



Adverse Actions Handbook

TTB H 5190.1B

Dated: January, 2016

**This Handbook supersedes
TTB H 5190.1A
Adverse Actions Handbook
dated September 2014**



**DEPARTMENT OF
THE TREASURY**

**Alcohol and Tobacco
Tax and Trade Bureau**

ORDER

TTB O 5190.1B

Date: 1/28/2016

Sunset Review: 1/28/2021

Subject: Adverse Actions Handbook

To: All Bureau Employees.

1. Purpose.

This Order authorizes the Trade Investigation Division (TID) to issue the Alcohol and Tobacco Tax and Trade Bureau (TTB) Adverse Actions Handbook (TTB H 5190.1B), which establishes procedures to administer adverse actions in response to violations of laws enforced by the Bureau.

Using the handbook properly ensures timely execution of adverse actions, integrity in the process, and success in fulfilling TTB's mission.

2. Cancellation.

This Order cancels TTB O 5190.1A Adverse Actions Handbook, dated September 2009.

3. Authority.

Section 1111(d) of the Homeland Security Act of 2002 established the Tax and Trade Bureau within the Department of the Treasury. Treasury Order No. 120-1 (Revised), dated January 24, 2003, designated the Tax and Trade Bureau as the Alcohol and Tobacco Tax and Trade Bureau (TTB). It grants the Administrator full authority, powers, and duties to administer TTB affairs and to perform TTB functions, including, without limitation, all management and administrative authorities and responsibilities similarly granted and assigned to Bureau Heads or Heads of Bureaus in Treasury Orders and Treasury Directives. In addition to section 1512(a) of the Homeland Security Act of 2002 (the "savings clause"), this Order affirms and ratifies any action taken that is consistent with what is prescribed in this Order.

4. Background.

The mission of TTB is to ensure tax and trade compliance with the Federal Alcohol Administration Act (FAA Act), including the Alcoholic Beverage Labeling Act of 1988, and the Internal Revenue Code (IRC), including the Balanced Budget Act of 1997. With respect to adverse actions, TTB's mission includes developing and implementing programs to ensure effective tax and trade compliance, and conducting tax audits and investigations of the regulated industries.

TTB's statutory mandate is to prevent consumer deception, protect the revenue, and ensure that product labels provide the consumer with adequate and accurate information as to the identity and quality of the product.

5. Adverse Actions Handbook.

The TTB Adverse Actions Handbook (TTB H 5190.1B) is issued as a separate directive and is binding on all TTB divisions. Any reference to this directive is deemed to include this Order and the Adverse Actions Handbook.

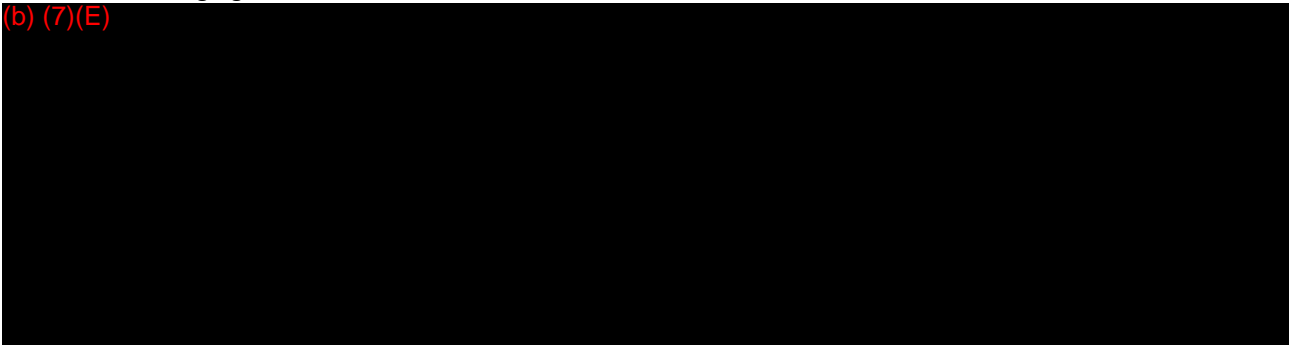
/s/John Manfreda
Administrator

Adverse Actions Handbook

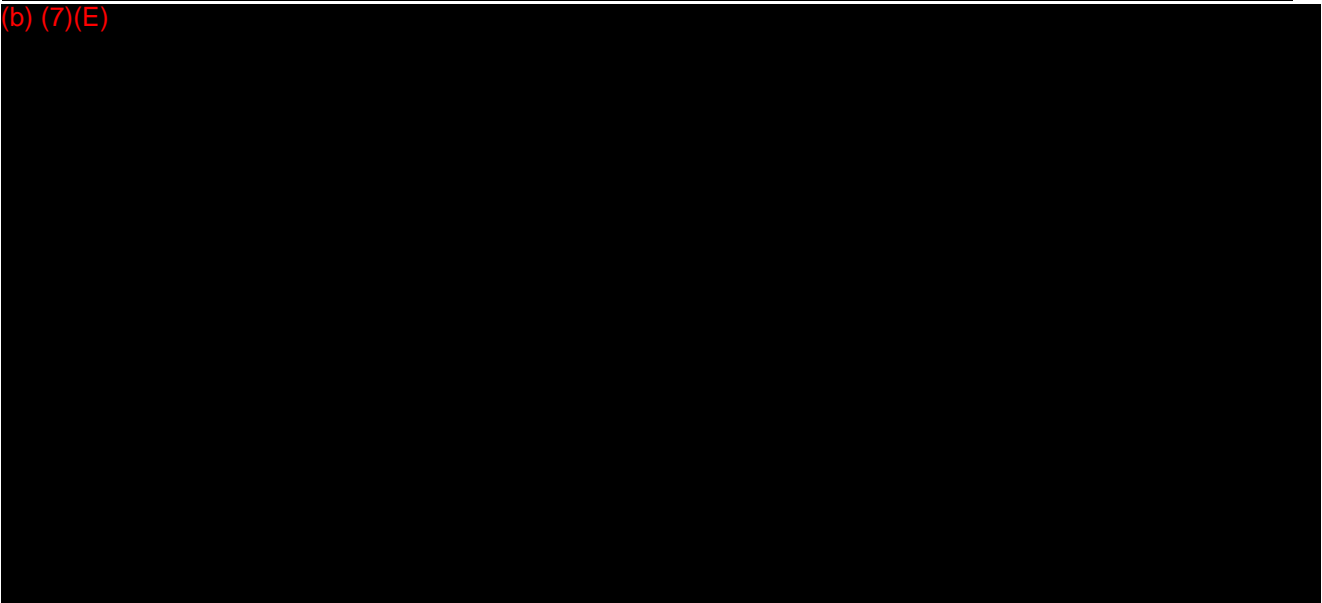
Table of Contents

1. PURPOSE.	1
2. GENERAL INFORMATION.	1
2.1 Informal Adverse Actions.	2
2.2 Formal Adverse Actions.	3
2.3 Settlement Agreements.	4
2.4 Closing Agreements.	4

(b) (7)(E)




(b) (7)(E)



(b) (7)(E)



(b) (7)(E)



Adverse Actions Handbook

1. Purpose.

This handbook establishes Bureau-wide criteria for resolving adverse action cases and provides guidelines to ensure consistency in how we resolve adverse action cases. TTB officials should utilize this handbook as a tool in the decision-making process, and not as a rigid code in determining adverse action settlements.

2. General Information.

Adverse actions serve punitive and remedial purposes. TTB may take action against holders of permits issued pursuant to the Internal Revenue Code (IRC) and/or the Federal Alcohol Administration Act (FAA Act). TTB also takes adverse action for FAA Act and IRC violations against non-permittees such as Bonded Wine Cellars and holders of Brewers' Notices, as well as those operating without a permit. For non-permittees, an informal adverse action may be accepted in lieu of a referral for criminal prosecution.

To sustain an adverse action against an FAA Act permittee (such as permit suspension or revocation other than for non-use), TTB must generally demonstrate that such permittee "willfully" violated the conditions of its permit. (b) (7)(E)

(b) (7)(E)

(b) (7)(E)

Specific knowledge of the statute by the industry member is not a required element.

For violations committed by IRC permittees (such as tobacco manufacturers and industrial alcohol producers), there is no legal requirement to prove "willfulness" of alleged violations of the conditions of such permit. Rather, the law allows TTB to suspend or revoke such permits if

(b) (7)(E)

(b) (7)(E)

Typically, cases settle informally without formal adjudication through five types of informal adverse actions. According to TTB regulations, informal settlement is not appropriate if the deciding official concludes: (1) that the evidence is conclusive and the nature of the violation is of a continuing character that necessitates immediate action to protect the public interest;

- (2) that informal settlement will not insure future compliance with the laws and regulations; or
- (3) that the circumstances clearly preclude informal settlement.

The remaining adverse actions require formal adversarial proceedings. Title 27, Code of Federal Regulations, Part 71, *Rules of Practice for Permit Proceedings*, requires TTB to afford an opportunity for compliance to the industry member before initiating formal suspension, revocation or annulment proceedings unless the violations are willful or the public interest would indicate otherwise and TTB so indicates in the Order to Show Cause. The adverse action pursued should be consistent with the severity of the non-compliant activity to ensure future compliance by the industry member. In egregious cases, TTB should consider revocation of the permit. Please note that an FAA Act permit can only be subject to suspension for a first violation per FAA Act, section 204(e)(1).

This handbook assumes adverse action cases will generally originate with the Trade Investigation Division (TID) or the Tax Audit Division (TAD). The Intelligence Division (ID), the National Revenue Center (NRC), and the Advertising, Labeling and Formulation Division (ALFD) may also initiate adverse actions. To the extent that this Handbook refers to District Directors (DDs) and Audit Directors (ADs) and Directors of TID and TAD, it should be interpreted to include the appropriate supervisors and directors of ID, ALFD and the NRC, unless otherwise indicated. (b) (7)(E)

(b) (7)(E)

2.1 Informal Adverse Actions.

(b) (7)(E)

(b) (7)(E) For the purposes of this handbook, an adverse action is informal if it does not result in administrative or other litigation or if TTB only issues an order to show cause as part of an agreed-upon resolution. Ideally, informal settlement efforts will lead to a settlement agreement between the Bureau and the industry member. The informal adverse actions are described below. The severity of the violation(s) and other relevant factors will determine which action is most appropriate.

Informal Adverse Actions

- a. **Warning Letter:** Written notice to an industry member from the TTB official that the industry member has been found to be in violation of laws and regulations, and that subsequent violations may subject the industry member to more severe penalties provided by law.

Informal Adverse Actions

- b. **Warning Conference and Warning Letter:** A conference to which the TTB official invites the industry member to discuss TTB concerns of non-compliance and/or risk of non-compliance, and documents those concerns with a Warning Letter.
- c. **Offer in Compromise (OIC):** A payment offered to the Bureau to resolve alleged violations of law, and compromise civil and/or criminal penalties provided by law.
- d. **Stipulated Suspension:** A formal stipulation by the industry member for violation of laws and regulations enumerated in an Order to Show Cause (OTSC), and a formal agreement by the industry member with the Bureau that his or her permit shall be suspended for a specified number of days.
- e. **Stipulated Suspension and OIC:** A means of resolving violations where the industry member agrees to resolve some specified violations by OIC and different specified violations by Stipulated Suspension.

The outcomes of informal settlement efforts vary; however if attempts at informal settlements fail, formal adverse actions may be necessary.

2.2 Formal Adverse Actions.

Informal settlement efforts are not always appropriate or successful, and sometimes the Bureau must pursue litigation or adjudication to resolve a case. A case that is resolved through the litigation or adjudication process is referred to here as a “formal” adverse action. A listing of the formal adverse actions follows.

Formal Adverse Actions

- a. **Revocation of a Permit:** Occurs when an existing permit is revoked because of a lack of use, or serious offenses committed by the industry member. Please note that an FAA Act permit can only be suspended for a first violation per the FAA Act, section 204(e).
- b. **Suspension:** For less severe violations, a permit can be suspended for a period of time during which the permittee is not allowed to conduct the operations authorized by its permit, subject to certain exceptions.
- c. **Annulment:** A procedure by the Bureau to void an existing FAA Act permit procured by the industry member through fraud, misrepresentation, or concealment of a material fact.
- d. **Denial/Disapproval of Application:** An application may be rejected and the permit denied based on grounds in the FAA Act or IRC. Such grounds vary depending upon the specific commodity involved.

Formal Adverse Actions

- e. **Civil Injunction:** A court order that prevents and restrains violations of the FAA Act.
- f. **Consent Decree:** A stipulated agreement specified in the FAA Act, taken before a court to prohibit repetition of violations.

Civil Injunctions and Consent Decrees are rare because they involve legal action in federal court. Any such recommendation will be subject to review and approval by the appropriate Bureau official, with the concurrence of the Office of Chief Counsel and the Department of Justice.

2.3 Settlement Agreements.

Settlement agreements typically consist of written documents through which TTB and an industry member resolve the issue(s) in dispute. TTB may use them to resolve both informal and formal adverse actions, as well as certain tax-related issues, without resort to litigation. Their purpose is to set forth the terms and conditions of the case resolution.

2.4 Closing Agreements.

Under 26 U.S.C. 7121, TTB may enter into a closing agreement with an industry member relating to tax liability with respect to any internal revenue tax for any taxable period. The taxable period may end prior to or subsequent to the date of the agreement. TTB may enter into a closing agreement for any IRC case in which there appears to be an advantage in having the case closed, and it is in the best interest of TTB for purposes of avoiding formal litigation or adjudication. (b) (7)(E)

(b) (7)(E)

(b) (7)(E)

27 CFR 70.485 provides detailed information regarding closing agreements and their particular requirements. Closing agreements typically focus primarily on the tax-related aspects of a case, but may contain terms similar to those that would appear in a settlement agreement. Closing and settlement agreements are not adverse actions; but such agreements may be one way to resolve an adverse action. (b) (7)(E)

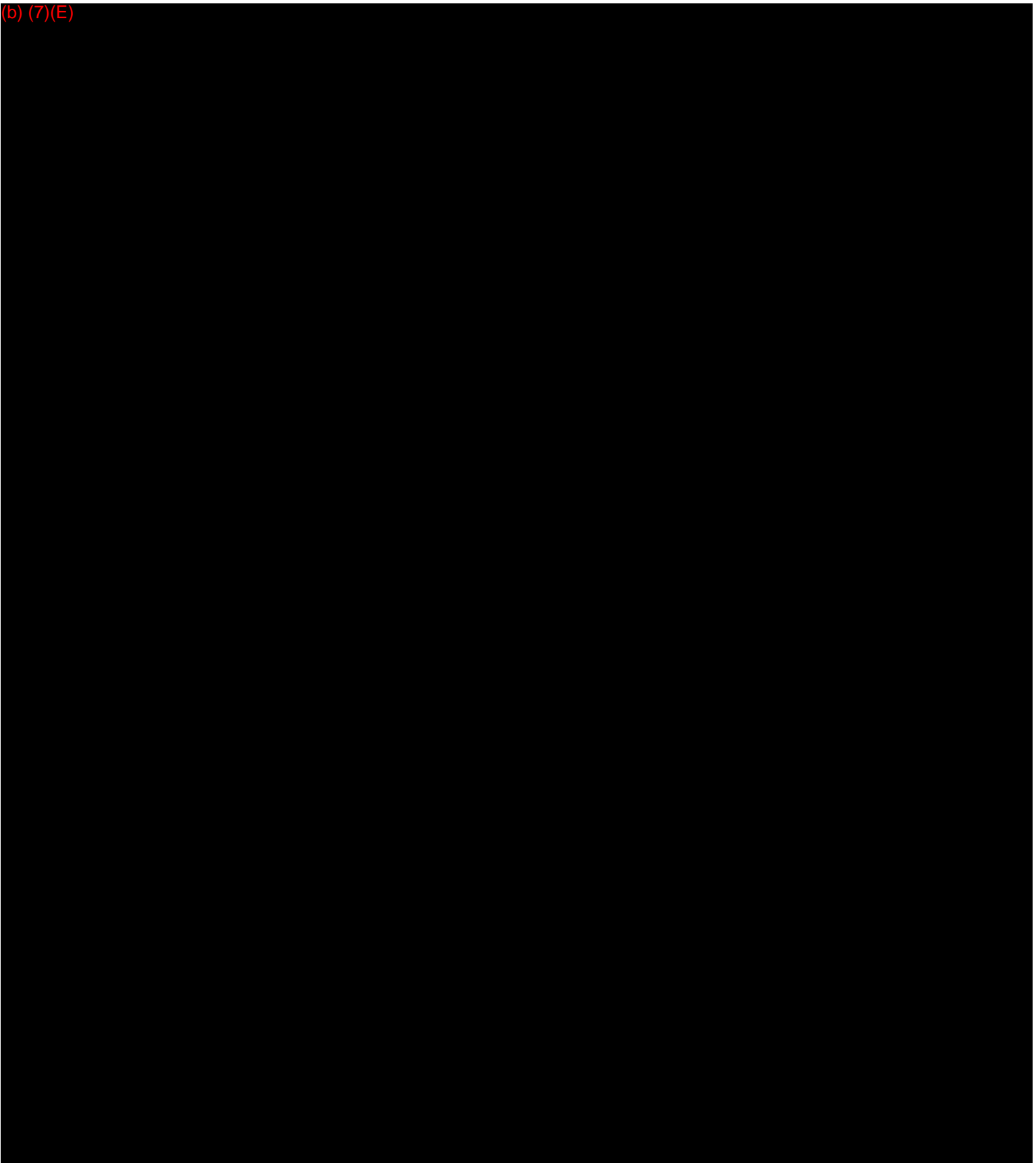
(b) (7)(E)

(b) (7)(E)

(b) (7)(E)



(b) (7)(E)



(b) (7)(E)

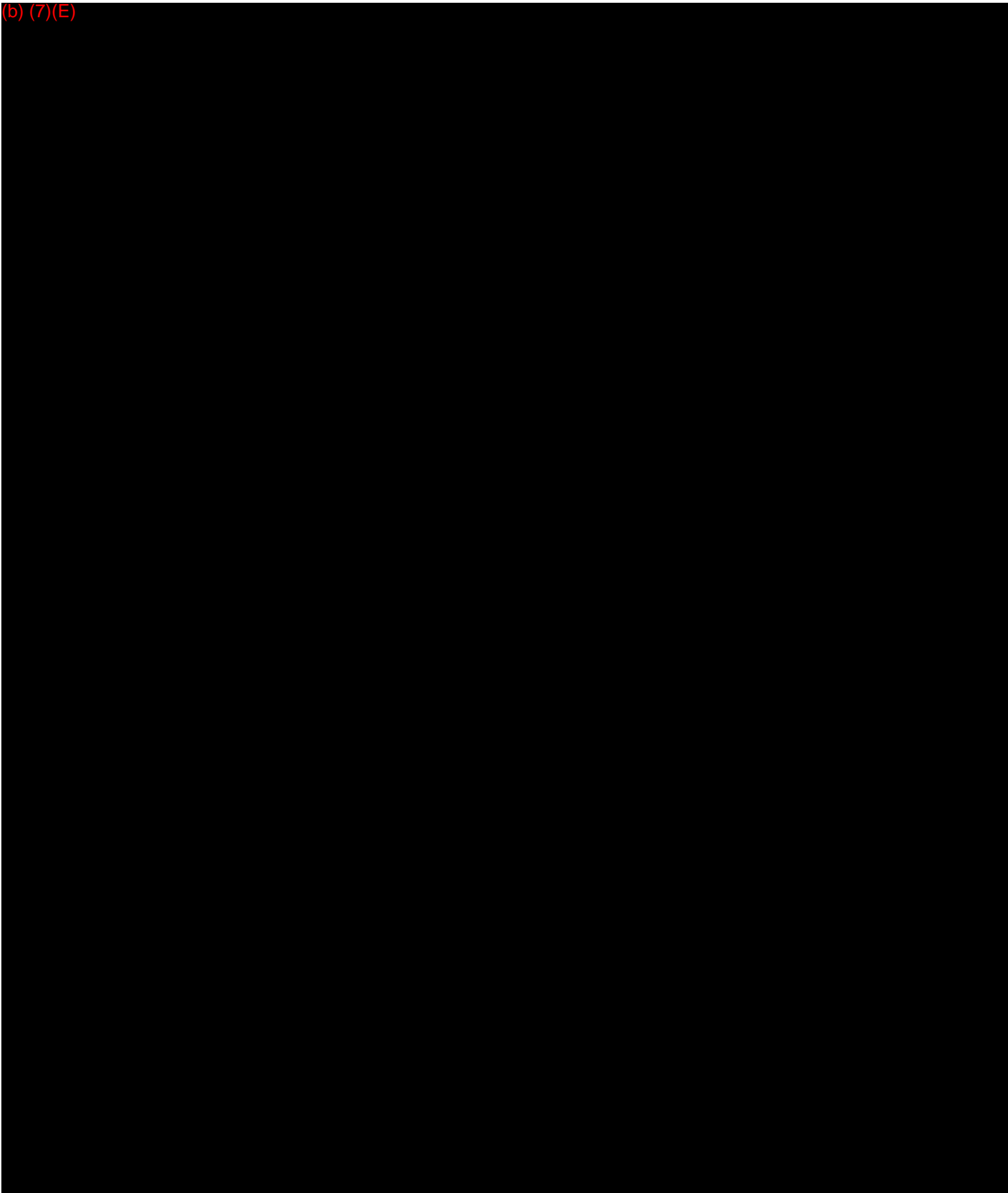
Type of Action	Limitation Period	Legal Citation
FAA Act Permit Suspension or Revocation	3 years; or 18 months after conviction for violation of any Federal alcohol law, contrary to terms/conditions of permit	27 U.S.C. 204(i)
FAA Act Permit Annulment for Fraud, Misrepresentation, or Concealment of Material Fact	No limitation	27 U.S.C. 204
FAA Act Criminal Charges/injunctive relief	5 years	18 U.S.C. 3282(a); 28 U.S.C. 2462
Alcohol Beverage Labeling Act Civil Penalties	5 years	28 U.S.C. 2462
IRC Permit Action	5 years	26 U.S.C. 6533(1); 28 U.S.C. 2462
IRC Criminal Charges	3 or 6 years depending on whether there is an intent to defraud the United States or if the offense falls under another enumerated provision	26 U.S.C. 6531
IRC Civil Actions for Fines, Penalties, or Forfeitures	5 years	26 U.S.C. 6533(1); 28 U.S.C. 2462

(b) (7)(E)

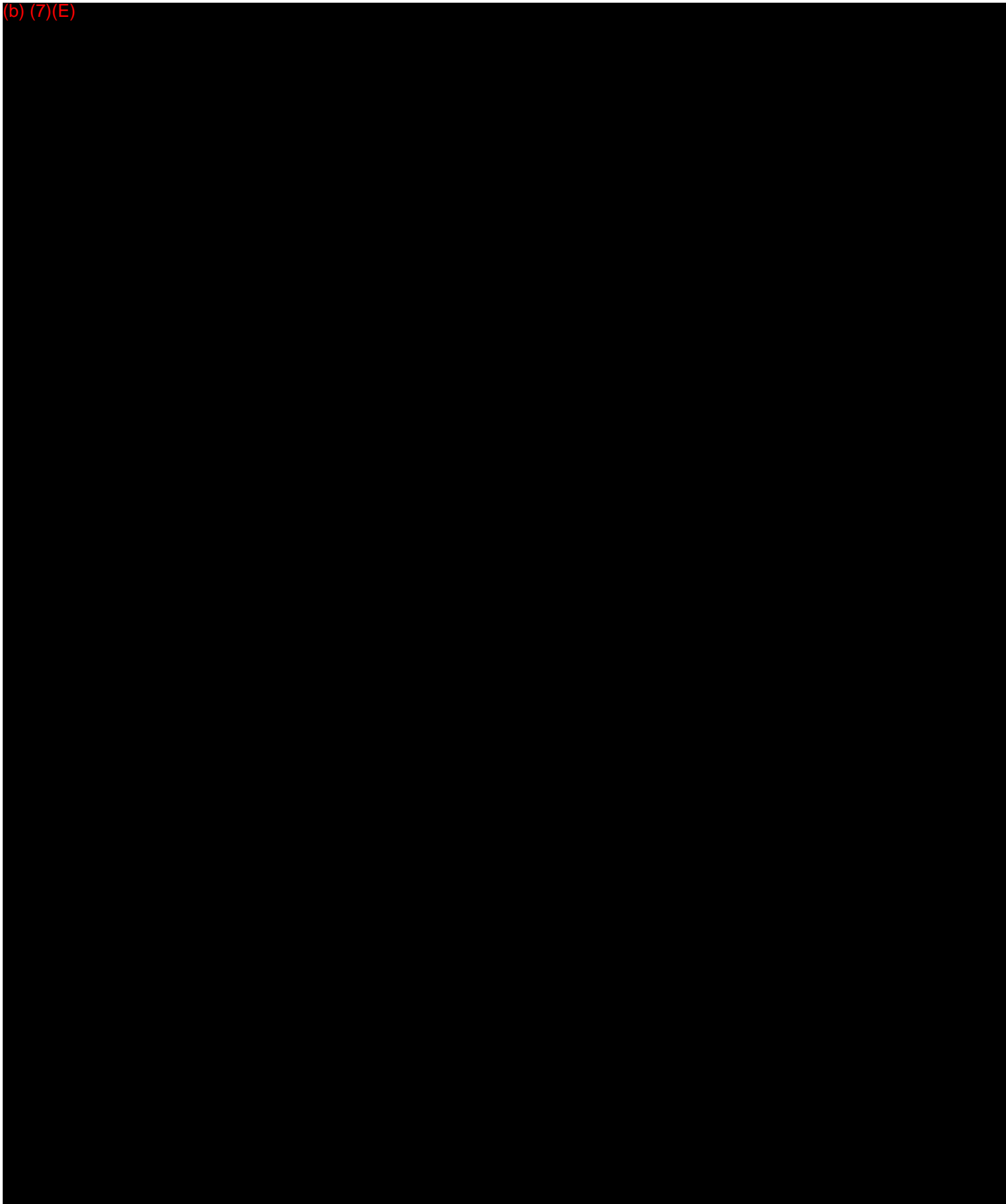
(b) (7)(E)

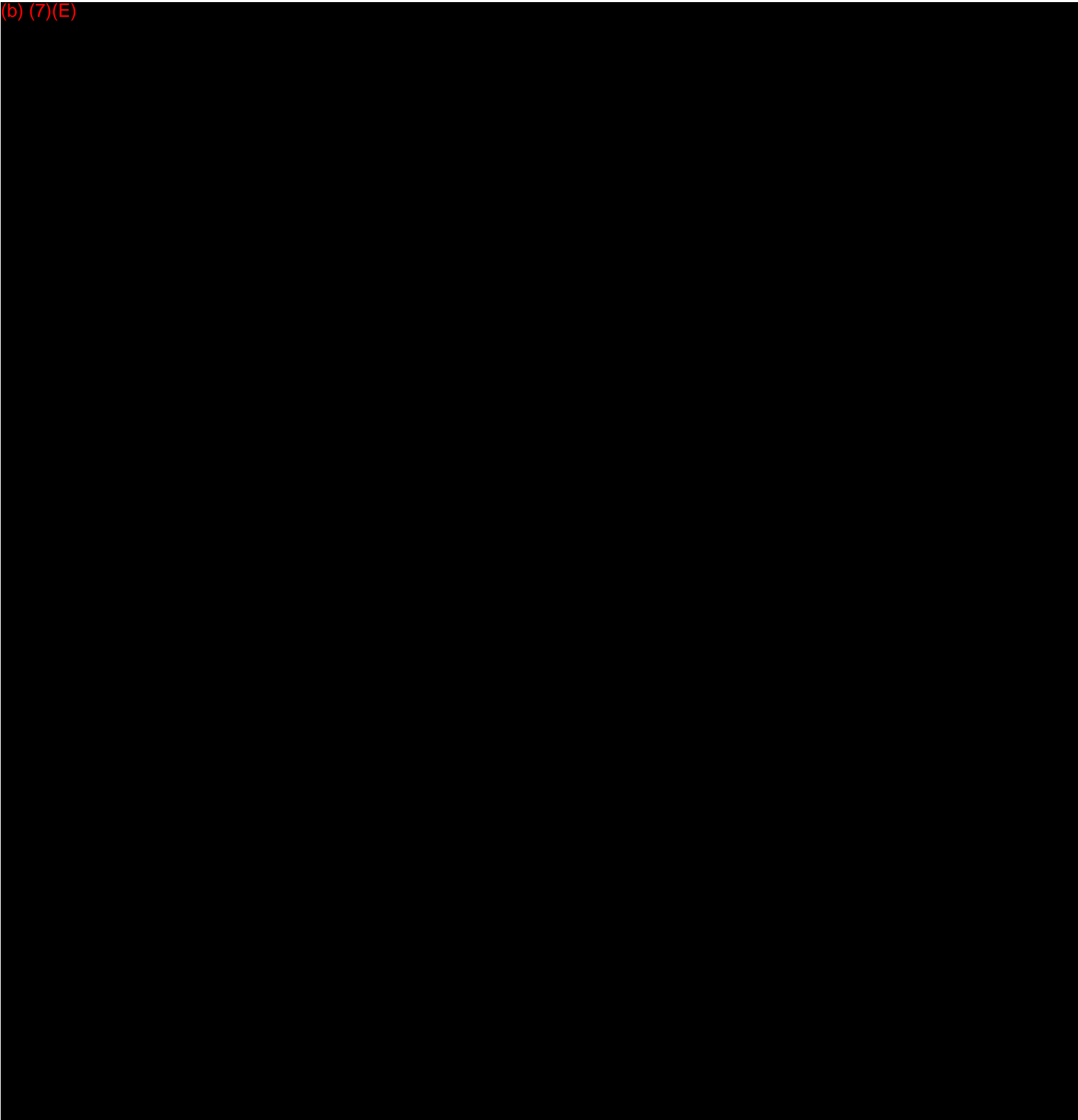


(b) (7)(E)

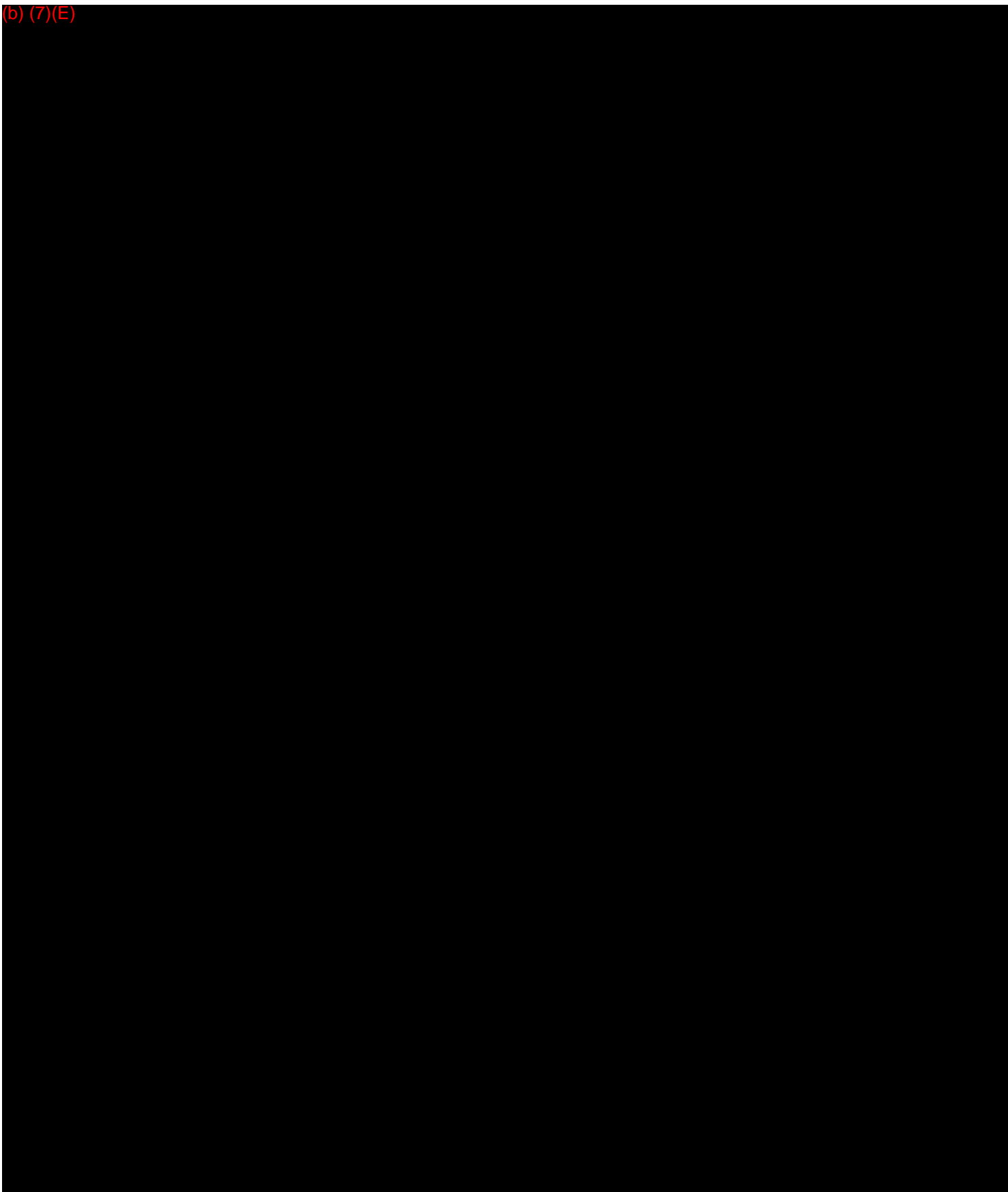


(b) (7)(E)



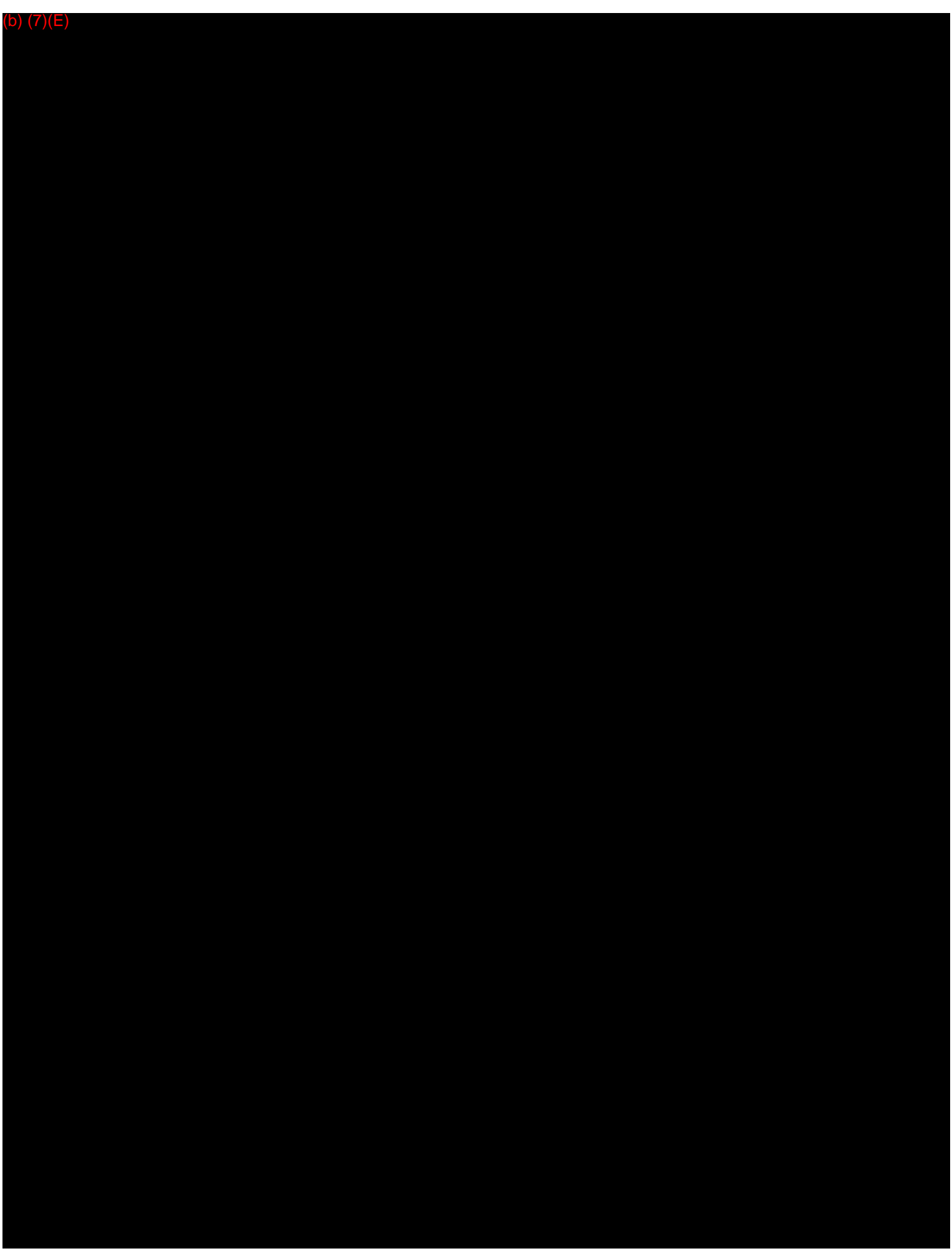


(b) (7)(E)



(b) (7)(E)

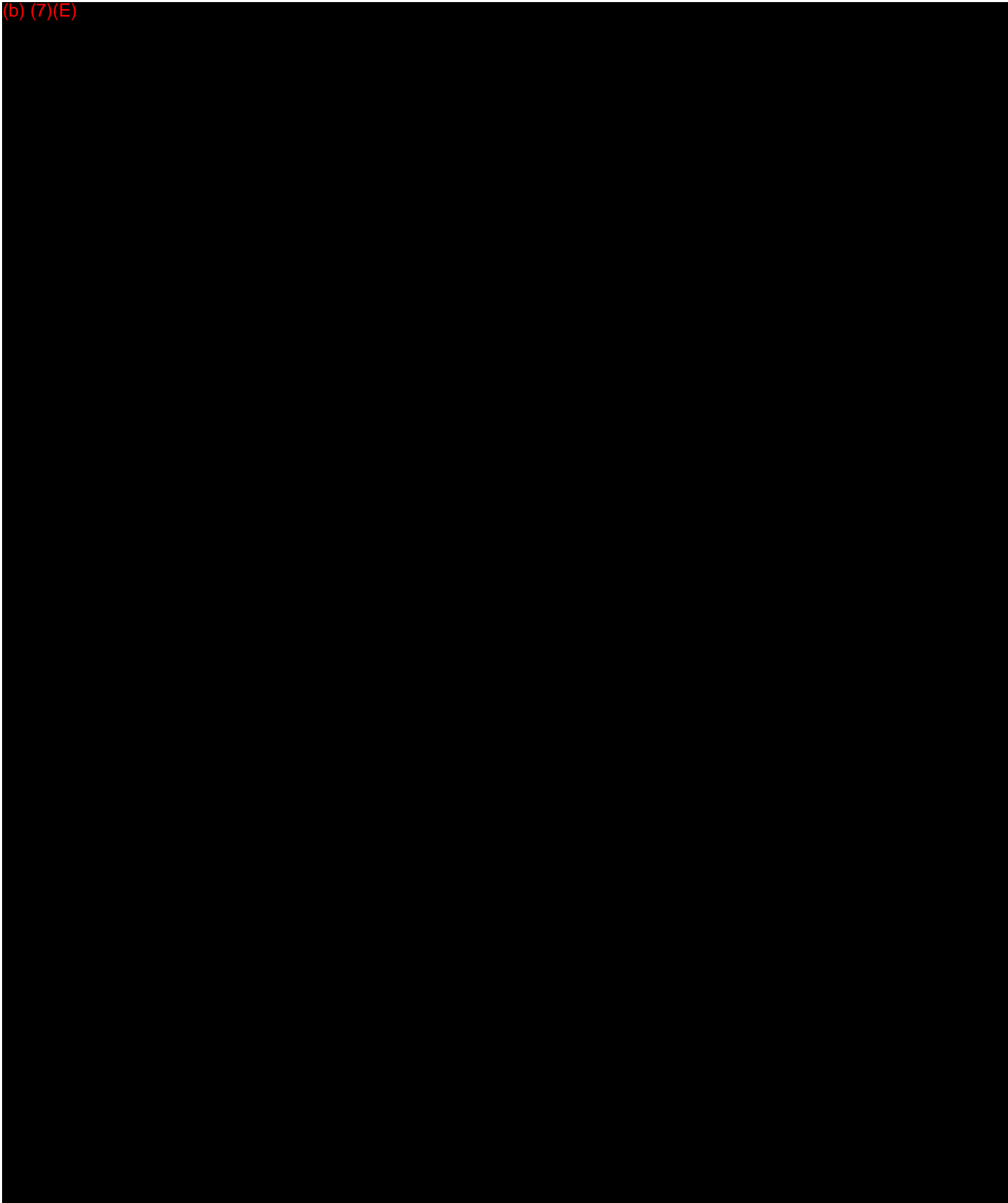


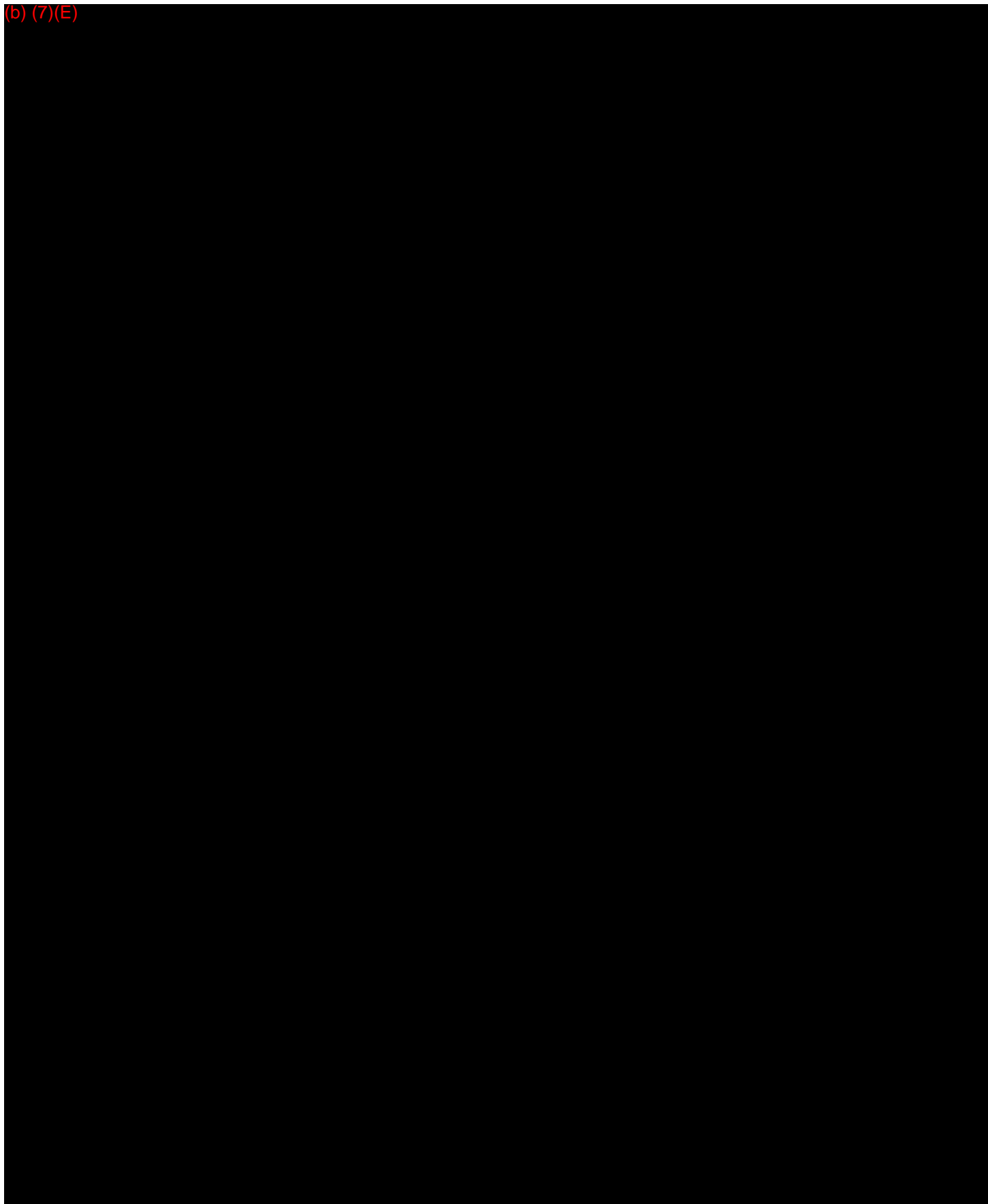


(b) (7)(E)



(b) (7)(E)





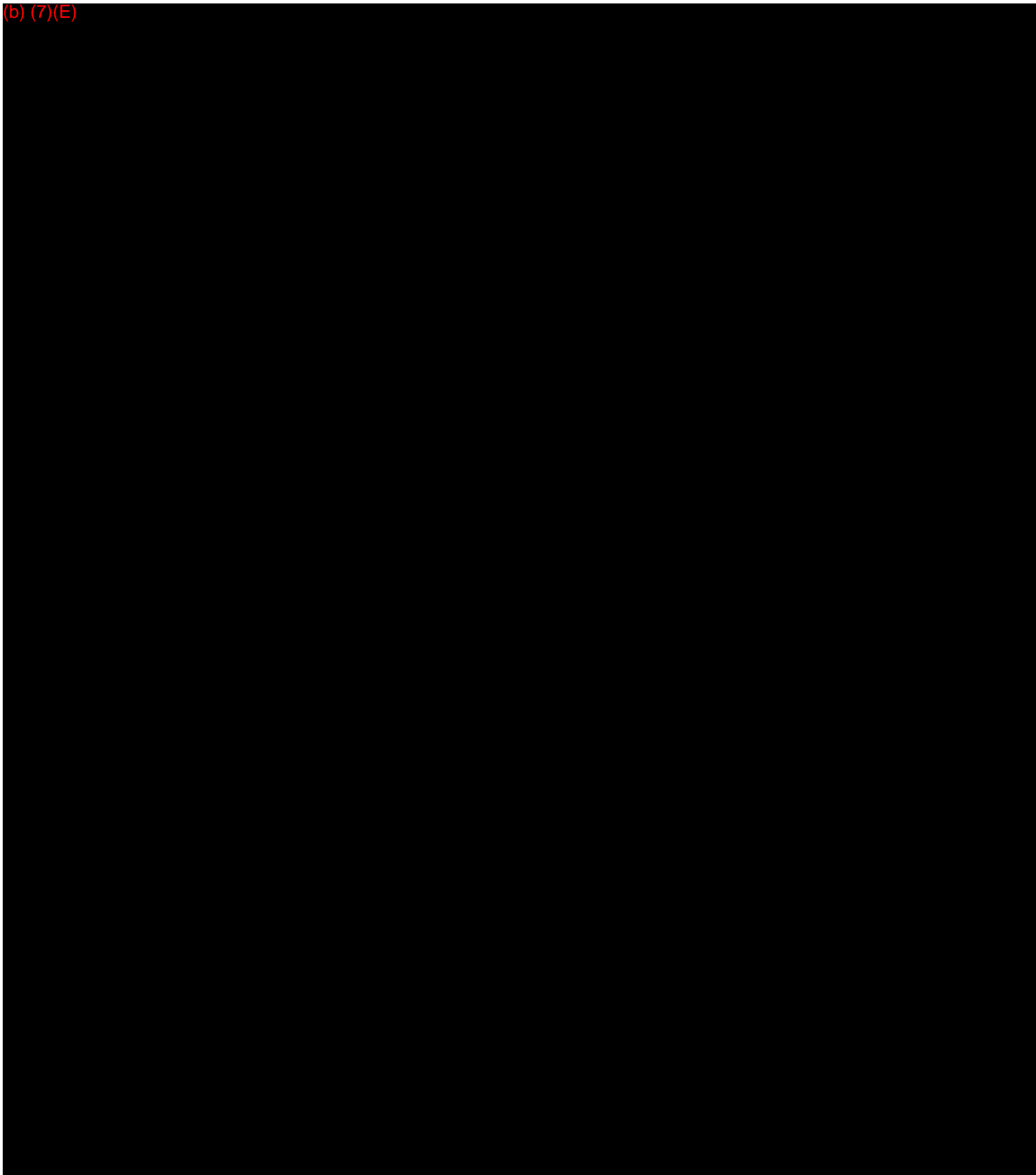
(b) (7)(E)



(b) (7)(E)



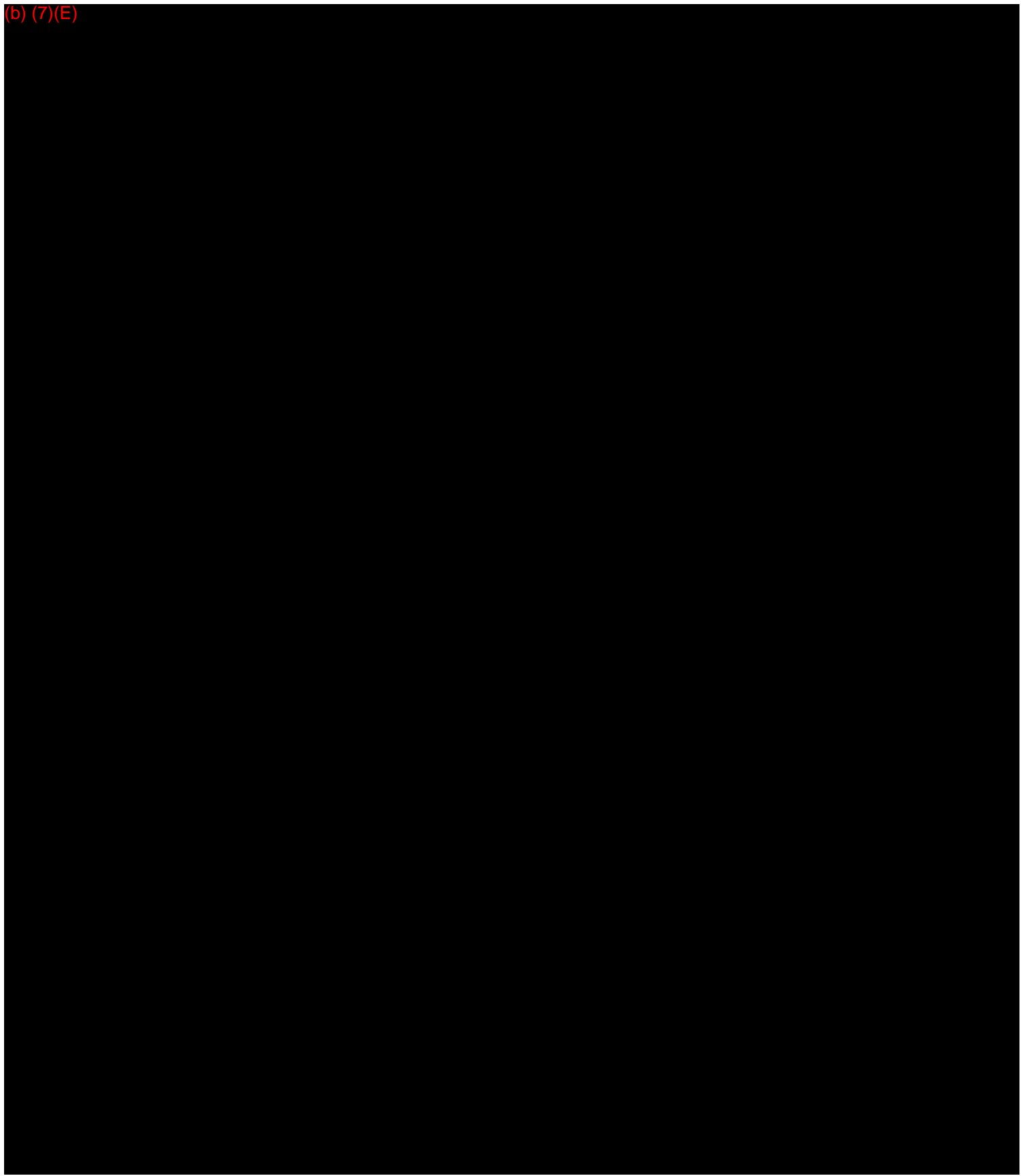
(b) (7)(E)



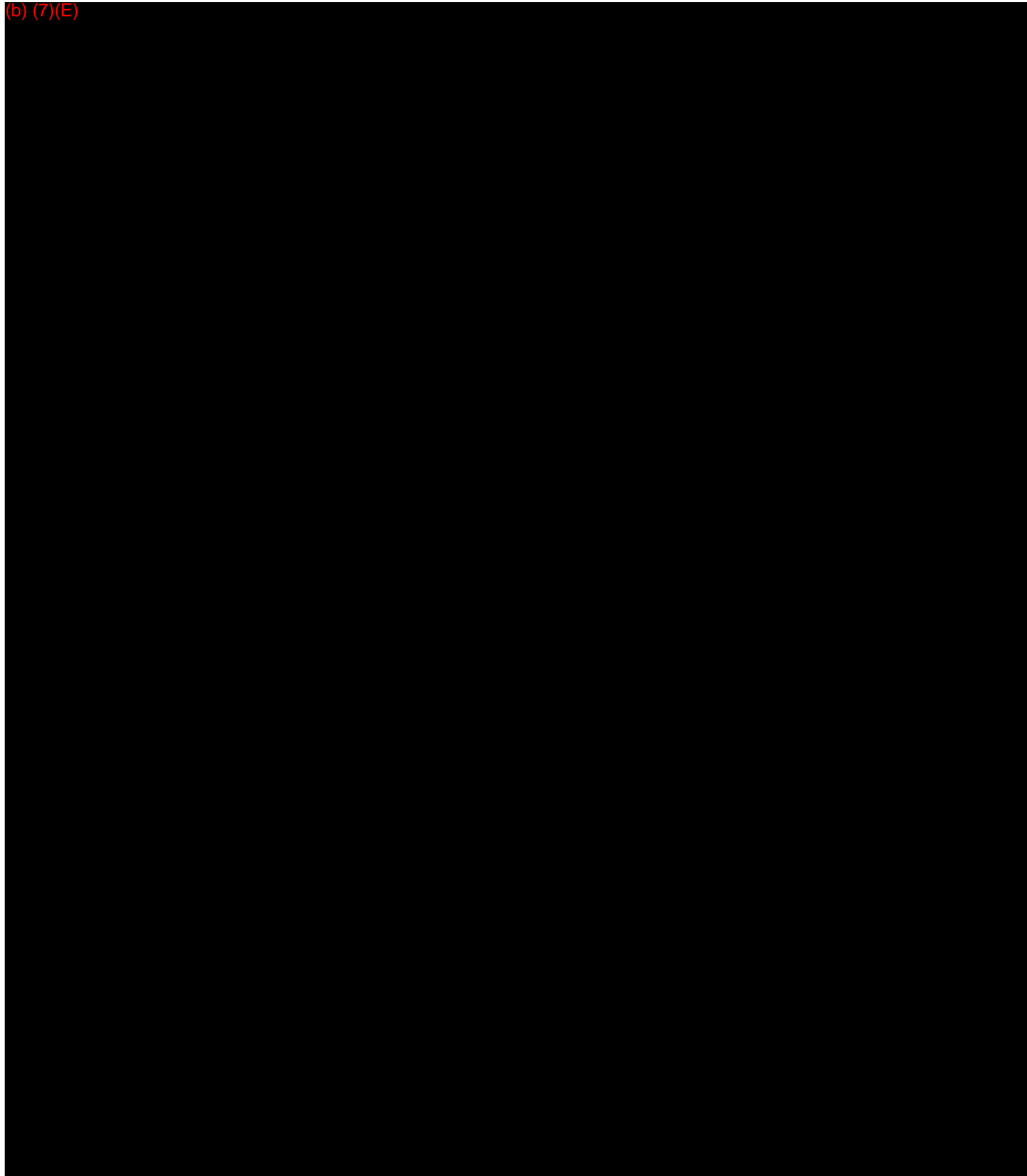
(b) (7)(E)



(b) (7)(E)



(b) (7)(E)



(b) (7)(E)

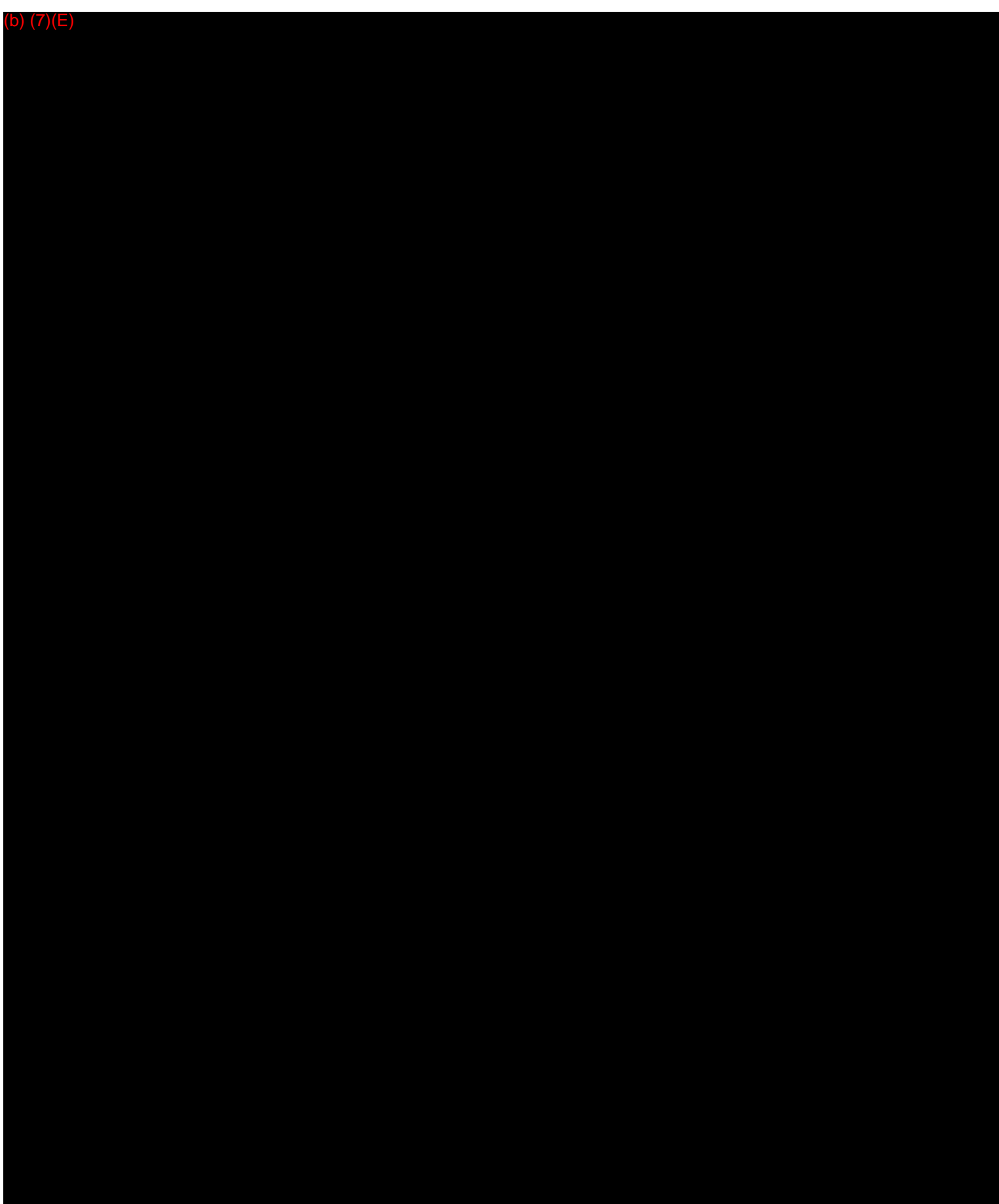


(b) (7)(E)



(b) (7)(E)





(b) (7)(E)

