USCIS decided to maintain these forms at their current fees and increased them only by the 67% average percentage fee increase for immigration benefit applications and petitions. These form types are therefore not included in the Table 11. The form types are: Form I-360, Petition for Amerasian Widow(er) or Special Immigrant; Form I-526, Immigrant Petition by Alien Entrepreneur; Form I-687, For Filing Application for Status as a Temporary Resident; Form I-690, Application for Waiver of Excludability; Form I-694, Notice of Appeal of Decision; Form I-695, Application for Replacement Employment Authorization or Temporary Residence Card; Form I-698, Application to Adjust Status From Temporary to Permanent Resident; Form I-829, Petition by Entrepreneur to Remove Conditions; Form I-914, Application for T Nonimmigrant Status; Form N-300, Application to File Declaration of Intention; Form N-336, Request for Hearing on a Decision in Naturalization Procedures; and Form N-470, Application to Preserve Residence for Naturalization Purposes.

Table 11

Form No.	Capture Biometrics	Inform Customers	Intake	Conduct IBIS Check	Review Records	Make Determination	Fraud Prevention and Detection	Issue Document	Total Unit Processing Activity Cost
I-90	N/A	\$38	\$29	\$5	\$38	\$66	\$18	\$38	\$232
I-102	N/A	\$38	\$29	\$5	\$38	\$116	\$18		\$244
I-129	N/A	\$38	\$29	\$5	\$38	\$80	\$18		\$208
I-129F	N/A	\$38	\$29	\$5	\$38	\$258	\$18		\$386
I-130	N/A	\$38	\$29	\$5	\$38	\$153	\$18		\$281
I-131	N/A	\$38	\$29	\$5	\$38	\$80	\$18	\$38	\$246
I-140	N/A	\$38	\$29	\$5	\$38	\$351	\$18		\$479
Waiver Applications	N/A	\$38	\$29	\$5	\$38	\$393	\$18		\$521
I-290B/Motions	N/A	\$38	\$29	\$5	\$38	\$544	\$18		\$672
I-485	N/A	\$38	\$29	\$5	\$38	\$437	\$18	\$38	\$603
I-539	N/A	\$38	\$29	\$5	\$38	\$135	\$18		\$263
I-600/600A	N/A	\$38	\$29	\$5	\$38	\$544	\$18		\$672
I-751	N/A	\$38	\$29	\$5	\$38	\$247	\$18	\$38	\$413
I-765	N/A	\$38	\$29	\$5	\$38	\$80	\$18	\$38	\$246
I-817	N/A	\$38	\$29	\$5	\$38	\$239	\$18	\$38	\$405
I-824	N/A	\$38	\$29	\$5	\$38	\$182	\$18		\$310
N-400	N/A	\$38	\$29	\$5	\$38	\$469	\$18		\$597
N-565	N/A	\$38	\$29	\$5	\$38	\$223	\$18		\$351
N-600/600K	N/A	\$38	\$29	\$5	\$38	\$319	\$18		\$447
Average Application/Petition	N/A	\$37	\$29	\$5	\$36	\$195	\$17	\$19	\$338
Biometric Services	\$100	N/A	N/A	N/A	N/A	N/A	N/A	N/A	\$100

XIV. Determining Unit Surcharge Costs by Immigration Benefit Application/Petition

The final step in calculating the immigration benefit application and petition fees is to add amounts to recover asylum and refugee costs, and fee waiver and exempt costs. These costs are referred to as “surcharges” since they are not directly related to the processing activity costs of a particular immigration benefit. Surcharges are not applicable to the biometric fee.

A. Fee Waiver/Exempt Surcharge

As noted previously, Congress has authorized USCIS to set its fees at a level that will generate sufficient revenue to fund the costs of providing similar services to other immigrants at no charge. USCIS determined the full costs of fee waivers and exemptions by subtracting the volume from the fee-paying volume of each application/petition, and multiplying that amount by the current fee. This amount was determined to be \$69 million, or an average of \$14 per application/petition (based on total fee-paying volume of 5.27 million less 200 thousand in volume from new fees where the surcharge is not applied). This amount represents approximately 3% of the total resource base funding.

USCIS used the same \$14 average unit fee/exemption surcharge cost for every application and petition. This is a departure from how the current fees are based, since the current fee waiver and exempt surcharge varies per application/petition since it is based upon a flat percentage of each application/petition processing activity costs. USCIS decided that this was the best methodology since the fee waiver and exempt surcharge is unrelated to the complexity of the application/petition, and also to minimize the dollar impact on the more complex applications and petitions.

B. Asylum and Refugee Surcharge

As noted previously, Congress has authorized USCIS to set its fees at a level that will generate sufficient revenue to fund the processing of asylum and refugee operations. The full costs of Asylum and Refugee operations were determined to be \$180 million, or an average of \$36 per application/petition (based on total fee-paying volume of 5.27 million less 200 thousand in volume from new fees where the surcharge is not applied). This amount represents approximately 8% of the total resource base funding.

USCIS used the same \$36 average unit fee/exempt surcharge costs for each application and petition. This is a departure from how the current fees are based, since the current fee waiver and exempt surcharge varies per application/petition since it is based upon a flat percentage of each application/petition processing activity costs. USCIS decided that this was the best methodology since the fee waiver and exempt surcharge is unrelated to the complexity of the application/petition, and also to minimize the dollar impact on the more complex applications and petitions.

Table 12 shows the amount of surcharges applied to each application and petition on a per unit basis. Unit processing activity costs average \$338 or 89% of an immigration benefit application/petition, while unit fee waiver and exemption surcharges, and asylum and refugee surcharges average \$47 or 11% (the average application/petition surcharge is \$13 instead of \$14 for fee waivers/exemptions, and \$34 instead of \$36 for asylum/refugee operations when factoring in the volume for new fees that will be established in separate rulemakings).

Table 12

Form No.	Unit Processing Activity Cost	Unit Fee Waiver/ Exempt Surcharge	Unit Asylum/ Refugee Surcharge	Total Unit Cost
I-90	\$232	\$14	\$36	\$282
I-102	\$244	\$14	\$36	\$294
I-129	\$208	\$14	\$36	\$258
I-129F	\$386	\$14	\$36	\$436
I-130	\$281	\$14	\$36	\$331
I-131	\$246	\$14	\$36	\$296
I-140	\$479	\$14	\$36	\$529
Waiver Applications	\$521	\$14	\$36	\$571
I-290B/Motions	\$672	\$14	\$36	\$722
I-360	\$269	\$14	\$36	\$319
I-485	\$603	\$14	\$36	\$653
I-526	\$755	\$14	\$36	\$805
I-539	\$263	\$14	\$36	\$313
I-600/600A	\$672	\$14	\$36	\$722
I-687	\$378	\$14	\$36	\$428
I-690	\$110	\$14	\$36	\$160
I-694	\$135	\$14	\$36	\$185
I-695	\$60	\$14	\$36	\$110
I-698	\$252	\$14	\$36	\$302
I-751	\$413	\$14	\$36	\$463
I-765	\$246	\$14	\$36	\$296
I-817	\$405	\$14	\$36	\$455
I-824	\$310	\$14	\$36	\$360
I-829	\$746	\$14	\$36	\$796
I-914	\$403	\$14	\$36	\$453
N-300	\$152	\$14	\$36	\$202
N-336	\$395	\$14	\$36	\$445
N-400	\$597	\$14	\$36	\$647
N-470	\$210	\$14	\$36	\$260
N-565	\$351	\$14	\$36	\$401
N-600/600K	\$447	\$14	\$36	\$497
Average Application/Petition	\$338	\$13	\$34	\$385

XV. Proposed Fee Adjustments

The average fee increase is approximately \$155 per immigration benefit application or petition, or 67%. The biometric fee is increased by \$30, from \$70 to \$100, or 43%. The last time USCIS performed a comprehensive fee review in FY 1998, the immigration benefit application/petition fees increased by an average \$65 or 76%, from \$85 to \$150.

The proposed fee schedule for the IEFA is illustrated in Table 13. To arrive at the final proposed fee, the unit costs are rounded up or down to the nearest \$5 increment consistent with past fee adjustment practices. The proposed rounded fee for each application/petition is compared to the current rounded fee, and the difference between the two is identified. The average application/petition fee factors in the new fees that will be established in separate rulemakings.

Table 13

Form No.	Current Fee	Proposed Fee	Difference
I-90	\$190	\$280	\$90
I-102	\$160	\$295	\$135
I-129	\$190	\$255	\$65
I-129F	\$170	\$435	\$265
I-130	\$190	\$330	\$140
I-131	\$170	\$295	\$125
I-140	\$195	\$530	\$335
Waiver Applications	\$265	\$570	\$305
I-290B/Motions	\$385	\$725	\$340
I-360	\$190	\$320	\$130
I-485	\$325	\$650	\$325
I-526	\$480	\$805	\$325
I-539	\$200	\$310	\$110
I-600/600A	\$545	\$720	\$175
I-687	\$255	\$425	\$170
I-690	\$95	\$160	\$65
I-694	\$110	\$185	\$75
I-695	\$65	\$110	\$45

I-698	\$180	\$300	\$120
I-751	\$205	\$460	\$255
I-765	\$180	\$295	\$115
I-817	\$200	\$455	\$255
I-824	\$200	\$360	\$160
I-829	\$475	\$795	\$320
I-914	\$270	\$450	\$180
N-300	\$120	\$200	\$80
N-336	\$265	\$445	\$180
N-400	\$330	\$645	\$315
N-470	\$155	\$260	\$105
N-565	\$220	\$400	\$180
N-600/600K	\$255	\$495	\$240
Average Application/Petition	\$230	\$385	\$155
Biometric Fee	\$70	\$100	\$30

Based on the proposed fee schedule and a projected application/petition fee-paying volume of 5.27 million and biometric service volume of 2.2 million, immigration benefit application/petition and biometric fees will generate \$2.286.5 billion in annual revenue for the FY 2008 and FY 2009 biennial period. For the same period, the estimated annual cost of processing immigration benefit applications/petitions and biometric services is \$2.287 billion. The \$500 thousand difference is due to rounding.

XVI. Impact on Applicants and Petitioners

The USCIS recognizes that this rule will have an impact on persons who file the affected applications/petitions and biometric fees. The proposed fee increases range from \$45 to \$335 depending on the type of immigration benefit applied for. Seven fees will increase by amounts between \$45 and \$100; fourteen fees will increase by amounts between \$100 and \$200; four fees will increase by amounts between \$200 and \$300; and seven fees will increase more than \$300.

However, USCIS has the authority to waive fees on a case-by-case basis pursuant to 8

CFR 103.7(c). In all fee waiver requests, applicants are required to demonstrate "inability to pay." In determining "inability to pay," USCIS officers will consider all factors, circumstances, and evidence supplied by the applicant including age, disability, household income, and qualification within the past 180 days for a federal means tested benefit.

The current fees are based on a comprehensive fee review completed in FY 1998 that was based on projected FY 1998 costs and volumes, and processes that existed in FY 1996. This fee review proposes to correctly align the fees with the most current costs and processes. The methodology is similar to the FY 1998 Fee Review, yet improved in many areas given the more accurate data sources (actual data versus estimates) and improved management tools of aligning resources and workload (Staffing Allocation Model). For these reasons, it is difficult to compare the proposed fees to the current fees since so many of the factors that influence the costs of processing immigration benefit application and petition fees have changed over this significant amount of time. However, besides the fact that overall costs have increased dramatically, the increases in the fees can be explained when analyzing the main factors that drive the costs; volume (the number of applications and petitions received) and time or "level of effort" (termed "completion rates" for the measure of hours per completion for a particular application or petition). In general, the higher the volume, the lower the fee since fixed costs are distributed over a larger base, and the more time or "level of effort" spent on a particular application or petition, the higher the fee. For example, a significant increase in the proposed fees for the Form I-140, Immigrant Petition for Alien Worker, is due to the threefold increase in completion rates as compared with the FY 1998 Fee Review; the significant increase in the proposed fees for the Form I-129F, Petition for Alien Fiancé, is due to the threefold increase in completion rates

and the lower volume projections as compared with the FY 1998 Fee Review; the significant increase in the proposed fees for the “Waiver Applications” is due to the doubling in completion rates as compared with the FY 1998 Fee Review; the significant increase in the proposed fees for the Form I-485, Application to Register Permanent Status or Adjust Status, is due to the doubling in completion rates as compared with the FY 1998 Fee Review; the significant increase in the proposed fees for the Form N-400, Application for Naturalization, is due to the doubling in completion rates and lower projected volumes as compared with the FY 1998 Fee Review; the significant increase in the proposed fees for the Form I-751, Petition to Remove the Conditions on Residence, is due to the doubling in completion rates as compared with the FY 1998 Fee Review; and the significant increase in the proposed fees for the Form I-817, Application for Family Unity Benefits, is due to the threefold increase in completion rates and the lower volume projections as compared with the FY 1998 Fee Review. Finally, even though the fee for Form I-290B/Motions was significantly increased recently (September 28, 2005), the actual Fee Review was completed in November 2002. As such, the data that was used for the current fee is relatively old and as this rulemaking discusses, costs have increased significantly since then. The November 2002 Fee Review was also not a comprehensive analysis – it did not analyze the full costs outside the Administrative Appeals Office that should be assigned to this form type, such as overhead, and activities such as “Fraud Prevention and Detection,” and “Inform Customers.” In addition, the November 2002 Fee Review did not include the allocation of fee waiver/exempt and asylum and refugee surcharges to the Form I-290B/Motions as this rulemaking does.

Regulatory Flexibility Act

This rule has been reviewed in accordance with 5 U.S.C. 605(b), and the Department of Homeland Security certifies that this rule will not have a significant economic impact on a substantial number of small entities. The majority of applications and petitions are submitted by individuals and not small entities as that term is defined in 5 U.S.C. 601(6).

USCIS acknowledges, however, that a number of small entities, particularly those filing business-related applications and petitions, such as Form I-140, Immigrant Petition for Alien Worker; Form I-129, Petition for a Nonimmigrant Worker, may be affected by this rule. For the FY 2008/2009 biennial time period, USCIS projects that approximately 270,000 Forms I-140 and 770,000 Forms I-129 will be filed. However, this volume represents petitions filed by a variety of businesses, ranging from large multinational corporations to small domestic businesses. USCIS does not collect data on the size of the businesses filing petitions, and therefore does not know the number of small businesses that may be affected by this rule. However, even if all of the employers applying for benefits met the definition of small businesses, the resulting degree of economic impact would not require a Regulatory Flexibility Analysis to be performed.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will result in an annual effect on the economy of more than \$100 million, in order to generate the revenue necessary to fully fund the increased cost associated with the processing of immigration benefit applications and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to other immigrants, as specified in the regulation, at no charge. The increased costs will be recovered through the fees charged for various immigration benefit applications.

Executive Order 12866

This rule is considered by the Department of Homeland Security to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. The implementation of this proposed rule would provide USCIS with an additional \$886 million in FY 2008 and FY 2009 in annual fee revenue, based on a projected annual fee-paying volume of 5.27 million applications/petitions and 2.2 million in biometric services, over the fee revenue that would be collected under the current fee structure. This increase in revenue will be used pursuant to subsections 286(m) and (n) of the INA to fund the full costs of processing immigration benefit applications and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to other immigrants at no charge. If USCIS does not adjust the current fees to recover the full costs of processing immigration benefit applications, USCIS would be forced to enact significant spending reductions resulting in a reversal of the considerable progress it has made over the last several years to reduce the backlog of immigration benefit applications and petitions. If such

reductions are necessary, USCIS will not curb any security-related activities in an effort to remain solvent. The revenue increase is based on USCIS costs and projected volumes that were available at the time of the rule. Accordingly, this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Homeland Security has determined that this rule does not have sufficient Federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104-13, 109 Stat. 163 (1995), all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

It should be noted that the changes to the fees will require changes to the application/petition forms to reflect the new fees. USCIS will submit a notification to OMB with respect to any such changes.

List of Subjects in 8 CFR Part 103

Administrative practice and procedures, Authority delegations (government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103--POWERS AND DUTIES; AVAILABILITY OF RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552(a); 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107-296, 116 Stat. 2135 (6 U.S.C.1 et seq.); E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

2. Section 103.7 is amended by revising the following forms in paragraph (b)(1):

§103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

For capturing biometric information. A service fee of \$100 will be charged for any individual who is required to have biometric information captured in connection with an application or petition for certain immigration and naturalization benefits (other than asylum), and whose residence is in the United States.

* * * * *

Form I-90. For filing an application for a Permanent Resident Card (Form I-551) in lieu

of an obsolete card or in lieu of one lost, mutilated, or destroyed, or for a change in name--\$280.

* * * * *

Form I-102. For filing a petition for an application (Form I-102) for Arrival/Departure Record (Form I-94) or Crewman's Landing (Form I-95), in lieu of one lost, mutilated, or destroyed--\$295.

Form I-129. For filing a petition for a nonimmigrant worker--\$255.

Form I-129F. For filing a petition to classify a nonimmigrant as a fiancée or fiancé under section 214(d) of the Act--\$435.

Form I-130. For filing a petition to classify status of an alien relative for issuance of an immigrant visa under section 204(a) of the Act--\$330.

Form I-131. For filing an application for travel documents--\$295.

Form I-140. For filing a petition to classify preference status of an alien on the basis of profession or occupation under section 204(a) of the Act--\$530.

Form I-191. For filing an application for discretionary relief under section 212(c) of the Act--\$570.

Form I-192. For filing an application for discretionary relief under section 212(d)(3) of the Act, except in an emergency case, or where the approval of the application is in the interest of the United States Government--\$570.

Form I-193. For filing an application for waiver of passport and/or visa--\$570.

Form I-212. For filing an application for permission to reapply for an excluded, deported or removed alien, an alien who has fallen into distress, an alien who has been removed as an alien enemy, or an alien who has been removed at government expense in lieu of deportation--

\$570.

* * * * *

Form I-290B. For filing an appeal from any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction--\$725.00 (the fee will be the same when an appeal is taken from the denial of a petition with one or multiple beneficiaries, provided that they are all covered by the same petition, and therefore, the same decision).

Form I-360. For filing a petition for an Amerasian, Widow(er), or Special Immigrant--\$320, except there is no fee for a petition seeking classification as an Amerasian.

Form I-485. For filing an application for permanent resident status or creation of a record of lawful permanent residence--\$650 for an applicant 14 years of age or older; \$550 for an applicant under the age of 14 years; no fee for an applicant filing as a refugee under section 209(a) of the Act.

* * * * *

Form I-526. For filing a petition for an alien entrepreneur--\$805.

Form I-539. For filing an application to extend or change nonimmigrant status--\$310.

* * * * *

Form I-600. For filing a petition to classify an orphan as an immediate relative for issuance of an immigrant visa under section 204(a) of the Act. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)--\$720.

Form I-600A. For filing an application for advance processing of orphan petition.

(When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)--\$725.

Form I-601. For filing an application for waiver of ground of inadmissibility under section 212(h) or (i) of the Act. (Only a single application and fee shall be required when the alien is applying simultaneously for a waiver under both those subsections.)--\$570.

Form I-612. For filing an application for waiver of the foreign-residence requirement under section 212(e) of the Act--\$570.

Form I-687. For filing an application for status as a temporary resident under section 245A (a) of the Act. A fee of \$425 for each application or \$275 for each application for a minor child (under 18 years of age) is required at the time of filing with the Department of Homeland Security. The maximum amount payable by a family (husband, wife, and any minor children) shall be \$1,125.

Form I-690. For filing an application for waiver of a ground of inadmissibility under section 212(a) of the Act as amended, in conjunction with the application under sections 210 or 245A of the Act, or a petition under section 210A of the Act--\$160.

Form I-694. For appealing the denial of an applications under sections 210 or 245A of the Act, or a petition under section 210A of the Act--\$185.

Form I-695. For filing an application for replacement of temporary resident card (Form I-688)--\$110.

Form I-698. For filing an application for adjustment from temporary resident status to that of lawful permanent resident under section 245A(b)(1) of the Act. For applicants filing

within 31 months from the date of adjustment to temporary resident status, a fee of \$260 for each application is required at the time of filing with the Department of Homeland Security. The maximum amount payable by a family (husband, wife, and any minor children (under 18 years of age living at home)) shall be \$780. For applicants filing after thirty-one months from the date of approval of temporary resident status, who file their applications on or after July 9, 1991, a fee of \$300 (a maximum of \$900 per family) is required. The adjustment date is the date of filing of the application for permanent residence or the applicant's eligibility date, whichever is later.

* * * * *

Form I-751. For filing a petition to remove the conditions on residence, based on marriage--\$460.

Form I-765. For filing an application for employment authorization pursuant to 8 CFR 274a.13--\$295.

* * * * *

Form I-817. For filing an application for voluntary departure under the Family Unity Program--\$455.

* * * * *

Form I-824. For filing for action on an approved application or petition--\$360.

Form I-829. For filing a petition by entrepreneur to remove conditions--\$795.

* * * * *

Form I-914. For filing an application to classify an alien as a nonimmigrant under section 101(a)(15)(T) of the Act (victims of a severe form of trafficking in persons and their immediate family members)--\$450. For each immediate family member included on the same

application, an additional fee of \$300 per person, up to a maximum amount payable per application of \$900.

Form N-300. For filing an application for declaration of intention--\$200.

Form N-336. For filing a request for hearing on a decision in naturalization proceedings under section 336 of the Act--\$445.

Form N-400. For filing an application for naturalization (other than such application filed on or after October 1, 2004, by an applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service, for which no fee is charged)--\$645.

* * * * *

Form N-470. For filing an application for benefits under section 316(b) or 317 of the Act--\$260.

Form N-565. For filing an application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343(c) of the Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(b) of the Act--\$400.

Form N-600. For filing an application for a certificate of citizenship under section 309(c) or section 341 of the Act--\$495, for applications filed on behalf of a biological child and \$455 for applications filed on behalf of an adopted child.

Form N-600K. For filing an application for citizenship and issuance of certificate under section 322 of the Act--\$495, for an application filed on behalf of a biological child and \$455 for an application filed on behalf of an adopted child.

* * * * *

Motion. For filing a motion to reopen or reconsider any decision under the immigration laws in any type of proceeding over which the Executive Office for Immigration Review does not have jurisdiction. No fee shall be charged for a motion to reopen or reconsider a decision on an application for relief for which no fee is chargeable or for any motion to reopen or reconsider made concurrently with any initial application for relief under the immigration laws for which no fee is chargeable. (The fee of \$725 shall be charged whenever an appeal or motion is filed by or on behalf of two or more aliens and all such aliens are covered by one decision. When a motion to reopen or reconsider is made concurrently with any application for relief under the immigration laws for which a fee is chargeable, the motion is filed and, if the motion is granted, the requisite fee for filing the application for relief will be charged and must be paid within the time specified in order to complete the application.)--\$725.

* * * * *

Dated:

Michael Chertoff,

Secretary.

BILLING CODE: 4410-10

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

8 CFR Part 103

CIS No. 2393-06

DHS Docket No. USCIS-2006-0044

RIN 1615-AB53

Adjustment of the Immigration and Naturalization

Benefit Application and Petition Fee Schedule

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes to adjust the immigration and naturalization benefit application and petition fees of the Immigration Examinations Fee Account. Fees collected from persons requesting these benefits are deposited into the Immigration Examinations Fee Account. These fees are used to fund the full cost of processing immigration and naturalization benefit applications and petitions, biometric services, and associated support services. In addition, these fees must recover the cost of providing similar services to asylum and refugee applicants and certain other immigrants at no charge.

The fees that fund the Immigration Examinations Fee Account were last updated on October 26, 2005, solely to reflect an increase in costs due to inflation. The last comprehensive fee review was conducted in fiscal year 1998. U.S. Citizenship and

Immigration Services has now conducted a new comprehensive review of the resources and activities funded by the Immigration Examinations Fee Account and determined that the current fees do not reflect current processes or recover the full costs of services that should be provided. Therefore, this rule proposes to increase the immigration and naturalization benefit application and petition fee schedule by a weighted average of \$244, from an average fee of \$231 to \$475, and to increase the biometric fee by \$20, from \$70 to \$90. These increases will ensure sufficient funding to meet immediate national security, customer service, and standard processing time goals, and sustain and improve service delivery. Furthermore, the rule proposes to merge the fees for certain applications so applicants will pay a single fee rather than paying several fees for related services.

This rule also proposes generally to allocate costs for surcharges and routine processing activities evenly across all form types for which fees are charged, and to vary fees in proportion to the amount of adjudication decision-making and interview time typically required according to the agency's current records. This rule proposes to eliminate U.S. Citizenship and Immigration Services' operational dependency on certain fees for interim benefits, duplicative filings, and premium processing. The rule also proposes to modify substantially the availability of fee waivers by limiting them to certain specified form types.

DATES: Written comments must be submitted on or before [Insert date 60 days from the date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS-2006-0044 by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW, 3rd Floor, Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS-2006-0044 on your correspondence. This mailing address may also be used for paper, disk, or CD-ROM submissions.
- Hand Delivery/Courier: Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW, 3rd Floor, Washington, DC 20529. Contact Telephone Number (202) 272-8377.

FOR FURTHER INFORMATION CONTACT: Paul Schlesinger, Chief, Office of Budget, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW, Suite 4052, Washington, DC 20529, telephone (202) 272-1930.

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List of Acronyms and Abbreviations

- ABC -- Activity-Based Costing.
- AAO -- Administrative Appeals Office.
- CBP -- Bureau of Customs and Border Protection.
- CFO Act -- Chief Financial Officers Act of 1990.
- CFO -- Chief Financial Officer.
- COOP -- Continuity of Operations.
- CHEP -- Cuban Haitian Entrant Program.
- EEV -- Employment Eligibility Verification.
- FASAB -- Federal Accounting Standards Advisory Board.
- FBI -- Federal Bureau of Investigation.
- FISMA -- Federal Information Security Management Act.
- FY -- Fiscal Year.
- FDNS -- Fraud Detection and National Security.
- FOIA -- Freedom of Information Act.
- GAO -- Government Accountability Office.
- GPRA -- Government Performance Results Act of 1993.
- HSA -- Homeland Security Act of 2002.
- IEFA -- Immigration Examination Fee Account.
- ICE -- Immigration and Customs Enforcement.
- IIO -- Immigration Information Officers.
- INA -- Immigration and Nationality Act.
- ILA -- Individual Learning Account.
- IT -- Information Technology.
- IBIS -- Interagency Border Inspection System.
- LAP -- Lease Acquisition Program.
- NARA -- National Archives and Records Administration.
- NRP -- National Recruitment Program.
- NSRV -- National Security and Records Verification.
- NACARA -- Nicaraguan Adjustment and Central American Relief Act.
- ORS -- Office of Records Services.
- OSI -- Office of Security and Investigations.
- OMB -- Office of Management and Budget.
- PMD -- Performance Management Division.
- PA -- Privacy Act.
- RFA -- Regulatory Flexibility Act.
- SBA -- Small Business Administration.
- SAVE -- Systematic Alien Verification for Entitlements.
- TPS -- Temporary Protected Status.
- UMRA -- Unfunded Mandates Reform Act of 1995.
- USPS -- United States Postal Service.
- USCIS -- United States Citizenship and Immigration Services.

VAWA -- Violence Against Women Act.

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. Comments that will provide the most assistance to U.S. Citizenship and Immigration Services (USCIS) in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and DHS Docket No. USCIS-2006-0044 for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected at the Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529.

The docket includes additional documents that support the analysis contained in this rule to determine the specific fees that are proposed. These documents include:

- FY 2008 / 2009 Fee Review Supporting Documentation; and
- Small Entity Analysis for Adjustment of the Immigration Benefit Application/Petition and Biometric Fee Schedule.

These documents may be reviewed on the electronic docket. The budget methodology software used in computing the immigration benefit application/petition and biometric fees is a commercial product licensed to U.S. Citizenship and Immigration Services which may be accessed on-site by appointment by calling (202) 272-1930.

II. Legal Authority and Requirements

The Immigration and Nationality Act (INA) provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including the costs of providing similar services without charge to asylum applicants and certain other immigrants. INA section 286(m), 8 U.S.C. 1356(m). The costs of providing services without charge must be funded by filing fees from other application and petition types and are referred to as “surcharges.” The INA also states that the fees may recover administrative costs as well. Id. The fee revenue collected under section 286(m) of the INA remains available to provide immigration and naturalization benefits and the collection of, safeguarding of, and accounting for fees. INA section 286(n), 8 U.S.C. 1356(n).

U.S. Citizenship and Immigration Services (USCIS) must also conform to the requirements of the Chief Financial Officers Act of 1990 (CFO Act), 31 U.S.C. 901-03. The CFO Act requires each agency's Chief Financial Officer (CFO) to “review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value.” Id. at 902(a)(8). This proposed rule reflects recommendations made by the DHS CFO and USCIS CFO.

Office of Management and Budget (OMB) Circular A-25 establishes Federal policy regarding fees assessed for Government services and the basis upon which user charges are to be set to be sufficient to recover the full cost to the Federal Government. OMB Circular A-25, User Charges (Revised), section 6, 58 FR 38142 (July 15, 1993). Full costs include, but are not limited to, an appropriate share of:

(a) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;

(b) Physical overhead, consulting, and other indirect costs, including material and supply costs, utilities, insurance, travel and rents or imputed rents on land, buildings, and equipment; and,

(c) Management and supervisory costs.

Full costs are determined based upon the best available records of the agency. Id. See also OMB Circular A-11, section 31.12 (June 30, 2006) (FY 2008 budget formulation and execution policy regarding user fees), found at http://www.whitehouse.gov/omb/circulars/a11/current_year/a11_toc.html.

When developing fees for services, USCIS also looks to the cost accounting concepts and standards recommended by the Federal Accounting Standards Advisory Board (FASAB). The FASAB defines “full cost” to include “direct and indirect costs that contribute to the output, regardless of funding sources.” Federal Accounting Standards Advisory Board, Statement of Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government 36 (July 31, 1995). To obtain full cost, FASAB identifies various classifications of costs to be included, and recommends various methods of cost assignment. Id. at 33-42.

These statutes and Administration policies require periodic policy decisions establishing the types and levels of services to be provided and the manner by which costs are allocated to particular types of activities for which fees are collected. This rule proposes enhanced service levels, more complete funding of existing services, and specific cost allocation methods.

III. The Immigration Examinations Fee Account

A. General Background.

In 1988, Congress established the Immigration Examination Fee Account (IEFA). Pub. L. 100-459, sec. 209, 102 Stat. 2186 (Oct. 1, 1988); enacting, after correction, INA sections 286(m), (n), 8 U.S.C. 1356(m), (n). Since 1989, fees deposited into the IEFA have been the primary source of funding for providing immigration and naturalization benefits, and other benefits as directed by Congress. In subsequent legislation, Congress directed that the IEFA fund the cost of asylum processing and other services provided to immigrants at no charge. Pub. L. 101-515, sec. 210(d)(1), (2), 104 Stat. 2101, 2121 (Nov. 5, 1990). Consequently, the immigration benefit application fees were increased to recover these additional costs. E.g., 59 FR 30520 (June 14, 1994).

USCIS, with limited exceptions, prepares all fingerprint cards (and electronic fingerprint capture) used to conduct Federal Bureau of Investigation (FBI) criminal background checks on individuals applying for certain benefits under the INA. Pub. L. 105-119, tit. I, 111 Stat. 2440, 2448 (Nov. 26, 1997). This legislation also authorizes USCIS to charge a fee for this fingerprinting service (which is now referred to as a biometric service fee). Id. The fees are deposited into the IEFA and are available for expenditure by USCIS to provide services. INA section 286(n), 8 U.S.C. 1356(n).

Table 1 lists, by form number, the types of immigration benefit applications and petitions for which fees are collected.¹

Table 1 – Types of Immigration Benefit Applications and Petitions	
Form No.	Description
I-90	Application to Replace Permanent Resident Card
I-102	Application for Replacement/Initial Nonimmigrant Arrival--Departure Document
I-129	Petition for a Nonimmigrant Worker
I-129F	Petition for Alien Fiancé(e)
I-130	Petition for Alien Relative
I-131	Application for Travel Document
I-140	Immigrant Petition for Alien Worker
I-191	Application for Advance Permission to Return to Unrelinquished Domicile
I-192	Application for Advance Permission to Enter as Nonimmigrant
I-193	Application for Waiver of Passport and/or Visa
I-212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal
I-290B / Motions	Appeal for any decision other than BIA; Motion to reopen or reconsider decision other than BIA
I-360	Petition for Amerasian, Widow(er), or Special Immigrant
I-485	Application to Register Permanent Residence or Adjust Status
I-526	Immigrant Petition by Alien Entrepreneur
I-539	Application to Extend/Change Nonimmigrant Status
I-600/600A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing of Orphan Petition
I-601	Application for Waiver on Grounds of Excludability
I-612	Application for Waiver of the Foreign Residence Requirement
I-687	For Filing Application for Status as a Temporary Resident
I-690	Application for Waiver of Excludability
I-694	Notice of Appeal of Decision
I-695	Application for Replacement Employment Authorization or Temporary Residence Card
I-698	Application to Adjust Status from Temporary to Permanent Resident
I-751	Petition to Remove the Conditions on Residence
I-765	Application for Employment Authorization

1. The Form I-905, Application for Authorization to Issue Certification for Health Care Workers, is represented in the table below and in subsequent tables for the purpose of identifying total IEFA volume, but is not subject to the proposed fee adjustments in this rule since the form type and associated fee has only recently been established.

I-817	Application for Family Unity Benefits
I-821	Application for Temporary Protected Status
I-824	Application for Action on an Approved Application or Petition
I-829	Petition by Entrepreneur to Remove Conditions
I-881	Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Pub.L. 105-100 (NACARA))
I-905	Application for Authorization to Issue Certification for Health Care Workers
I-914	Application for T Nonimmigrant Status
N-300	Application to File Declaration of Intention
N-336	Request for Hearing on a Decision in Naturalization Procedures
N-400	Application for Naturalization
N-470	Application to Preserve Residence for Naturalization Purposes
N-565	Application for Replacement Naturalization/Citizenship Document
N-600/600K	Application for Certification of Citizenship/ Application for Citizenship and Issuance of Certificate under Section 322
Biometrics	Capturing and Processing Biometric Information

Several IEFA fees are set by statute. Section 244(c)(1)(B) of the INA, 8 U.S.C. 1254a(c)(1)(B), limits the filing fee for Temporary Protected Status (Form I-821) to \$50. Section 286(u) of the INA, 8 U.S.C. 1356(u), created a Premium Processing Service for certain kinds of employment-based applications, and set the premium fee at \$1,000. Premium Processing Service guarantees that USCIS will process a petition or application within 15 calendar days of receiving a Form I-907, Request for Premium Processing Service. 8 CFR 103.2(f). The use of premium processing fees is limited to providing premium processing services themselves and to making infrastructure improvements in adjudications and customer service processes. INA section 286(u), 8 U.S.C. 1356(u). Other statutory fees relating to immigration services are not affected by this rule.

As is the case with the current fee structure, waiver applications (Form I-191, Application for Advance Permission to Return to Unrelinquished Domicile; Form I-192,

Application for Advance Permission to Enter as a Non-Immigrant; Form I-193, Application for Waiver of Passport and/or Visa; Form I-212, Application to Reapply for Admission into the U.S. After Deportation; Form I-601, Application for Waiver on Grounds of Excludability; and Form I-612, Application for Waiver of the Foreign Residence Requirement) will be combined and subsequently referenced as “Waiver Applications.” There is one universal fee for these application and form types.

In addition to the IEFA, USCIS receives fee funding from several smaller, specific accounts, such as the H-1B Nonimmigrant Petitioner Account under section 286(s) of the INA, 8 U.S.C. 1356(s), and the Fraud Prevention and Detection Account under section 286(v) of the INA, 8 U.S.C. 1356(v), which are not affected by this proposed rule. In the President’s FY 2007 Budget, USCIS also requested appropriated funds for the Systematic Alien Verification for Entitlements (SAVE) and Employment Eligibility Verification (EEV) programs, as well as for the Business Transformation program. Funds from the IEFA are, however, distributed at the present time to every program within the USCIS including these programs.

B. Fee Schedule History.

The current immigration benefit application and petition fees are based on a review implemented in fiscal year (FY) 1998, adjusted for cost of living increases and other factors. The fees have since been periodically adjusted for inflation with the last adjustment for inflation effective October 25, 2005. 70 FR 56182 (Sept. 26, 2005).

USCIS began charging a fee for fingerprinting services in 1998. 63 FR 12979 (Mar. 17, 1998). USCIS later adjusted the fee to recover the full costs of providing

fingerprinting services. 66 FR 65811 (Dec. 21, 2001). The biometric fee was last adjusted on April 30, 2004 to \$70. 69 FR 20528 (April 15, 2004).

Table 2 illustrates the history of the adjustments to the IEFA fee schedule and the biometric fee schedule.

Table 2 – History of Immigration Benefit Application and Petition Fees

Form Type	Prior to IEFA		FY 1989	FY 1991	FY 1994	FY 1998	FY 2002	FY 2004	Current Fees
	FY 1985	FY 1986							
I-90	\$15		\$35	\$70	\$75	\$110	\$130	\$185	\$190
I-102	\$15		\$35	\$50	\$65	\$85	\$100	\$155	\$160
I-129	\$35		\$50	\$70	\$75	\$110	\$130	\$185	\$190
I-129F	\$35		\$40	\$75	\$75	\$95	\$110	\$165	\$170
I-130	\$35		\$40	\$75	\$80	\$110	\$130	\$185	\$190
I-131	\$15		\$45	\$65	\$70	\$95	\$110	\$165	\$170
I-140	\$50	\$35	\$50	\$70	\$75	\$115	\$135	\$190	\$195
Waiver Applications	\$35		\$45	\$90	\$95	\$170	\$195	\$250	\$265
I-290B/Motions	\$50		\$110						\$385
I-360						\$110	\$130	\$185	\$190
I-485	\$50		\$60	\$120	\$130	\$220	\$255	\$315	\$325
I-526				\$140	\$155	\$350	\$400	\$465	\$480
I-539	\$15		\$35	\$70	\$75	\$120	\$140	\$195	\$200
I-600/600A	\$50		\$75	\$140	\$155	\$405	\$460	\$525	\$545
I-687				\$185	\$185	\$185	\$185	\$240	\$255
I-690							\$35	\$90	\$95
I-694	\$50						\$50	\$105	\$110
I-695				\$15	\$15	\$15	\$15	\$65	\$65
I-698	\$120						\$120	\$175	\$180
I-751			\$35	\$65	\$80	\$125	\$145	\$200	\$205
I-765			\$35	\$60	\$70	\$100	\$120	\$175	\$180
I-817				\$75	\$80	\$120	\$140	\$195	\$200

I-821	\$50						\$50		\$50
I-824				\$30	\$30	\$120	\$140	\$195	\$200
I-829					\$90	\$345	\$395	\$455	\$475
I-881							\$215	\$275	\$285
I-905									\$230
I-914							\$200	\$255	\$270
N-300	\$15	\$50				\$50	\$60	\$115	\$120
N-336						\$170	\$195	\$250	\$265
N-400	\$35	\$60	\$90	\$95	\$225	\$260	\$320	\$330	\$330
N-470	\$15	\$55			\$80	\$95	\$150	\$155	\$155
N-565	\$15	\$50	\$50	\$65	\$135	\$155	\$210	\$220	\$220
N-600/600K	\$35	\$60	\$90	\$100	\$160	\$185	\$240	\$255	\$255
Biometrics						\$25	\$50	\$70	\$70

C. Urgency and Rationale for New Fee Schedule.

In developing this proposed rule, USCIS reviewed its recent cost experiences, current service levels, goals for additional services, and various factors for allocating costs to particular form types. This rule proposes a fee structure that will allow USCIS to close current funding gaps, accomplish performance goals, eliminate problematic incentives, and fairly allocate costs.

In FY 2008 and FY 2009, USCIS is projecting a funding gap between revenue and expenses in the IEFA. Over the last several years, USCIS has come to rely on a combination of fee funding from temporary programs (e.g., Temporary Protected Status, section 245(i) penalty fees) and appropriated subsidies for temporary programs (e.g., backlog elimination) to close this funding gap. With the termination of these temporary funding sources, fee adjustments are needed to avoid significant service reductions, backlog increases, and spending reductions. While the workload associated with these temporary programs will terminate along with the termination of its funding sources, the significant amount of fixed costs that are recovered through the fees still remain. This includes costs that do not directly vary with this temporary workload, including USCIS Headquarters office costs and asylum and refugee operations.

USCIS has been receiving a subsidy of appropriated dollars for the past several years. In FY 2006, Congress appropriated \$115 million for USCIS, subject to later rescissions. Department of Homeland Security Appropriations Act, 2006, 109-90, 119 Stat. 2064, 2080 (Oct. 18, 2005). During the time since the last comprehensive fee adjustment, USCIS has increased emphasis on national security and public screening of applicants, and on quality controls. At the same time, certain immigration benefit determinations

have become more complex as legislation has created new programs and eligibilities. This created a significant funding gap. Since USCIS has largely been limited to the revenue that the current fee structure provides, this funding gap has been reflected in several ways, including inadequate facilities to provide services to customers, inadequate investments in infrastructure to improve service, and, most notably, inadequate case processing capacity to keep up with the volume of applications and petitions filed, creating a very significant backlog. Costs associated with dealing with the backlog caused further slippage, creating a cycle of deteriorating service.

Appropriated funds have mitigated the effects of a portion of this funding gap, but did not allow USCIS to provide sufficient case processing capacity to meet service level goals set by the President. This appropriation subsidy expires at the end of FY 2006. Until USCIS can restructure fees to bring revenue in alignment with the cost of processing each application and petition such that it can meet its overall mission of administering the immigration and citizenship laws of the United States, application and petition fees will be insufficient for USCIS to provide adequate case processing capacity, and, therefore, a potential return to backlogs.

Spending reductions to meet the funding gap would result in a reversal of the considerable progress USCIS has made over the last several years to reduce the backlog of immigration benefit applications and petitions. Such a reversal would likely include increases in customer complaints, requests to expedite certain applications and petitions, litigation seeking mandamus against USCIS, and other negative consequences that consume more resources in an ad hoc and reactive manner. This fee rule is essential to bringing fees into alignment with desired levels of service.

USCIS' security-related activities and objectives are its highest priority in allocating scarce resources, and the effects of rising immigration benefit application backlogs could undermine these national security and public safety objectives. USCIS therefore places an emphasis on timely background checks to ensure that the United States is not placed at risk by failing to identify individuals who may be national security or public safety risks at the earliest possible time in the adjudications process. Backlogs allow some applicants and petitioners who are already in the United States to remain in the United States without authorization, and delay identification of potential risks and actions to initiate removal proceedings as appropriate.

Based on the current weighted average application/petition fee of \$231 and biometric fee of \$70, and on a projected application/petition fee-paying volume of 4.68 million and biometric service volume of 2.2 million, immigration benefit application/petition and biometric fees will generate \$1.233 billion in annual revenue for the FY 2008 and FY 2009 biennial period. For the same period, the estimated annual cost of processing those immigration and naturalization benefit applications and petitions and biometric services, including additional resource requirements, is \$2.423 billion. The resulting annual funding gap between revenue and expenses is \$1.190 billion, of which \$619 million is additional resource requirements (see Part IV.E for a detailed discussion of these requirements).

1. Delay in Performing a Comprehensive Fee Review.

The fee changes proposed in this rule reflect a more robust capability to calculate, predict, and analyze costs and revenues. A comprehensive cost analysis of the IEFA has not occurred since the FY 1998 Fee Review. The fact that a comprehensive fee review

has been delayed for such a long period of time is a major reason why the current fee schedule is inadequate to recover the full costs of USCIS operations. This is a primary cause for the creation and growth of the immigration benefit application and petition backlog.

A Government Accountability Office (GAO) Report in January 2004 concluded that the “fees were not sufficient to fully fund [US]CIS’ operations.” GAO, Immigration Application Fees: Current Fees are Not Sufficient to Fund U.S. Citizenship and Immigration Services’ Operations (GAO-04-309R, Jan. 5, 2004) at 2. GAO stated that “[i]n part, this has resulted because (1) the current fee schedule is based on an outdated fee study that did not include all costs of [US]CIS’ operations and (2) costs have increased since that study was completed due to an additional processing requirement and other actions.” Id. GAO recommended that USCIS “perform a comprehensive fee study to determine the costs to process new immigration applications.” Id. at 3. The fee review that is the basis for the proposed fees in this rule addresses that recommendation.

As noted by the GAO, USCIS currently incurs several significant costs that are not recovered in the current fee structure. These include: Integrated Card Production System; National Customer Service Center; National Records Center; term/temporary employees; additional Adjudication Officers; and expansion of Service Center operations. Id. at 31. The GAO also identified the need to recover the costs of “new departmental requirements,” especially expanding the number of Interagency Border Inspection System (IBIS) checks conducted as a result of the September 11, 2001 terrorist attacks. Id. at 33. A portion of these costs were recovered in the April 2004 fee increase. GAO

also suggested that USCIS identify and recover “administrative and overhead” costs associated with the creation of USCIS as a separate agency in March 2003. *Id.* at 42-44.

Since fee revenues have not been sufficient to recover full operating costs, USCIS has been forced to rely on funding from temporary programs, to curtail spending in critical areas, to use premium processing funds for base infrastructure rather than for major business infrastructure improvements to the adjudication and customer-service processes, and to use fees from pending applications to fund applications being processed. This insufficiency delayed investment in a new technology and business process platform to radically improve USCIS’ capabilities and service levels as originally envisioned by Congress when it first established the premium processing program.

2. Presidential Mandate to Eliminate the Backlog.

In FY 2002, the President mandated a processing time standard of no more than 6 months for the adjudication of all types of immigration benefit applications and petitions to eliminate the backlog of pending applications and petitions at USCIS. USCIS was to achieve that time standard by the end of FY 2006. Since that mandate, USCIS has received a total of \$460 million in appropriated funds. The President’s FY 2006 Budget prioritizes USCIS resources to achieve the time standard and eliminate the backlog. After FY 2006, USCIS’ budget requests for adjudication programs are projected to be limited to fee resources, as USCIS strives to maintain the six-month or less processing time standard and identifying opportunities for performance improvements within a primarily fee-based environment.

While USCIS has made substantial progress in recent years in reducing case backlogs and improving service levels, this has been largely the result of this subsidy of temporary

appropriated dollars. These funds were not only necessary to eliminate the backlog that had grown prior to FY 2002, but also to make up for the insufficiency of the fee schedule. This was clearly made apparent in the FY 2005 budget when Congress appropriated an additional \$60 million towards backlog elimination efforts due to the significant impact of September 11th on the standards, procedures, and policies of USCIS. Without this temporary subsidy, not only would the pre-FY 2002 backlogs continued to have grown, but the backlog would have grown even greater due to the insufficiency of the fee schedule to process incoming workload for the period FY 2002 through FY 2006.

3. Enhanced Staffing Models.

The new fee schedule is necessary to improve service levels and ensure the security and integrity of the immigration system without causing backlogs to return. This fee review is based for the first time on an enhanced staffing model that is designed to align resources with the need to prevent future backlogs, providing for an efficient and effective workforce balance. Prior to this analysis, USCIS' distribution of adjudicators across field offices did not match the distribution of workload across field offices.

A 2001 GAO report recommended that USCIS “[d]evelop a staffing model for processing naturalization applications and expand the model to include other application types as their processes are reengineered or automated.” GAO, Immigration Benefits: Several Factors Impede Timeliness of Application Processing (GAO-01-488, May 4, 2001) at 55. In addition, in November, 2005, GAO stated that:

This kind of planning is consistent with the principle of integration and alignment that we have advocated as one of the critical success factors in human capital planning. As we have previously reported, workforce planning that is linked to strategic goals and objectives can help agencies be aware of their current and future needs such as the size of the workforce and its deployment across the organization. In addition, we

have said that the appropriate geographic and organizational deployment of employees can further support organizational goals and strategies.

GAO, Immigration Benefits: Improvements Needed to Address Backlogs and Ensure Quality of Adjudications (GAO-06-20, Nov. 21, 2005) at 34.

Historically, USCIS has been required to balance resource requirements against budgetary realities with the end result often being a staffing model based on what USCIS could afford, not what is required to meet acceptable performance standards. Following the last comprehensive fee review in FY 1998, the agency was only able to maintain the status quo and the backlog actually increased despite significant fee increases in FY 1998. The clear distinction between this proposed fee schedule and prior fee schedules is that the proposed fee schedule does not simply reflect costs and performance retrospectively, locking USCIS into a revenue stream that at best allows it maintain the status quo. Instead the proposed fee schedule is designed to provide for an adequate and sustainable level of investment in staff, infrastructure, and processes designed to improve the USCIS' ability to administer the nation's immigration laws.

The staffing model identifies sufficient funding not only to meet immediate standard processing time goals, but also to sustain and improve service delivery by providing additional funding to handle sudden surges in workload, another reason for the growth in immigration benefit application and petition backlogs. Sufficient capacity to process workload is a problem not limited to USCIS. Capacity also relates to agencies that USCIS depends upon to meet its performance goals. For example, this rule proposes additional funding in support of FBI name checks.

4. Isolation of Premium Processing Fees.

The current fee system has not enabled USCIS to undertake the investments in a new technology and business process platform that are needed to radically improve the agency's capabilities and service levels. The proposed fee structure is designed to recover annual costs for facilities, information technology systems, business processes, and other capacities in a way that allows USCIS to continue improving service levels, both to applicants/petitioners and to the American public, through more effective administration of the immigration laws of the United States. Under the proposed fee schedule, premium processing revenues will be fully isolated from other revenues and devoted to the extra services provided to premium processing customers and to broader investments in a new technology and business process platform to radically improve the agency's capabilities and service levels. In short, this rule fully funds normal operations and infrastructure maintenance with standard fees so that premium fees can be applied to significant infrastructure improvements, as envisioned by Congress. Currently, because of the insufficiency of the fee schedule, USCIS is not able to use premium processing funds to invest in major infrastructure improvements to the adjudication and customer-service processes.

5. Eliminating Perceptions of Impediments to Efficiency.

This rule restructures certain fee arrangements that are currently perceived to provide disincentives for USCIS to improve efficiency in processing. For example, USCIS has long authorized certain customers, particularly applicants for adjustment of status, to apply for certain benefits while the initial application is pending, referred to generally as "interim benefits." These include, most importantly, employment authorization and

permission to travel abroad and return to the United States to pursue the pending application. In the current fee structure, USCIS charges additional fees for interim benefits in addition to initial application fees. Thus, the longer cases take to adjudicate, the more total revenue is collected. This creates the perception that the agency gains by processing cases slowly.

Through the provisions proposed in this rule, USCIS would eliminate its reliance on interim benefits as a significant funding source for base operations. Under the proposed fee structure, an applicant for adjustment of status will pay a single fee. If USCIS is unable to process the base application within the established processing goals, the applicant will not pay separate fees for interim benefits, no matter how long the case remains pending. For certain application types, most notably applications for adjustment of status to permanent residence (Form I-485), the most critical interim benefit is the fact an applicant is allowed to remain in the United States while his or her application is pending. This spurs USCIS to process cases quickly and ensure that it promptly identifies those applicants who are risks to national security or public safety, resolves their cases, and initiates removal proceedings as appropriate. The restructuring proposed under this rule would create more appropriate pricing structures and eliminate perceived disincentives to process cases in a timely manner.

At the same time, USCIS recognizes that, in some cases, delays in background and security checks alone will require issuance of interim benefits. Accordingly, USCIS has built into the cost model for all adjustment of status applications the cost of processing interim benefits for a percentage of applicants.

USCIS estimates that the current application fees paid by an applicant for adjustment

of status with interim benefits over a multi-year time period are approximately \$800. The proposed rule increases the adjustment of status application (Form I-485) fee for an adult applicant to \$820, but exempts applicants who have paid that fee from any additional fee that otherwise might be payable to apply for advance parole or employment authorization. USCIS anticipates revising the Form I-485 accordingly, but this rule gives the agency flexibility to continue to use the Forms I-131 and I-765 for adjustment applicants. Either way, no additional fee would be charged for a Form I-485 applicant who has paid the base fee that now includes the cost of processing interim benefits.

Similarly, this rule proposes to eliminate from revenue projections separate fees from the two petitions currently required to be filed for an alien spouse abroad who will enter the United States in the K-3 nonimmigrant classification for certain spouses of U.S. citizens. See INA section 101(a)(15)(K)(ii), 8 U.S.C. 1101(a)(K)(ii); 8 CFR 214.1(a)(2). These two petitions are Form I-130, Petition for Alien Relative, and Form I-129F, Petition for Alien Fiancé(e). USCIS is working to consolidate the K-3 petitions so that separate fees will not be necessary.

The elimination of separate fees for interim benefits or the second K-3 petition affect more than adjustment of status applicants and family petitioners. The consolidation of these fees reduces the number of application types for which any fee is charged and thereby increases the amount of certain processing activity costs, administrative overhead and surcharge costs that must be spread across all other fee-paying application and petition types. All other fees will be increased.

6. Program Changes to Ensure Integrity of the Immigration System.

Since the tragic events of September 11, 2001, a persistent issue has been that weaknesses in the integrity of the immigration system make the United States vulnerable to terrorism, crime, and the economic cost of an underground population. USCIS takes these concerns seriously and has aggressively addressed them with the creation of a new directorate for National Security and Records Verification (NSRV). This directorate is focused on preserving the integrity of the immigration system. One component of the new directorate is the Fraud Detection and National Security (FDNS) Division. FDNS fulfills its mission in a variety of ways that include conducting benefit fraud assessments, providing investigative support to Adjudication Officers, and implementing remedial processes to discourage fraud.

The current fee structure does not allow FDNS to address fraud more broadly or to attend to USCIS' needs in national security cases. The proposed fee structure to support FDNS will fill this void. The proposed fee structure also enhances quality assurance, provides additional Adjudication Officer training, requires Adjudication Officers to attend removal proceedings when appropriate, tracks the delivery of secure documents, and enhances internal security and investigative operations. Section IV.E details these additional resource requirements.

7. USCIS' Commitment to Future Fee Reviews.

USCIS is committed to update its fees through a similar analysis at least once every two years. In comparison to fee reviews over the last decade, which essentially made retrospective adjustments on a narrowly calculated fee review, future fee reviews will combine assumptions from recent experiences (which may allow for cost reductions from

new efficiencies) and from prospective activity changes (such as those that may arise from additional security measures or performance changes).

D. Programs and Services Currently Funded.

For FY 2007, the IEFA is anticipated to provide approximately 89% of USCIS' total funding. The major programs, activities and services funded by the IEFA are discussed below.

1. Adjudication Services.

The Adjudication Services program is the primary program responsible for the processing of immigration benefit applications and petitions while ensuring the security of the immigration system. Through a network of 250 local offices, Application Support Centers, Service Centers, and Asylum Offices, the program funds the timely and quality processing of: (1) Family-based petitions - facilitating the process for close relatives to immigrate, gain permanent residence, work, etc.; (2) Employment-based petitions - facilitating the process for current and prospective employees to immigrate to or stay in the United States temporarily; (3) Asylum and Refugee processing - adjudicating asylum applications, conducting credible and reasonable fear screenings, and the processing of refugees; and (4) Naturalization - processing applications of those who wish to become United States citizens. The Adjudication Services program currently receives 94% of its total funding from the IEFA.

On average, USCIS annually: (1) processes over 6 million applications and petitions, (2) processes close to 90,000 asylum applicants, (3) interviews approximately 70,000 refugee applicants, and (4) naturalizes approximately half a million new citizens. Adjudication Officers review applications and often conduct interviews of the applicants

and petitioners. They have the dual responsibility of providing courteous service to the public while being alert to the possibility of security concerns, fraud, and misrepresentation. District Adjudications Officers are located in offices nationwide. Service Center Adjudications Officers are located only in the following Service Centers: St. Albans, VT; Lincoln, NE; Irving, TX; and Laguna Niguel, CA.

An Asylum Officer determines if an applicant for asylum qualifies for that status based on the requirements of the INA. These officers are specially trained in country conditions, interviewing techniques (including credibility determinations), and asylum law. Positions are located in eight Asylum Offices throughout the United States. The Asylum Officer Corps and new Refugee Officer Corps (which provides similar adjudicative services for refugee applications overseas) also leverage specialized resources, including professional interpreters, to deliver timely and accurate provision of legal protection to individuals who have been persecuted and displaced.

In coordination with other components of DHS and other Federal agencies, USCIS combats immigration benefit fraud through the FDNS office in the NSRV Directorate, as previously discussed. USCIS trains FDNS staff to analyze and identify fraud patterns and trends and document evidence of fraud for administrative action. USCIS will continue to implement fraud detection measures in Service Centers, field offices, and Refugee and Asylum programs, including training adjudications staff to proactively identify fraud/security profiles while considering an application. Apart from FDNS, the other major division within NSRV is the Office of Records Services (ORS), which establishes policies, procedures, and performance objectives for the USCIS Records Program. The Records Program manages over 160 million Alien-files and related

records in support of the enforcement and benefits missions of the DHS. The ORS also manages the National Records Center and coordinates the USCIS Freedom of Information Act/Privacy Act (FOIA/PA) program.

2. Information and Customer Services.

Through the Information and Customer Services Program, USCIS reduces the frequency of repeated, redundant applicant and petitioner contact with USCIS employees, thus improving agency efficiency. USCIS makes it easier for the public to get the information they need when they need it, through multiple channels of available assistance, including the USCIS website, toll-free call center (National Customer Service Call Center), and face-to-face appointments. On an annual basis, USCIS: (1) handles over 14 million calls via the National Customer Service Call Centers, (2) receives 78 million “hits” on the USCIS website, and (3) serves approximately 5 million individuals through information counters at local offices. The Information and Customer Services program currently receives 52% of its total funding from the IEFA.

Each year millions of people apply for various types of benefits under the INA. The Immigration Information Officers (IIOs) provide information about immigration and nationality requirements; IIOs are not authorized to, and do not, provide legal advice to applicants and petitioners. IIOs assist with a wide variety of requests, including questions on how to complete required form types, and explain the administrative procedures and normal processing times for each application. IIOs provide a range of customer services, including certain case services and problem resolution assistance on applications and petitions. IIOs also process and make decisions on a limited array of

applications and petitions. Positions are located throughout the country in Districts, Sub Offices, Asylum Offices, and Service Centers.

Through the National Customer Service Center, USCIS provides toll-free nationwide assistance to individuals calling from within the United States. Individuals can access live assistance from 8:00 AM until 6:00 PM, Monday through Friday (local time; hours slightly different for those persons calling from outside the continental United States). They can also access recorded information (including information about the status of their specific case) 24 hours a day/7 days a week. Both live and recorded service are available in English and Spanish. Callers from outside the United States can access limited information through a separate toll number.

USCIS receives about 1.7 million direct information and customer service related contacts per month, or more than 20 million contacts per year. Today, over 84% of all information and customer service interactions are self-service. The self-service options provide the public with new choices that are simpler and more effective to both the public and USCIS. They also save significant amounts of money compared to providing live assistance to all individuals.

In-person service continues, however, to be a critical component of the USCIS service model. To improve service levels, USCIS has shifted to offering most in-person service by appointment that is scheduled via Internet interaction. This has helped reduce long lines and wait times, and address public concerns and inquiries. USCIS also has developed a new series of focused fact sheets on available services to assist and communicate more clearly with the public.

3. Administration.

Nine Headquarters offices provide administrative and mission support to Headquarters offices and USCIS field locations worldwide. The USCIS Administration program currently receives 100% of its total funding from the IEFA.

- The Office of Administration plans, develops, implements, and evaluates agency-wide policies and procedures for the operation of centrally managed, agency-wide support activities. It is responsible for programming, budgeting and oversight for the direct delivery of administrative support to USCIS in the areas of Acquisition, Procurement, Asset Management and Personal Property, Facilities and Real Property, and Logistics.
- The Office of Planning, Budget, and Finance is responsible for planning and budgeting integration and financial management activities.
- The Office of Chief Counsel consists of legal divisions advising and representing USCIS Operations both at Headquarters and in the field on behalf of the DHS General Counsel. Chief Counsel divisions include Adjudications Law, Refugee and Asylum Law, National Security, Commercial and Administrative Law, Ethics, Legislation, Field Offices, and Training, with each division responsible for reviewing, interpreting, and providing legal advice and litigation support to USCIS operational components.
- The Office of Citizenship promotes civic integration and instruction and training on citizenship responsibility for legal immigrants interested in becoming naturalized citizens of the United States, including development of educational materials and community outreach activities.

- The Office of Communications oversees and coordinates communication to internal and external stakeholders in order to empower employees with the tools needed to perform their jobs, to educate the public regarding USCIS benefits and services, and to facilitate consistent messaging for USCIS.
- The Office of Congressional Relations advises the Director on legislative matters and serves as the primary point of contact for members of Congress and congressional staffers.
- The Office of Policy and Strategy directs, prioritizes, and sets the agenda for agency-wide policy, strategy, and long-term planning activities, as well as research and analysis on immigration services issues.
- The Office of Security and Investigations (OSI) oversees continuity of operations planning and implementation, secure communications and document storage, agency-wide physical and facility security programs, and security awareness training.
- The Office of Human Capital and Training manages human capital policy and operations and provides continuous professional training and career development to all USCIS employees through a variety of career, executive and managerial development programs.

IV. The Fee Review of Immigration Benefit Applications/Petitions and Biometric Services.

The current immigration benefit application and petition fees are based on the FY 1998 Fee Review, adjusted for cost of living increases and other factors. Since costs and processes have changed significantly since the FY 1998 Fee Review, the current fees do

not reflect today's costs and procedures. This rule proposes enhanced service levels, more complete funding of existing services, and specific cost allocation methods.

A. Methodology.

To develop this rule, USCIS convened its Workload and Fee Projection Group. The Workload and Fee Projection Group is composed of subject matter experts throughout the agency and statistical experts from the DHS Office of Immigration Statistics.

USCIS employed an Activity-Based Costing (ABC) methodology to determine the full cost of immigration and naturalization benefit applications and petitions, as well as biometric services, for which fees are charged. This is an improved version of the same methodology used in the FY 1998 Fee Review that is the basis for the current fee structure. ABC is a business management tool that provides insight into the relationship between inputs (costs) and outputs (products and services) by quantifying how work is performed in an organization (activities).

The ABC methodology uses a two-stage approach to assigning costs. The first stage assigns costs to activities, and the second stage assigns activity costs to products. For USCIS, the products are decisions on the immigration and naturalization benefit applications and petitions and the biometric services for which fees are charged. To implement this two-stage approach, ABC requires four analytic steps:

- identifying and defining the activities involved in processing immigration and naturalization benefit applications and petitions and biometric services;
- examining budgetary records/execution plans and additional resource requirements to identify the resources required to process immigration and naturalization benefit applications and petitions and biometric services;

- assigning these resources to the defined processing activities; and
- assigning processing activity costs to defined immigration and naturalization benefit applications and petitions and biometric services for which a fee is charged.

USCIS used commercially available ABC software in computing the immigration benefit application/petition and biometric fees. This software application is designed to assign costs through activities to final products (applications/petitions and biometric services). The data entered into the software were tailored to USCIS specifications using the preexisting software structure. This new software is vastly improved over any models previously used by USCIS, particularly because it can readily accept the most up-to-date information, as well as “what-if” scenarios, on a continual and real time basis for fee review and cost management purposes.

B. Assumptions.

As previously discussed, USCIS is assuming that it will no longer collect separate fee revenues from certain interim benefits or K-3 petitions.

In this proposed rule, USCIS is assuming no revenues from certain penalty fees. INA section 245(i), 8 U.S.C. 1255(i), permits certain aliens who otherwise would be ineligible for adjustment of status to lawful permanent residence (primarily because of their unlawful presence) to obtain such adjustment upon payment of a \$1,000 penalty in addition to the base application fee. Section 245(i) adjustment of status is available, however, only to beneficiaries of immigrant petitions or applications for labor certification filed on or before April 30, 2001. As a result of this sunset provision, USCIS has seen a steady decline in these revenues over the last several years (\$66 million in FY 2001; \$37 million in FY 2003; and \$24 million in FY 2005) and projects

that an insignificant amount of penalty fees will be collected by the time the proposed fee structure is in place given the finite and declining number of people affected by this legislation.

USCIS does not anticipate any significant new Temporary Protected Status (TPS) populations at this time, although because of the nature of TPS (including, for example, response to natural disaster) such predictions are by definition uncertain. Given the statutory requirement that TPS status be periodically reviewed and that termination of TPS designations for long-standing, high volume countries is a reasonable possibility, USCIS must build its budgets on the assumption that it cannot rely on fee revenue from such programs to fund on-going activities. INA section 244, 8 U.S.C. 1254a. For planning purposes and without intending to forecast any particular policy assessments, USCIS has assumed that the TPS Program for re-registrants of certain nationalities will not continue, which will result in a substantial decline of volumes for Form I-821 (Application for Temporary Protected Status) and associated Form I-765 (Application for Employment Authorization). This assumption eliminates a limited source of fee receipts, but also reduces a larger amount of costs distributed across all other application fees because the statutory fee (\$50) does not recover the full cost of processing TPS applications.

Finally, USCIS is assuming the elimination of revenues associated with the Form I-881, Nicaraguan Adjustment and Central American Relief Act – Suspension of Deportation or Application Special Rule (NACARA 203). See Pub. L. 105-100, Sec. 203, 111 Stat. 2196, as amended by Pub. L. 105-139, 111 Stat. 2644. This program provided a benefit for a finite group of people, the vast majority of whom are

Guatemalans and Salvadorans who entered the United States prior to 1991 and who had an asylum application pending by specified deadlines in 1995 and 1996. Since enactment of NACARA, USCIS has adjudicated approximately 170,000 applications for relief under NACARA 203. USCIS projects that by the end of FY 2007, nearly all qualifying NACARA 203 applications will have been adjudicated, and that there will be virtually no filings in FY 2008 and 2009. USCIS projects a decline in the annual volume from approximately 23,082 applications in FY 2005, to 10,000 in FY 2006, to less than 200 in FY 2007.

In FY 2001, the USCIS Asylum Division hired approximately 70 term employees to assist with the NACARA 203 workload. As the number of pending NACARA 203 applications and individuals still eligible to apply for this relief declined, the Asylum Division stopped back-filling term positions as they became vacant in order gradually to reduce the staffing level and budget commensurate with the decreasing workload. Thus, through attrition of the term employees, USCIS has been able to reach appropriate staffing levels for this workload. Cost adjustments associated with the workload were incorporated in the President's FY 2007 Budget.

USCIS is also assuming that the number of fee waiver requests will hold steady from FY 2005 levels. Although USCIS anticipates an increase in the number of fee waiver requests as a result of the proposed fee structure, this increase will be offset by the new fee waiver policy that limits fee waivers to certain situations as explained in section XI of this preamble.

C. Defining Processing Activities.

In ABC, activities are the critical link to assigning costs to products (decisions on applications/petitions and biometric services for which the USCIS charges a fee). USCIS used the following activities:

- **Inform the Public**, involving receipt and response to inquires through telephone calls, written correspondence, or walk-in inquiries;
- **Capture Biometrics**, involving electronic capture of biometric (fingerprint, photograph, signature) information, and background checks performed by the FBI;
- **Intake**, involving mailroom operations, data capture and collection, file assembly, fee receipting, and file room operations;
- **Conduct Interagency Border Inspection System (IBIS) Checks**, involving comparison of information on applicants, petitioners, beneficiaries, derivatives and others against various Federal lookout systems (IBIS);
- **Review Records**, involving acquisition and creation of relevant files, consolidation of files, connection of returned evidence with application or petition files, movement of files upon request, and management of file location and archives;
- **Make Determinations**, involving actual adjudication of applications and petitions, requests for additional evidence, interviewing of applicants, consultation with supervisors or legal counsel and researching applicable laws and decisions on complex adjudications, and recordation of decision;
- **Fraud Detection and Prevention**, involving detection, combat, and deterrence of immigration and naturalization benefit fraud; and,
- **Issue Documents**, involving production and distribution of secure documents that identify the holder's immigration status or employment authorization.

D. Sources of Cost Information.

The first step in implementing an ABC methodology is to identify the appropriate amount of FY 2008/2009 IEFA costs and assign these costs to the defined processing activities. USCIS began with the President's FY 2007 Budget (less non-recurring costs), adjusted for inflation for the FY 2008/2009 biennial period, and added resource requirements as the best available source of information for determining the full cost of immigration benefit applications/petitions and biometric services. The President's FY 2007 Budget request (\$1,760,000,000) best represents USCIS' base resources since it is indicative of the costs incurred by the agency today and adjusts the base for inflation from FY 2006 levels. Inflation is determined for this purpose by referring to Government-wide standards discussed below in section IV.E.2. The additional resource requirements are discussed below in section IV.E.3.

E. Adjustments.

1. Non-Recurring Costs.

USCIS first eliminated any spending items in the President's FY 2007 Budget that would not recur after FY 2007. Accordingly the base was reduced by \$8.5 million associated with the temporary expansion of Application Support Centers for additional workload associated with a temporary planned program for the recall of green cards issued before 1989 and thus lacking expiration dates and up-to-date security features. After adjustment, the President's FY 2007 Budget has a base of \$1,751,500,000.

2. Inflation.

USCIS then adjusted the FY 2007 IEFA Budget request level for the FY 2008 and FY 2009 biennial period by pay (Federal employee payroll and benefits) and non-pay

(contracts, utilities, rent, etc.) inflation factors issued by the Office of Management and Budget (OMB) used in implementing OMB Circular A-76 (Performance of Commercial Activities), found at http://www.whitehouse.gov/omb/circulars/a076/a76_incl_tech_correction.pdf.

Using \$1,751,500,000 as the base, USCIS applied pre-established budget inflation factors. Separate factors are used for the pay and non-pay portions of the budget.

The pay portion of the FY 2007 budget totals \$727,600,000. The FY 2008/2009 blended pay inflation factor is 3.3%. This blended pay inflation factor is calculated using 2.2% for FY 2008 plus half of 2.2% (1.1%) for FY 2009). The pay inflation of \$24,010,800 was then added to the FY 2007 base, yielding a FY 2008/2009 pay base of \$751,610,800.

The non-pay portion of the President's FY2007 Budget was \$1,023,900,000. The blended non-pay inflation factor of 2.85%. The blended non-pay inflation factor is calculated using 1.9% for FY 2008 plus half of 1.9% (0.95%) for FY 2009. The non-pay inflation of \$29,181,150 was then added to the FY 2007 base, yielding a FY 2008/2009 non-pay base of \$1,053,081,150.

These pay and non-pay inflation projections of \$53 million yield a FY 2008/2009 base of \$1,804,691,950.

3. Additional Resource Requirements.

USCIS also identified \$619 million in additional resource requirements to fulfill legal requirements and policy decisions. These additional resource requirements involve costs above and beyond what was presented in the President's FY 2007 Budget, plus inflation for the FY 2008/2009 biennial period, that are necessary for USCIS to meet its mission

responsibilities. “Additional Resource Requirements” represent enhancements that are not currently funded in the President’s FY 2007 Budget. These include: (1) Service Enhancements, (2) Security and Integrity Enhancements, (3) Humanitarian Program Enhancements, and (4) Infrastructure Enhancements.

a. Service Enhancements.

USCIS is enhancing service to provide efficient and customer-oriented immigration and naturalization benefit and information services. The following enhancements will enable USCIS to achieve and maintain timely processing of immigration and naturalization benefits; provide information resources and services to appropriate individuals and entities; foster a customer-centered approach to service delivery; and develop seamless, IT-supported processes that efficiently support immigration and naturalization benefits adjudication and information sharing:

Enhance adjudications and support staff to maintain application and petition processing times, officer training, additional capacity for unanticipated surges in workload, and process Notices to Appear. Additional funding is necessary to support a staffing model designed to align resources with the need to prevent future backlogs, and providing for an efficient and effective workforce balance. This includes Adjudication Officers and support staff (Supervisors, Clerks, Immigration Information Officers, Records personnel, Administration personnel, and Quality Assurance Analysts). Current funding and the staffing model it supports are not sufficient to maintain prescribed processing time requirements. USCIS’ staffing model incorporates additional requirements which include: (1) additional time required of Adjudication Officers to attend removal proceedings when appropriate; (2) additional Adjudication Officer

training to provide a 5% increase in the agency's investment in employee training in order to maintain a more appropriate balance between the commitment to production and an ongoing investment in things, such as training, designed to improve qualitative performance; and (3) providing USCIS with a small surplus production capacity that gives the agency flexibility to adapt to temporary increases in filings without those increases immediately affecting service levels to all applicants. USCIS' staffing model also provides capacity to improve processing times and service delivery over time rather than, at best, perpetuating current levels. This enhancement requires 1,906 staff and \$224 million.

Process Freedom of Information Act requests. The Freedom of Information Act (FOIA), 5 U.S.C. 552, provides for the public disclosure of governmental records unless an exemption applies. USCIS' FOIA program has been historically understaffed, resulting in a growing backlog that is currently 82,000 cases. USCIS determined that approximately 90 positions (predominantly contractors) would be needed for a period of 2 years, at a cost of \$9.6 million per year, in order to reduce the backlog by 50% the first year and the remaining 50% during the second year. Also, USCIS determined that a total of 146 staff is necessary to keep pace with the average 120,000 cases per year workload. To reach the required level of staff to handle this continuing normal workload, an additional 17 staff are permanently needed, at a fully burdened cost of \$1.4 million. To meet the requirements of the FOIA, this enhancement requires 103 staff and \$11 million.

Provide Change of Address (AR-11) data entry services. Aliens, who enter the United States and are required to be registered, must notify DHS of any change of address within 10 days, using Form AR-11. INA section 265, 8 U.S.C. 1305; 8 CFR

265.1. It is estimated that costs to support AR-11 data entry operations will total \$1 million (\$83,300 per month). Over 480,000 AR-11 forms will be processed in FY 2008 (268,000 Nonimmigrant and 212,000 Immigrant). Additionally, system operations and maintenance costs are estimated to cost approximately \$200,000 per year. This enhancement requires \$1.2 million.

Print and distribute guidebooks for new naturalized citizens. Additional funding is necessary for the printing and distribution of two educational resources: A civics study guide, designed for naturalization applicants, that helps immigrants learn United States history and civics in preparation for the naturalization test; and the “Citizen’s Almanac”, a document to be given to each new citizen at his or her naturalization ceremony, which presents America’s most cherished founding documents, Presidential quotes on citizenship, and other civics and history content. This enhancement requires approximately \$900,000.

Enhance mail and file room support for the Administrative Appeals Office. The Administrative Appeals Office (AAO) produces appellate decisions that provide fair and legally supportable resolutions of individual applications and petitions for immigration benefits. This request provided needed resources for the AAO’s requirements for clerical support for the office's mail and file room operations. In addition to mail and file room support, contractors answer the telephone, obtain electronic records, update information in electronic databases, provide periodic reporting of receipts and completions, and conduct workload analysis. This enhancement requires \$129,000.

b. Security and Integrity Enhancements.

Consistent with the President's and the Secretary's priorities, USCIS is enhancing the security and integrity of the immigration and naturalization system. The following enhancements will enable USCIS to ensure that benefits are granted only to eligible applicants and petitioners; deter, detect, and pursue immigration and naturalization benefits fraud; and identify and communicate immigration and naturalization-related information to partners in support of DHS strategic goals:

Establish a second, full-service card production facility and fully fund card production workload. The effect of the Federal Information Security Management Act (FISMA), Pub. L. 107-347, 116 Stat. 2899 (Dec. 17, 2002) (40 U.S.C. 11331; 44 U.S.C. 101 note, 3541 – 3549), and implementing directives require compliance with National Institute of Standards and Technology principles for critical systems for contingency planning. To meet these standards, USCIS must establish a second full-service card production site. The second facility will support day-to-day production as well as be available in the event of catastrophic failure. Finally, additional funding is included to fully fund card production requirements based on workload projections. To meet these requirements, USCIS is proposing to add 4 staff and \$36.7 million.

Enhance fraud prevention and detection efforts. To meet its mission responsibilities of enhancing fraud prevention and detection efforts, USCIS created the FDNS, discussed above, to implement, direct, and oversee anti-fraud and detection operations throughout USCIS. FDNS has developed and implemented a joint anti-fraud strategy, structure, policy, and process with its Immigration and Customs Enforcement (ICE) counterpart for the referral of suspected fraud cases. If, for example, FDNS refers a possible criminal investigation and ICE declines the case for investigation, USCIS shifts focus from

criminal to administrative processes, and initiates an administrative inquiry/investigation. FDNS also conducts benefit fraud assessments on various immigration benefit forms to determine fraud rates, causes, and solutions. In addition, FDNS identifies systemic vulnerabilities and other weaknesses that could compromise the integrity of the legal immigration system by reviewing existing regulations, policies and procedures and offering corrective remedies where deficiencies exist. This enhancement requires 170 staff and \$31 million.

Enhance the delivery of secure documents. USCIS currently delivers its secure documents (Permanent Resident Cards, Employment Authorization Documents and travel documents) through the United States Postal Service (USPS) first class mail. There is no process in place that enables USCIS to track their delivery and ensure that these documents are delivered to the proper recipient. Some beneficiaries claim not to have received their documents in the mail to avoid paying document replacement fees. USCIS and the USPS have partnered to develop and implement a process wherein the documents would be delivered via USPS priority mail (2 to 3 day delivery) with delivery confirmation. The additional funding will enable USCIS to track delivery of each document and to respond to queries from applicants regarding the status of document delivery. This enhancement requires \$27.2 million.

Pay increased costs due to the FBI for background checks. USCIS pays the FBI for fingerprint and name checks performed on certain immigration and naturalization benefit applications. USCIS needs the additional funds to align with the projected filing increases for Forms N-400 and I-90, less the projected decrease in Form I-485. USCIS will also be expanding the biometric service to applications for travel documents and

petitions to remove conditions of residence (Forms I-131 and I-751). This enhancement requires \$11.9 million.

Enhance national security systems and processes. Funding is necessary to centrally direct and oversee the resolution of background check hits pertaining to national security and egregious public safety investigations; direct, coordinate, and oversee the adjudication of all cases with national security implications; pursue, collect, and analyze information from various sources for dissemination to field adjudicators for use in their decision making process; and provide support to various law enforcement agencies. It is also needed to provide for major enhancements and improvements to USCIS' national security systems (i.e. software, systems development and change management and training efforts) necessary to further enhance the background check process. This enhancement requires \$11.5 million.

Enhance Internal Security and Investigative Operations. Given its increasingly recognized critical mission and the number of its employees and contract staff, USCIS is underserved by the small number of investigative personnel now on staff at headquarters and selected field offices. Additional funding is necessary to support capabilities to deter, and to conduct investigations of allegations of, misconduct by USCIS employees, assigned contract staff and other involved persons. This enhancement requires 65 staff and \$11 million.

Establish a compliance function for on-site visits for fraud detection purposes. Funds are necessary to support a compliance program aimed at determining fraud rates and causes among high-risk petitions and applications. This initiative will serve as a deterrent to fraud upon implementation and publication of findings and corrective actions. This and

other USCIS anti-fraud initiatives will help restore integrity to this Nation's legal immigration system. This enhancement requires \$8 million.

Enhance Protective Security Operations. Additional funds are necessary to ensure comprehensive security for the conduct of business and operations at USCIS facilities for employees, applicants and visitors. Given its increasingly critical and recognized mission and size, USCIS is presently underserved by the small number of Security Specialists now on staff at headquarters and selected field offices. Maintenance of the integrity of USCIS facilities and processes is directly related to the agency's ability to implement its primary mission. USCIS must have a robust, aggressive and responsive security capability to assure a comprehensive security envelope for daily operations. This enhancement requires 36 staff and \$5.2 million.

Enhance existing card production program. The USCIS document production facility utilizes contractor support for its document production activities. The prime contractor on site is responsible for securing maintenance contracts on the equipment to ensure that all equipment runs optimally, without interruptions. Many companies will not prorate their maintenance contracts and want to have them funded on an annual basis, which becomes problematic when USCIS does not issue a full year of funding to its production contractor. Current funding mechanisms do not allow for contractor support during the full period of performance reflected in the contract, and result in inefficient use of both program office contracting officer technical representative time, and contract officer and administration time, as duplicative work needs to be performed each time additional funds are placed on the contract. The additional base requirement will enable USCIS to fund the production support contract for the full 12-month period of performance. By

doing this, USCIS can ensure that secure document production can continue without disruptions associated with continuing resolutions and interim funding allocations that may develop at the beginning of new fiscal years. This enhancement requires \$4.4 million.

Enhance Emergency Preparedness Operations. USCIS needs additional funds to prepare to continue essential operations and to recover from an event or incident and return to full operations. Funds are required to conduct Continuity of Operations (COOP) exercises and successful participation in and contribution to government COOP exercises. Continued refinement of training and presentation of that training to various audiences and at various locations is critical. This enhancement requires 6 staff and \$1.4 million.

Establish Crisis Management and Information Security Operations. Additional funding is necessary to operate a certified full-time, real-time mission coordination and support capability for national security information control and communications throughout USCIS and with DHS and other agencies. This includes sustained operation of the Crisis Communications and Coordination Center on a real-time 24/7 basis to monitor USCIS operations throughout the world and to permit secure communications throughout the Federal government on behalf of USCIS executive leadership. This enhancement requires 6 staff and \$1.2 million.

Enhance Personnel Security Operations. Additional funding is necessary to provide proper and timely security clearances for USCIS and contract employees; review of and contributions to USCIS acquisitions for goods and services; and coordination with other

agencies and authorities to assure maintenance of current, accurate and complete personnel security information. This enhancement requires 10 staff and \$1.2 million.

Enhance technology security operations. Additional funding is necessary to ensure the security of the sustained operation of the Crisis Communications and Coordination Center on a real-time 24/7 basis and, in conjunction with the USCIS Office of Chief Information Officer, ongoing contribution to and review of all USCIS IT efforts with specific focus on the security aspects of those efforts and systems, including expert forensic IT analyses related to internal investigations. Internal use of the data, and use of the data by external authorities, especially when required to address emergency incident situations, require an ongoing and certain agency commitment to the security features of its IT infrastructure and the data therein. This enhancement requires 2 staff and \$.5 million.

c. Humanitarian Program Enhancements.

USCIS is supporting the United States' humanitarian commitments. This support includes the following enhancement:

Fully fund the Cuban Haitian Entrant Program. This increase will fully fund the Cuban Haitian Entrant Program (CHEP). CHEP assists the resettlement of Cubans and Haitians who are irregular arrivals or paroled into the United States, including those who are paroled directly from Cuba under the Cuban Special Migration Program. In FY 2006, two non-government grant recipients, Church World Services and the Catholic Conference of Bishops, provided resettlement services. The actual number of migrants served each year is unpredictable, in part because many arrive irregularly. This enhancement requires \$14 million.

d. Infrastructure Enhancements.

USCIS is strengthening the infrastructure necessary to achieve USCIS' mission. The following enhancements will enable USCIS to strengthen key management processes, systems, and administrative support activities, including information technology infrastructure; enhance the organization's ability to support the mission in an environment of fluctuating workloads and new external mandates; and manage financial resources strategically, including revenue, expenditures, and capital investments:

Upgrade and maintain the USCIS information technology environment. Additional funds are necessary to upgrade and maintain the USCIS information technology environment, which includes several programs in support of a national security-based immigration process that is more effective and customer focused. One of the programs will provide necessary technology upgrades to the current USCIS enterprise legacy information technology (IT) systems so that these comply with OMB, GAO, DHS, and other Federal regulations, law, and guidelines. Decommissioning of the legacy environment systems is a lengthy process and, in the meantime, these systems are required to be upgraded to meet minimum standards in the areas of IT security and privacy.

Another program focuses on upgrading and maintaining the USCIS IT operating environment so that it can sustain continued operations, reduce IT security risks and information sharing limitations through hardware and software standardization, and maintain USCIS' ability to process cases and support Federal enforcement organizations. By having a more reliable IT environment, USCIS staff can better support applicants and petitioners. The third program allows USCIS to implement unplanned but required IT

changes in a timely and responsive manner. By budgeting for these unplanned changes, USCIS is in a state of readiness for legislative and other changes that impact the current and future IT environment, as well as the USCIS operating plan. Funds are also necessary for other activities to provide additional trained and experienced IT Government staff, governance capabilities, IT security, continuity of operations planning and disaster recovery, and other IT oversight capabilities. This enhancement requires 98 staff and \$110.8 million.

Rent and lease acquisition resources. Rental payments to the General Services Administration for USCIS facilities are currently budgeted at \$146 million, but are projected to increase to \$163.9 million. Thus, additional resources are required to fund projected FY 2008/FY 2009 payments. In addition, the Lease Acquisition Program (LAP) is the agency's Real Property Capital Assets Investment Plan. This program will improve workplaces to better meet the agency mission and goals and better utilize real property assets. Current USCIS real property inventory includes 188 facility leases requiring sustainment from year to year. Most leases have a 10-year term and must be either renewed or replaced at the end of the term. Recent experience shows that 11 facility projects are required each year, either as a replacement for a non-renewable lease or for a renewal in the same facility but with additional space. USCIS currently has 37 leases that have already or will expire by FY 2008. The LAP currently is funded only for \$11.6 million based on the lease expiration schedule; the lease funding requirement is \$39.5 million. The additional funding allows USCIS to increase its investment in facilities, so that its local offices can meet appropriate standards, and

applicants/petitioners and others coming to those offices can be reasonably comfortable. This enhancement requires \$45.9 million.

Enhance the training program for all USCIS employees to foster organizational individual achievement by promoting continuous learning. The additional funds will enable USCIS to expand both mission support and professional development modules available to all USCIS employees through online technology. The USCIS Learning Management System provides mandatory training modules, mission support modules, and more than 2000 commercial, web-based, information technology, business, and leadership courses for personal and professional development. In addition, USCIS requires resources to plan and develop a comprehensive and continuing orientation plan for all USCIS employees. This program will serve as the primary vehicle for introductory, foundational and continuous information about DHS and USCIS leadership, mission, core values, vision, organizational structure and policies. It will also provide functional information about USCIS' business processes and practices, standard operating procedures and the cultural environment of a high-performance organization that is an employer of choice. This program will serve as a cornerstone for promoting employee career development, leadership development, and succession management. The project will also include the development of web-based orientation modules.

Finally, funds will be used to support an Enterprise Development Program that will provide USCIS government employees with an Individual Learning Account (ILA), which includes annual resources and time set aside exclusively for training. This program is seen as the primary means for employees to increase their knowledge, skill and capacity to perform their work and build careers consistent with USCIS goals for

performance excellence. Such a program is designed to enhance critically needed training while taking advantage of USCIS transformational initiatives including the availability of new technologies and processes. This enhancement requires 27 staff and \$37.9 million.

Enhance resources for the Office of Chief Counsel. Additional resources will be focused on filling the legal needs of USCIS' field offices, both district and regional, where most areas do not currently have any attorney on site. The provision of additional attorneys will allow USCIS to ensure that there is at least one attorney available in each district. All types of litigation continue to increase, including mandamus actions when USCIS is perceived to not respond to applications in a timely manner, employment, acquisition protests, and claims. Furthermore, there is a critical need to advise adjudicators and investigators on issues affecting national security concerns and citizenship qualifications. Attorney responsibilities include providing on-site legal advice on immigration benefits-related matters, adjudications involving issues of national security, visa appeal briefs, reviewing Notices to Appear, and providing litigation support to the Department of Justice's litigating divisions and United States Attorneys' Offices. Additional attorneys will also provide training to USCIS personnel on issues involving immigration related adjudications, inadmissibility and deportability. This enhancement requires 30 staff and \$5.9 million.

Transfer records to the National Archives and Records Administration. The National Archives and Records Administration (NARA) has determined, pursuant to 44 U.S.C. 2905, that immigration records should become permanent records of the United States. Therefore, all immigration records that become eligible for retirement based upon the

year of birth will be turned over in five-year “collections.” The first collection is to include records relating to persons born in 1907 or earlier. All records transferred to NARA must be inventoried. Due to the age of records and data integrity, the records must be audited and systems must be updated before the transfer. Therefore, \$3.4 million is needed annually to audit the immigration records in preparation for the transfer of ownership of over 25 million records to the NARA to become permanent records.

USCIS will begin transfer of all immigration records with 1907 year of birth and earlier beginning in 2008. This initiative will span a period of 10 years. Future records will be transferred to NARA as they become eligible. This mandatory cost totals \$3.4 million.

Fully fund the Human Resources and Occupational Safety and Health Service Level Agreements/Programs. Based on workload trends over the past 3 years, USCIS requires an additional \$3 million that will allow the service provider, the Bureau of Customs and Border Protection (CBP), to provide additional capacity to handle human resources and occupational safety and health requirements. In addition, an additional \$150,000 (fully-burdened costs) will allow USCIS to meet the requirement to provide every supervisor with occupational safety and health training. This enhancement requires \$3.2 million.

Conduct policy evaluation and research. The Homeland Security Act of 2002 (HSA) requires that USCIS conduct policy research to develop sound information to inform and guide immigration program and policy development. In addition, the Government Performance Results Act of 1993 (GPRA), Pub. L. 103-62, 107 Stat. 285 (Aug.3, 2003) (codified in various sections of titles 5 and 31 U.S.C.), requires agencies to evaluate pilot and experimental programs that are designed to improve mission delivery, including efficiency, national security and customer service, before implementing such programs

on a large scale. USCIS requires funding to conduct targeted research and evaluation to develop and assess policy options affecting national immigration programs and policies and to assess USCIS pilot programs. The mandated research and evaluation efforts will ensure prudent use of USCIS resources, enhanced information to inform policy options and impact assessment, and improved agency performance consistent with the stated GPRA and HSA requirements. This enhancement requires \$3.1 million.

Enhance internal controls, build a data warehouse for performance information, enhance budget staff, conduct competitive sourcing reviews, and provide additional financial management resources to evaluate and analyze service level agreements under the auspices of the Office of Chief Financial Officer. In an effort to strengthen USCIS' planning and financial management functions, during FY 2006 USCIS created an Office of the Chief Financial Officer (CFO). The strengthened CFO function within USCIS ensures that reasonable internal controls exist within USCIS to safeguard assets from waste, fraud and abuse. In order to execute these duties, additional resources are necessary to review organizational program offices. The reviews require highly skilled personnel to assess internal agency components. The assessments identify vulnerabilities in program regulations, standard operating procedures, and work processes. This element of review is imperative as self-assessment is key to eliminating internal fraud, waste and abuse, as well as identifying inefficiencies and recommending corrective actions. In addition, funds sought will be used for additional staff to maintain the financial health and stability of the USCIS. Historically, the CFO function has remained inadequately staffed and has been unable to fully meet USCIS' budgetary planning and execution

requirements. The request for budget planning and execution will provide sufficient resources to staff and support these functions.

Finally, DHS mandated that USCIS, ICE and CBP establish service level agreements covering several core administrative support areas. While these service level agreements have been established, USCIS needs to strengthen oversight of the services performed and received. Several of the key factors that justify service level agreements, such as cost efficiencies, consistency in operational processing, and effective cross-agency communication require better monitoring. Funds will also be used for staff to evaluate and analyze service level agreements to gauge the benefits. Currently, performance evaluations/surveys are not initiated to ensure accountability and effectiveness or efficiency. This enhancement requires 65 staff and \$11 million.

Establish a National Recruitment Program. Since inception, USCIS has not had the resources to establish a National Recruitment Program (NRP). According to the Office of Personnel Management, the recruitment process for federal employers holds a number of challenges, one of which is the ability to replace an aging workforce. Over the next five years, over half of USCIS' workforce will be eligible for retirement. USCIS must be positioned to compete for talent in light of the retirement wave. The primary mission of the NRP will be to help management attract the right talent in order to ensure the employment of a high-quality and diverse workforce making USCIS an employer of choice. This enhancement requires 2 staff and \$2.5 million.

Enhance procurement operations. The current procurement workload requires additional contract specialists. Currently, USCIS has only ten warranted contract specialists averaging 115 actions annually. USCIS procurement staff obligated

approximately \$500 million in new contractual actions in FY 2005, in addition to administering \$4 billion in ongoing contracts. Also, the USCIS Office of Contracting recently assumed responsibility for the USCIS portion of several large contracts formerly administered by ICE. Continued understaffing poses significant internal control issues and increases the risk that limited contract dollars will not be used as effectively as possible. This request will double the size of USCIS' Office of Procurement. This enhancement requires 10 staff and \$1 million.

4. Summary.

Table 4 summarizes the calculation of the FY 2008 / 2009 costs at the \$2.423 billion (rounded to the nearest million).

Table 4 – FY 2008/2009 IEFA Costs	
President's FY 2007 IEFA Budget	\$1,760,000
Less: Non-Recurring Costs	<u>(8,500)</u>
FY 2007 Adjusted IEFA Budget	1,751,500
Plus: Inflation	53,000
Plus: Additional Resource Requirements	<u>619,000</u>
Total	<u>\$2,423,000</u>

F. Determining Application and Petition Surcharge Costs.

Asylum/Refugee and fee/exempt costs are referred to as “surcharges” since they are not directly related to the processing activity costs of a particular immigration benefit.

These costs must be ascertained and then applied to all fee-paying applications.

1. Asylum and Refugee Costs.

Congress has authorized USCIS to set its immigration benefit application and petition

fees at a level that recovers sufficient revenue to provide asylum and refugee services. INA section 286(m), 8 U.S.C. 1356(m). USCIS determined the asylum and refugee surcharge costs to be \$182 million or 7% (including \$14 million for the Cuban Haitian Entrant Program as identified in the “Additional Resource Requirements” section in part IV.E) of the FY 2008/2009 IEFA Costs.

2. Fee Waiver/Exemption Costs.

Congress has authorized USCIS to set its immigration benefit application and petition fees at a level that recovers sufficient revenue to provide services to other immigrants at no charge. INA section 286(m), 8 U.S.C. 1356(m). Eligible applicants and petitioners are granted fee waivers if they can establish that they are unable to pay the fee. In addition, asylum and refugee applicants are exempt from paying the fee for certain immigration benefit applications and petitions. This amount also includes fees received from applicants residing in the Virgin Islands of the United States and in Guam, since these fees are paid over to the treasuries of the Virgin Islands and Guam per section 286(m) of the INA, 8 U.S.C. 1356(m). USCIS determined the full costs of fee waivers and exemptions by subtracting the workload volume from the fee-paying volume of each application/petition, and multiplying that amount by the current fee. USCIS determined the fee waiver/exempt costs to be \$70 million or 3% of the FY 2008/2009 IEFA Costs.

G. FY 2008/2009 Processing Activity Costs.

The amount of immigration and naturalization benefit application and petition and biometric costs that were assigned to processing activities was determined by adjusting the FY 2008/2009 IEFA costs by the costs attributable to the asylum/refugee and fee waiver/exemption services.

Table 5 summarizes the total of \$2.171 billion assigned to processing activities (dollars in thousands):

Table 5 – FY 2008/2009 Processing Activity Costs	
FY 2008/2009 IEFA Costs	\$2,423,000
Less: Asylum and Refugee Services	(182,000)
Less: Fee Waiver and Exempt Services	(70,000)
Total	<u>\$2,171,000</u>

V. Volumes.

USCIS used two types of volume data in the fee review. The first is workload volume (measured in terms of the number of incoming applications and petitions) that was used as one of the main cost drivers for assigning processing activity costs to immigration and naturalization benefit applications and petitions (explained further in section VII.B). The other is fee-paying volume data that was used as the denominator in the equation to calculate the immigration and naturalization benefit application and petition and biometric service unit costs.

A. Biometric Services.

Projected volume increases from the FY 2005 levels include an increase in biometric services of an additional 392,239 from FY 2005 levels, since USCIS began to expand biometric services to include Form I-90 on June 30, 2005. Therefore, USCIS projects this additional amount for the remaining annual period of October 2004 to June 2005, in order to annualize the biometric service volume. In addition, USCIS will be expanding biometric services to the Form I-131 (Refugee Travel Document, Reentry Permit only)

and Form I-751 (Petition to Remove the Conditions on Residence) in FY 2007, equating to an increase in biometric services of 205,496. This was not projected in the FY 2007 IEFA budget. Finally, the Workload and Fee Projection Group projected an additional 69,785 in corresponding biometric service volume given the increase in Form N-400 (111,006) and Form I-90 (2,626), less the decrease in Form I-485 (43,847). This issue explained in the next section. As mentioned previously, USCIS will not assume that the TPS Program for re-registrants of certain nationalities will continue, resulting in a projected decline of 334,823 in associated biometric service volumes. USCIS also projects a volume decline of 23,082 associated with the conclusion of NACARA filings.

The overall projected increase in biometric services from FY 2005 levels is 309,615. Given a workload volume of 2,351,000 in FY 2005, the projected FY 2008/2009 workload volume is 2,660,615. Also, given the fee-paying volume of 1,901,674 in FY 2005, the projected FY 2008/2009 fee-paying volume is 2,211,289.

B. Immigration Benefit Applications and Petitions.

As previously stated, this rule proposes to eliminate USCIS' operational dependency on certain interim benefit fees. Interim benefits are associated with the Form I-765, Application for Employment Authorization, and Form I-131, Application for Travel Document (Advance Parole only), that are issued to individuals on request while their applications for adjustment of status to permanent residence (Form I-485, Application to Register Permanent Status or Adjust Status) are pending. USCIS' analysis of interim benefits associated with a pending Form I-485 identified a total decrease of 725,000 applications (450,000 Form I-765 and 275,000 Form I-131). This proposed rule eliminates fees for interim benefits for applicants for adjustment of status to permanent

residence.

As previously mentioned, this proposed rule eliminates K-3 (certain spouses of United States citizens) petition fees associated with Form I-129F. USCIS' analysis of K-3 petitions identifies a volume decrease of 17,535 in the total number of fee-paid Form I-129F as a result of this change.

USCIS also will not assume that the Temporary Protected Status (TPS) Program for re-registrants of certain nationalities will continue, resulting in an assumed decline of volumes for Form I-821 (Application for Temporary Protected Status) and Form I-765. As such, USCIS projects a decrease in volume of 334,823 for each of these benefits, with the fiscal effect adjusted by the fact that there is no fee charged for the Form I-821 for re-registrants.

USCIS projects that there will be no filings for Form I-881, Nicaraguan Adjustment and Central American Relief Act – Suspension of Deportation or Application Special Rule (NACARA 203) in FY 2008 and 2009, for a volume decline of 23,082 (from 23,082 in FY 2005 to zero).

Projected volume increases are the product of projections from the USCIS Workload and Fee Projection Group – similar to the FY 1998 Fee Review. USCIS leveraged a time series model based on a regression analysis over the last 15 years, with the most recent data trends given the greatest weight. USCIS then adjusted this data based on known or projected program, policy, or other factors that would impact the analysis. The Workload and Fee Projection Group mainly focused on the applications and petitions that comprise the majority of the workload. For the remainder of the workload, USCIS used FY 2005 actual volumes for the FY 2008/2009 biennial period. The Workload and Fee Projection

Group did not foresee a reason to change these figures from FY 2005 levels since this was a fairly typical year.

The Workload and Fee Projection Group projected an overall increase of 160,893 in immigration benefit application and petition volumes over FY 2005 levels due to projected increases in Form I-130 (35,539), Form I-140 (59,996), Form I-90 (2,626), and Form N-400 (111,006) filings, less decreases projected in the Form I-485 (43,847) filings due to a decline in the availability of employment-based visas, and in Form I-129 (1,241), and Form I-539 (3,186) filings.

In sum, the overall projected decrease in immigration benefit applications and petitions from FY 2005 levels is 939,547. Given a total workload volume of 5,932,531 in FY 2005, the projected FY 2008/2009 total workload volume is 4,992,984. Also, given the total fee-paying volume of 5,615,537 in FY 2005, the projected FY 2008/2009 total fee-paying volume is 4,675,990.

Even though the overall number of workload volume is projected to decrease, the overall adjudicative time required to process applications and petitions is actually increasing. Most of the workload volume decrease is associated with interim benefits. USCIS plans to integrate applications for these benefits into the underlying application for adjustment of status. While this will decrease the actual count of individual applications filed, the same discrete decisions and processing will in many respects remain to the extent to which USCIS is unable to make a decision on the underlying benefit within 90 days. Thus the required adjudicative time is not eliminated as these numbers would suggest, but is being shifted to the adjustment of status application. The other major decrease is associated with the TPS program, and the form types associated

with this program are in fact one of the least complex adjudications. The above-mentioned workload decreases are offset by a significant projected workload increase in one of the most complex and time consuming adjudications – the Form N-400, Application for Naturalization.

Table 6 summarizes the FY 2005 actual workload volumes, the projected FY 2008/2009 biennial workload volumes, and the difference by application/petition.

Table 6 – Workload Volumes by Application/Petition			
Form No.	FY 2005 Actual Workload Volume	FY 2008/2009 Projected Workload Volume	Difference
I-90	699,005	701,631	2,626
I-102	22,218	22,218	
I-129	384,820	383,579	(1,241)
I-129F	63,800	46,265	(17,535)
I-130	661,502	697,041	35,539
I-131	379,165	104,165	(275,000)
I-140	75,009	135,005	59,996
Waiver Applications	39,306	39,306	
Form I-290B/Motions	35,072	35,072	
I-360	13,684	13,684	
I-485	629,568	585,721	(43,847)
I-526	332	332	
I-539	223,186	220,000	(3,186)
I-600/600A	30,974	30,974	
I-687	38,769	38,769	
I-690	3,601	3,601	
I-694	409	409	
I-695	132	132	
I-698	881	881	
I-751	117,532	117,532	
I-765	1,744,961	960,138	(784,823)
I-817	5,532	5,532	
I-824	38,307	38,307	
I-829	39	39	
I-881	23,082		(23,082)

I-905	10	10	
I-914	413	413	
N-300	133	133	
N-336	11,089	11,089	
N-400	602,972	713,978	111,006
N-470	556	556	
N-565	28,541	28,541	
N-600/600K	57,931	57,931	
Total	5,932,531	4,992,984	(939,547)

To calculate unit costs, USCIS identified the number of fee-paying volumes for each application/petition and biometric fee by dividing the actual fee revenues received in FY 2005 by the FY 2005 fee. USCIS then adjusted this number to reflect the filing trends in FY 2006 and expected filing trends in FY2007. This adjustment is reflected in the “adjustment” column in Table 7 and represents the same amount as the “difference” column in Table 6 that calculated the projected volume changes from FY 2005 to FY 2008/2009.

Table 7 – Fee-Paying Volumes by Application/Petition			
Form No.	FY 2005 Fee-Paying Volume	Adjustment	FY 2008/2009 Fee-Paying Volume
I-90	599,391	2,626	602,017
I-102	21,408		21,408
I-129	384,820	(1,241)	383,579
I-129F	63,800	(17,535)	46,265
I-130	661,502	35,539	697,041
I-131	374,616	(275,000)	99,616
I-140	74,678	59,996	134,674
Waiver Applications	39,306		39,306
I-290B/Motions	35,072		35,072
I-360	12,045		12,045
I-485	584,998	(43,847)	541,151
I-526	328		328
I-539	222,668	(3,186)	219,482
I-600/600A	29,146		29,146

I-687	38,714		38,714
I-690	3,601		3,601
I-694	409		409
I-695	86		86
I-698	881		881
I-751	105,880		105,880
I-765	1,622,701	(784,823)	837,878
I-817	5,532		5,532
I-824	38,307		38,307
I-829	21		21
I-881	23,082	(23,082)	
I-905	10		10
I-914	142		142
N-300	73		73
N-336	11,089		11,089
N-400	575,775	111,006	686,781
N-470	556		556
N-565	27,720		27,720
N-600/600K	57,180		57,180
Total	5,615,537	(939,547)	4,675,990

VI. Assigning Costs to Processing Activities.

USCIS uses a detailed operating plan to manage its resources effectively. The plan identifies the payroll (pay and benefits, awards, overtime) and non-payroll costs (general expenses, information technology, contracts) associated with each USCIS office, as well as costs that are managed and funded centrally such as rent, information technology operations and maintenance, and service level agreements. The operating plan is a vast improvement over the cost data used in the FY 1998 Fee Review, where the information was only available at very high levels conglomerating various functions.

Each USCIS office was classified as “overhead” versus “direct.” This classification was performed since direct cost items can be directly “assigned” to activities based on a relationship that is readily identifiable between the cost item and a processing activity. For example, an Adjudications Officer performs work under the “Make Determination”

activity. Therefore, the costs associated with an Adjudications Officer are directly assigned to this activity. Overhead cost items are “allocated” to activities since no direct relationship can be developed between the resource item and the activity. For example, there is no direct relationship between the Office of Planning, Budget, and Finance and the “Make Determination” activity, but clearly USCIS’ financial management operations are vital, and as such, the costs were allocated to the “Make Determination” activity based on number of government staff, as was the case with most overhead cost items.

A. Overhead Costs.

USCIS defined overhead as “the ongoing administrative expenses of a business which cannot be attributed to any specific business activity, but are still necessary for the business to function.” Examples include the majority of Headquarters functions such as the Office of Planning, Budget, and Finance, the Office of the Chief Information Officer, the Office of Chief Counsel, the Congressional Relations Office, and the Office of Policy and Strategy. These offices are further identified in section III.D under the “Administration” program. Field functions classified as overhead include support positions such as management, administration, analysts and information technology staff. Centrally managed costs such as rent, information technology operations and maintenance, and service level agreements were also classified as overhead.

Total overhead costs were identified to be \$609 million, of which \$179 million is payroll (29%) and \$430 million is non-payroll (71%). Total overhead costs represent 25% of the FY 2008/2009 IEFA costs. This includes \$37.9 million to enhance the training program, \$45.9 million for rent and lease acquisition resources, and \$110.8 million to upgrade and maintain the USCIS information technology environment as

identified in section IV.E.3. USCIS assessed a total of \$562 million (\$609 million less \$47 million associated with the asylum and refugee program) in overhead costs as a flat percentage of each application/petition and biometric processing activity costs. While the amount of the overhead will vary between processing activities, the percentage of cost is constant.

B. Direct Costs.

USCIS reviewed and analyzed the FY 2008/2009 IEFA costs in detail to determine which direct items could be directly assigned to the immigration benefit application/petition and biometric service processing activities. The following depicts the major direct cost items assigned to the processing activities:

Inform the Public. Of the \$2.171 billion assigned to immigration benefit application/petition and biometric service processing activities, \$243 million or 11% is assigned directly to the “Inform the Public” activity. “Inform the Public” includes \$54 million for the National Customer Service Center contract and support activities to provide nationwide assistance by telephone to individuals calling from within the United States about immigration services and benefits. Most of the \$90 million in direct payroll costs are for IIOs who assist persons with information necessary to complete required form types and explain the administrative procedures and average processing times for each application/petition.

Intake. Of the \$2.171 billion assigned to immigration benefit application/petition and biometric service processing activities, \$139 million or 7% is assigned directly to the “Intake” activity. “Intake” includes \$105 million for activities related to the mail, filing, data entry, and fee receipting at USCIS Service Centers. It also includes \$2 million for

the lockbox, which is an agent of the Department of Treasury that performs the electronic fee receipting, fee deposit, and initial data entry for specific form types.

Conduct IBIS Checks. Of the \$2.171 billion assigned to immigration and naturalization benefit application and petition and biometric service processing activities, \$29 million or 1% is assigned directly to the “Conduct IBIS Check” activity. Since July 2002, USCIS has added security checks to the processing of all immigration and naturalization benefit applications and petitions. “Conduct IBIS Check” includes \$17 million in direct payroll costs of Adjudication Officers and other authorized personnel to compare information on applicants, petitioners, beneficiaries, derivatives and household members who apply for an immigration or naturalization benefit on a USCIS application or petition against various Federal lookout systems.

Review Records. Of the \$2.171 billion assigned to immigration benefit application/petition and biometric service processing activities, \$223 million or 10% is assigned directly to the “Review Records” activity. “Review Records” includes \$73 million in direct payroll costs to oversee records operations (including processing Freedom of Information Act (FOIA) requests) in Headquarters, the National Records Center (a centralized facility for storing alien records), and field offices. This activity covers \$11 million in new funding to process FOIA requests (as identified in section IV.E.3), a \$21 million records support contract to maintain records at local field offices, \$15 million in contract support staff in support of the Harrisonburg File Facility for receipt file holdings, and the National Archives and Records Administration contract for the retirement of alien files, among other records activities.

Make Determination. Of the \$2.171 billion assigned to immigration benefit application/petition and biometric service processing activities, \$1.093 billion or 50% is assigned directly to the “Make Determination” processing activity. This activity includes \$466 million in direct payroll costs for Adjudication Officers and support personnel (including \$224 million to enhance adjudications and support staff as identified in section IV.E.3), \$100 million for field office discretionary general expenses, \$21 million for field office overtime, \$36 million for investment technology field support contract, \$22 million for field training, \$24 million for the National Benefits Center contract, \$26 million for the adjudications clerical contract in support of field offices, and \$11.5 million in Application Support Center contract costs in direct support of processing the Form I-90 (Application to Replace Permanent Resident Card).

Fraud Detection and Prevention. Of the \$2.171 billion assigned to immigration and naturalization benefit application and petition and biometric service processing activities, \$123 million or 6% is assigned directly to the “Fraud Detection and Prevention” activity. This activity includes \$59 million in payroll costs for Immigration Officers and Intelligence Research specialists to detect and combat immigration and naturalization benefit fraud. The activity also includes \$31 million in additional government staff for fraud prevention and detection efforts, \$8 million for a new Compliance Office, and \$11.5 million in system enhancements to national security systems and processes (as identified in section IV.E.3).

Issue Document. Of the \$2.171 billion assigned to immigration and naturalization benefit application/petition and biometric service processing activities, \$117 million or 5% is assigned directly to the “Issue Document” activity. The “Issue Document” activity

involves work performed at centralized facilities to produce secure cards for certain immigration benefits. This includes \$27 million for the Integrated Card Production system, including the contract, consumables, and information and technology operations and maintenance. The activity also includes \$36.7 million for a backup card production facility, and \$27.2 million for the enhanced delivery of secure documents (as identified in section IV.E.3).

Capture Biometrics. Of the \$2.171 billion assigned to immigration and naturalization benefit application and petition and biometric service processing activities, \$204 million or 10% is assigned directly to the “Capture Biometrics” activity. The “Capture Biometrics” activity includes \$74.5 million in contract costs and \$14 million in direct payroll costs (most of which is for Application Support Center managers) of operating the Application Support Centers to electronically capture applicants’ fingerprints, photographs, and signatures. This activity also includes \$67 million (including \$11.9 million for increased costs associated with an overall increase in projected biometric workload as well as an increase in FBI name check costs passed on to USCIS through an interagency agreement, as identified in section IV.E.3) in costs paid to the FBI to conduct the appropriate background checks of fingerprints and/or applicant names (depending upon the immigration benefit). This is a change in the manner in which USCIS currently calculates the biometric fee since FBI background check costs were previously included in the immigration benefit application/petition fees. USCIS believes this is a more accurate methodology since there is a direct relationship between the biometric workload and the costs paid to the FBI. In addition, under this method, applicants and petitioners directly bear the costs of FBI background checks, as is the case today.

The FY 2008/2009 IEFA costs by processing activity are summarized in Table 8 (dollars in thousands).

Table 8 – FY 2008/2009 Costs by Processing Activity	
FY 2008/2009 Costs by Processing Activity	Amount (000)
Capture Biometrics	\$204,000
Inform Customers	\$243,000
Intake	\$139,000
Conduct IBIS Checks	\$29,000
Review Records	\$223,000
Make Determination	\$1,093,000
Fraud Detection and Prevention	\$123,000
Issue Document	<u>\$117,000</u>
Total	<u>\$2,171,000</u>

VII. Assigning Processing Activity Costs to Applications and Petitions and Biometric Services.

In ABC, the final stage in the process is assigning the processing activity costs to the products. The products are decisions on the immigration and naturalization benefit applications and petitions and biometric services for which USCIS charges fees.

A. Biometric Services.

The “Capture Biometrics” processing activity was assigned directly to the biometric fee. The unit cost for this activity, and the biometric fee, is \$92 based on total costs of \$204 million and a fee-paying volume of 2.2 million. The other processing activities represent the basic components of processing immigration and naturalization benefit applications and petitions.

B. Immigration Benefit Applications and Petitions.

In general, the more complex an immigration or naturalization benefit application or petition is to adjudicate, the higher the unit costs. This is because the largest processing activity cost, “Make Determination,” was assigned to the various immigration and naturalization benefit applications and petitions by a factor of workload volume weighted by completion rate (hours per completion). Workload volume is the measure of how many times an activity is performed for a particular product (number of application/petitions and biometrics received in a fiscal year), and “completion rate” measures the average adjudicative time or “level of effort” needed to perform the activity for a particular product, since time is a key factor in determining immigration benefit application and petition fees. The completion rates were based on the most recent data available from the period of April 2005 – March 2006. Exceptions to this general rule occur when: (1) volumes skew the unit costs (e.g., high volume applications tend to have lower unit costs since fixed costs are allocated over a higher volume base), (2) additional activities were performed (e.g., some applications require the creation of secure cards); and 3) applications and petitions with low volumes were increased only by the weighted average fee increase (discussed below).

For the processing activities of “Inform the Public,” “Intake,” “Conduct IBIS Check,” “Review Records,” “Fraud Prevention and Detection” and “Issue Document,” the applications and petitions reflect the same average unit processing activity costs for each activity. The “Issue Document” processing activity costs were allocated only to those applications for which a secure document is required. This is a departure from the basis of the current fees since the current unit processing activity costs vary for every

immigration benefit application and petition. USCIS decided that this was the best allocation method since these processing activity costs are not particularly driven by the complexity of the application/petition, and also to minimize the dollar impact on the more complex applications and petitions (which already will carry higher fees due to their complexity).

As explained previously, USCIS assumed no separate interim benefit fees from Form I-485 applicants, and thus added interim benefit costs from the “Make Determination” activity into the cost of the Form I-485, the primary immigration benefit application for which interim benefits are relevant. USCIS accomplished this by adding the completion rates for the Forms I-765 and I-131 to the Form I-485 completion rate. As a result, the costs for the “Make Determination” activity for the Form I-485 received more of those costs, including associated overhead costs, than it normally would have without factoring in interim benefits. USCIS believes this is a fair and equitable methodology since applicants, when filing a Form I-485, would also pay for the processing costs of interim benefits, and would not have to pay for surcharges, other processing activities, and associated overhead costs more than once as they do today. Interim benefit costs outside the “Make Determination” processing activity were distributed to the other immigration benefit applications and petitions in accordance with the general methodology. Also explained previously, in anticipating the elimination of duplication in the K-3 petition process, USCIS assumed no revenues from Form I-129F as it relates to the K-3 classification, depending instead on one petition on Form I-130. This, too, has the effect of redistributing costs relating to the K-3 classification over all other form types.

USCIS leveraged “completion rates,” reflective of hours per completion, to identify the adjudicative time required to complete specific form types. The rate for each form type represents an average, as some cases within certain form types are more complex than others. Completion rates reflect what is termed “touch time” or the time the Adjudication Officer is actually handling or touching the case. It is not reflective of “queue time” or time spent waiting, for example, for additional information or supervisory approval. This is different from “processing time” which reflects the total time applicants and petitioners can expect to await a decision on their case once it is received by USCIS. Even though the completion rates for select applications and petitions have increased since the FY 1998 Fee Review, as referenced later in this rule in the “Impact on Applicants and Petitioners” section, processing times have decreased for the majority of form types.

All Adjudication Officers are required to report completion rate information. In addition to using this data in determining fees, completion rates are a key factor in determining local office staffing allocations to match resources and workload since the type of workload (and amount) dictates the resource requirements. For this reason, the data are scrutinized both at the local office and regional level by management, and by the Performance Management Division (PMD) at the Headquarters level to ensure data accuracy. When the data reported are found to be inconsistent with other offices, or inconsistent with prior reported data, PMD will contact the reporting office and make any necessary adjustments. USCIS also places confidence in the data, given the consistency of reporting it has witnessed over the last few years. The fact that this information is now available on a continual basis makes it easier for USCIS to update cost information more

frequently for fee review and cost management purposes. This methodology is substantially superior to that available for the FY 1998 Fee Review, where it was necessary to use a method of physical observations (based on a statistically valid sample).

District Office, Service Center, and the National Benefit Center completion rates, reflected in terms of hours per completion, are summarized in Table 9 by application and petition. The completion rates for Form I-290B/Motions (Administrative Appeals Office) and Biometric Services (Application Support Centers) are not identified here since specific costs can be directly assigned to these fee-based services, and therefore the factors of workload volume and completion rates are not necessary to assign processing activity costs to products.

Table 9 – Completion Rates			
Form No.	District Offices	Service Centers	National Benefit Center
I-90	.77	.51	N/A
I-102	.65	.32	.31
I-129	.15	.41	N/A
I-129F	2.73	.49	.41
I-130	.87	.33	.62
I-131	.50	.22	.13
I-140	2.73	1.06	N/A
Waiver Applications	1.23	1.05	.85
I-360	.89	2.16	N/A
I-485	1.40	.90	1.92
I-526	1.95	6.29	N/A
I-539	1.24	.29	.30
I-600/600A	1.46	N/A	N/A
I-687	3.13	4.70	.20
I-690	2.98	1.11	.25
I-694	.74	.88	N/A
I-695	1.33	.54	N/A
I-698	2.61	2.42	N/A
I-751	1.19	.48	N/A
I-765	.30	.17	.17

I-817	1.65	.61	.60
I-824	.96	.42	.55
I-829	3.18	8.33	N/A
I-914	N/A	3.34	N/A
N-300	1.04	N/A	N/A
N-336	1.39	N/A	N/A
N-400	1.19	N/A	N/A
N-470	1.56	1.00	N/A
N-565	.60	.71	N/A
N-600/600K	.86	1.05	N/A

Table 10 displays the unit costs (processing activity costs divided by the number of fee-paying applications/petitions) for each immigration benefit application and petition by processing activity, and the average processing activity unit costs. The processing activity costs were identified in Table 8, and the number of fee-paying applications/petitions was identified as 4.68 million in Table 7.

The application and petition unit costs are generally increased by varying amounts according to the form type, mainly due to the “Make Determination” processing activity cost differences. As previously stated, the “Make Determination” processing activity unit cost generally follows the premise that the more complex the application/petition is to adjudicate, the higher the unit costs. For the processing activities of “Inform the Public,” “Intake,” “Conduct IBIS Check,” “Review Records,” “Fraud Prevention and Detection” and “Issue Document,” the applications and petitions reflect the same average unit costs for each processing activity. Since the “Issue Document” processing activity costs were allocated only to those applications for which a secure document is required, the average processing activity unit costs of \$25 (based on total fee-paying volume of 4.68 million) is less than the processing activity unit costs of \$53 (based on associated fee-paying volume of 2.2 million) for the associated applications.

E. Table 10 – Processing Activity Unit Costs by Application/Petition

Form No.	Inform Customers	Intake	Conduct IBIS Check	Review Records	Make Determination	Fraud Prevention and Detection	Issue Document	Total Unit Processing Activity Cost
I-90	\$52	\$30	\$6	\$48	\$138	\$26	\$53	\$353
I-102	\$52	\$30	\$6	\$48	\$103	\$26		\$265
I-129	\$52	\$30	\$6	\$48	\$82	\$26		\$244
I-129F	\$52	\$30	\$6	\$48	\$257	\$26		\$419
I-130	\$52	\$30	\$6	\$48	\$136	\$26		\$298
I-131	\$52	\$30	\$6	\$48	\$70	\$26	\$53	\$285
I-140	\$52	\$30	\$6	\$48	\$304	\$26		\$466
Waiver Applications	\$52	\$30	\$6	\$48	\$349	\$26		\$511
I-290B/Motions	\$52	\$30	\$6	\$48	\$472	\$26		\$634
I-360	\$52	\$30	\$6	\$48	\$527	\$26		\$689
I-485	\$52	\$30	\$6	\$48	\$546	\$26	\$53	\$761
I-526	\$52	\$30	\$6	\$48	\$1,397	\$26		\$1,559
I-539	\$52	\$30	\$6	\$48	\$127	\$26		\$289
I-600/600A	\$52	\$30	\$6	\$48	\$500	\$26		\$662
I-687	\$52	\$30	\$6	\$48	\$740	\$26		\$902
I-690	\$52	\$30	\$6	\$48	\$866	\$26		\$1,028
I-694	\$52	\$30	\$6	\$48	\$212	\$26		\$374
I-695	\$52	\$30	\$6	\$48	\$384	\$26		\$546
I-698	\$52	\$30	\$6	\$48	\$672	\$26	\$53	\$887
I-751	\$52	\$30	\$6	\$48	\$214	\$26	\$53	\$429
I-765	\$52	\$30	\$6	\$48	\$73	\$26	\$53	\$288
I-817	\$52	\$30	\$6	\$48	\$209	\$26	\$53	\$424
I-824	\$52	\$30	\$6	\$48	\$164	\$26		\$326
I-829	\$52	\$30	\$6	\$48	\$2,979	\$26	\$53	\$3,194

I-914	\$52	\$30	\$6	\$48	\$2,139	\$26	\$53	\$2,354
N-300	\$52	\$30	\$6	\$48	\$580	\$26		\$742
N-336	\$52	\$30	\$6	\$48	\$465	\$26		\$627
N-400	\$52	\$30	\$6	\$48	\$428	\$26		\$590
N-470	\$52	\$30	\$6	\$48	\$507	\$26		\$669
N-565	\$52	\$30	\$6	\$48	\$205	\$26		\$367
N-600/600K	\$52	\$30	\$6	\$48	\$293	\$26		\$455
Average Application/Petition	\$52	\$30	\$6	\$48	\$234	\$26	\$25	\$421

VIII. Assigning Surcharge Costs to Applications and Petitions.

The final step in calculating the immigration and naturalization benefit application and petition fees is to add amounts to recover asylum and refugee costs, and fee waiver and exempt costs. As previously mentioned, these costs are referred to as “surcharges” since they are not directly related to the processing activity costs of a particular immigration benefit. Surcharges are not assigned to the biometric fee.

A. Method of Assigning Costs.

USCIS used the same average unit surcharge cost for every application and petition type. This is a departure from the current allocation methodology, since the current surcharges are based upon a flat percentage of each application/petition processing activity cost and therefore varies for each case type. USCIS decided that using the same average cost is a better allocation method, since the surcharges are unrelated to the complexity of the application/petition, and this new allocation method also minimizes the dollar impact on the more complex applications and petitions (which already will carry higher fees due to their complexity).

B. Fee Waiver/Exemption Costs.

As previously stated, total fee waiver and exemption costs were determined to be \$70 million. The average of \$15 was derived by dividing the \$70 million by the total 4.68 million application/petition fee-paying volumes.

C. Asylum/Refugee Costs.

As previously stated, the full costs of asylum and refugee operations were determined to be \$182 million. The average of \$39 was derived by dividing the \$182 million by the total 4.68 million application/petition fee-paying volume.

Table 11 displays the amount of surcharges applied to each application and petition on a per unit basis. Unit processing activity costs average (weighted) \$421 or 90% of FY 2008/2009 IEFA costs, while unit fee waiver/exemption and Asylum/Refugee surcharges average \$54 or 10%. This equates to a weighted average unit cost per application/petition of \$475.

Table 11 – Application and Petition Unit Costs				
Form No.	Unit Processing Activity Cost	Unit Fee Waiver/ Exempt Surcharge	Unit Asylum/ Refugee Surcharge	Total Unit Cost
I-90	\$353	\$15	\$39	\$407
I-102	\$265	\$15	\$39	\$319
I-129	\$244	\$15	\$39	\$298
I-129F	\$419	\$15	\$39	\$473
I-130	\$298	\$15	\$39	\$352
I-131	\$285	\$15	\$39	\$339
I-140	\$466	\$15	\$39	\$520
Waiver Applications	\$511	\$15	\$39	\$565
I-290B/Motions	\$634	\$15	\$39	\$688
I-360	\$689	\$15	\$39	\$743
I-485	\$761	\$15	\$39	\$815
I-526	\$1,559	\$15	\$39	\$1,613
I-539	\$289	\$15	\$39	\$343
I-600/600A	\$662	\$15	\$39	\$716
I-687	\$902	\$15	\$39	\$956
I-690	\$1,028	\$15	\$39	\$1,082
I-694	\$374	\$15	\$39	\$428
I-695	\$546	\$15	\$39	\$600
I-698	\$887	\$15	\$39	\$941
I-751	\$429	\$15	\$39	\$483
I-765	\$288	\$15	\$39	\$342
I-817	\$424	\$15	\$39	\$478
I-824	\$326	\$15	\$39	\$380
I-829	\$3,194	\$15	\$39	\$3,248
I-914	\$2,354	\$15	\$39	\$2,408
N-300	\$742	\$15	\$39	\$796
N-336	\$627	\$15	\$39	\$681
N-400	\$590	\$15	\$39	\$644

N-470	\$669	\$15	\$39	\$723
N-565	\$367	\$15	\$39	\$421
N-600/600K	\$455	\$15	\$39	\$509
Weighted Average Application/Petition	\$421	\$15	\$39	\$475

IX. Proposed Fee Adjustments

To arrive at the final proposed fees, the unit costs are rounded up or down to the nearest \$5 increment consistent with past fee practices as reflected in 8 CFR 103.7(b).

A. Biometric Services.

The biometric fee is increased by \$20, from \$70 to \$90, or 29%. USCIS last increased the fee by \$20, from \$50 to \$70, or 40% in April 2004. As discussed above, a portion of this fee is paid by USCIS to the FBI for fingerprint processing and that cost may change.

B. Immigration Benefit Applications and Petitions.

The weighted average application/petition is increased by \$244, from \$231 to \$475, or 106%. When USCIS last performed a comprehensive fee review in FY 1998, the immigration benefit application/petition fees increased by a weighted average of \$65 or 76%, from \$85 to \$150.

To arrive at the proposed fees, in addition to rounding adjustments, USCIS adjusted certain low volume form types. Since some low volume form types (20,000 or less) produced particularly high unit costs as compared to the current fees (greater than 250%), USCIS decided to increase them only by the average percentage fee increase (106%) of all immigration benefit applications and petitions. These form types are:

- Form I-360, Petition for Amerasian Widow(er) or Special Immigrant;

- Form I-690, Application for Waiver of Excludability;
- Form I-695, Application for Replacement Employment Authorization or Temporary Residence Card;
- Form I-914, Application for T Nonimmigrant Status;
- Form N-300, Application to File Declaration of Intention; and
- Form N-470, Application to Preserve Residence for Naturalization Purposes.

USCIS did, however, use its normal methodology to increase proposed fees for form types related to the legalization program under the Immigration Reform and Control Act of 1986, INA sec. 245A, 8 U.S.C. 1255a (Form I-687, For Filing Application for Status as a Temporary Resident; Form I-694, Notice of Appeal of Decision; Form I-698, Application to Adjust Status From Temporary to Permanent Resident) and for entrepreneur petitions (Form I-526, Immigrant Petition by Alien Entrepreneur; Form I-829, Petition by Entrepreneur to Remove Conditions), although these increases were more than 250%. These applications do not present the equitable policy arguments supporting the fee relief provided for Violence Against Women Act (VAWA) self-petitioners and victims of trafficking, for example, as compared to IRCA legalization applicants who have resided in the United States since at least 1982, or entrepreneurs seeking lawful permanent residence on the basis of investments of at least \$500,000.

The proposed fee schedule for the immigration and naturalization benefit applications and petitions is illustrated in Table 12. The proposed rounded fee for each application or petition is compared to the current rounded fee, and the difference between the two is identified. This table omits some variations within specific form types relating to children, family caps, etc.; for these fees, please see the proposed regulation text itself.

Table 12 – Current and Proposed Fees			
Form No.	Current Fee	Proposed Fee	Difference
I-90	\$190	\$410	\$220
I-102	\$160	\$320	\$160
I-129	\$190	\$300	\$110
I-129F	\$170	\$475	\$305
I-130	\$190	\$355	\$165
I-131	\$170	\$340	\$170
I-140	\$195	\$520	\$325
Waiver Applications	\$265	\$565	\$300
I-290B/Motions	\$385	\$690	\$305
I-360	\$190	\$390	\$200
I-485	\$325	\$820	\$495
I-526	\$480	\$1,620	\$1,140
I-539	\$200	\$345	\$145
I-600/600A	\$545	\$720	\$175
I-687	\$255	\$960	\$705
I-690	\$95	\$195	\$100
I-694	\$110	\$430	\$320
I-695	\$65	\$135	\$70
I-698	\$180	\$945	\$765
I-751	\$205	\$485	\$280
I-765	\$180	\$345	\$165
I-817	\$200	\$480	\$280
I-824	\$200	\$380	\$180
I-829	\$475	\$3,260	\$2,785
I-914	\$270	\$555	\$285
N-300	\$120	\$245	\$125
N-336	\$265	\$685	\$420
N-400	\$330	\$645	\$315
N-470	\$155	\$320	\$165
N-565	\$220	\$420	\$200
N-600/600K	\$255	\$510	\$255
Weighted Average Application/Petition	\$231	\$475	\$244

Based on the proposed fee schedule and a projected application/petition fee-paying volume of 4.68 million and biometric service volume of 2.2 million, immigration and naturalization benefit application and petition and biometric fees will generate \$2.421

billion in annual revenue for the FY 2008 and FY 2009 biennial period. For the same period, the estimated FY 2008/2009 cost of processing immigration and naturalization benefit applications and petitions and biometric services is \$2.423 billion. The \$2 million difference is due to rounding.

X. Impact on Applicants and Petitioners.

The USCIS recognizes that this rule will have an impact on persons who file the affected applications and petitions and biometric fees. The proposed fee increases range from \$70 to \$2,785, depending on the type of immigration or naturalization benefit for which the application or petition is submitted. Thirteen fees will increase by amounts between \$70 and \$200; seven fees will increase by amounts between \$200 and \$300; six fees will increase by amounts between \$300 and \$400; and six fees will increase more than \$400.

USCIS is retaining the authority to waive certain fees on a case-by-case basis pursuant to 8 CFR 103.7(c). In all fee waiver requests, applicants are required to demonstrate “inability to pay.” In determining “inability to pay,” USCIS officers will consider all factors, circumstances, and evidence supplied by the applicant including age, disability, household income, and qualification within the past 180 days for a federal means tested benefit. The current fees are based on a comprehensive fee review completed in FY 1998 that was based on projected FY 1998 costs and volumes, and processes that existed in FY 1996. The new fee review proposes to correctly align the fees with currently planned costs and processes. The methodology is similar to the FY 1998 Fee Review, yet improved in many areas given the more detailed and accurate data sources and improved management tools to align resources and workload (e.g., staffing

model). For these reasons, it is difficult to compare the proposed fees to the current fees since so many of the factors that influence the costs of processing immigration benefit application and petition fees have changed over this significant amount of time.

However, besides the fact that overall costs have increased dramatically, the increases in fees can mainly be explained by comparing completion rate data (termed “cycle time” in the FY 1998 Fee Review).

As stated previously, the more time or “level of effort” spent on adjudicating a particular application or petition, measured in terms of completion rates, the higher the fee. Examples include:

- Form I-140, Immigrant Petition for Alien Worker, fee increase is due to the threefold increase in completion rates (i.e., three times the level of effort) as compared with the FY 1998 Fee Review;
- Form I-129F, Petition for Alien Fiancé, fee increase is due to the threefold increase in completion rates as compared with the FY 1998 Fee Review;
- Waiver Applications, fee increases are due to the doubling in completion rates as compared with the FY 1998 Fee Review;
- Form I-485, Application to Register Permanent Status or Adjust Status, fee increase is due to the doubling in completion rates as compared with the FY 1998 Fee Review, as well as the manner in which interim benefits are added to this form type as explained in section VI (when comparing the fees applicants pay today for adjustment of status and interim benefits versus the proposed single fee for adjustment of status, the difference is far less significant);
- Form N-400, Application for Naturalization, fee increase is due to the doubling in

completion rates as compared with the FY 1998 Fee Review;

- Form I-751, Petition to Remove the Conditions on Residence, fee increase is due to the doubling in completion rates as compared with the FY 1998 Fee Review; and
- Form I-817, Application for Family Unity Benefits, fee increase is due to the threefold increase in completion rates as compared with the FY 1998 Fee Review.

Finally, even though the fee for Form I-290B/Motions was increased recently (September 28, 2005), the actual Fee Review supporting the increase was completed in November 2002. The data that were used for the current fee are outdated and costs have significantly increased. The November 2002 Fee Review was not a comprehensive analysis, as it did not analyze the full costs outside the Administrative Appeals Office that should be assigned to this form type, such as overhead, and other activities outside of the “Make Determination” activity such as “Fraud Prevention and Detection,” and “Inform the Public” activities. In addition, the November 2002 Fee Review did not include the allocation of fee waiver/exempt and asylum and refugee surcharges to the Form I-290B/Motions as this rulemaking does.

XI. Fee Waivers

In tandem with the proposed increase in fees, USCIS also proposes to modify and clarify eligibility for an individual fee waiver in 8 CFR 103.7(c). Where appropriate in its fee structure, USCIS waives the application/petition fee for a class of applicants/petitioners. For example, there is no fee for filing an application for asylum. The applicable rule, 8 CFR 103.7(c) provides for an individual fee waiver request in other cases. USCIS considers waiving the fee for a single individual based on his or her

circumstances when all others in similar circumstances applying for the same benefit or service must pay the fee.

Every fee waiver, whether for a group of applicants done through the rate setting process or through an individual fee waiver, does not simply waive the fee for the affected individual or individuals. Since USCIS is funded from application fees, a fee waiver transfers the cost to all other fee-paying applicants. Fairness requires that there be compelling reasons when granting an individual fee waiver to one applicant while making others applying for the same benefit or service pay full cost plus a surcharge to pay for the free service provided to the first customer.

In recent months, the number of individual fee waiver requests has risen, both in terms of total volume and as a percentage of applications filed. In addition, the proposed rate setting is based on historical data with respect to fee waivers. The higher fees proposed in this rule would likely mean more customers will apply for fee waivers as they attempt to avoid the rising costs of applying for a benefit or service. The process of considering a fee waiver request itself has a significant associated adjudication cost.

To offset this potential, this proposed rule clarifies the fee waiver process by limiting fee waivers to certain situations. The current rule permits application for a fee waiver even when such an application contradicts the basic benefit or service being requested. For example, companies can apply for a waiver of the fee when seeking to admit a foreign worker to whom they must pay appropriate wages. Similarly, individuals may apply for a fee waiver when seeking status based on a substantial investment or an extension of stay where they must demonstrate the ability to support themselves during the period of extended stay without working. Applicants for permanent residence must

demonstrate they can support themselves and will not become a public charge, and those seeking to sponsor the immigration of a relative must commit to providing a financial safety net to the relative if necessary to ensure the aliens does not become a public charge, yet such applicants can seek a fee waiver.

These examples illustrate situations where the basic premise of a fee waiver is wholly or largely inconsistent with the status held or benefit or service sought. The proposed rule applies this principle by limiting the possibility of a fee waiver to certain kinds of applications where a need-based waiver is not inconsistent with the status or benefit being sought. In so doing, it also clarifies and simplifies the waiver process. The proposed rule limits the list of applications for which an individual fee waiver based on inability to pay may be granted to the Form I-90; Form I-360; Form I-751; Form I-765; Form I-817; Form I-914; Form N-300; Form N-336; Form N-400; Form N-470; Form N-565; Form N-600; Form N-600k; and the Form I-290B (if relating to a motion or appeal filed with USCIS regarding one of the other waiver-eligible form types).

Finally, a fee waiver based on an inability to pay implicates other provisions of the INA. INA section 212(a)(4), 8 U.S.C. 1182(a)(4), provides that an alien who is likely to become a public charge is inadmissible to the United States. In family-sponsored immigration, for example, this potential ground for inadmissibility may be overcome through the appropriate affidavit of support under INA section 213A, 8 U.S.C. 1183a. USCIS should not grant a waiver of a fee that indicates that the alien may be inadmissible and such affidavit of support may be suspect.

XII. Statutory and Regulatory Reviews.

A. Regulatory Flexibility Act.

In accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(6), USCIS examined the impact of this rule on small entities. A small entity may be: a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act (15 U.S.C. 632)), a small not-for-profit organization, or a small governmental jurisdiction (locality with fewer than 50,000 people). USCIS determined which entities were small by using the definitions supplied by the Small Business Administration (SBA). The size of the companies was determined by using the ReferenceUSA databases at <http://www.referenceusa.com/>. Below is a summary of the small entity analysis. A more detailed analysis is available in the rulemaking docket.

Individuals rather than small entities submit the majority of immigration and naturalization benefit applications and petitions. Entities affected by this rule are those that file and pay the fees for certain immigration benefit applications on behalf of an alien. These applications include the Form I-129, Petition for a Nonimmigrant Worker, and the Form I-140, Immigrant Petition for Alien Worker. USCIS conducted a statistically valid sample analysis of applicants of these form types to determine if this rule has an economically significant impact on a substantial number of small entities.

Out of the 439,000 applications filed in FY 2005 for these form types, USCIS first identified the minimum sample size that was large enough to achieve a 95% confidence level. This sample size was identified as 383 (out of a total of 149,658 unique entities that filed applications in FY 2005). USCIS then randomly selected 653 entities, of which

561, or 86% were classified as small entities. Therefore, USCIS determined that a substantial number of small entities are impacted by this rule.

USCIS then analyzed the economic impact on small entities of this rule by: (1) identifying the number of applications filed by the small entities having sales revenue data identified by the random sample; and (2) multiplying the number of applications by the fee increase associated with the applicable form types in order to estimate the increased annual burden imposed by this rulemaking. Once the additional cost of this rulemaking on the randomly selected small entities was determined, USCIS divided this total increased cost by the annual sales revenue of the entity. By comparing the cost increases imposed by this rulemaking with the sales revenue of the impacted small entities, we are able to understand the economic impact of this rule on the individual small entities we have sampled. Using the ReferenceUSA database of business information, USCIS was able to identify annual sales revenue estimates for 273 of the 561 small entities previously sampled. Of the 273 small entities, 213 or about 78% of the small entities exhibited an impact of less than 0.1% of sales revenue, and all of the small entities sampled exhibited an impact of less than 1% of total revenue. A simple (non-weighted) average of the 273 small entities equated to an overall impact of only 0.061% of sales revenue. Therefore, USCIS believes that a substantial number of small entities are not significantly impacted economically by this rule.

In summary, although the analysis shows that this rulemaking will affect a substantial number of small entities, the economic impact of this rule was found to be negligible. This rule has been reviewed in accordance with 5 U.S.C. 605(b), and the Department of

Homeland Security certifies that this rule will not have a significant economic impact on a substantial number of small entities.

B. Unfunded Mandates Reform Act of 1995.

The Unfunded Mandates Reform Act of 1995 (UMRA) requires certain actions to be taken before an agency promulgates any notice of proposed rulemaking “that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year.” 2 U.S.C. 1532(a). While this rule may result in the expenditure of more than \$100 million by the private sector annually, it is not a “Federal mandate” as defined for UMRA purposes, 2 U.S.C. 658(6), as the payment of application and petition fees by individuals or other private sector entities is, to the extent it could be termed an enforceable duty, one that arises from participation in a voluntary Federal program, applying for immigration status in the United States. 2 U.S.C. 658(7)(A)(ii). Therefore, no actions were deemed necessary under the provisions of the UMRA.

C. Small Business Regulatory Enforcement Fairness Act of 1996.

This rule is a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will result in an annual effect on the economy of more than \$100 million, in order to generate the revenue necessary to fully fund the increased cost associated with the processing of immigration benefit applications and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to other immigrants, as

specified in the regulation, at no charge. The increased costs will be recovered through the fees charged for various immigration benefit applications.

D. Executive Order 12866.

This rule is considered by the Department of Homeland Security to be an economically significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review. The implementation of this proposed rule would provide USCIS with an additional \$1.190 billion in FY 2008 and FY 2009 in annual fee revenue, based on a projected annual fee-paying volume of 4.68 million applications/petitions and 2.2 million requests for biometric services, over the fee revenue that would be collected under the current fee structure. This increase in revenue will be used pursuant to subsections 286(m) and (n) of the INA, 8 U.S.C. 1356(m) and (n), to fund the full costs of processing immigration benefit applications and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to other immigrants at no charge. If USCIS does not adjust the current fees to recover the full costs of processing immigration benefit applications, USCIS would be forced to enact significant spending reductions resulting in a reversal of the considerable progress it has made over the last several years to reduce the backlog of immigration benefit applications and petitions to increase the integrity of the immigration benefit system and to protect national security and public safety. The revenue increase is based on USCIS costs and projected volumes that were available at the time the proposed rule was drafted. USCIS has placed in the rulemaking docket a detailed analysis that explains the basis for the annual fee increase. Accordingly, this rule has been reviewed by the Office of Management and Budget.

E. Executive Order 13132.

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Homeland Security has determined that this rule does not have sufficient Federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988: Civil Justice Reform.

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act.

Under the Paperwork Reduction Act of 1995, Public Law 104-13, 109 Stat. 163 (1995), all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

The changes to the fees will require changes to the application/petition form types to reflect the new fees. USCIS will submit a notification to OMB with respect to any such changes. In addition, this rule anticipates (but is not dependent on) consolidating the Form I-131 and Form I-765 into the Form I-485 so that applicants for adjustment of status will not have to file three separate form types in order to apply for adjustment of status, advance parole and employment authorization. This change will reduce paperwork burdens on these applicants.

List of Subjects in 8 CFR Part 103.

Administrative practice and procedures, Authority delegations (government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103--POWERS AND DUTIES; AVAILABILITY OF RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552(a); 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107-296, 116 Stat. 2135 (6 U.S.C.1 et seq.); E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

2. Section 103.7 is amended by:

- a. Revising the entries for the following forms in paragraph (b)(1);
- b. Removing the fifth and sixth sentences in paragraph (c)(1); and by
- c. Adding a new paragraph (c)(5).

The revision and addition read as follows:

§ 103.7 Fees.

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(b) * * *

(1) * * *

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For capturing biometric information. A service fee of \$90 will be charged for any individual who is required to have biometric information captured in connection with an

application or petition for certain immigration and naturalization benefits (other than asylum), and whose residence is in the United States.

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Form I-90. For filing an application for a Permanent Resident Card (Form I-551) in lieu of an obsolete card or in lieu of one lost, mutilated, or destroyed, or for a change in name--\$410.

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Form I-102. For filing a petition for an application (Form I-102) for Arrival/Departure Record (Form I-94) or Crewman's Landing (Form I-95), in lieu of one lost, mutilated, or destroyed--\$320.

Form I-129. For filing a petition for a nonimmigrant worker--\$300.

Form I-129F. For filing a petition to classify a nonimmigrant as a fiancée or fiancé under section 214(d) of the Act--\$475; no fee for a K-3 spouse as designated in section 214.1(a)(2) of this chapter who is the beneficiary of an immigrant petition filed by a U.S. citizen on Form I-130.

Form I-130. For filing a petition to classify status of an alien relative for issuance of an immigrant visa under section 204(a) of the Act--\$355.

Form I-131. For filing an application for travel documents--\$340.

Form I-140. For filing a petition to classify preference status of an alien on the basis of profession or occupation under section 204(a) of the Act--\$520.

Form I-191. For filing an application for discretionary relief under section 212(c) of the Act--\$565.

Form I-192. For filing an application for discretionary relief under section 212(d)(3) of the Act, except in an emergency case, or where the approval of the application is in the interest of the United States Government--\$565.

Form I-193. For filing an application for waiver of passport and/or visa--\$565.

Form I-212. For filing an application for permission to reapply for an excluded, deported or removed alien, an alien who has fallen into distress, an alien who has been removed as an alien enemy, or an alien who has been removed at government expense in lieu of deportation--\$565.

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Form I-290B. For filing an appeal from any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction--\$690 (the fee will be the same when an appeal is taken from the denial of a petition with one or multiple beneficiaries, provided that they are all covered by the same petition, and therefore, the same decision).

Form I-360. For filing a petition for an Amerasian, Widow(er), or Special Immigrant--\$390, except there is no fee for a petition seeking classification as an Amerasian.

Form I-485. For filing an application for permanent resident status or creation of a record of lawful permanent residence--\$820 for an applicant 14 years of age or older; \$720 for an applicant under the age of 14 years; no fee for an applicant filing as a refugee under section 209(a) of the Act. No additional fee will be charged for a request for travel document (advance parole) or employment authorization by an applicant who has paid the Form I-485 application fee, regardless whether or not the Form I-131 or Form I-765 is

required to be filed by such applicant to receive these benefits.

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Form I-526. For filing a petition for an alien entrepreneur--\$1,620.

Form I-539. For filing an application to extend or change nonimmigrant status--\$345.

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Form I-600. For filing a petition to classify an orphan as an immediate relative for issuance of an immigrant visa under section 204(a) of the Act. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)--\$720.

Form I-600A. For filing an application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)--\$720.

Form I-601. For filing an application for waiver of ground of inadmissibility under section 212(h) or (i) of the Act. (Only a single application and fee shall be required when the alien is applying simultaneously for a waiver under both those subsections.)--\$565.

Form I-612. For filing an application for waiver of the foreign-residence requirement under section 212(e) of the Act--\$565.

Form I-687. For filing an application for status as a temporary resident under section 245A (a) of the Act. A fee of \$960 for each application or \$810 for each application for a minor child (under 18 years of age) is required at the time of filing with the Department of Homeland Security. The maximum amount payable by a family (husband, wife, and any minor children) shall be \$2,730.

Form I-690. For filing an application for waiver of a ground of inadmissibility under

section 212(a) of the Act as amended, in conjunction with the application under sections 210 or 245A of the Act, or a petition under section 210A of the Act--\$195.

Form I-694. For appealing the denial of an applications under sections 210 or 245A of the Act, or a petition under section 210A of the Act--\$430.

Form I-695. For filing an application for replacement of temporary resident card (Form I-688)--\$135.

Form I-698. For filing an application for adjustment from temporary resident status to that of lawful permanent resident under section 245A(b)(1) of the Act. For applicants filing within 31 months from the date of adjustment to temporary resident status, a fee of \$945 for each application is required at the time of filing with the Department of Homeland Security. The maximum amount payable by a family (husband, wife, and any minor children (under 18 years of age living at home)) shall be \$2,835. For applicants filing after thirty-one months from the date of approval of temporary resident status, who file their applications on or after July 9, 1991, a fee of \$985 (a maximum of \$2,955 per family) is required. The adjustment date is the date of filing of the application for permanent residence or the applicant's eligibility date, whichever is later.

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Form I-751. For filing a petition to remove the conditions on residence, based on marriage--\$485.

Form I-765. For filing an application for employment authorization pursuant to 8 CFR 274a.13--\$345.

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Form I-817. For filing an application for voluntary departure under the Family Unity Program--\$480.

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Form I-824. For filing for action on an approved application or petition--\$380.

Form I-829. For filing a petition by entrepreneur to remove conditions--\$3,260.

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Form I-914. For filing an application to classify an alien as a nonimmigrant under section 101(a)(15)(T) of the Act (victims of a severe form of trafficking in persons and their immediate family members)--\$555. For each immediate family member included on the same application, an additional fee of \$405 per person, up to a maximum amount payable per application of \$1,215.

Form N-300. For filing an application for declaration of intention--\$245.

Form N-336. For filing a request for hearing on a decision in naturalization proceedings under section 336 of the Act--\$685.

Form N-400. For filing an application for naturalization (other than such application filed on or after October 1, 2004, by an applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service, for which no fee is charged)--\$645.

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Form N-470. For filing an application for benefits under section 316(b) or 317 of the Act--\$320.

Form N-565. For filing an application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343(c) of the

Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(b) of the Act--\$420.

Form N-600. For filing an application for a certificate of citizenship under section 309(c) or section 341 of the Act--\$510, for applications filed on behalf of a biological child and \$470 for applications filed on behalf of an adopted child.

Form N-600K. For filing an application for citizenship and issuance of certificate under section 322 of the Act--\$510, for an application filed on behalf of a biological child and \$470 for an application filed on behalf of an adopted child.

* * * * *

Motion. For filing a motion to reopen or reconsider any decision under the immigration laws in any type of proceeding over which the Executive Office for Immigration Review does not have jurisdiction. No fee shall be charged for a motion to reopen or reconsider a decision on an application for relief for which no fee is chargeable or for any motion to reopen or reconsider made concurrently with any initial application for relief under the immigration laws for which no fee is chargeable. (The fee of \$690 shall be charged whenever an appeal or motion is filed by or on behalf of two or more aliens and all such aliens are covered by one decision. When a motion to reopen or reconsider is made concurrently with any application for relief under the immigration laws for which a fee is chargeable, the motion is filed and, if the motion is granted, the requisite fee for filing the application for relief will be charged and must be paid within the time specified in order to complete the application.)--\$690.

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(c) * * *

(5) Except as otherwise specifically provided by this paragraph and by paragraph (c)(4) of this section, no fee relating to any application, petition, appeal, motion or request made to U.S. Citizenship and Immigration Services may be waived under this section except for the following: Form I-90; Form I-360; Form I-751; Form I-765; Form I-817; Form I-914; Form N-300; Form N-336; Form N-400; Form N-470; Form N-565; Form N-600; Form N-600k; and Forms I-290B, motions filed with U.S. Citizenship and Immigration Services relating to the specified forms in this paragraph (c)(5).

* * * * *

Dated:

Michael Chertoff,
Secretary