

UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~



OFFICE OF THE INSPECTOR GENERAL  
NATIONAL SECURITY AGENCY  
CENTRAL SECURITY SERVICE

(b) (3) - P.L. 86-36

**To:** Chief, D14 **Date:** 16 December 2016

**From:** Investigator [redacted]

(b) (3) - P.L. 86-36  
(b) (6)

**Subject:** [redacted] Improperly Directing Contract Activities  
(Personal Services) in violation of the Federal Acquisition Regulation  
(FAR)

**File No:** IV-16-0026

**Precedence:** Routine

**Purpose:** To provide a summary report of investigation, and to recommend that this case be closed.

**Details:**

**I. (U) Background**

(U//~~FOUO~~) The Office of the Inspector General (OIG) conducted this investigation in response to an allegation that [redacted]

[redacted] may have been inappropriately directing activities relating to NSA Contract [redacted]. The contract, commonly referred to as the [redacted] contract, is a Firm Fixed Price Level of Effort contract awarded to the [redacted]. The [redacted] contract staffs technical personnel such as Information Security Systems Engineers and Systems Administrators to support the [redacted] organization.

(b) (3) - P.L. 86-36

(b) (3) - P.L. 86-36  
(b) (6)

(U//~~FOUO~~) Specifically, the allegation stated that [redacted] was reviewing resumes and conducting interviews of contractor personnel in order to accept or reject them for the contract, thereby creating an unauthorized personal services contract in violation of the FAR.<sup>1</sup> In addition, it was alleged that [redacted] inappropriately disclosed [redacted] proposal information to another company.

<sup>1</sup> (U//~~FOUO~~) On 6 May 2016, the AIGI forwarded a management referral outlining these concerns to the Agency Senior Acquisition Executive for awareness. ([Appendix D](#))

UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

II. (U) Issue(s)

(b) (3) - P.L. 86-36  
(b) (6)

- Did [redacted] inappropriately direct activities relating to the contract?
- If so, did [redacted] through his actions, create an employer-employee relationship with contractor personnel and a "Personal Services" contract?
- Did [redacted] inappropriately provide [redacted] proposal information to another company?

(b) (3) - P.L. 86-36

III. (U) Applicable Standard(s)

**Federal Acquisition Regulation**

**Part 37- Service Contracting**

Subpart 37.1—Service Contracts--General

37.101 Definitions. ... "Personal services contract" means a contract that, by its express terms or as administered, makes the contractor personnel appear, in effect, Government employees (see 37.104).

37.102 Policy. ... (c) Agencies shall not award a contract for the performance of an inherently governmental function (see Subpart 7.5)...

37. 104 Personal Service Contracts.

(a) As indicated in 37.101, a personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor's personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.

**Subpart 3.104, Procurement Integrity**

**3.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.**

(a) Except as specifically provided for in this subsection, no person or other entity may disclose contractor bid or proposal information or source selection information to any person other than a person authorized, in accordance with applicable agency regulations or procedures, by the agency head or the contracting officer to receive such information.

(b) Contractor bid or proposal information and source selection information must be protected from unauthorized disclosure in accordance with 14.401, 15.207, applicable law, and agency regulations.

IV. (U) Investigative Activity

A. (U) Document Review:

- Contract [redacted] and TTO; Firm Fixed Price Level of Effort contract awarded to the [redacted] ([Appendix A](#))
- White Paper written by the [redacted] PM proposing changes to the contract labor categories. Initially forwarded to the COR and [redacted] TD without markings in July 2015. ([Appendix B](#))
- [redacted] White Paper marked as [redacted] PROPRIETARY” ([Appendix C](#))
- OIG Management Referral sent to the Senior Acquisition Executive on 6 May 2016. ([Appendix D](#))

(b) (3) -P.L., 86-36

V. (U) Witness Interviews:

(U) Reviewing Resumes

(U//~~FOUO~~) Witness testimony from the COR, the [redacted] Program Manager (PM), [redacted] Technical Director (TD), and [redacted] established that a process has been in place since at least 2014 whereby the COR forwarded resumes she received from the company to the [redacted] leadership for review. According to the COR, she did so because she did not have sufficient technical background or expertise to determine whether the resumes included the appropriate technical experience. Therefore, she forwarded the resumes to the [redacted] leadership for feedback in that particular area. According to the TD and [redacted] they reviewed the resumes and provided the requested feedback, both positive and negative, on the varying levels of experience reflected in the resumes.

(b) (3) -P.L., 86-36

(U//~~FOUO~~) [redacted] acknowledged reviewing the resumes along with his Deputy and TD. He understood the resumes were being shared with his team to provide awareness of the skillsets and backgrounds of contractor personnel being assigned to very technical positions within his organization. He and his leadership team, as a group, reviewed the resumes. On occasion, they found that some of the resumes seemed to lack the quantity or quality of experience they were hoping to see, but no one was accepted or rejected by his team. Everyone understood that the ultimate decision of hiring and assigning contractors to [redacted] was made solely by the COR and the company. [redacted] and his leadership team willingly accepted whoever was assigned to the contract.

(b) (3) -P.L., 86-36  
(b) (6)

(U//~~FOUO~~) Witness testimony established that on or about 7 July 2016, a meeting was held with Contracting Officer (CO) that included the COR, [redacted] his deputy and the [redacted] TD. During this meeting, the CO instructed the COR to cease providing contractor resumes to the [redacted] leadership to avoid any perceptions of impropriety. According to [redacted] he has neither requested nor received any further resumes of [redacted] contract personnel since that meeting.

(b) (3) -P.L., 86-36  
(b) (6)

(U//~~FOUO~~) Conducting Interviews

(U//~~FOUO~~) The COR testified that in early 2016 she learned from the PM that [redacted] was interviewing contractors in his organization, but could only identify one such individual. The individual, a contractor employee assigned to the [redacted] to support the [redacted] organization, testified to being invited to a meeting with [redacted] in approximately February of 2016. According to the witness, [redacted] had her resume on his desk during the meeting and discussed her job history as listed on her resume. He also asked her interview-type questions such as, "Tell me a little about yourself," and "What are your strengths and weaknesses?" He also presented simulated risk assessment scenarios and asked her how she would handle such situations. Despite having already been hired by the company and placed onto the contract, the witness felt [redacted] was "interviewing" her during this meeting. The witness reported her concerns about the meeting to her company PM.

(b) (3) -P.L., 86-36

(U//~~FOUO~~) [redacted] admitted scheduling one-on-one meetings with contractor employees in his organization. According to [redacted] he does this with all newly assigned employees, both contractors and civilians. The purpose of the meetings was to welcome the employees to the office and provide an overview of the [redacted] organization. [redacted] does not consider such meetings to be interviews. He recalled one such meeting with a contractor when he had the contractor's resume out on his desk during the meeting. According to [redacted] he wanted to talk about her previous jobs and experience.

(b) (3) -P.L., 86-36  
(b) (6)

(U//~~FOUO~~) [redacted] testified that he could not recall asking contractors interview-type such as individual strengths and weaknesses or presenting mission scenarios, although it is possible that he did. [redacted] understood how such questions could be perceived as interview-type question, but denied that was his intent. The contractors were already assigned and working on the contract so it was not a situation where they were seeking a job. The meetings occurred after they had already been hired by their company and assigned to his organization. He has never complained about the performance of a contractor or asked for any contractor to be removed from his organization. As a former contractor himself, [redacted] is well aware that, as a government official, he cannot hire or fire individual contractors and would never attempt to do so.

(U//~~FOUO~~) Unauthorized Disclosure of Proposal Documentation



(b) (3) -P.L., 86-36

(U//~~FOUO~~) The COR and the [redacted] PM testified that in July of 2015, the [redacted] PM sent a "white paper" proposing changes to contractor work roles to her and the [redacted] TD. The COR later learned from a [redacted] employee that a [redacted] contractor in [redacted] spaces had somehow come into possession of the proposal. However, it was unknown how or who may have provided it to them. According to the COR, the proposal was not marked as proprietary initially. She reported the incident to the [redacted] PM who said it was proprietary information. A few days later, he forwarded another copy of the same document that was marked as [redacted] PROPRIETARY."

(b) (3) -P.L., 86-36

(b) (3) -P.L., 86-36

(U//~~FOUO~~) During his testimony, the [redacted] TD surmised that someone, possibly himself, must have printed it out and a [redacted] employee picked it up from the printer along with other documents. At the time, both [redacted] and [redacted] personnel worked in the [redacted] office spaces and shared a networked unclassified printer. He believes the document was picked-up accidentally and there was no intent to pass any proprietary information to a third party.

(U//~~FOUO~~) [redacted] testified that he was not in the office at the time the incident occurred. However, he heard later that someone in his office printed the document to a shared printer and it was picked-up by a [redacted] employee. [redacted] believes the document was immediately returned to [redacted]. He does not believe there was any ill intent on anyone's behalf. When [redacted] received a call from the [redacted] Program Manager, who was concerned about what had happened, he explained that it was an accident.

(b) (3) -P.L., 86-36  
(b) (6)

(b) (3) -P.L., 86-36

(U//~~FOUO~~) In his testimony, the [redacted] PM acknowledged only marking the document after he had heard it was temporarily in the possession of a [redacted] employee. He also stated that [redacted] apologized to him for the incident and said it was an accident.

VI. (U) Analysis

(U//~~FOUO~~) The FAR Section 371.04 prohibits agencies from awarding personal service contracts unless specially authorized by statute. A personal service contract is characterized by the employer-employee relationship it creates between the Government and contractor personnel. There was insufficient evidence to conclude that [redacted] created, or attempted to create, a personal services contract with [redacted] through his activities of reviewing resumes and conducting meetings with contract personnel. The resumes he reviewed were provided by the designated contract COR who admittedly did not have the technical experience to properly evaluate them. The evidence did not establish that [redacted] ever accepted or rejected individual contractor employees based upon their resumes.

(b) (3) -P.L., 86-36  
(b) (6)

(U//~~FOUO~~) In addition, the OIG did not find that [redacted] practice of scheduling meetings with newly assigned contractor and government employees to welcome them to the organization to be uncommon or inappropriate. Although the questions he posed to

the contractor employee could have reasonably been perceived to be interview-type questions, there was no ambiguity about whether the meeting was a job interview as it clearly was not. The meeting occurred after the employee had been hired by the company and staffed to support the [redacted] contract. There was no evidence to suggest that [redacted] attempted to exercise improper supervision or control over [redacted] employees assigned to support the [redacted]. Therefore, [redacted] did not create a personal services contract with [redacted] through his activities of reviewing resumes and conducting meetings with contract employees.

(b) (3) - P.L. 86-36  
(b) (6)

(b) (3) - P.L. 86-36

(U//~~FOUO~~) The FAR Section 3.104-4(a) prohibits persons or entities from disclosing "contractor bid or proposal information" to unauthorized persons. For the purposes of investigation, the OIG considered the document prepared by the [redacted] PM to be contractor proposal information within the meaning of the FAR. However, the OIG found no evidence that [redacted] or anyone else intentionally disclosed this document to [redacted] personnel. The documentary evidence and witness testimony established that the document contained no markings or a recognizable header describing its contents at the time it was sent to the COR and the TD. The witnesses' contention that it was probably inadvertently retrieved from a shared printer to be plausible and most likely the case. Therefore, the OIG found that [redacted] did not disclose contractor bid or proposal information to an unauthorized person in violation of the FAR.

(b) (3) - P.L. 86-36  
(b) (6)

(b) (3) - P.L. 86-36

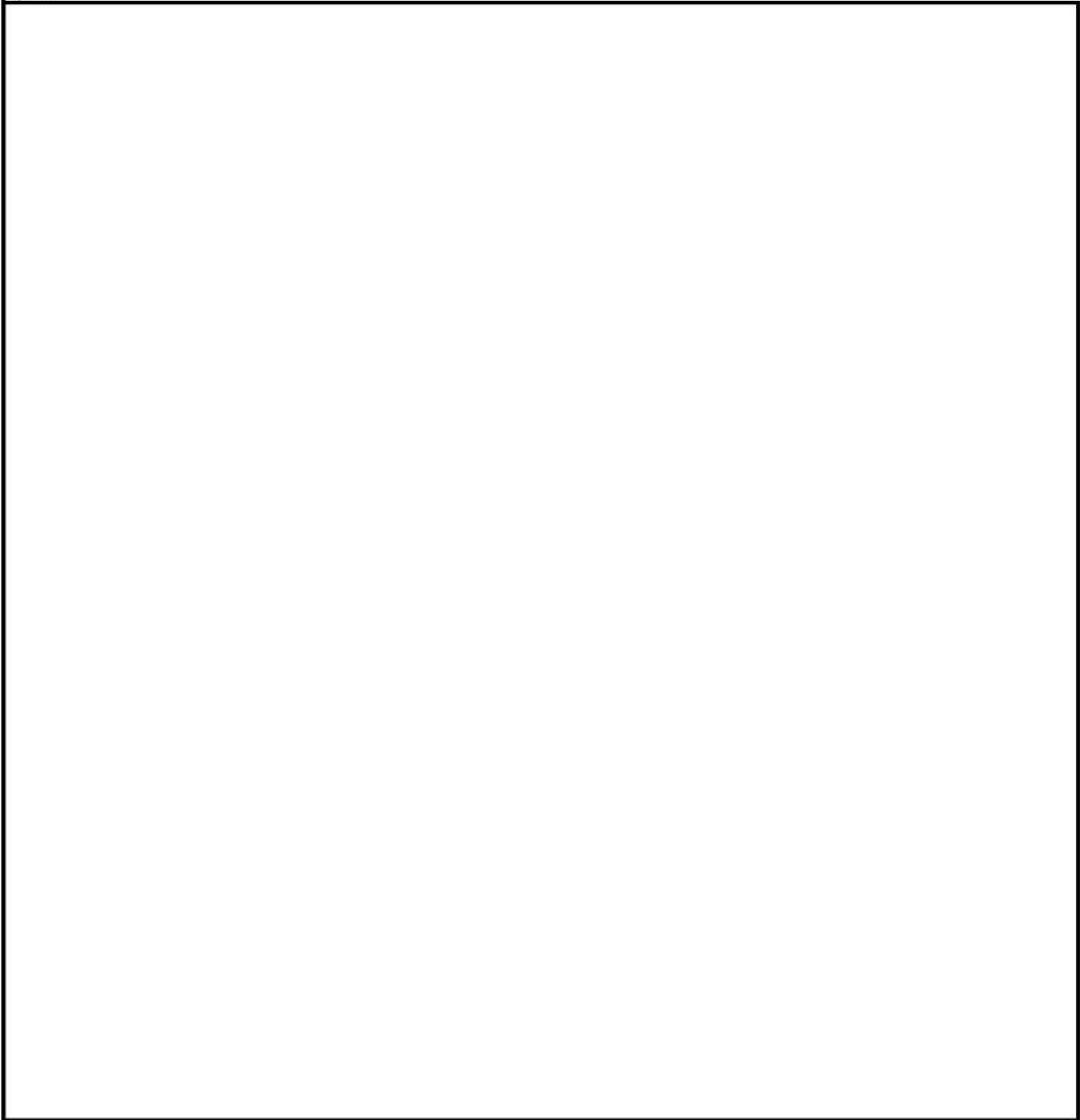
VII. (U) Conclusion(s)

(U//~~FOUO~~) In light of the above, the OIG found that:

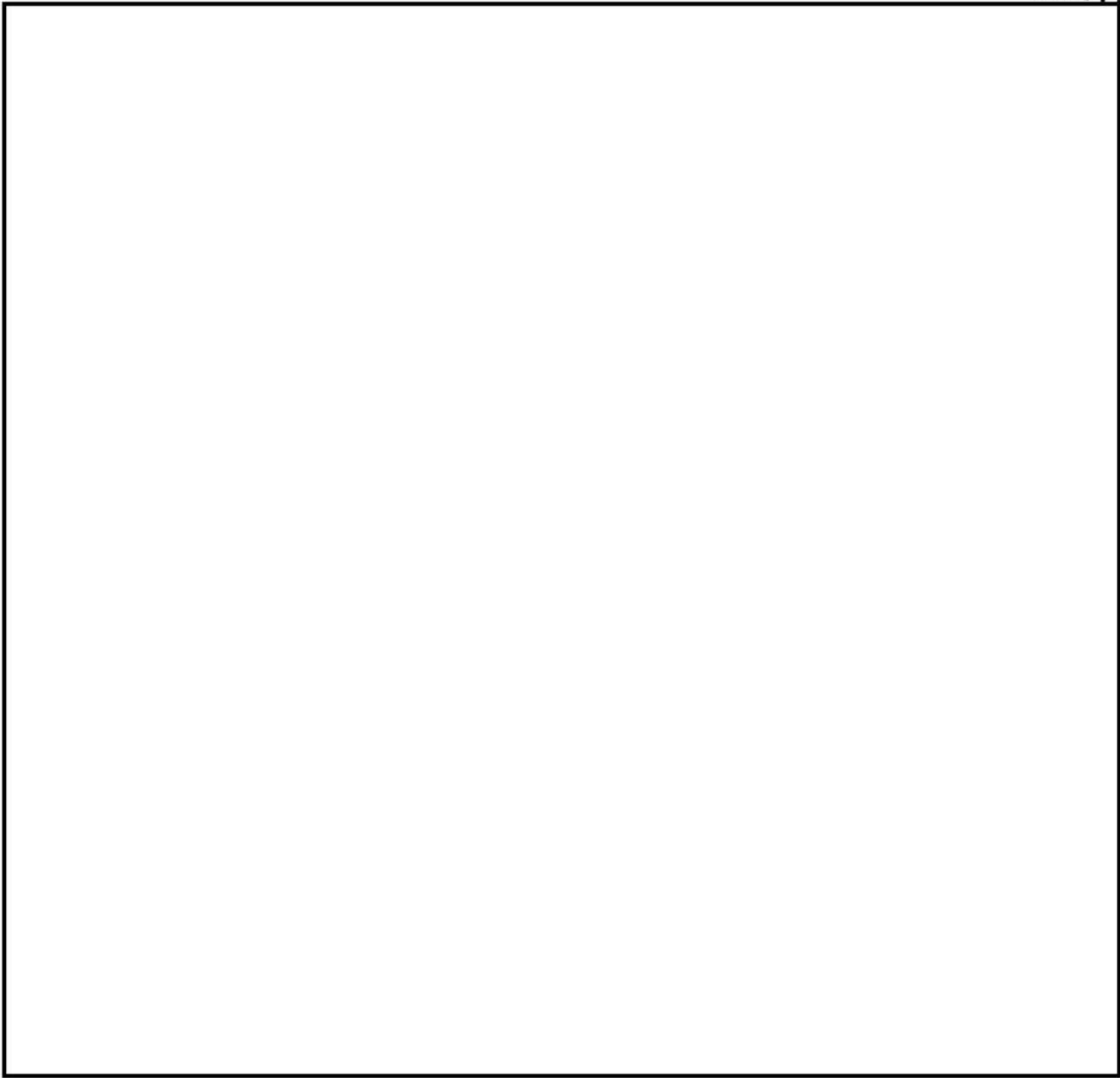
- [redacted] did not inappropriately direct activities relating to contract or otherwise create a personal services contract in violation of the FAR, Section 37.104(b).
- [redacted] did not inappropriately disclose [redacted] proposal information to another company in violation of the FAR, Section 3.104-4(a)

VIII. (U) Recommendation: Recommend that the case be closed.

(b) (3) - P.L. 86-36  
(b) (4)

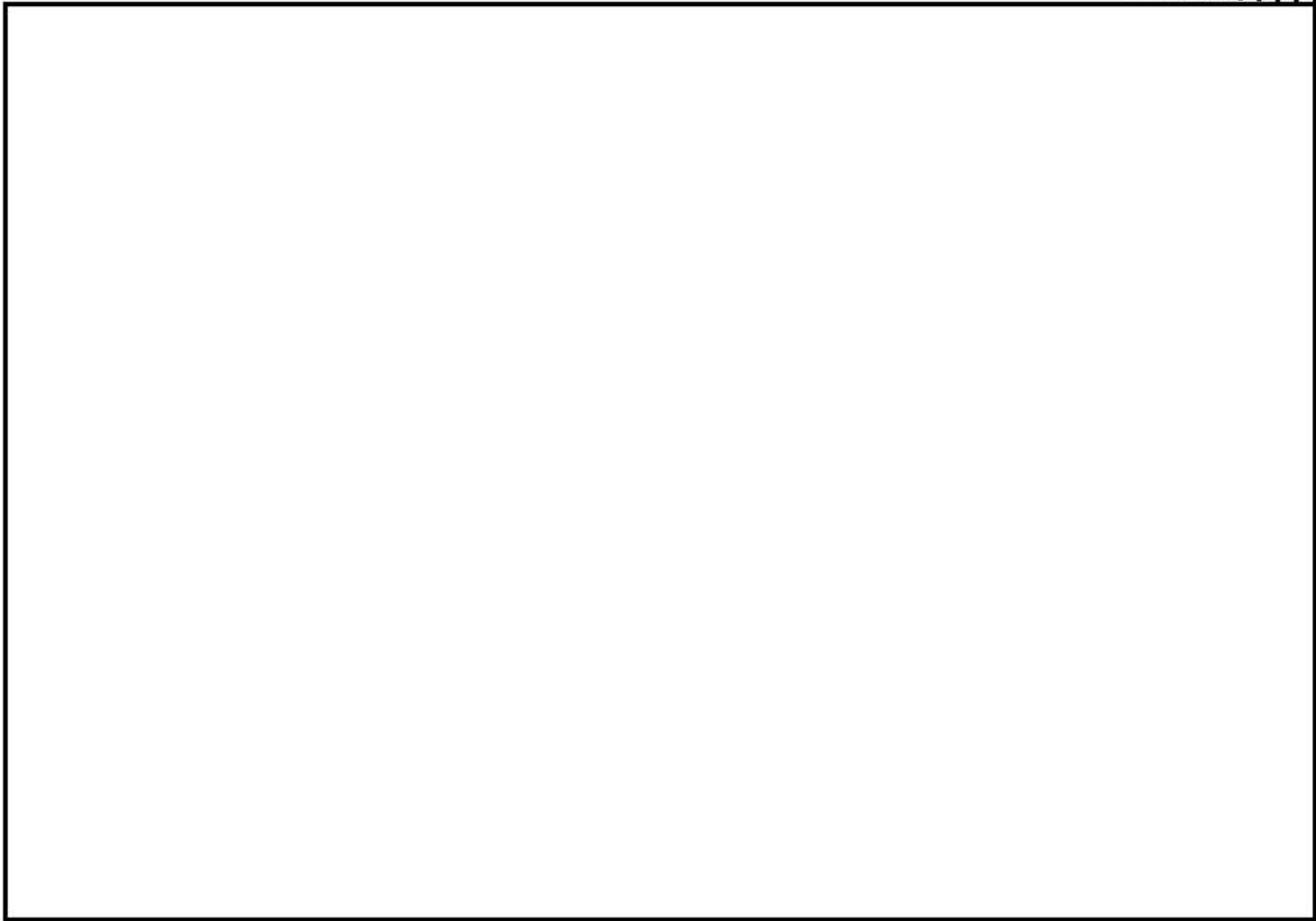


(b) (3) - P.L. 86-36  
(b) (4)

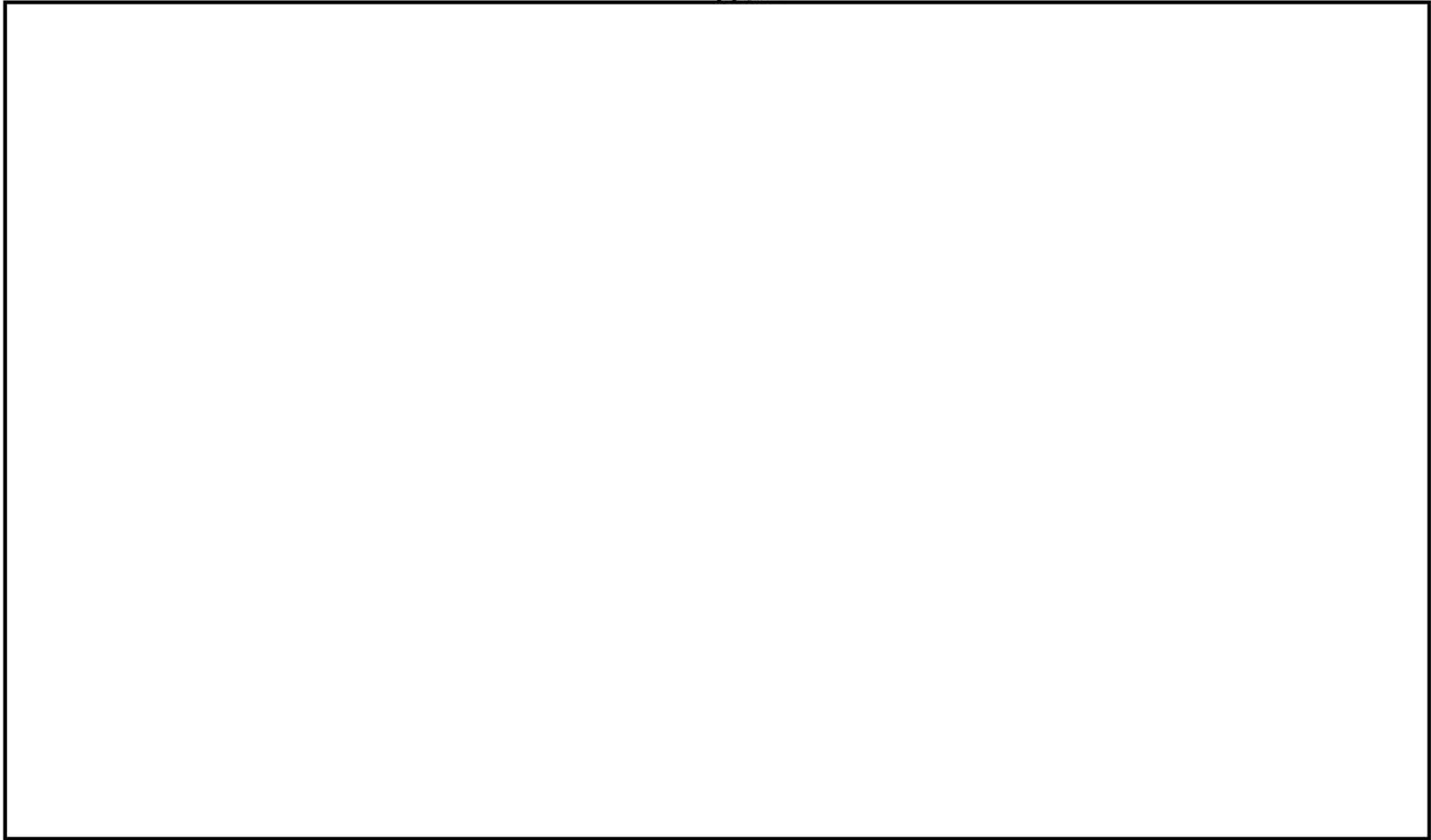




(b) (3) - P.L. 86-36  
(b) (4)

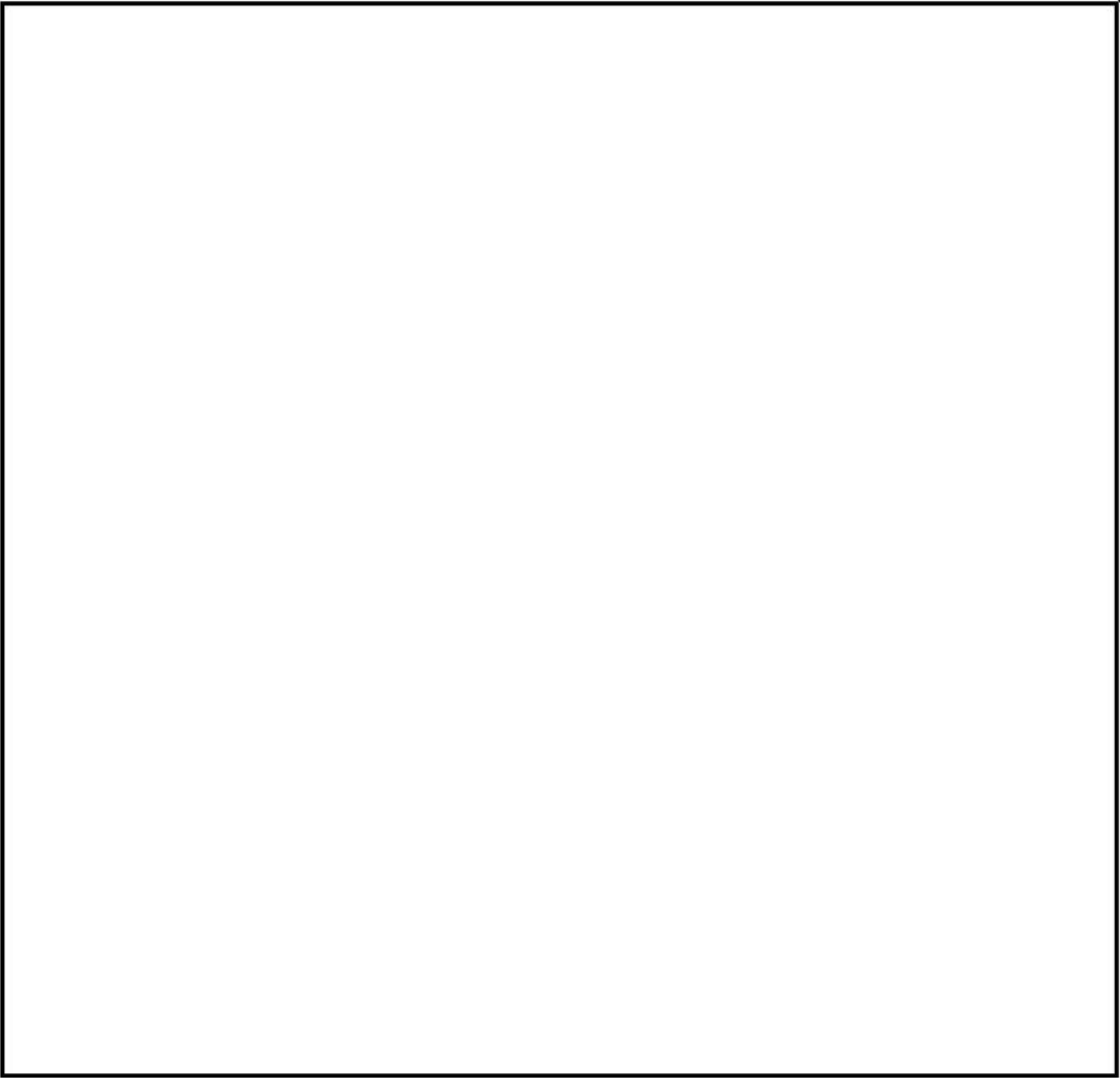


(b) (3) - P.L. 86-36  
(b) (4)

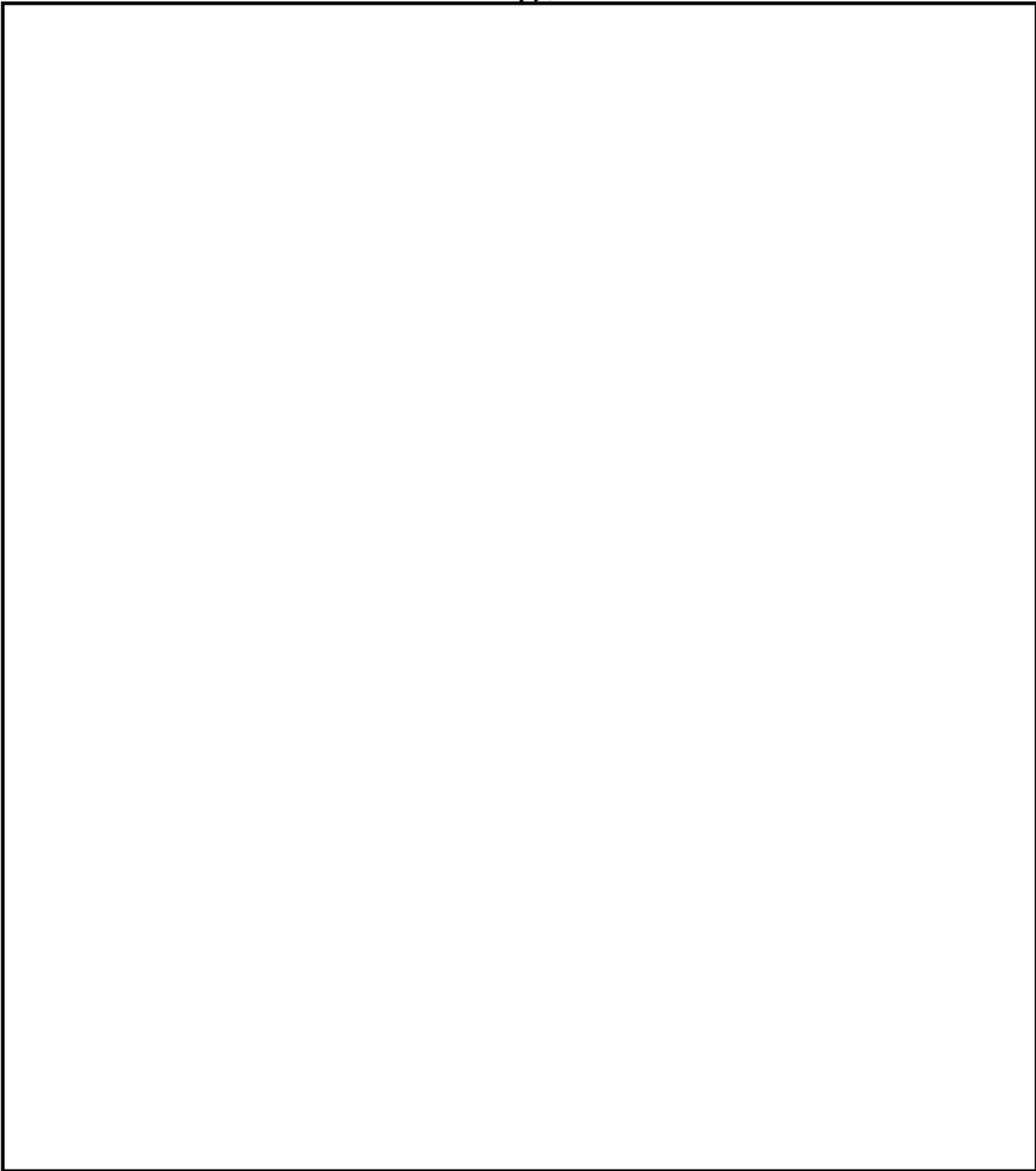


(b) (3) - P.L. 86-36  
(b) (4)

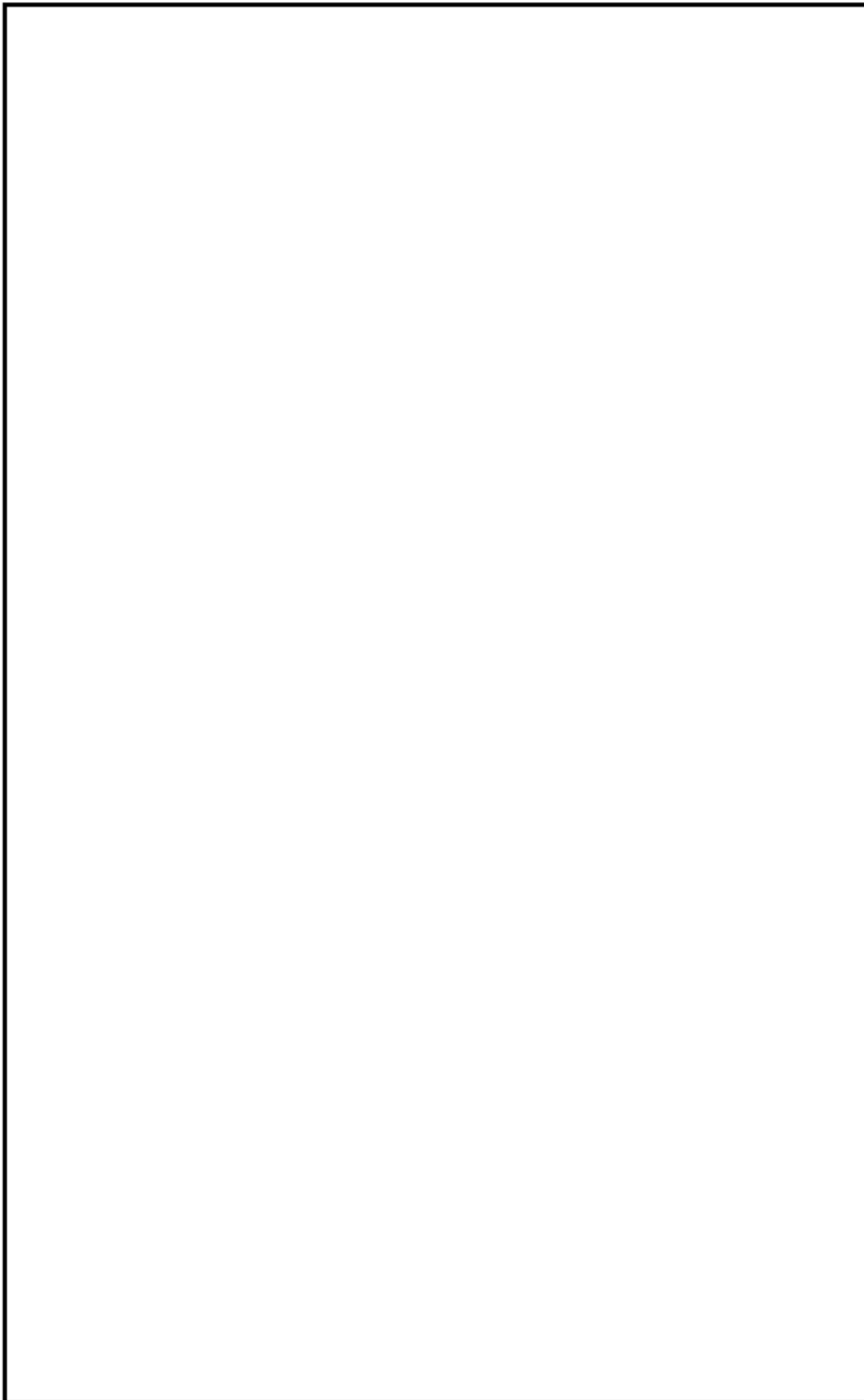
(b) (3) - P.L. 86-36  
(b) (4)



(b) (3) - P.L. 86-36  
(b) (4)

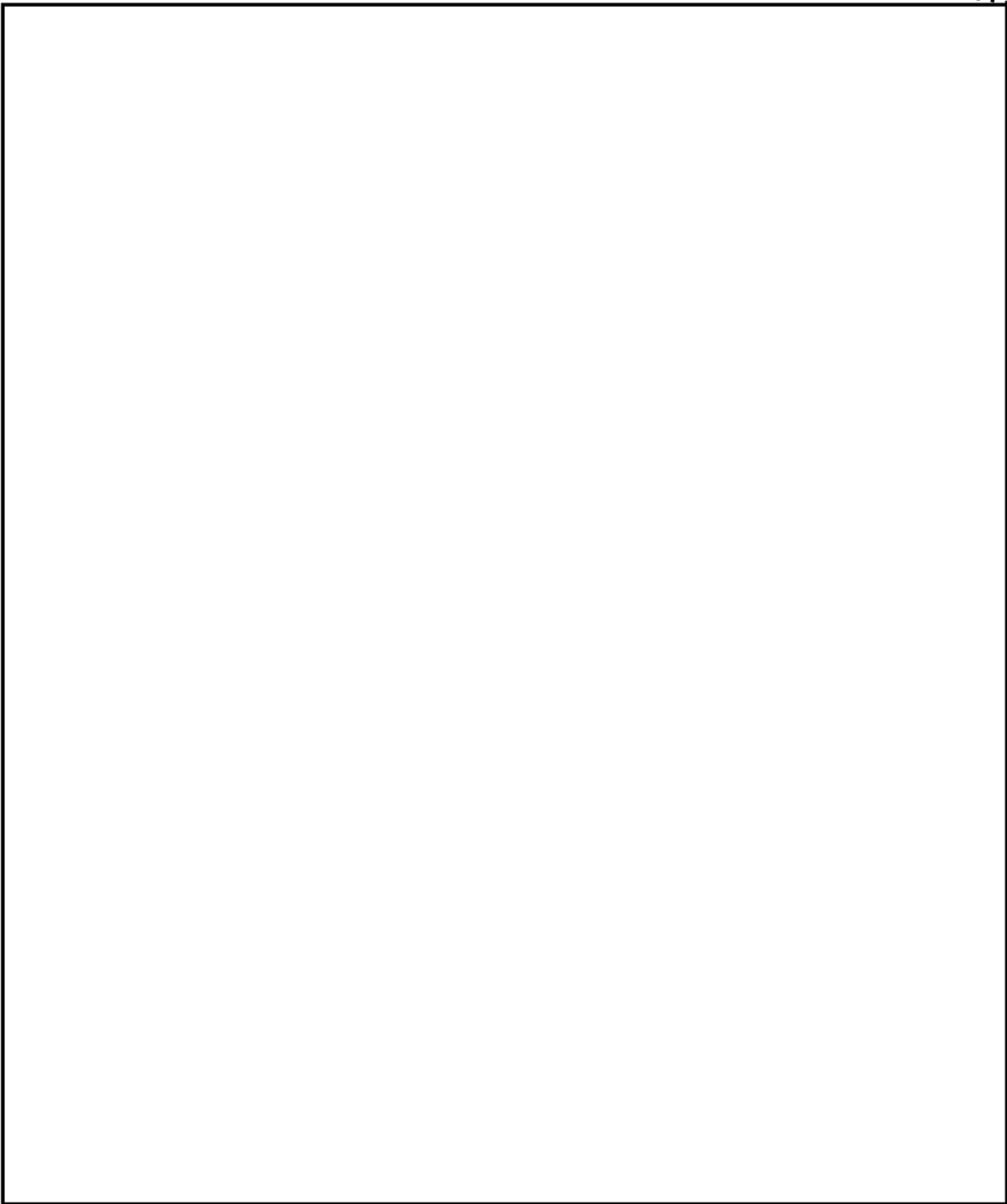


(b) (3) - P.L. 86-36  
(b) (4)

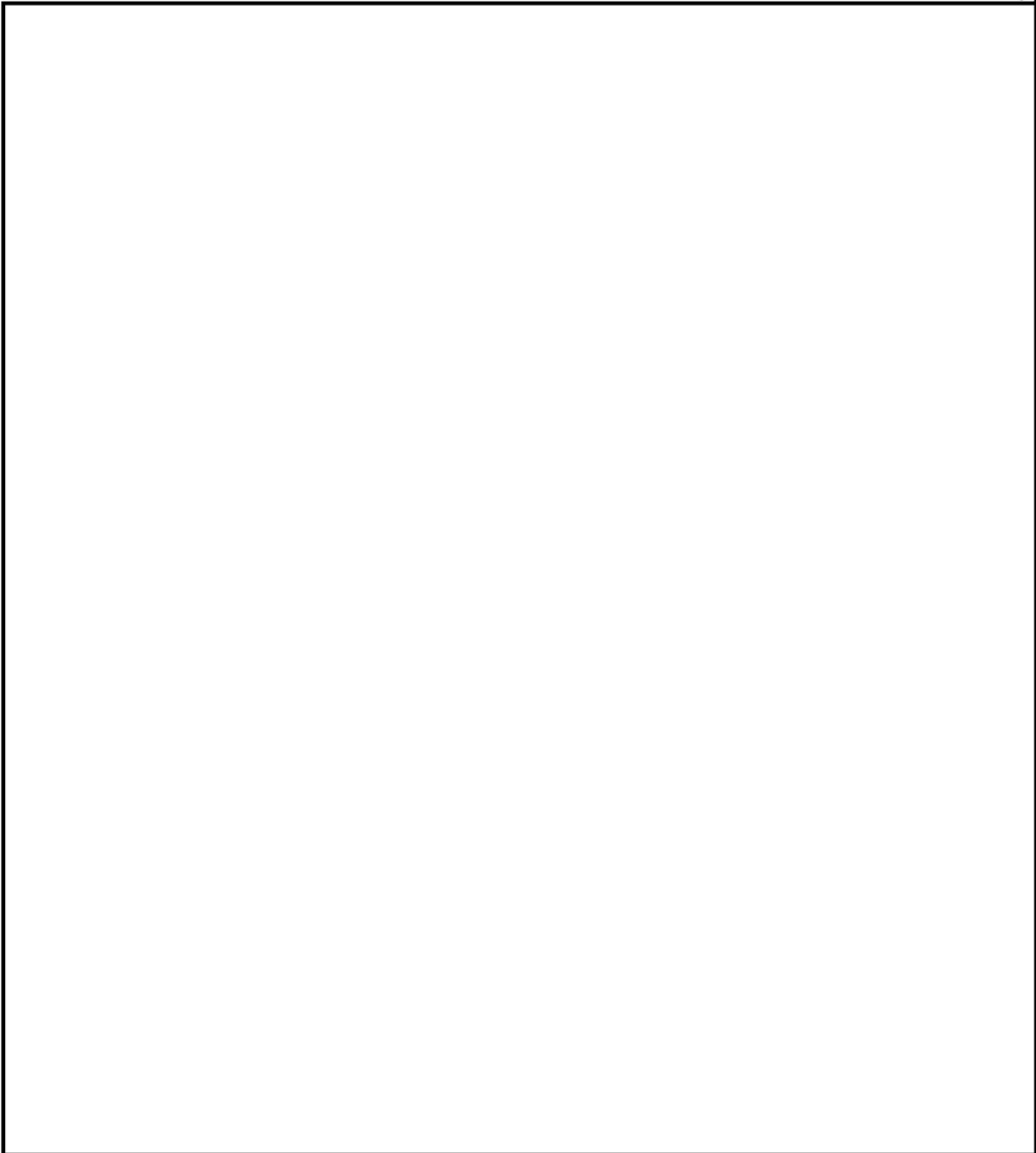




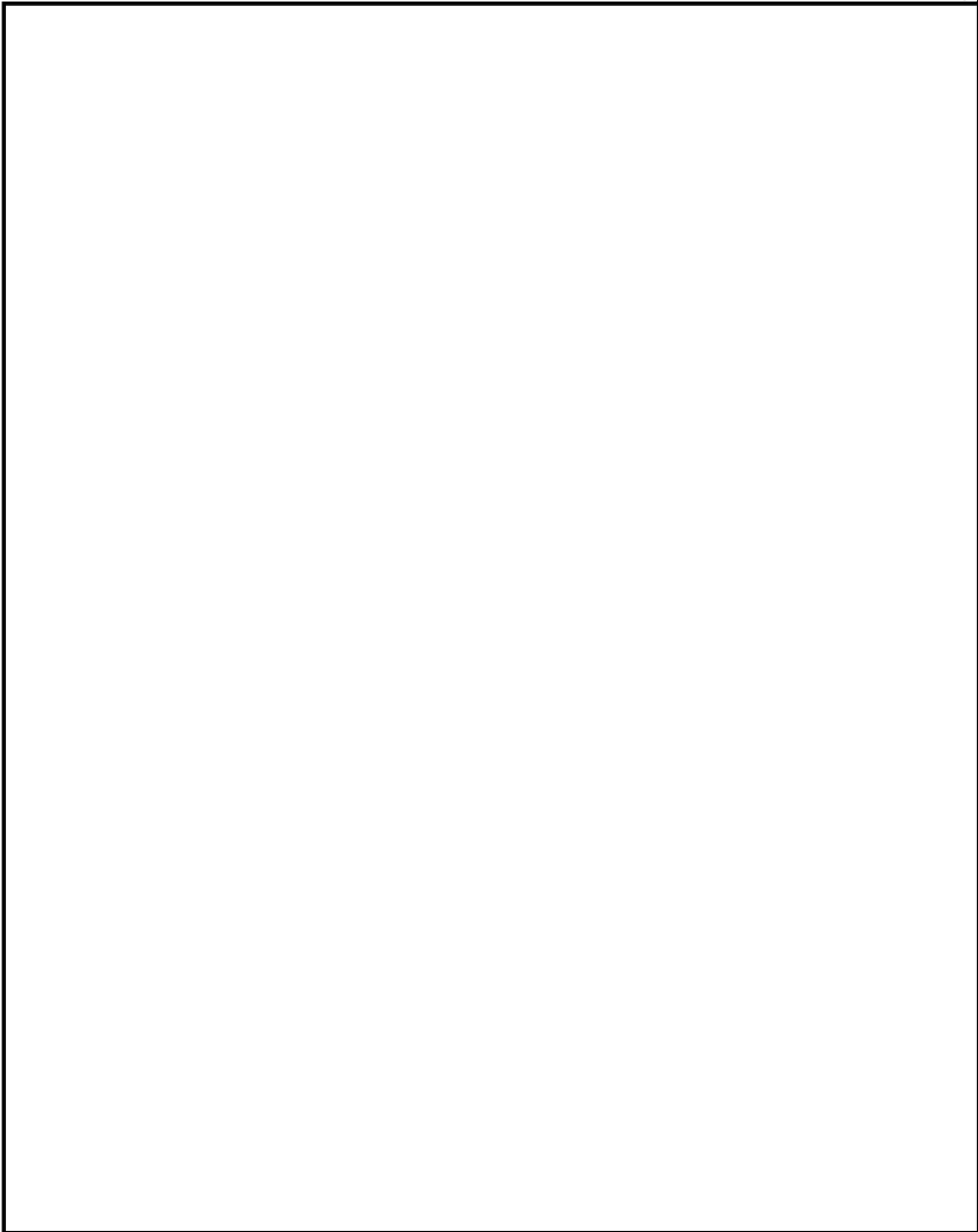
(b) (3) - P.L. 86-36  
(b) (4)



(b) (3) - P.L. 86-36  
(b) (4)

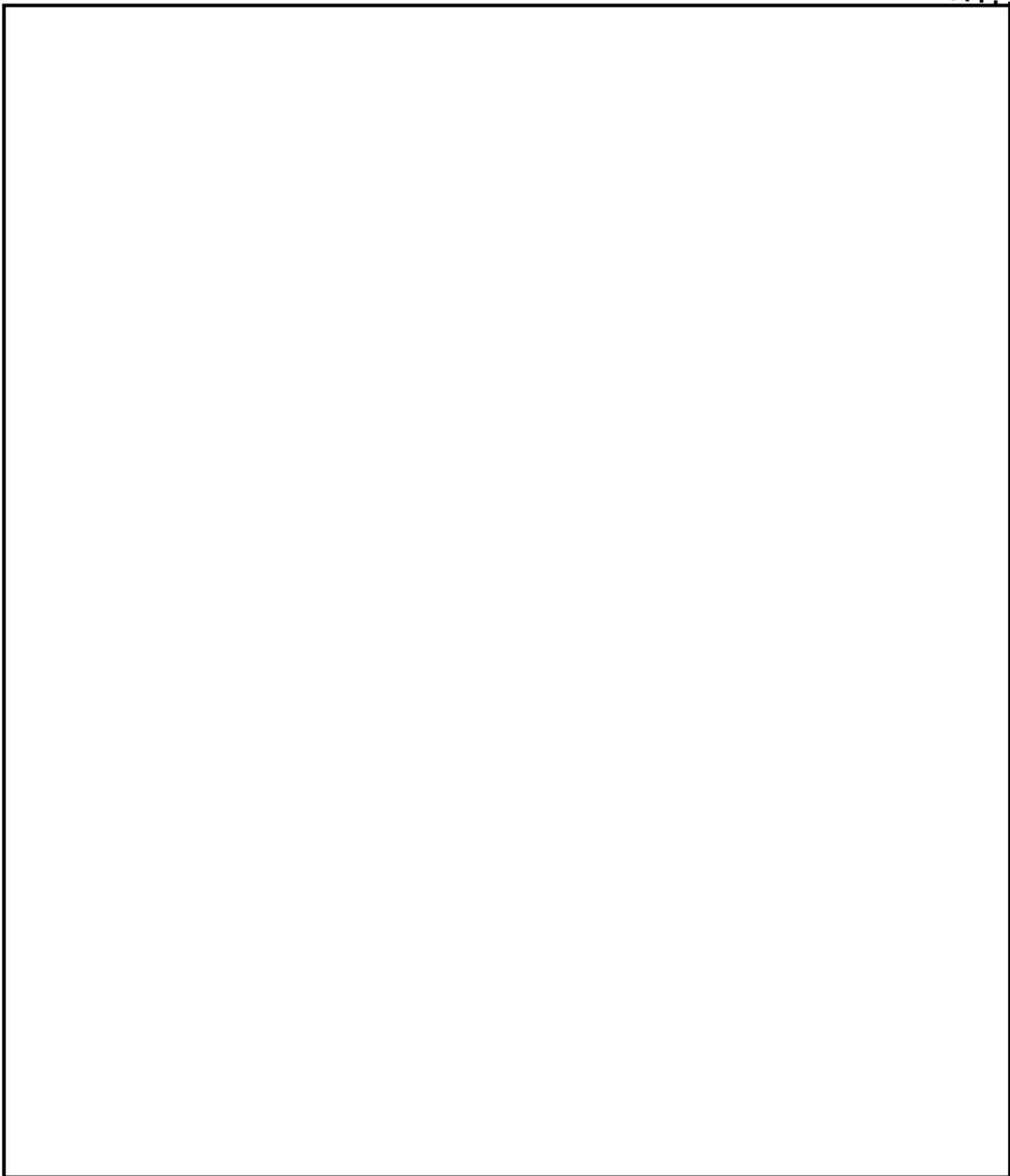


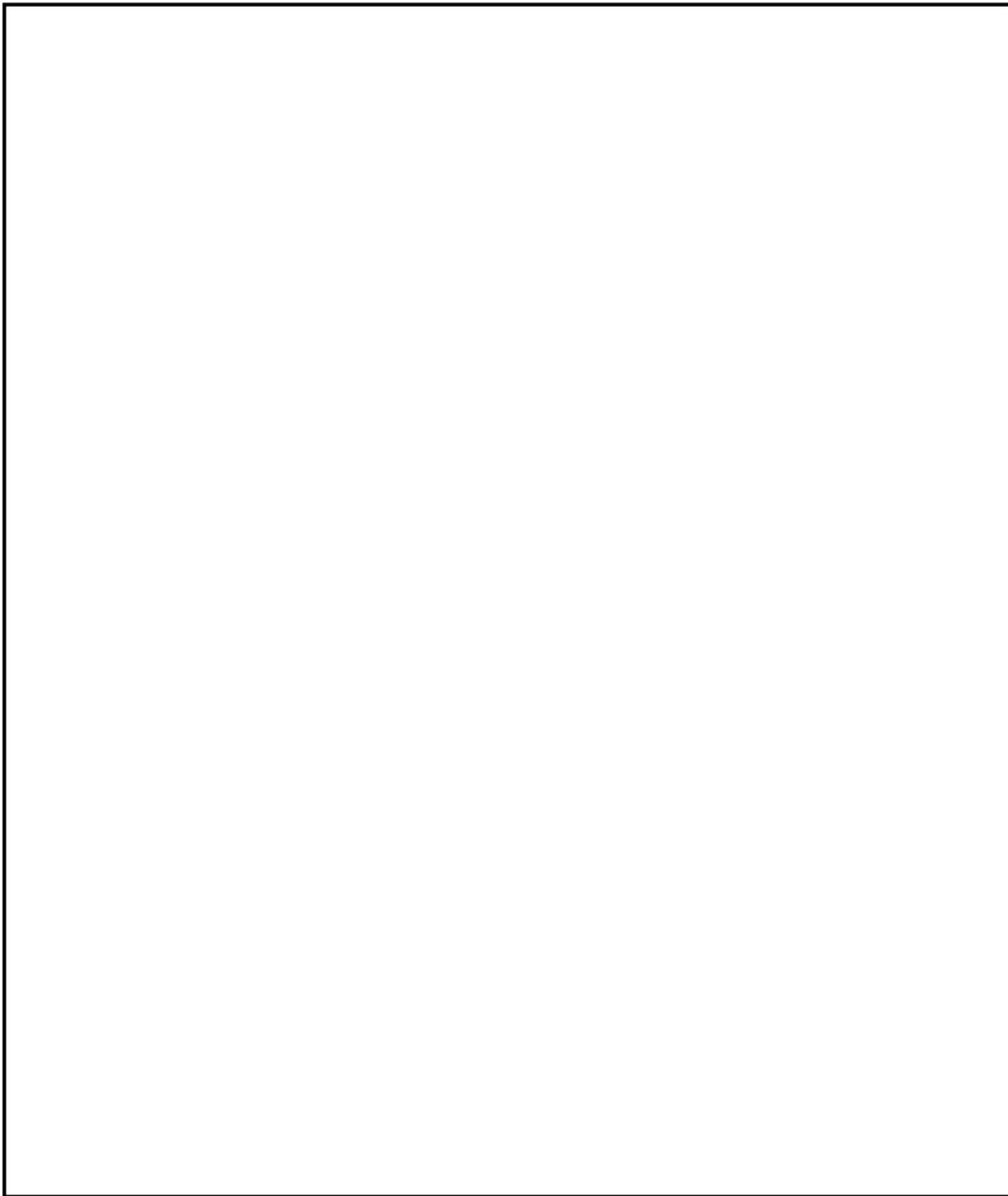
(b) (3) - P.L. 86-36  
(b) (4)



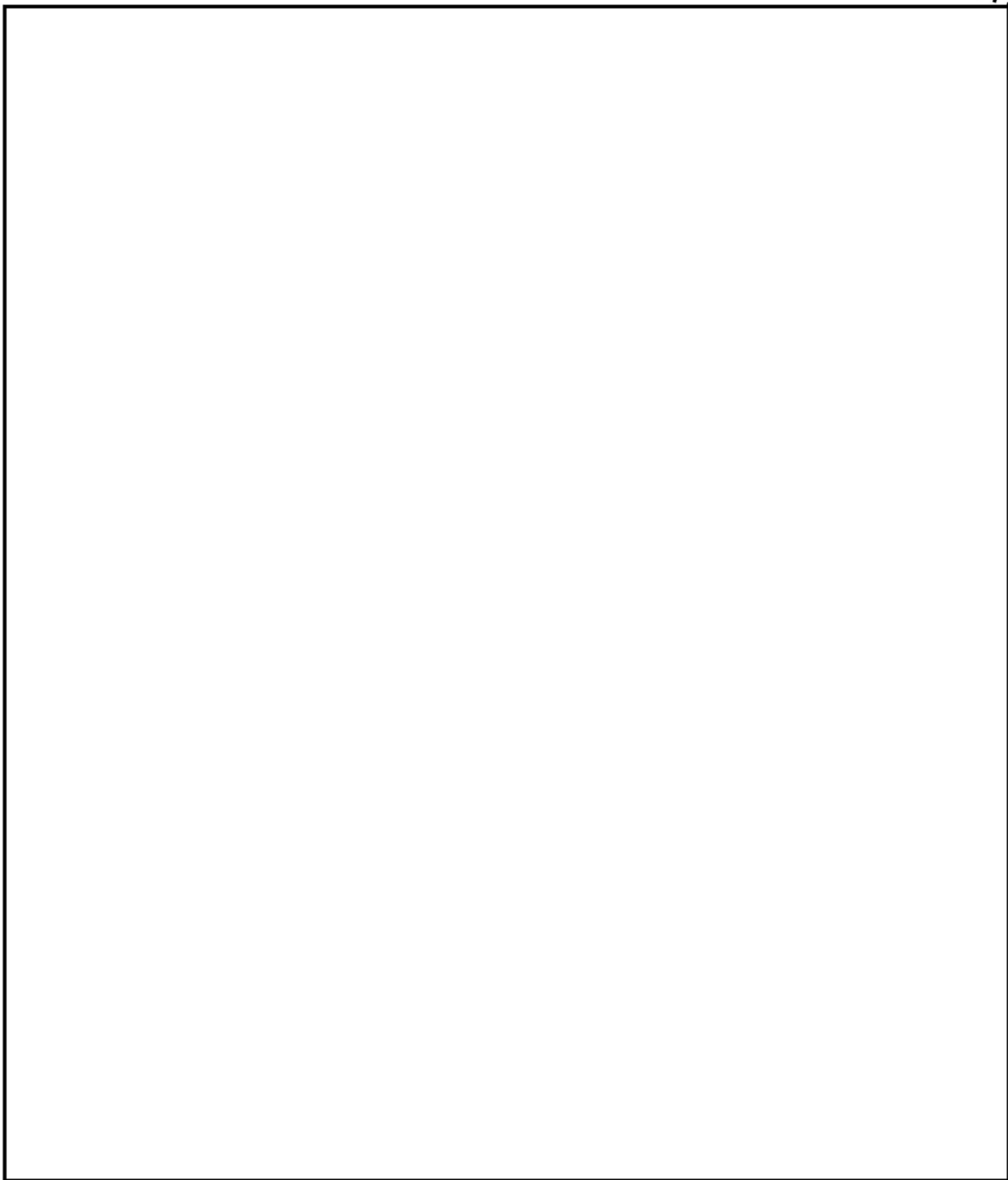


(b) (3) - P.L. 86-36  
(b) (4)

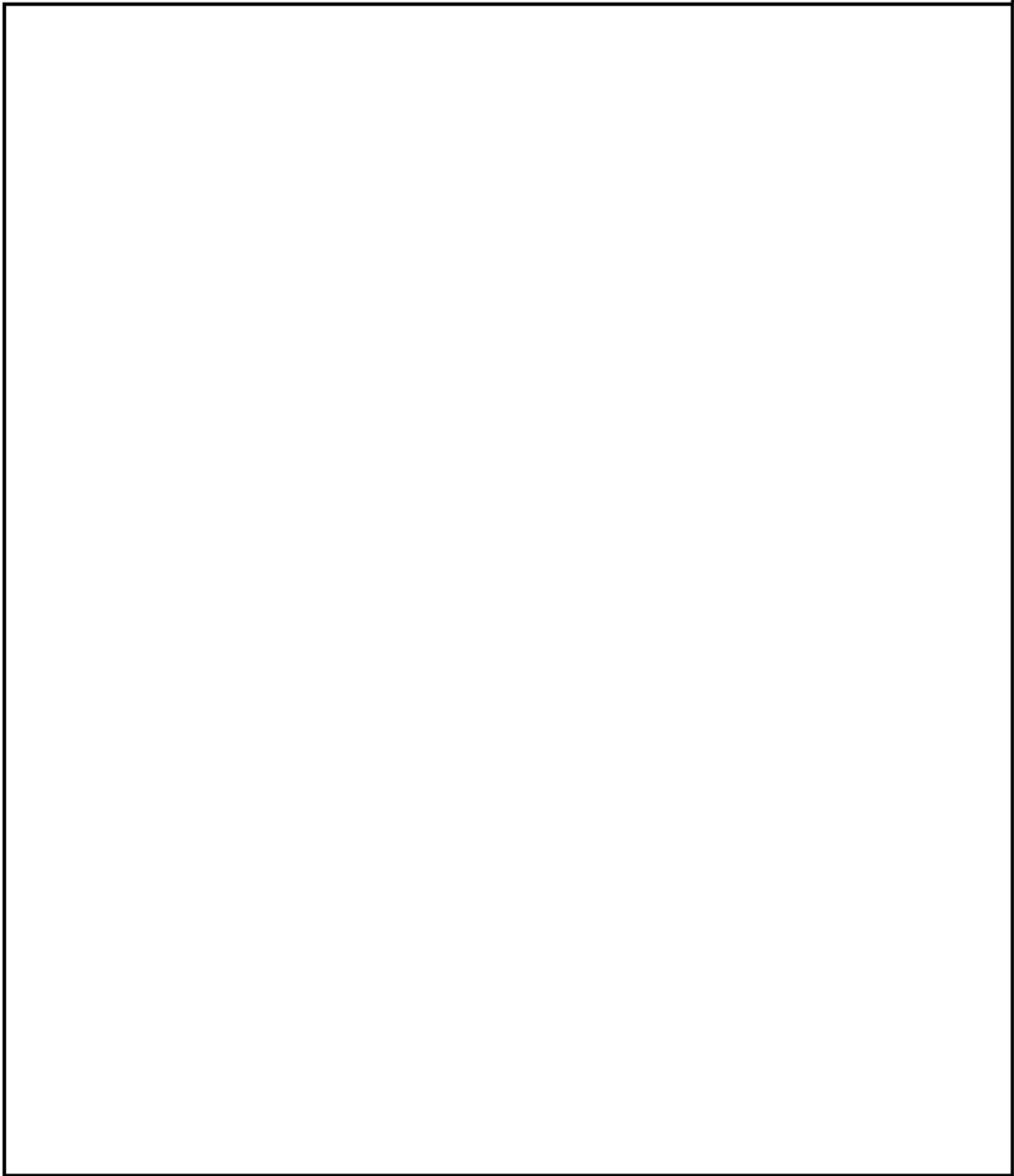




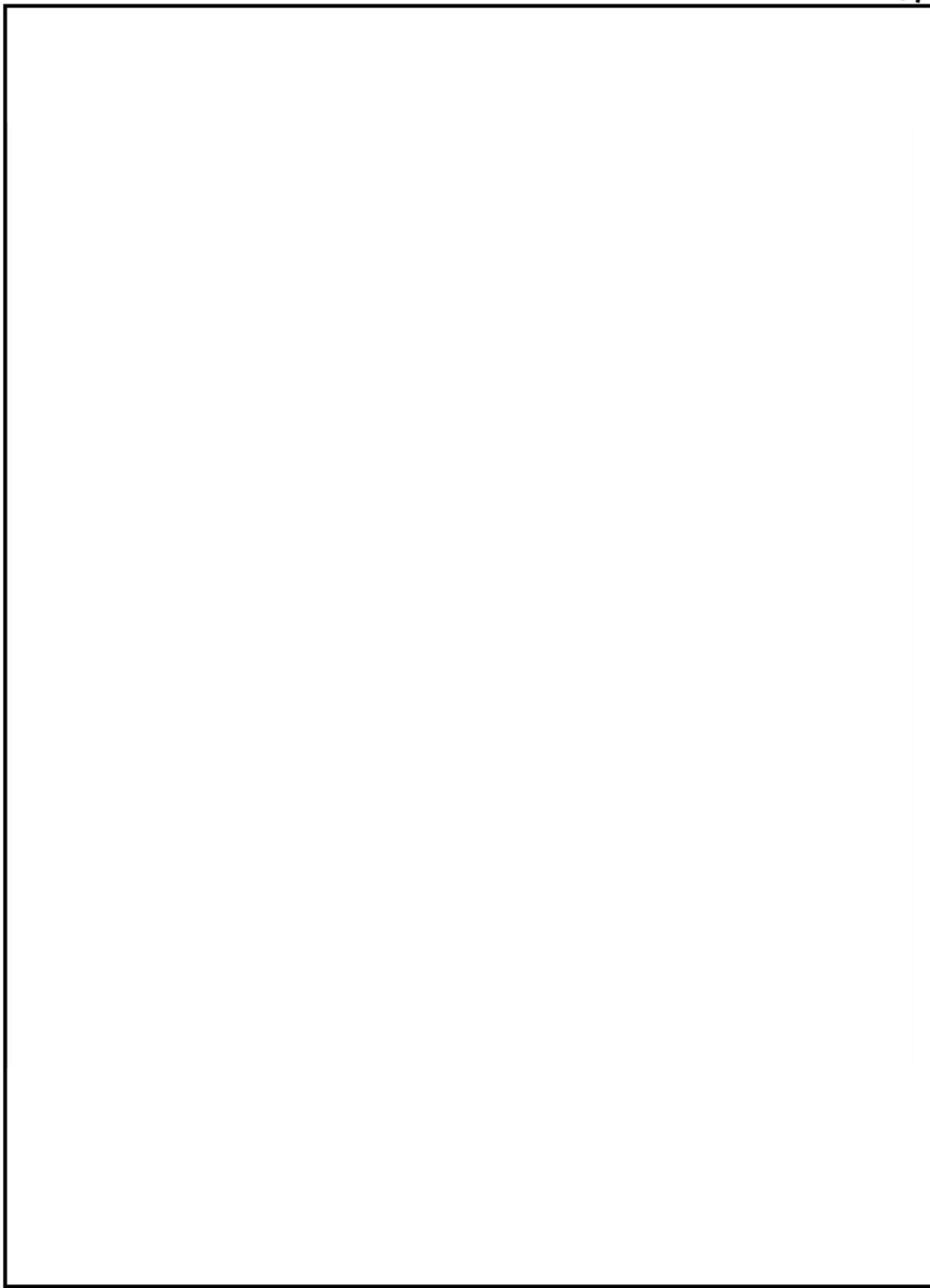




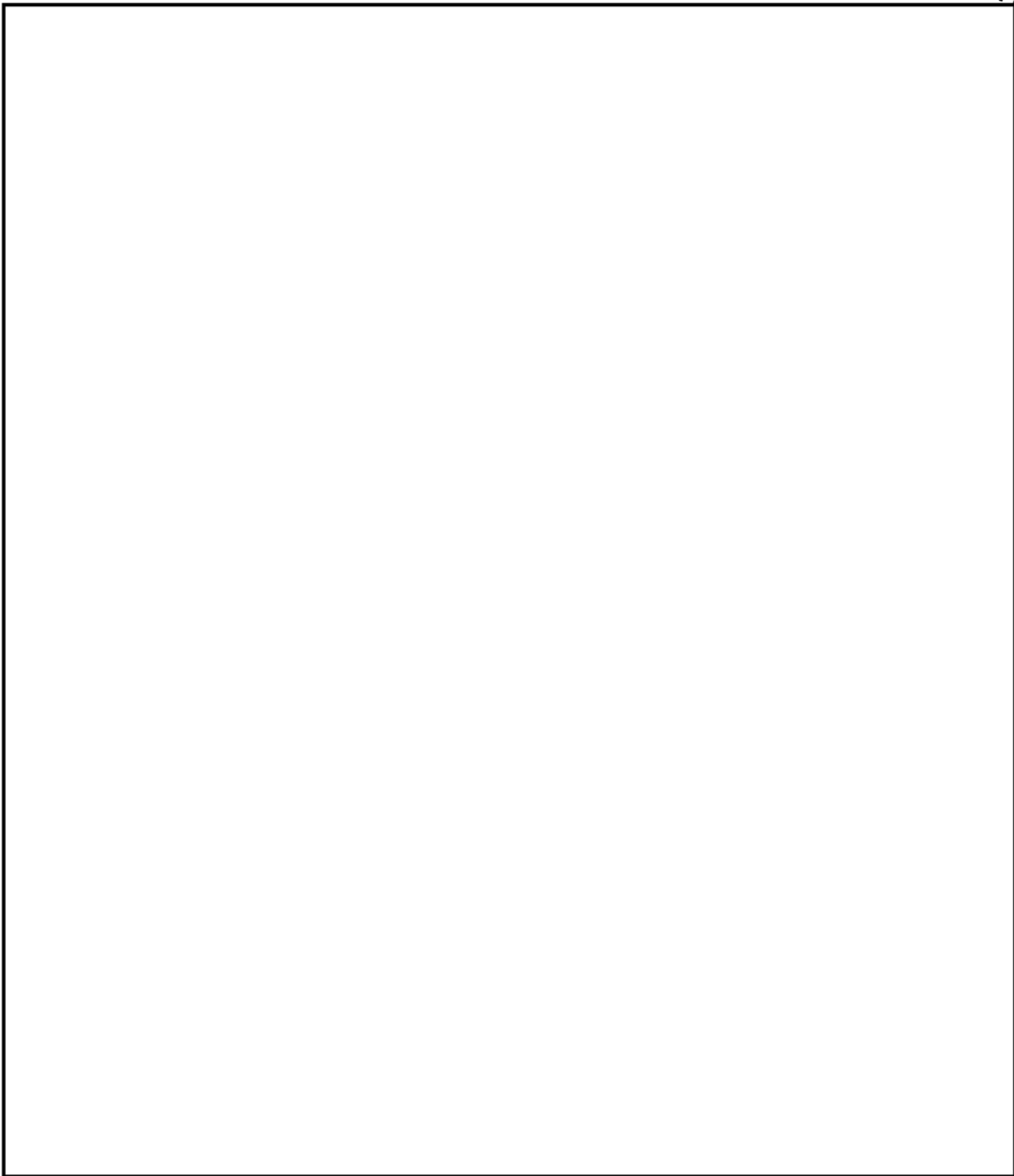
(b) (3) - P.L. 86-36  
(b) (4)



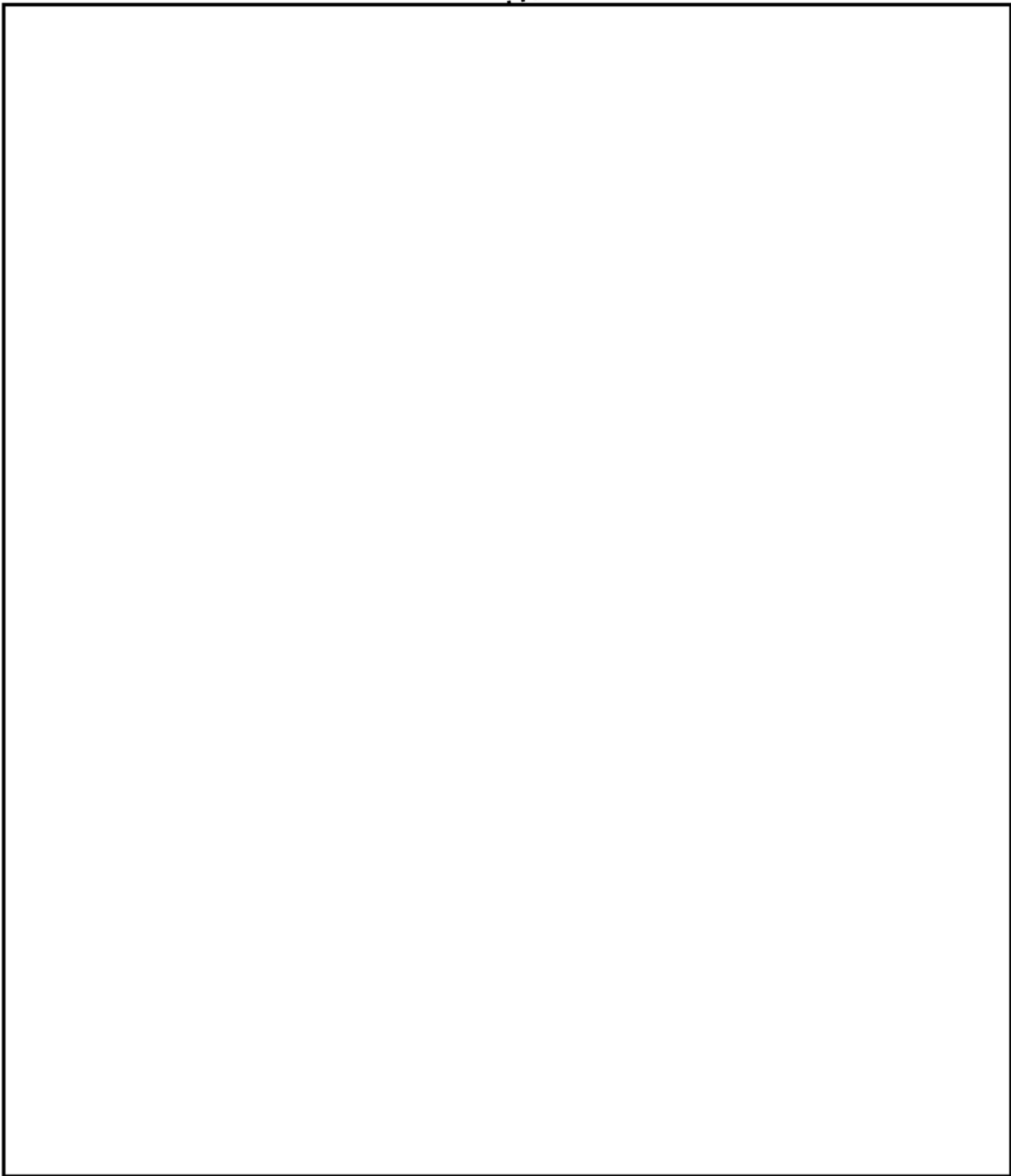
(b) (3) - P.L. 86-36  
(b) (4)



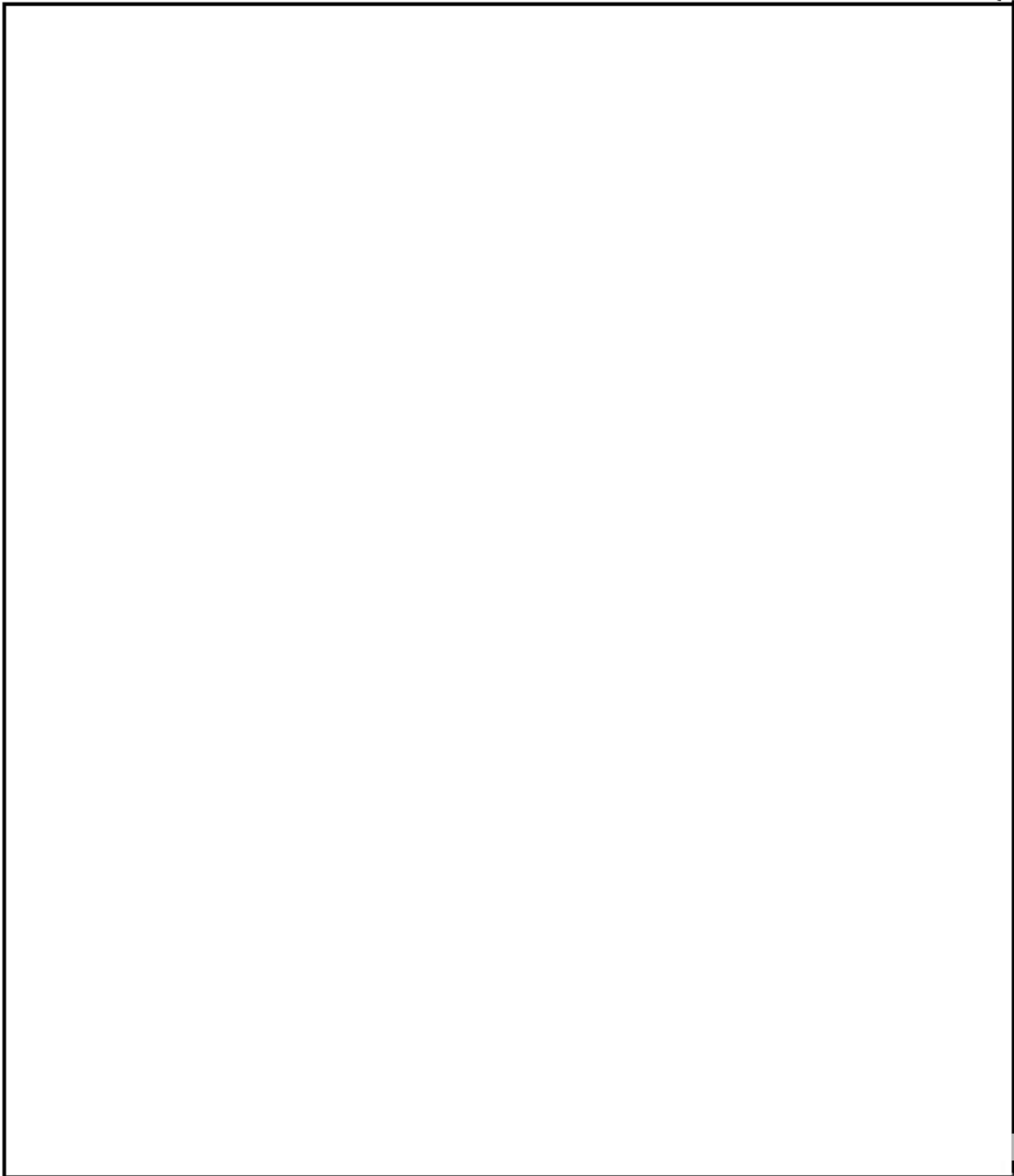
(b) (3) - P.L. 86-36  
(b) (4)



(b) (3) - P.L. 86-36  
(b) (4)



(b) (3) - P.L. 86-36  
(b) (4)



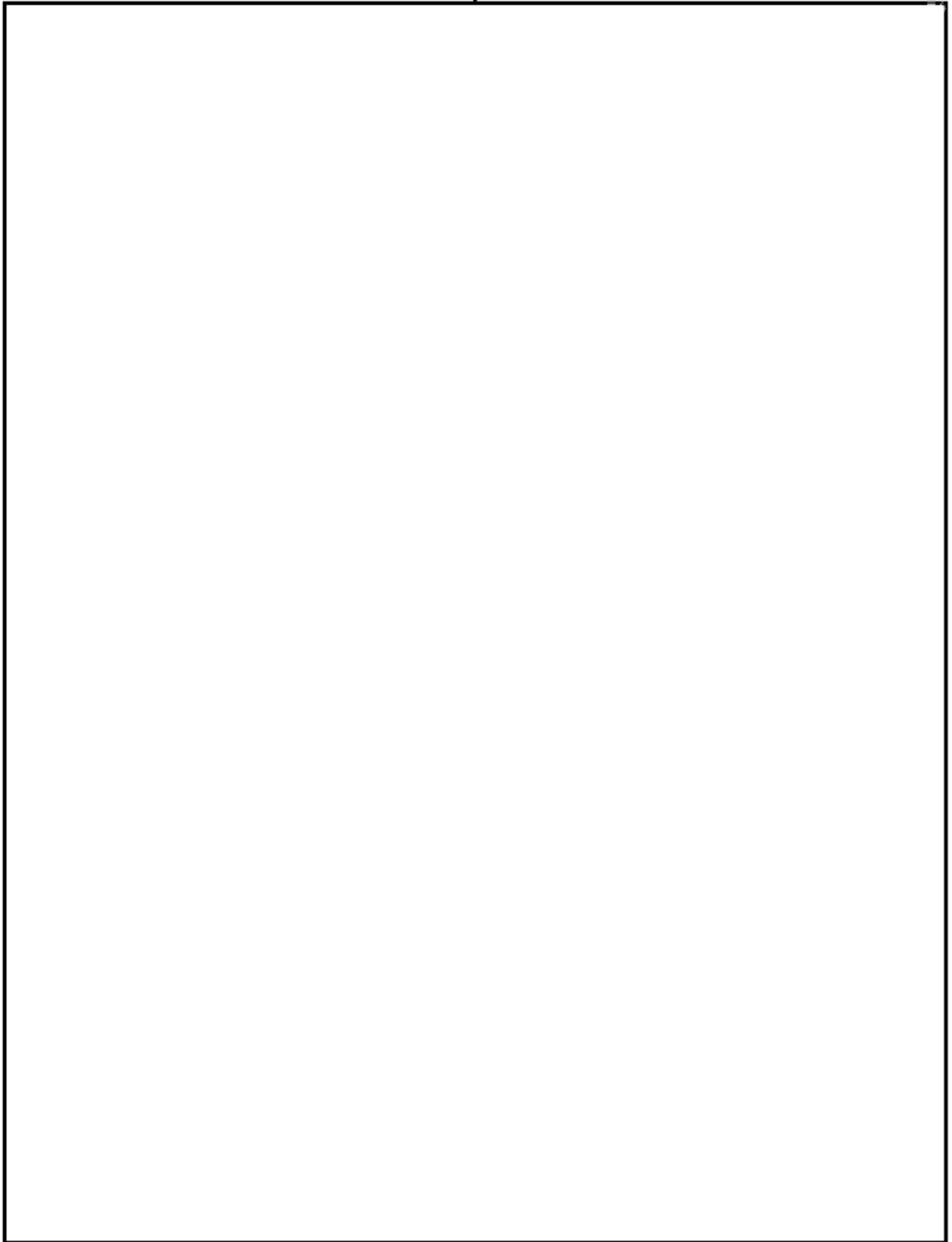


(b) (3) - P.L. 86-36  
(b) (4)

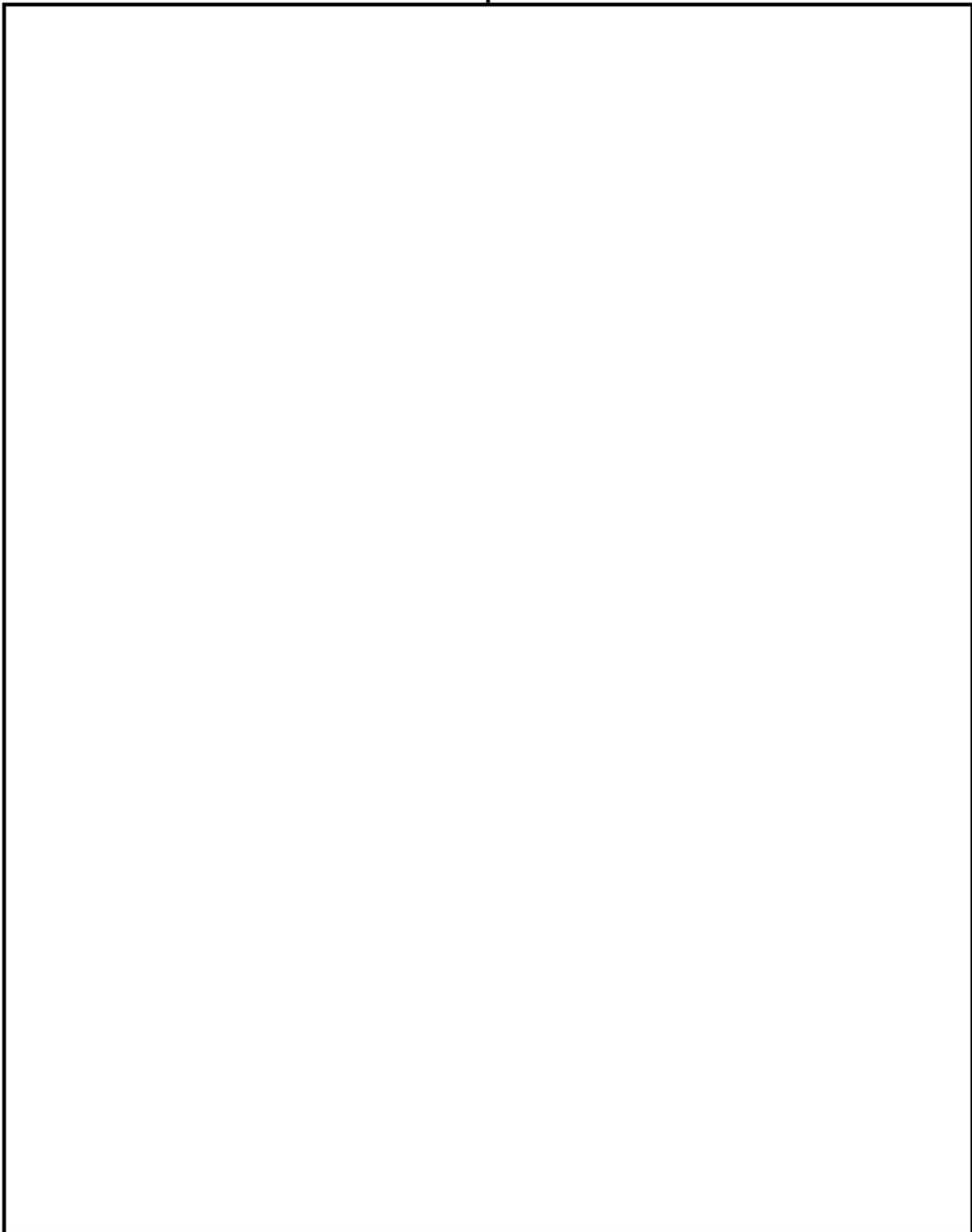


(b) (3) - P.L. 86-36  
(b) (4)

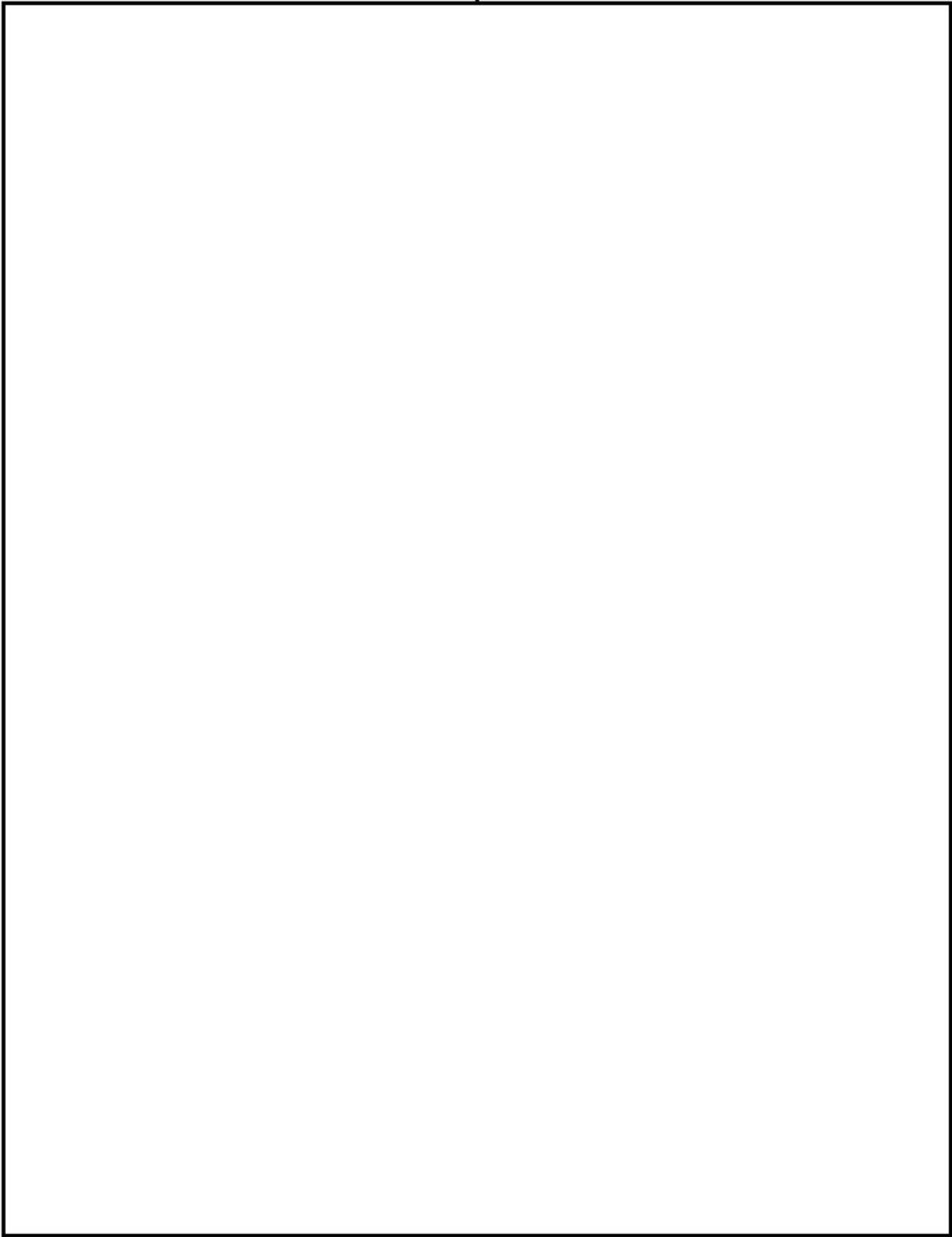
# Appendix B



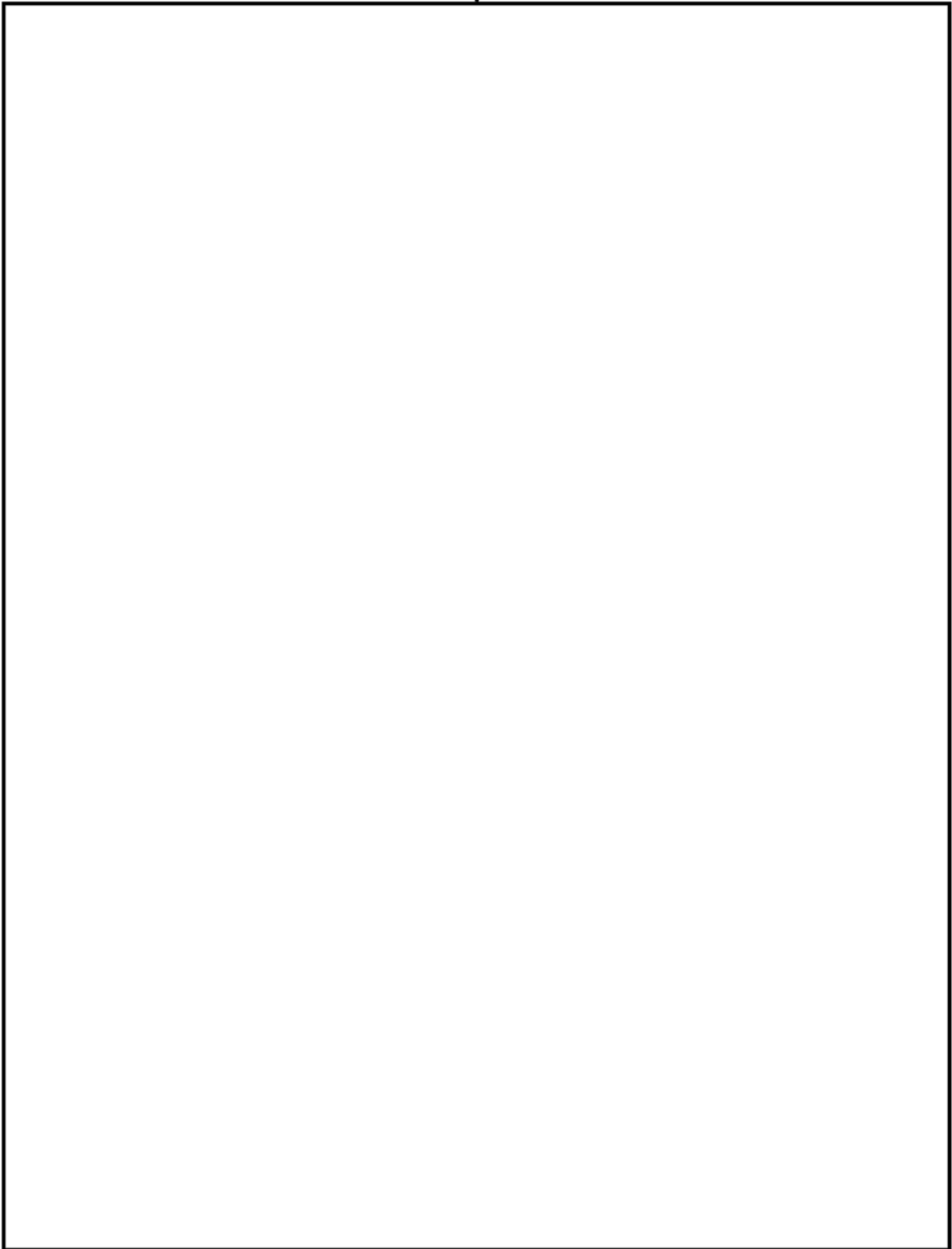
(b) (3) - P.L. 86-36  
(b) (4)



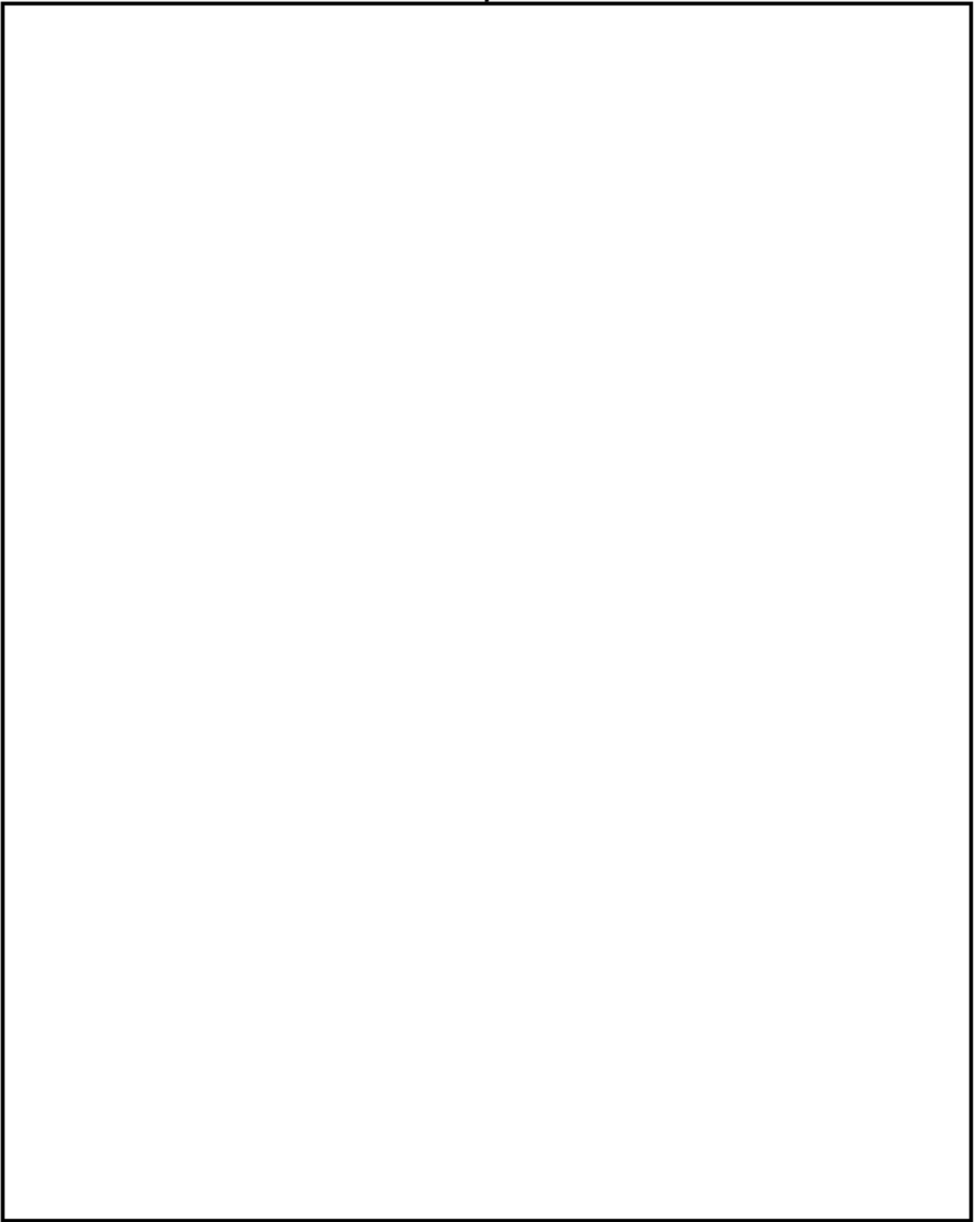
(b) (3) - P.L. 86-36  
(b) (4)



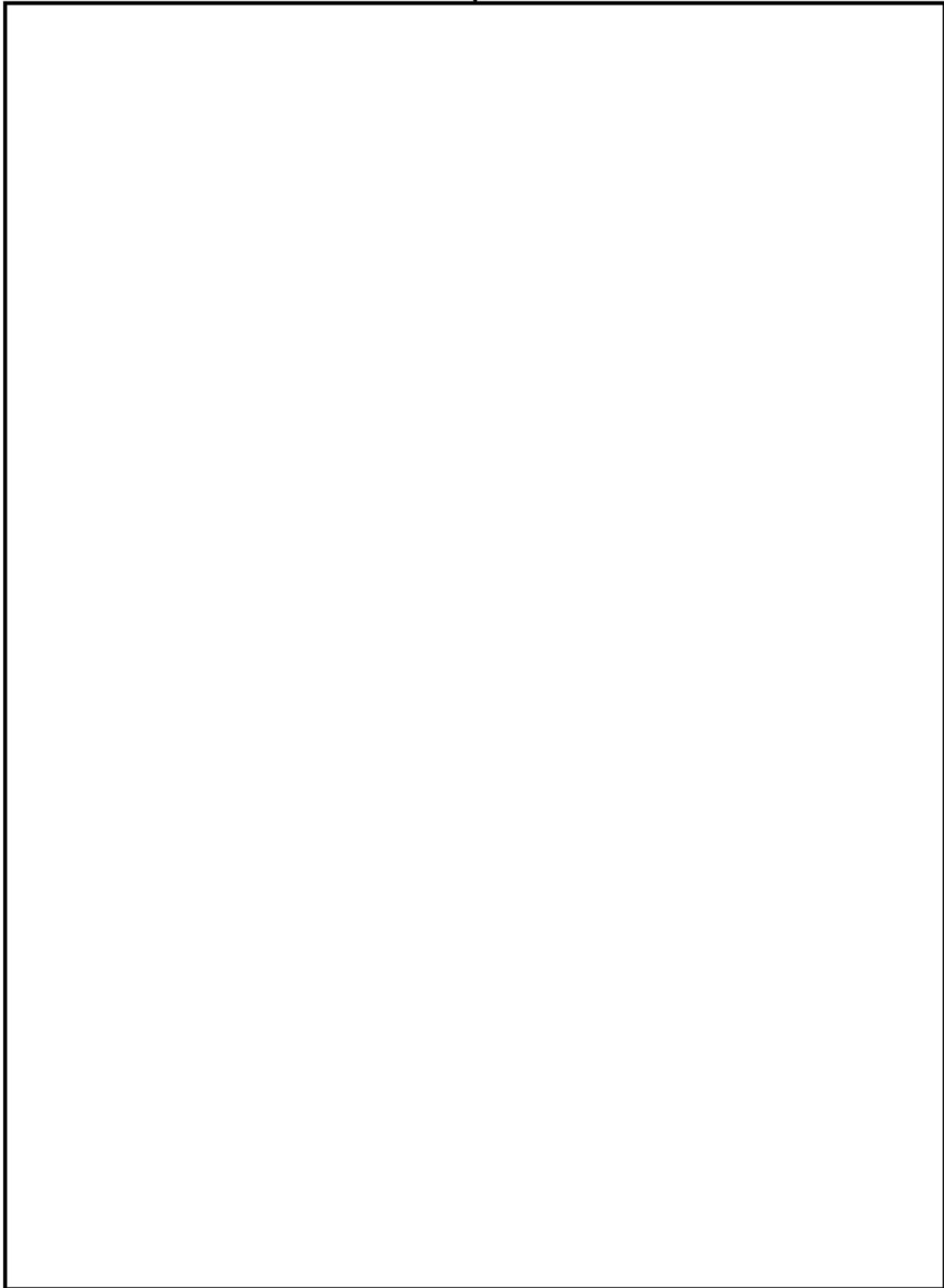
(b) (3) - P.L. 86-36  
(b) (4)



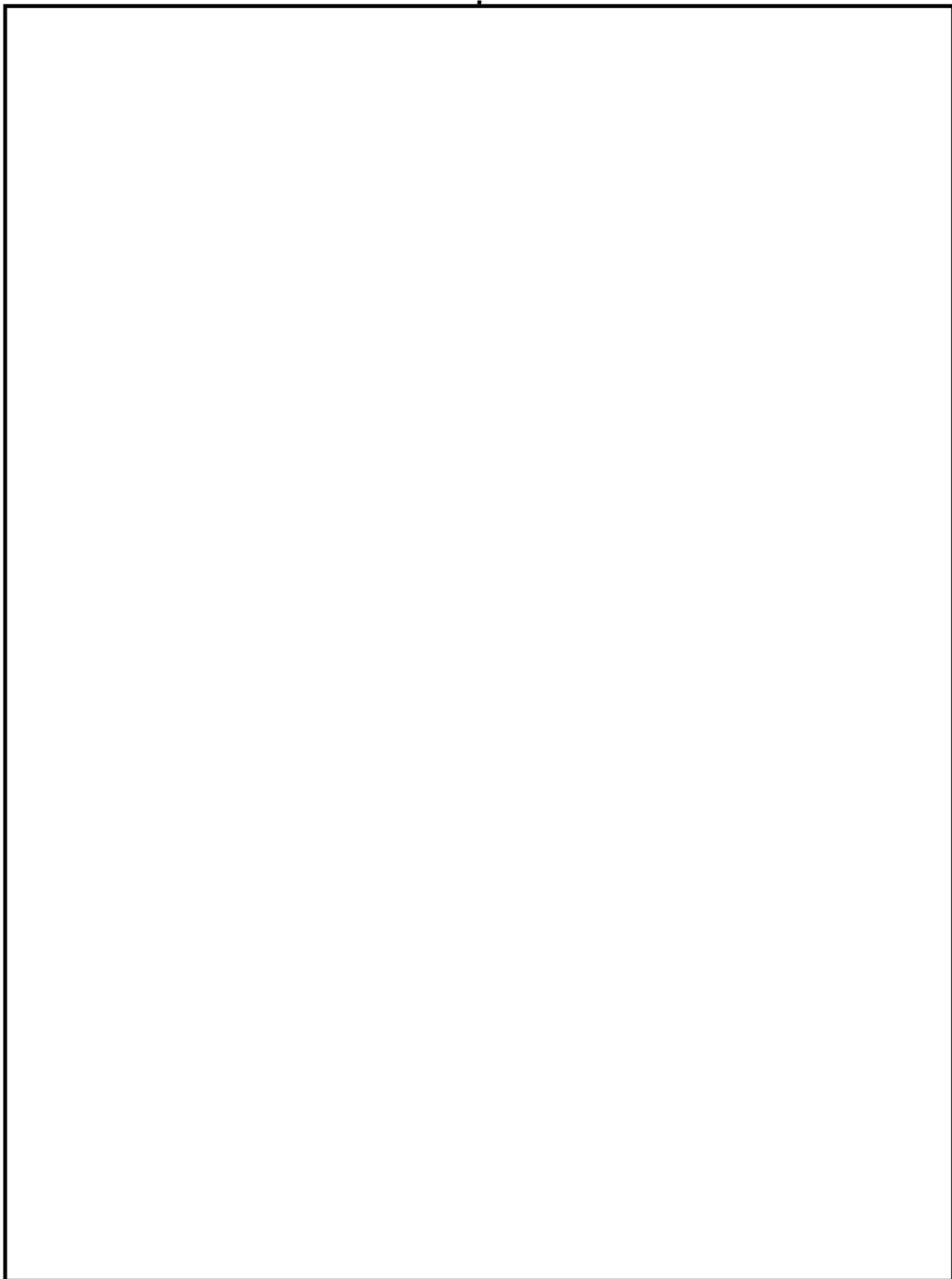
(b) (3) - P.L. 86-36  
(b) (4)



(b) (3) - P.L. 86-36  
(b) (4)

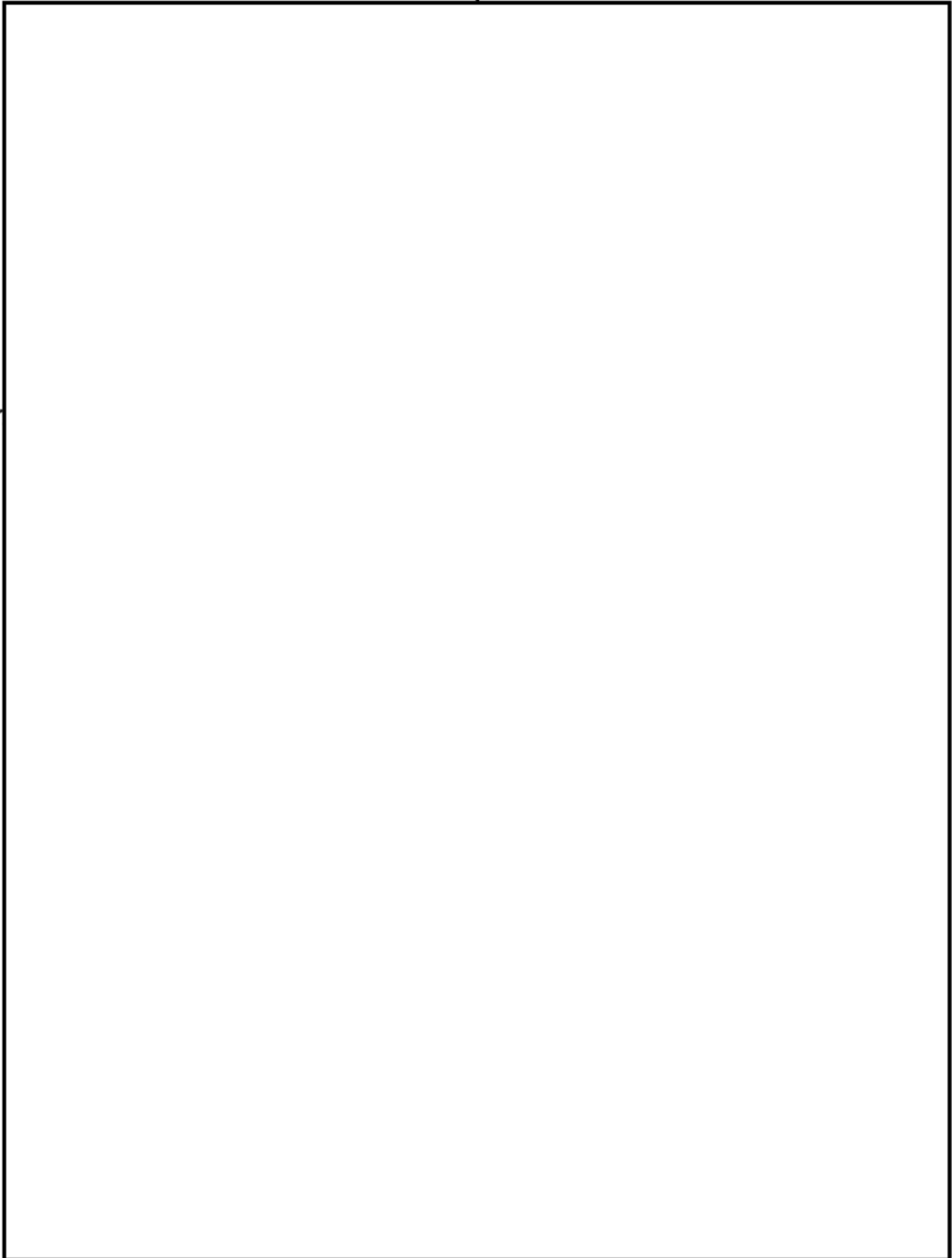


(b) (3) - P.L. 86-36  
(b) (4)

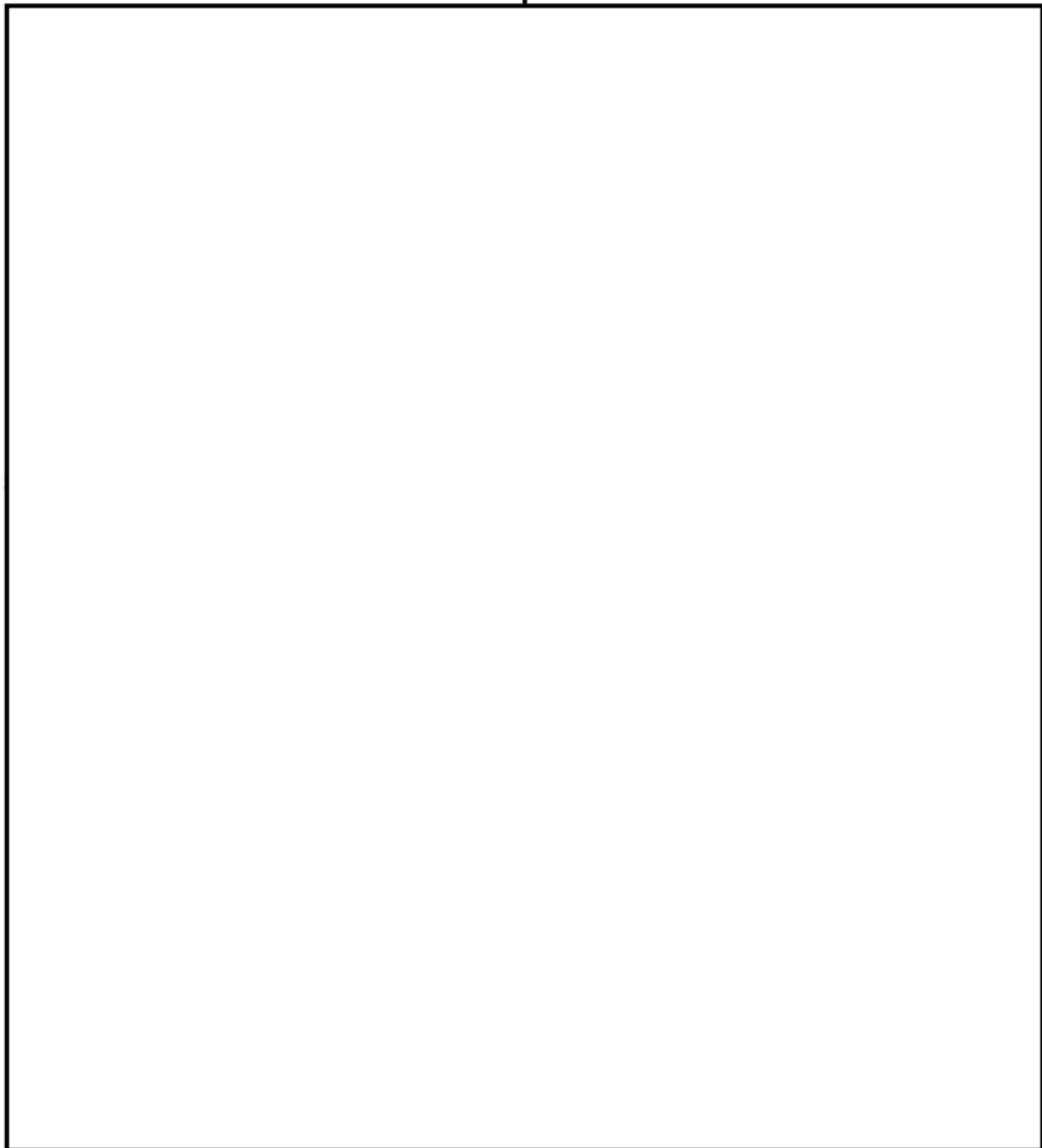




(b) (3) - P.L. 86-36  
(b) (4)

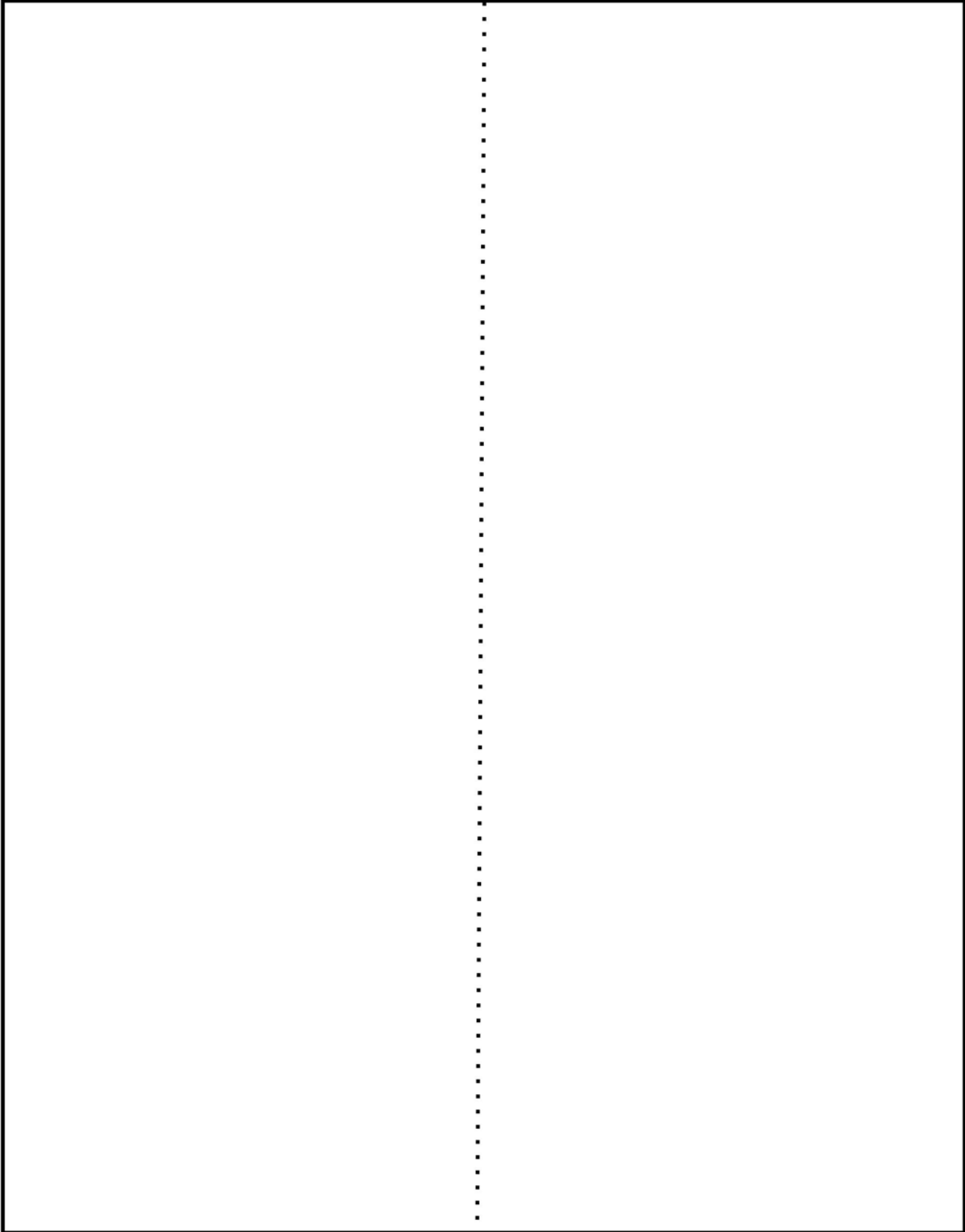


(b) (3) - P.L. 86-36  
(b) (4)



(b) (3) - P.L. 86-36  
(b) (4)

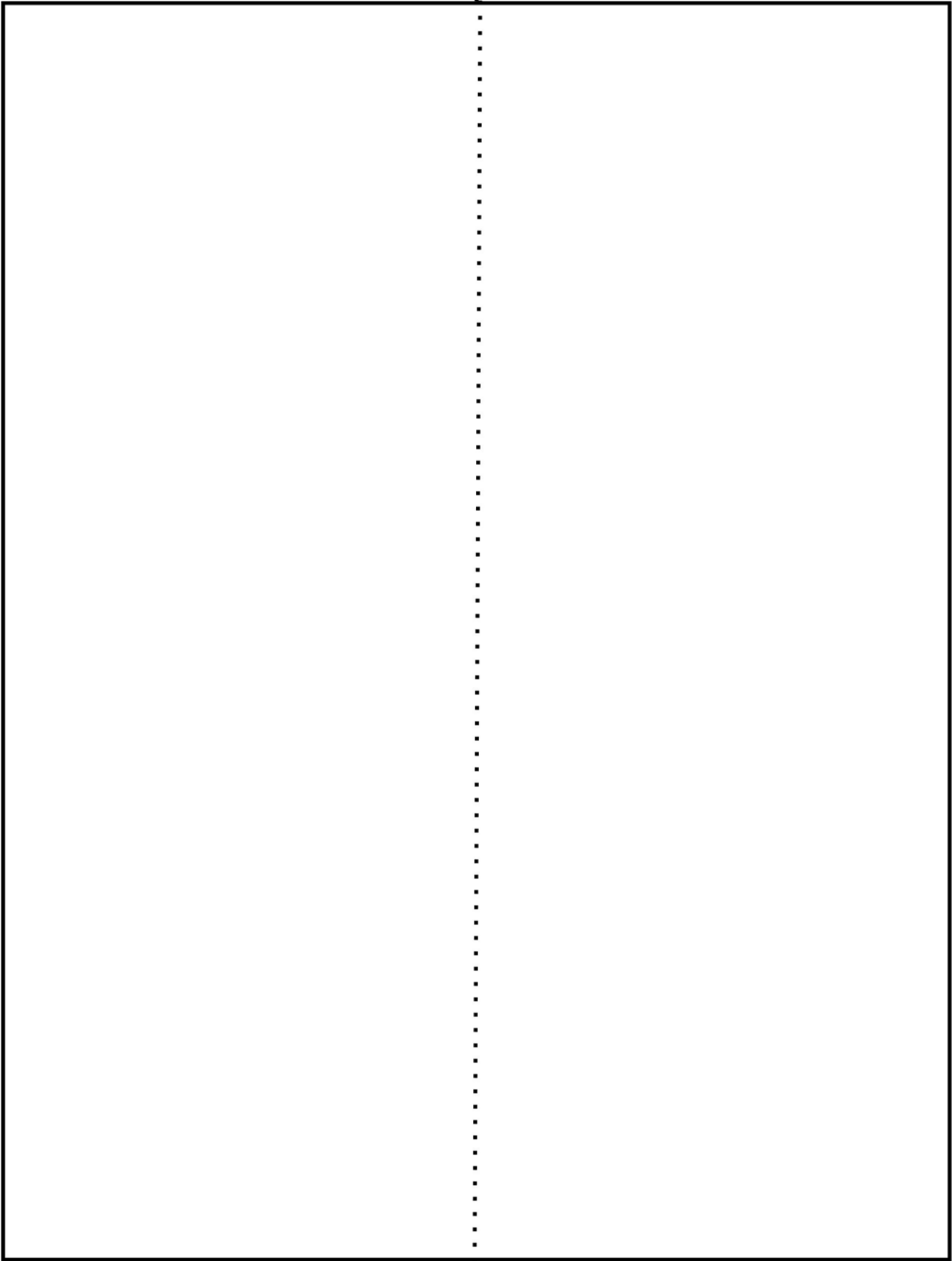
# Appendix C



[Redacted]

PROPRIETARY

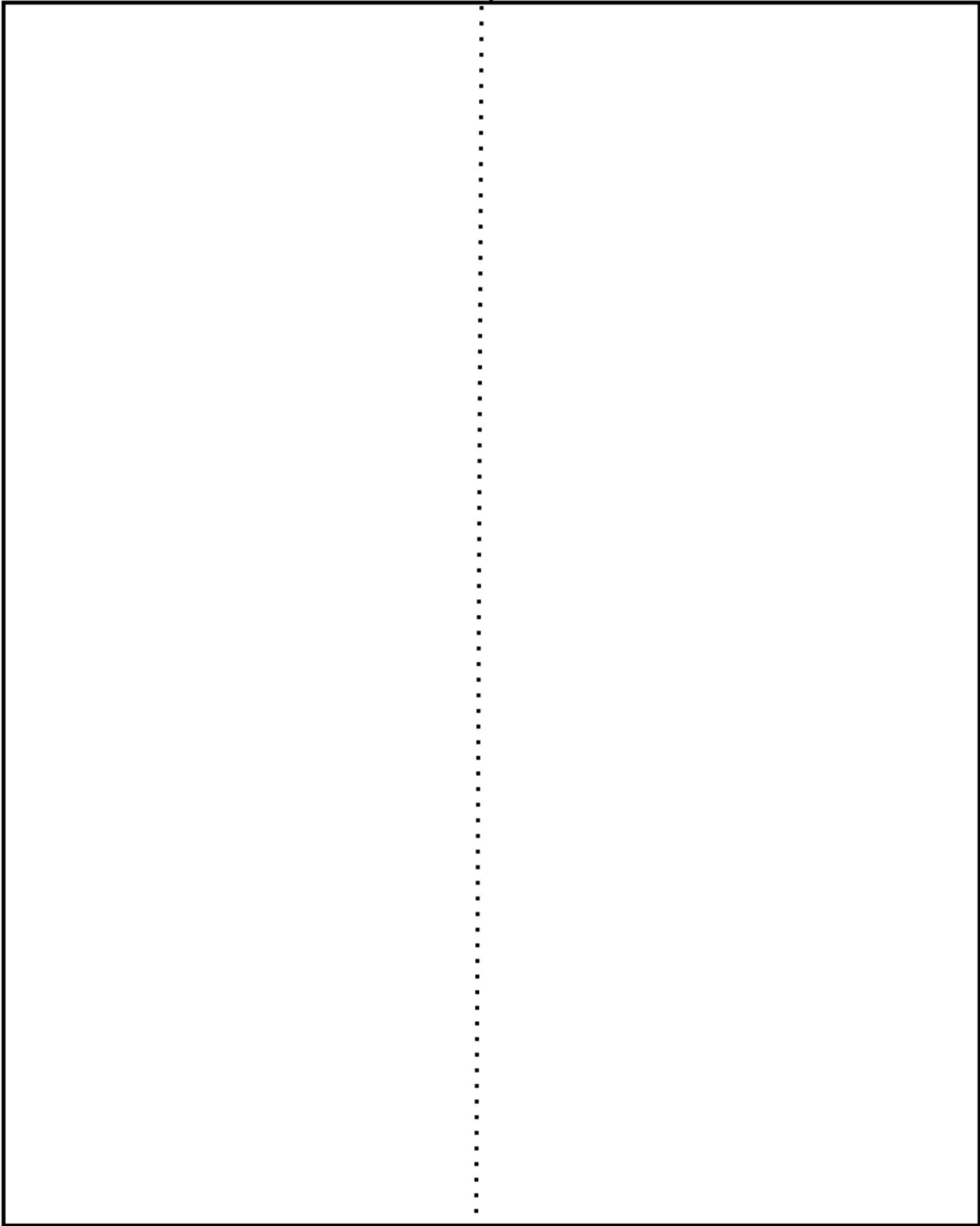
(b) (3) - P.L. 86-36  
(b) (4)



[Redacted]

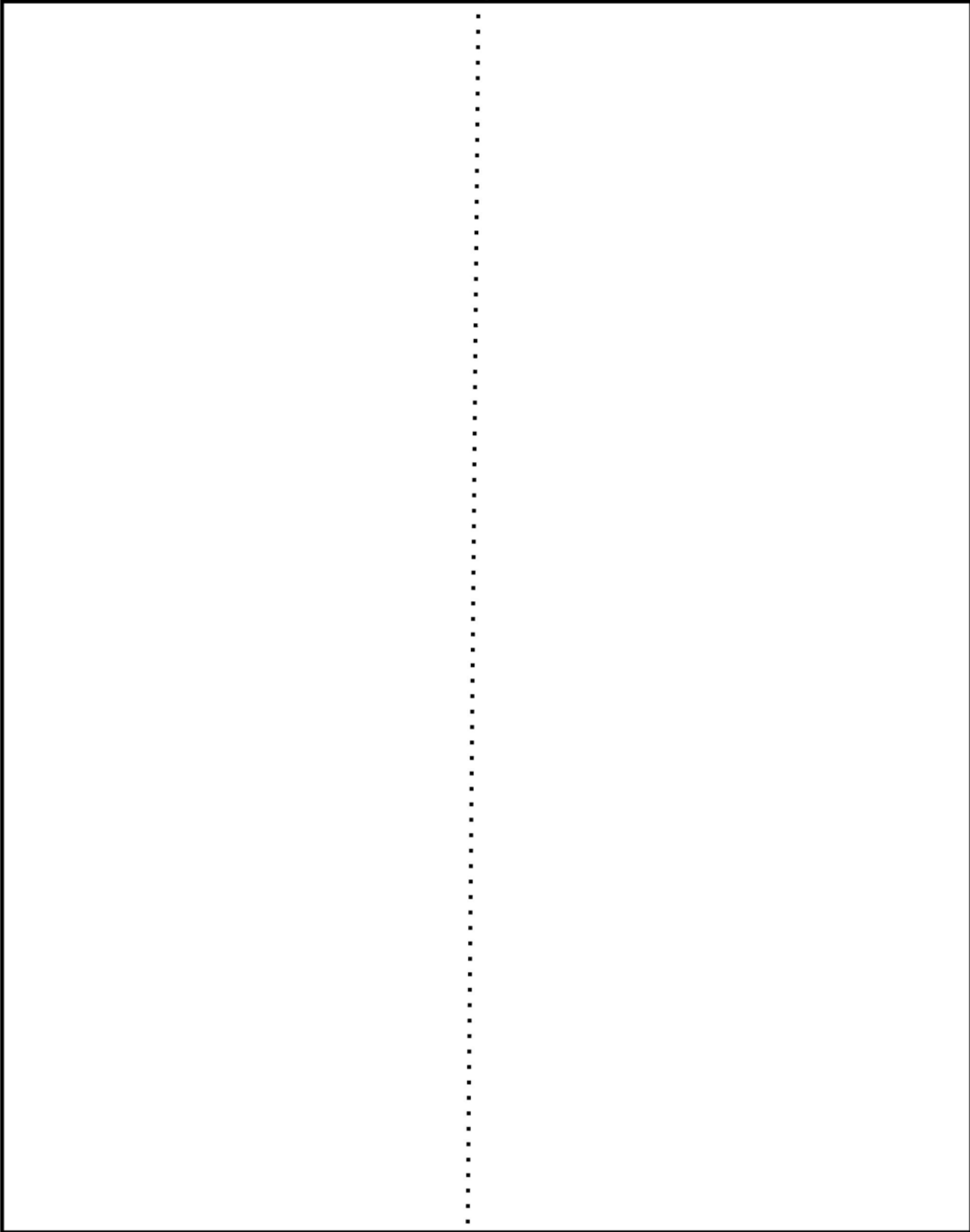
PROPRIETARY

(b) (3) - P.L. 86-36  
(b) (4)



PROPRIETARY

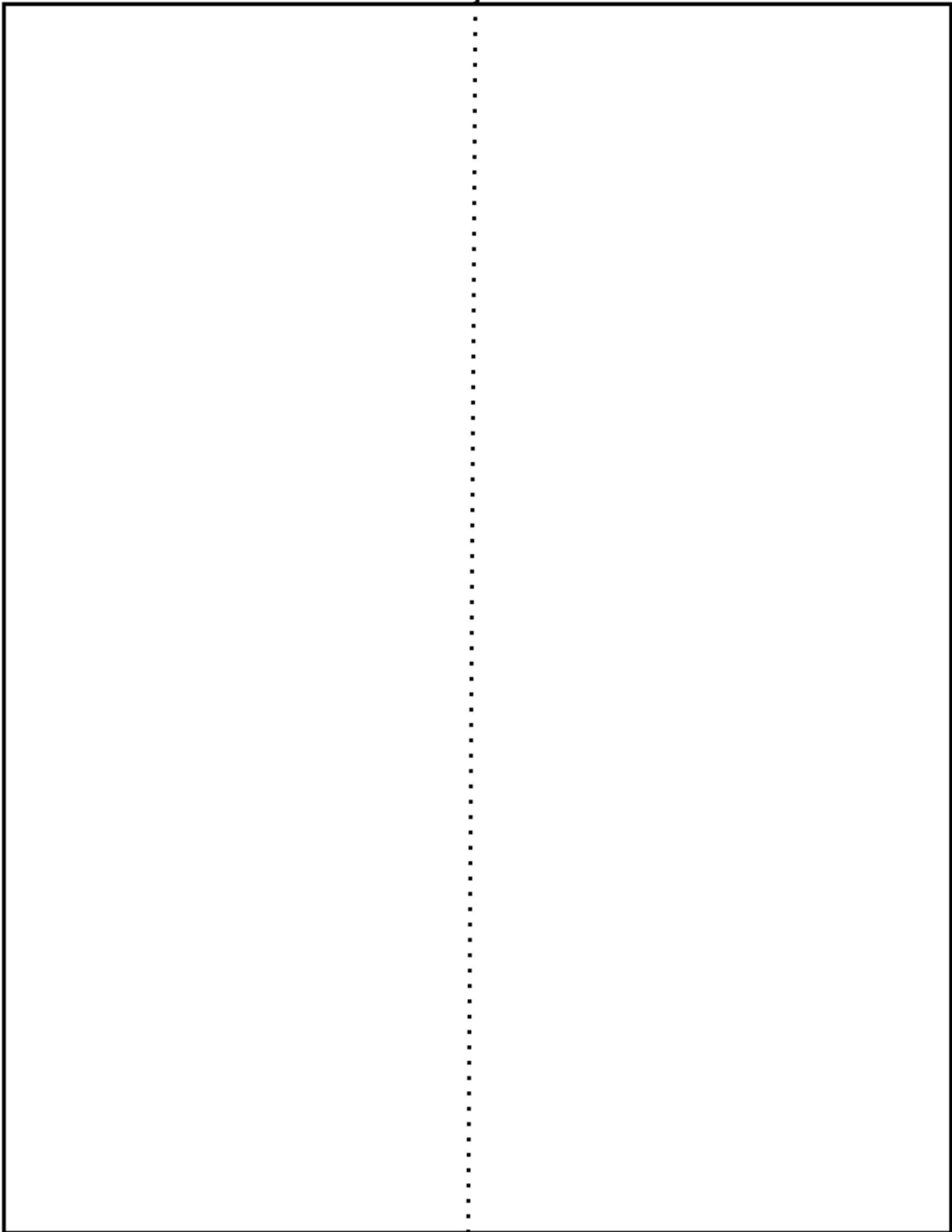
(b) (3) - P.L. 86-36  
(b) (4)



[Redacted]

PROPRIETARY

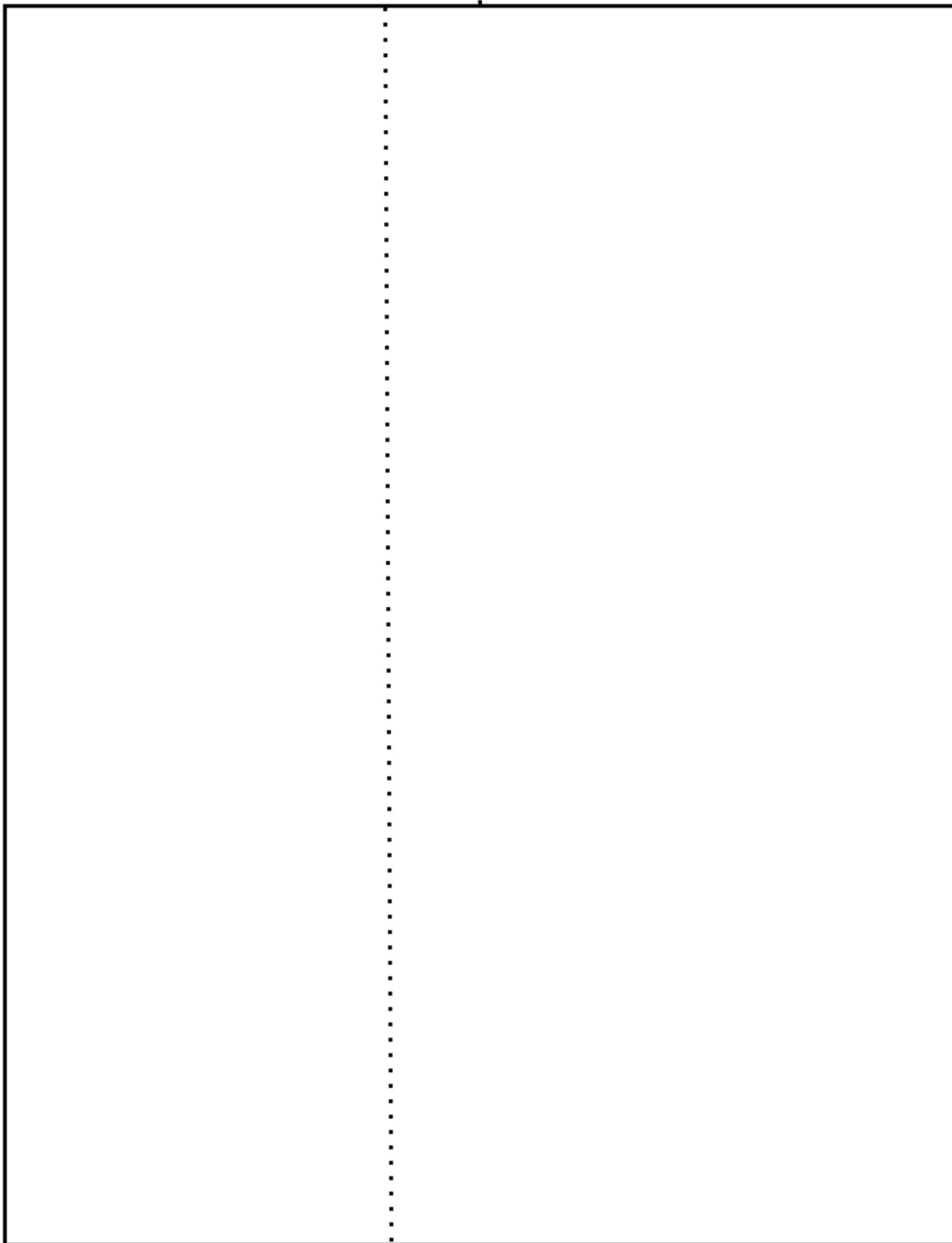
(b) (3) - P.L. 86-36  
(b) (4)



[Redacted]

PROPRIETARY

(b) (3) - P.L. 86-36  
(b) (4)

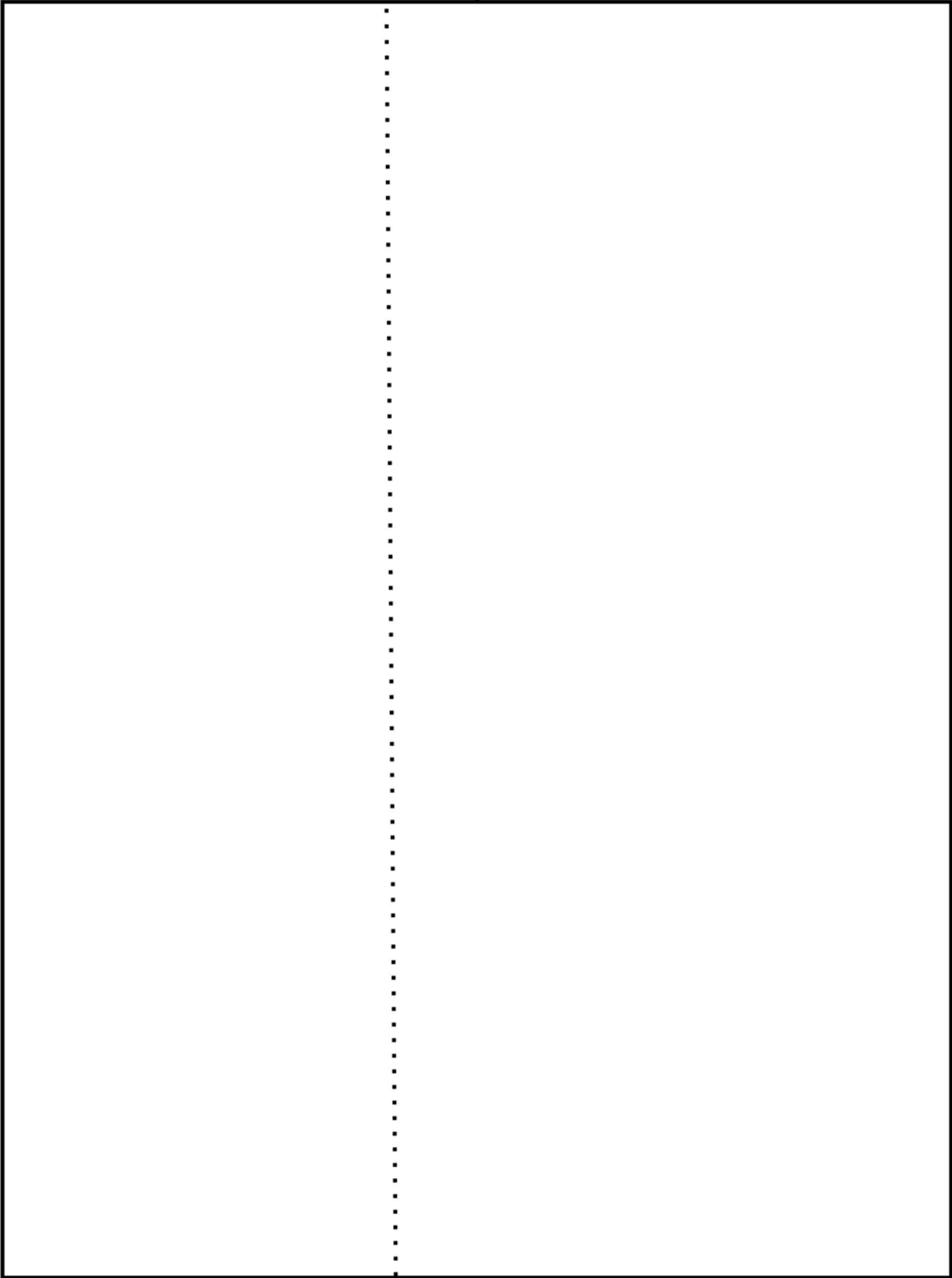


[Redacted]

PROPRIETARY



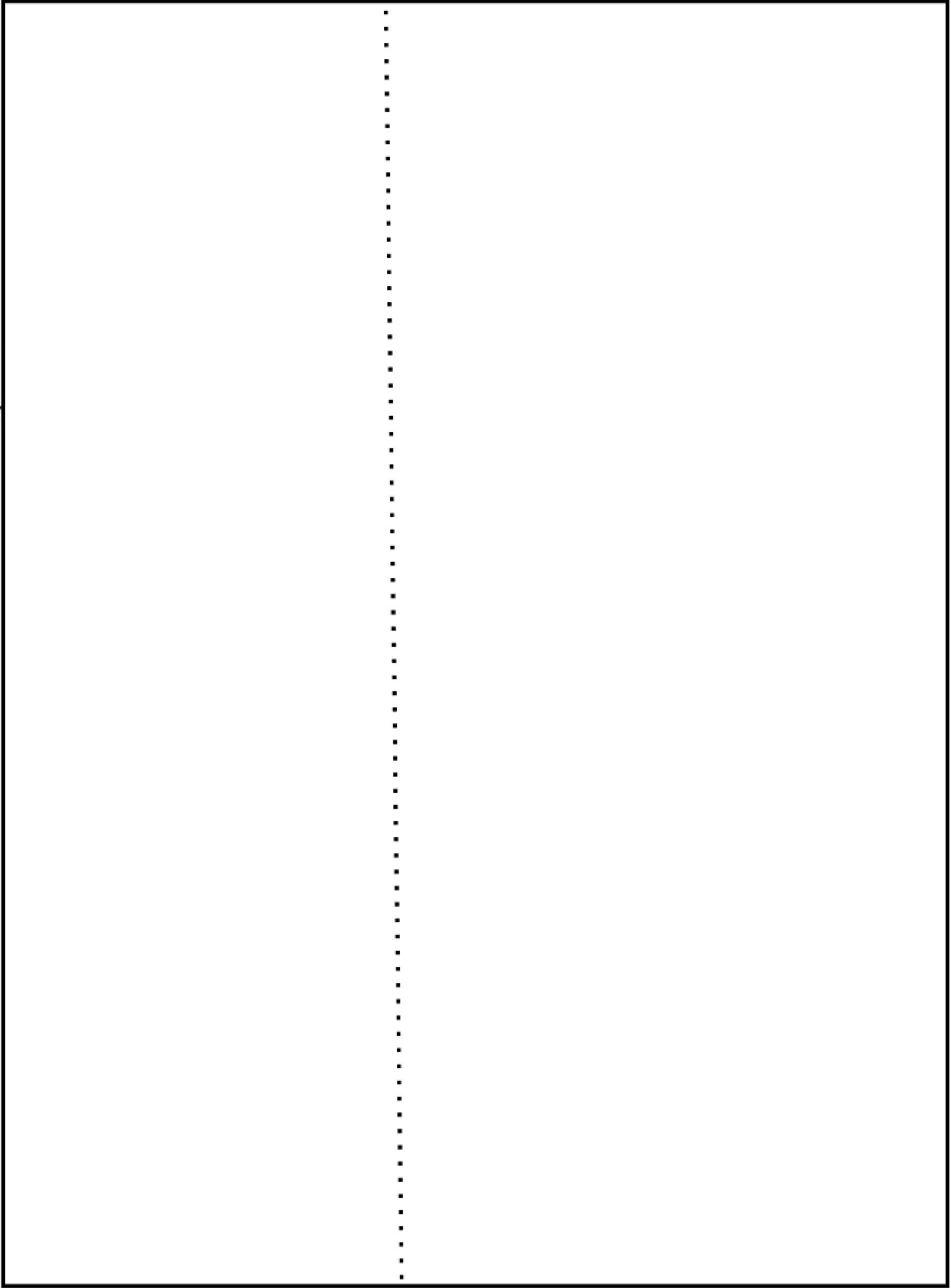
(b) (3) - P.L. 86-36  
(b) (4)



[Redacted]

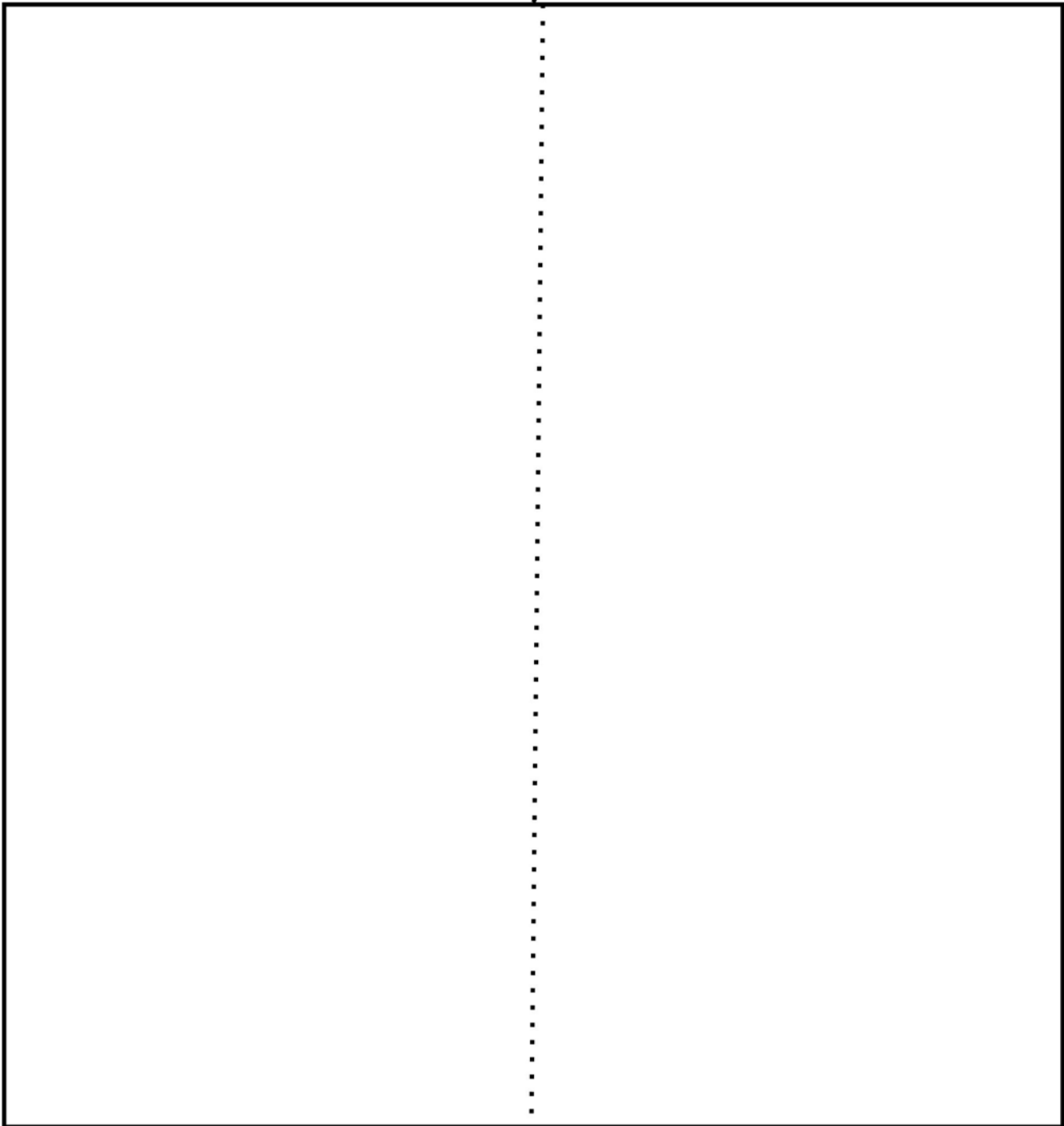
PROPRIETARY

(b) (3) - P.L. 86-36  
(b) (4)



PROPRIETARY

(b) (3) - P.L. 86-36  
(b) (4)



PROPRIETARY



NATIONAL SECURITY AGENCY  
CENTRAL SECURITY SERVICE  
OFFICE OF THE INSPECTOR GENERAL



(b) (3) - P.L. 86-36

6 May 2016  
CO-16-0219

MEMORANDUM FOR [redacted] SENIOR ACQUISITION EXECUTIVE

SUBJECT: (U//FOUO) Concerns with management of NSA Contract [redacted]

(U//FOUO) The Office of the Inspector General (OIG) recently received allegations that [redacted] [redacted] on the subject contract, may be inappropriately directing activities related to the contract. While we are conducting an inquiry into these and other allegations related to this contract, we wanted to bring them to your attention immediately because they may adversely impact the timely and effective execution of the existing contract..

(U//FOUO) According to information provided to the OIG, [redacted] insists on approving all contractor personnel that are assigned to support the contract. This allegedly includes reviewing all resumes of contractor personnel proposed by the contracting company, [redacted], and in many cases, conducting in-person interviews. Not only are these actions inappropriate, they may also be causing inordinate difficulties and delays in the staffing of the contract. Perhaps even more troubling, it is our understanding that [redacted] has been informed on more than one occasion that his activities are inappropriate, but that he has ignored that advice and continued to operate in this manner.

(b) (3) - P.L. 86-36  
(b) (6)

(U//FOUO) We request your assistance in reviewing [redacted] ongoing activities related to this contract, and ask that you take appropriate action, if any. Please provide an update to my POC for this matter, [redacted] by 27 May 2016, and feel free to call me at [redacted] if you have any questions.

(b) (3) - P.L. 86-36

[redacted signature box]

Assistant Inspector General for Investigations

Cc:  
OGC [redacted]

PRIVACY SENSITIVE: This memorandum contains information protected by the Privacy Act of 1974, as amended, and should not be shared or distributed without the approval of the NSA/CSS OIG. The information being shared is relevant to the official responsibilities of your office and disclosed for a routine use as described in the NSA/CSS System of Records Notice GNSA 29.