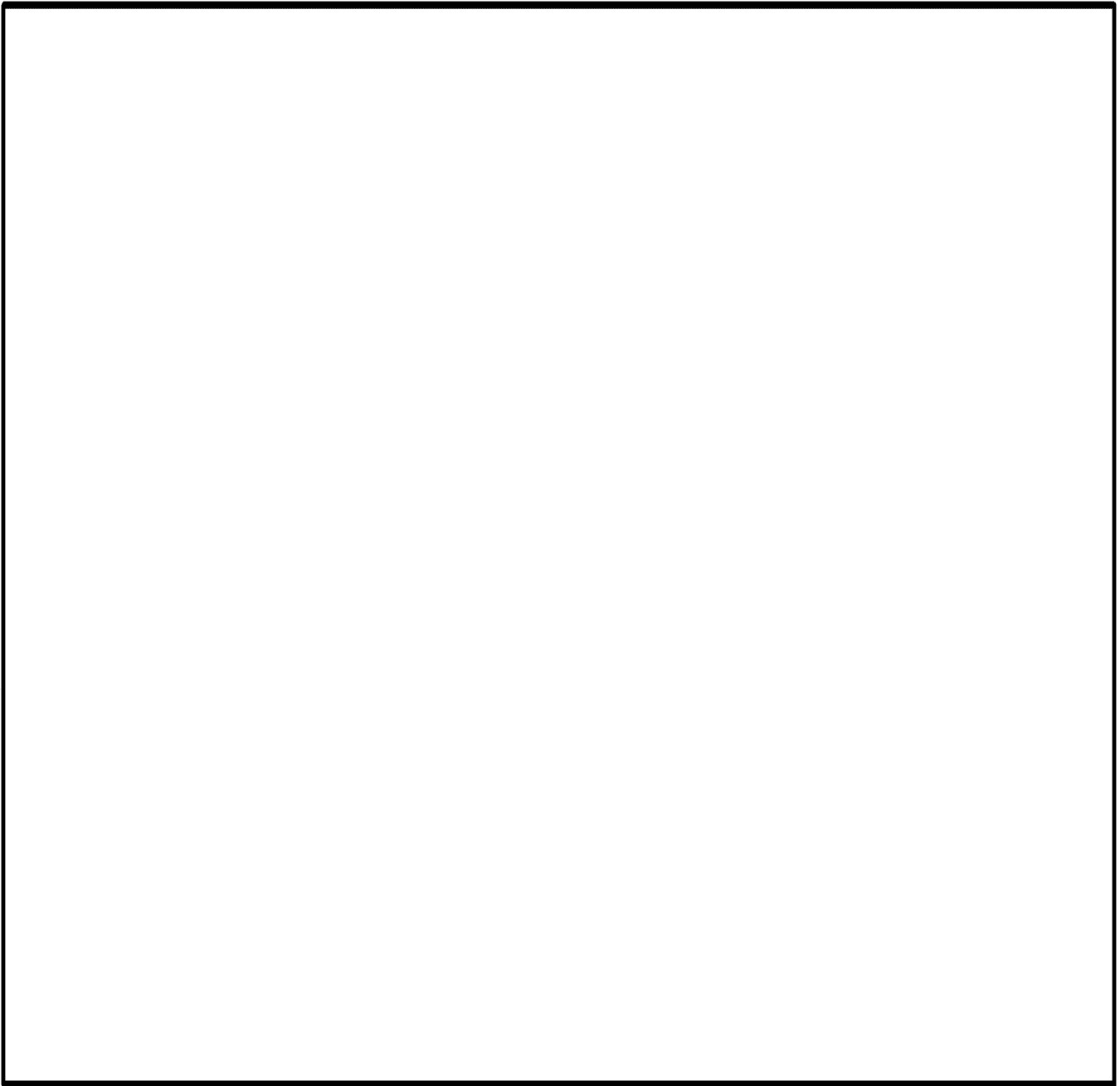
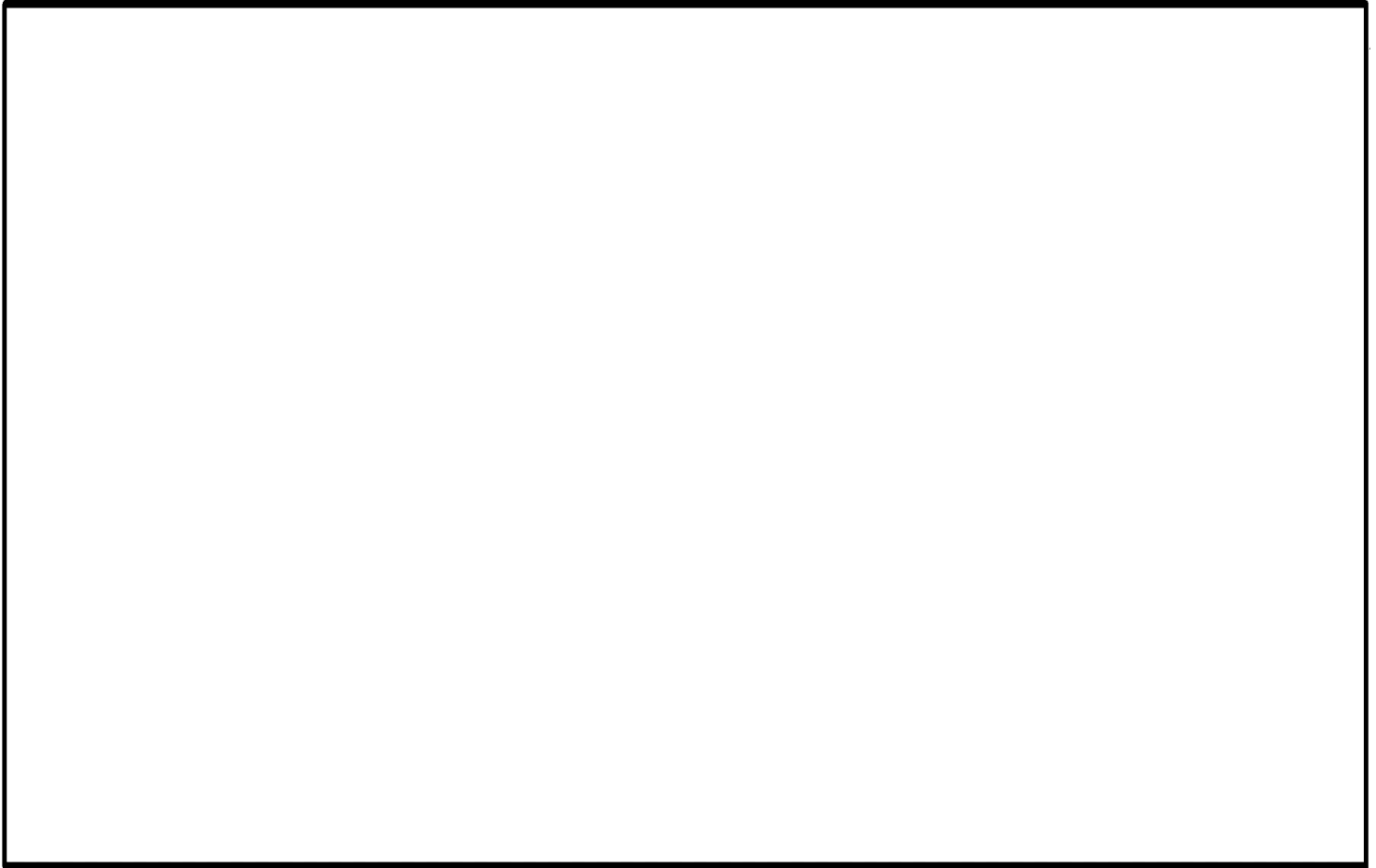


Out-of-Scope



U.S. Citizenship  
and Immigration  
Services

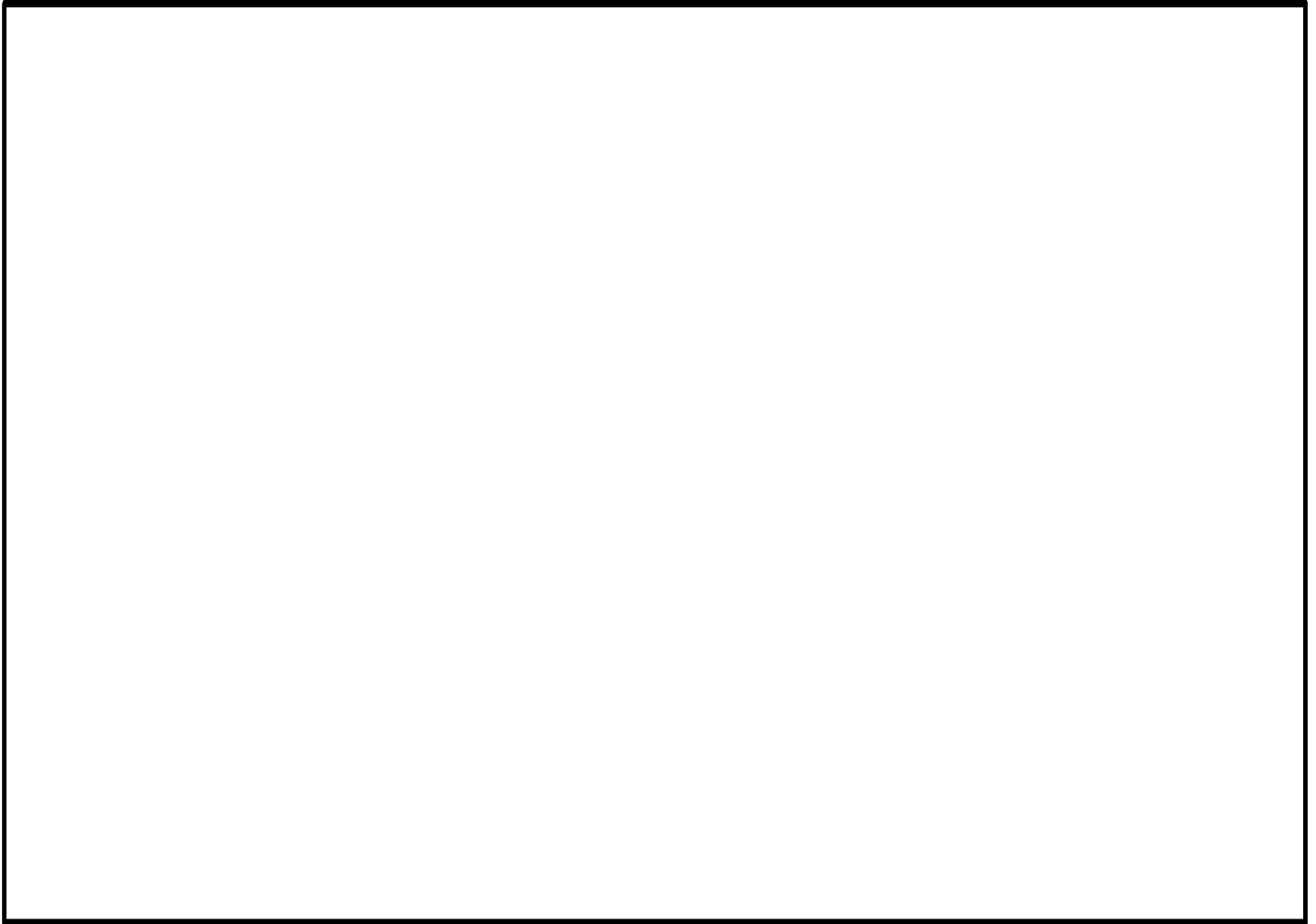
# EPO #2



U.S. Citizenship  
and Immigration  
Services

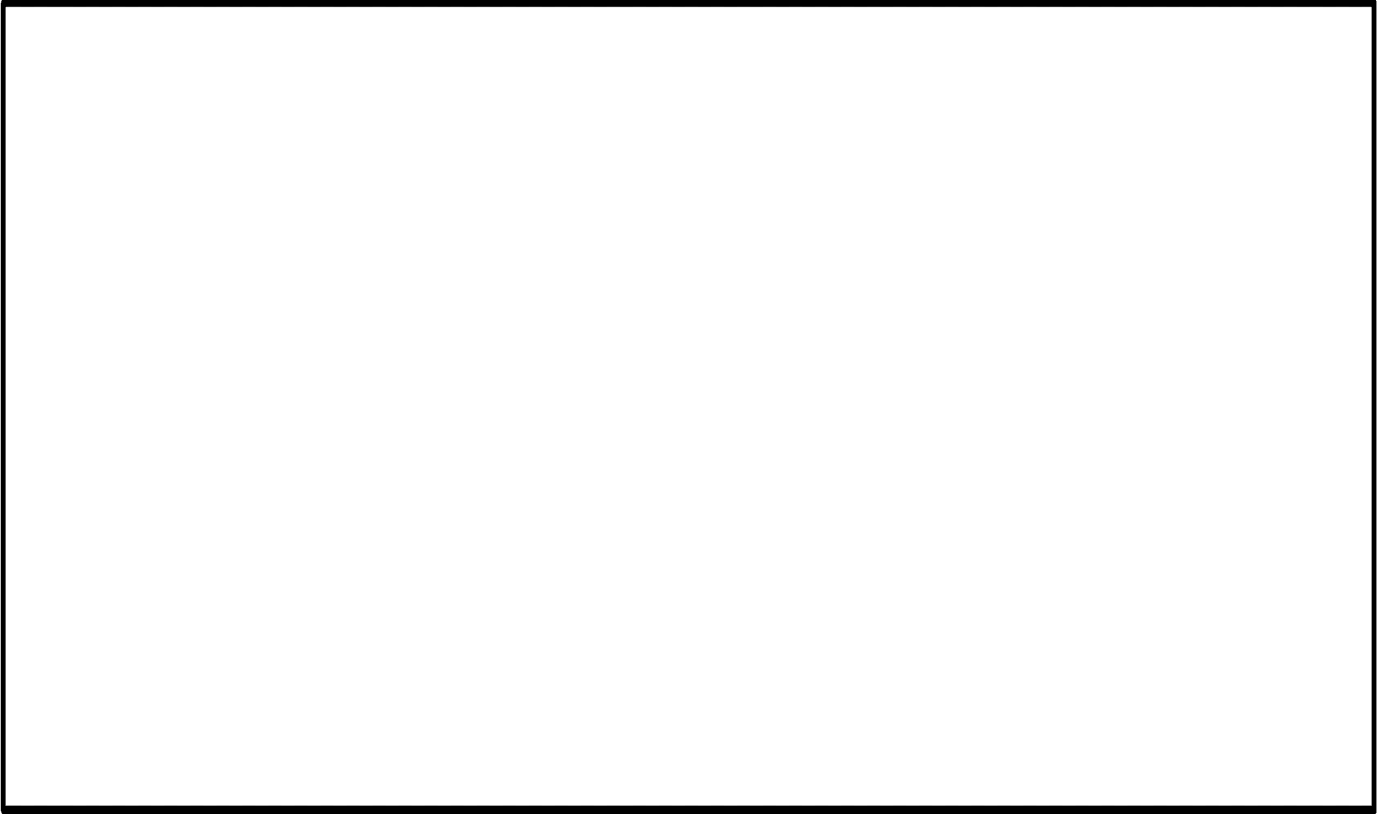
Out-of-Scope

# Form I-140, Immigrant Petition for Alien Worker



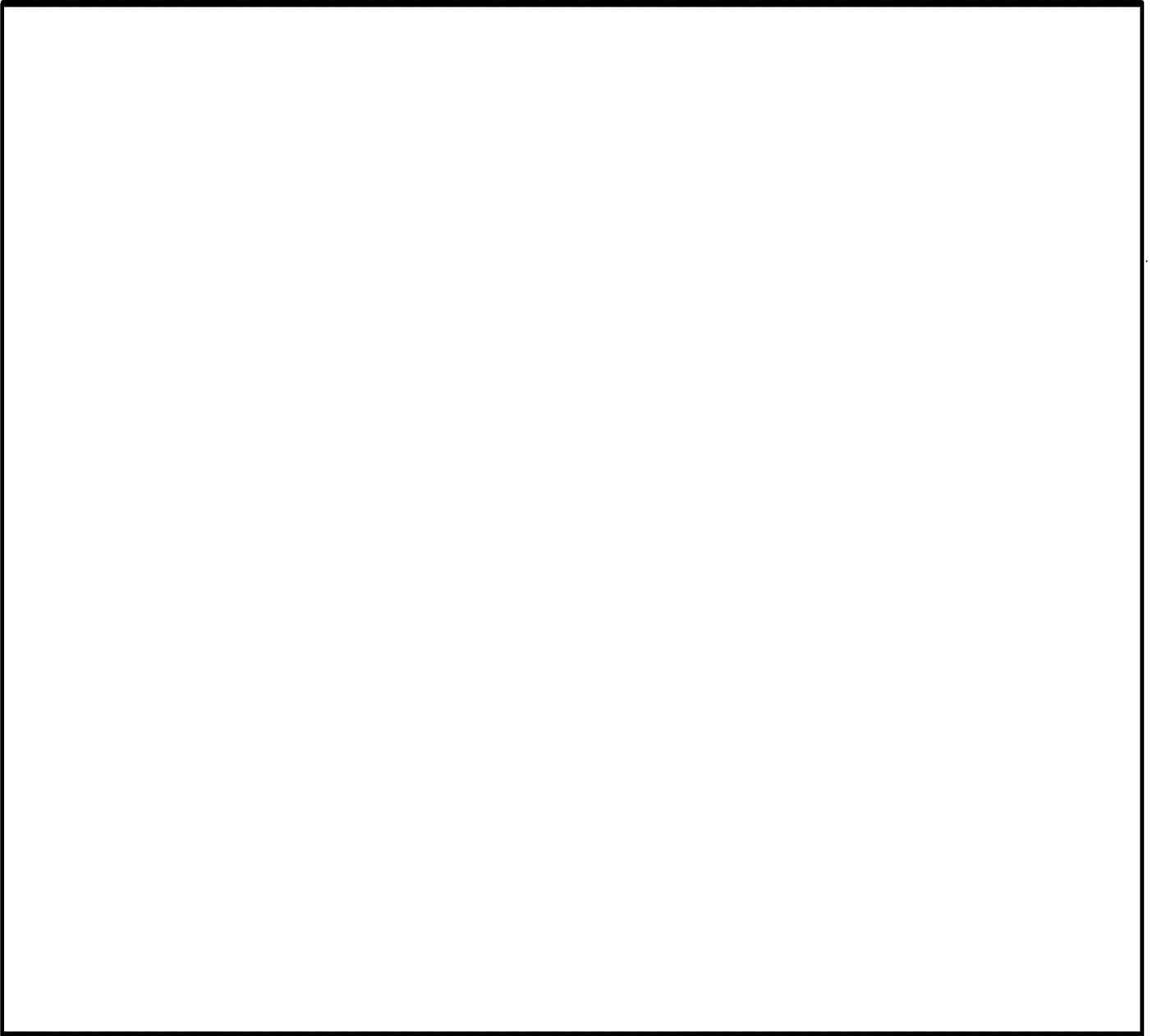
U.S. Citizenship  
and Immigration  
Services

# Who Can File the I-140, Immigrant Petition for Alien Worker?



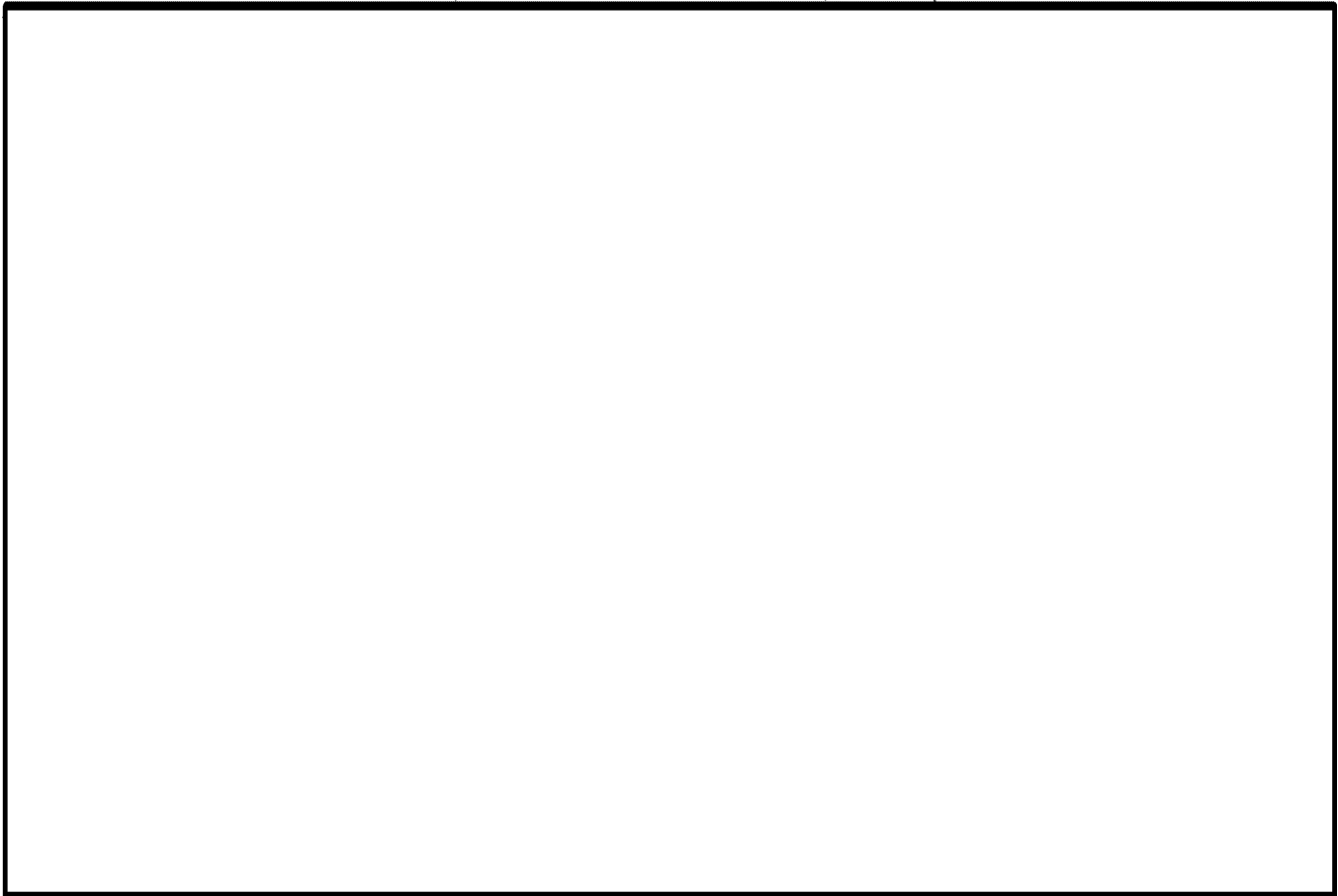
U.S. Citizenship  
and Immigration  
Services

Out-of-Scope



U.S. Citizenship  
and Immigration  
Services

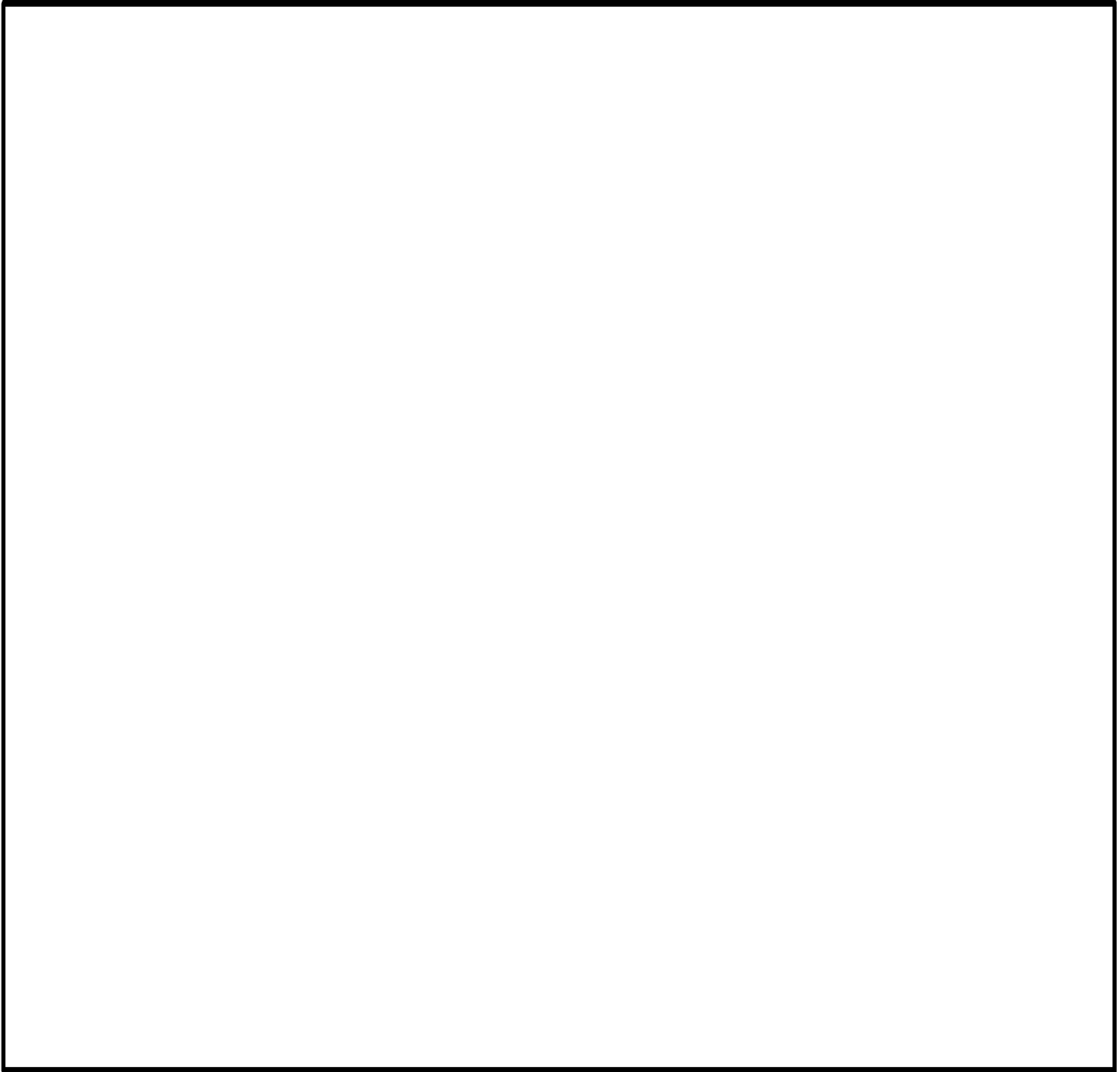
Out-of-Scope



U.S. Citizenship  
and Immigration  
Services

Out-of-Scope

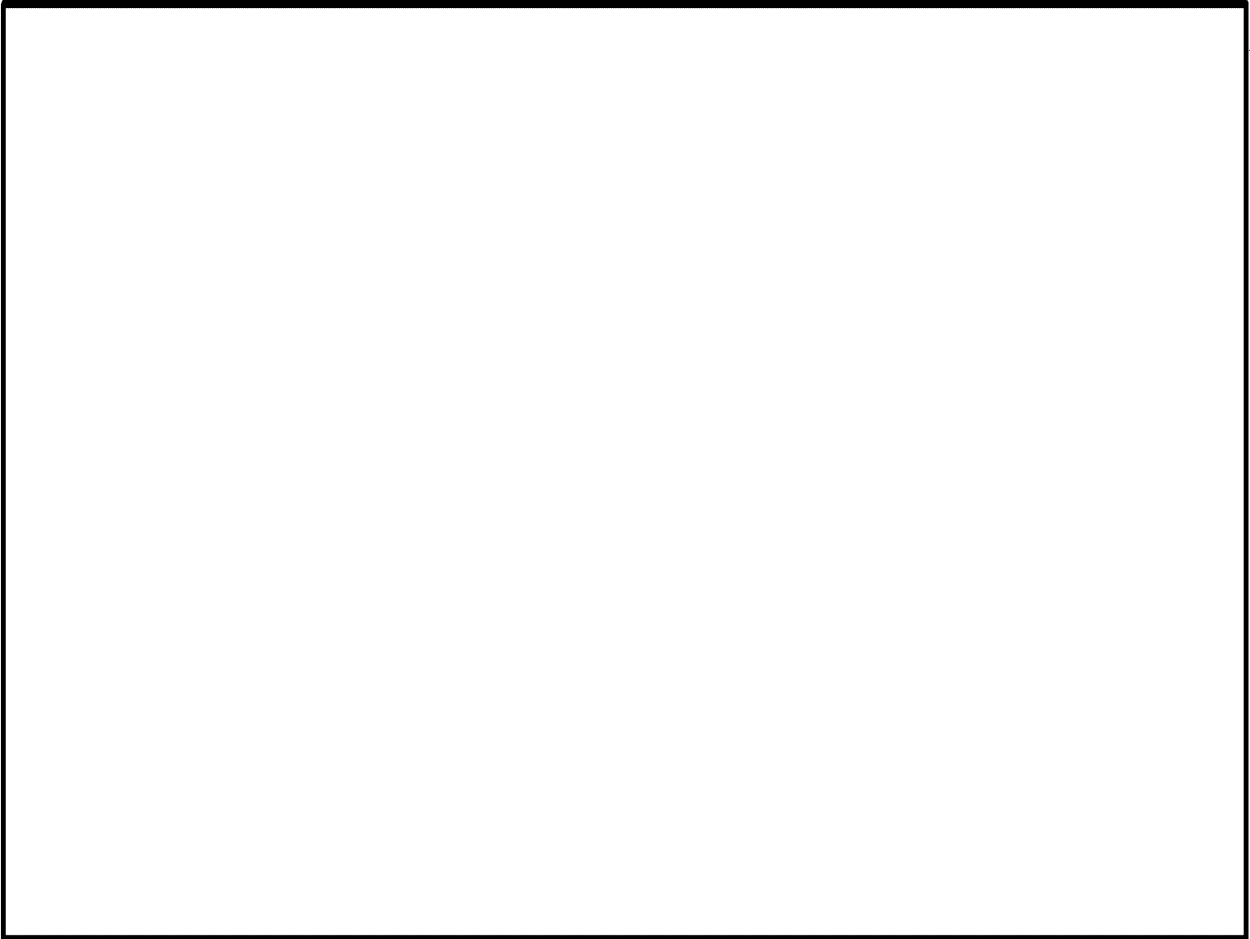
# Determining Priority Dates:



U.S. Citizenship  
and Immigration  
Services

# Employment Requirements:

Out-of-Scope



U.S. Citizenship  
and Immigration  
Services



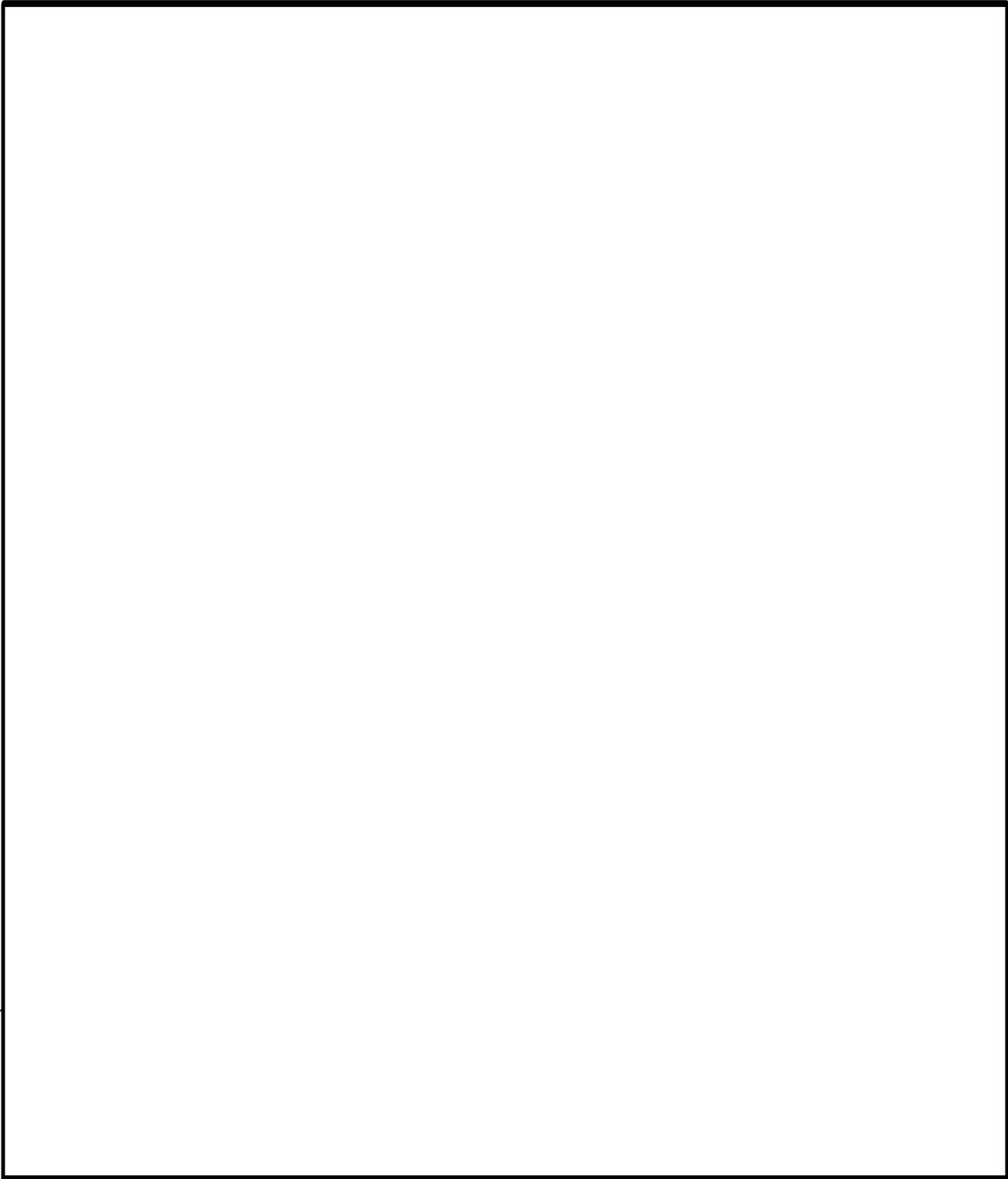
# EPO #3

Out-of-Scope



**U.S. Citizenship  
and Immigration  
Services**

Out-of-Scope



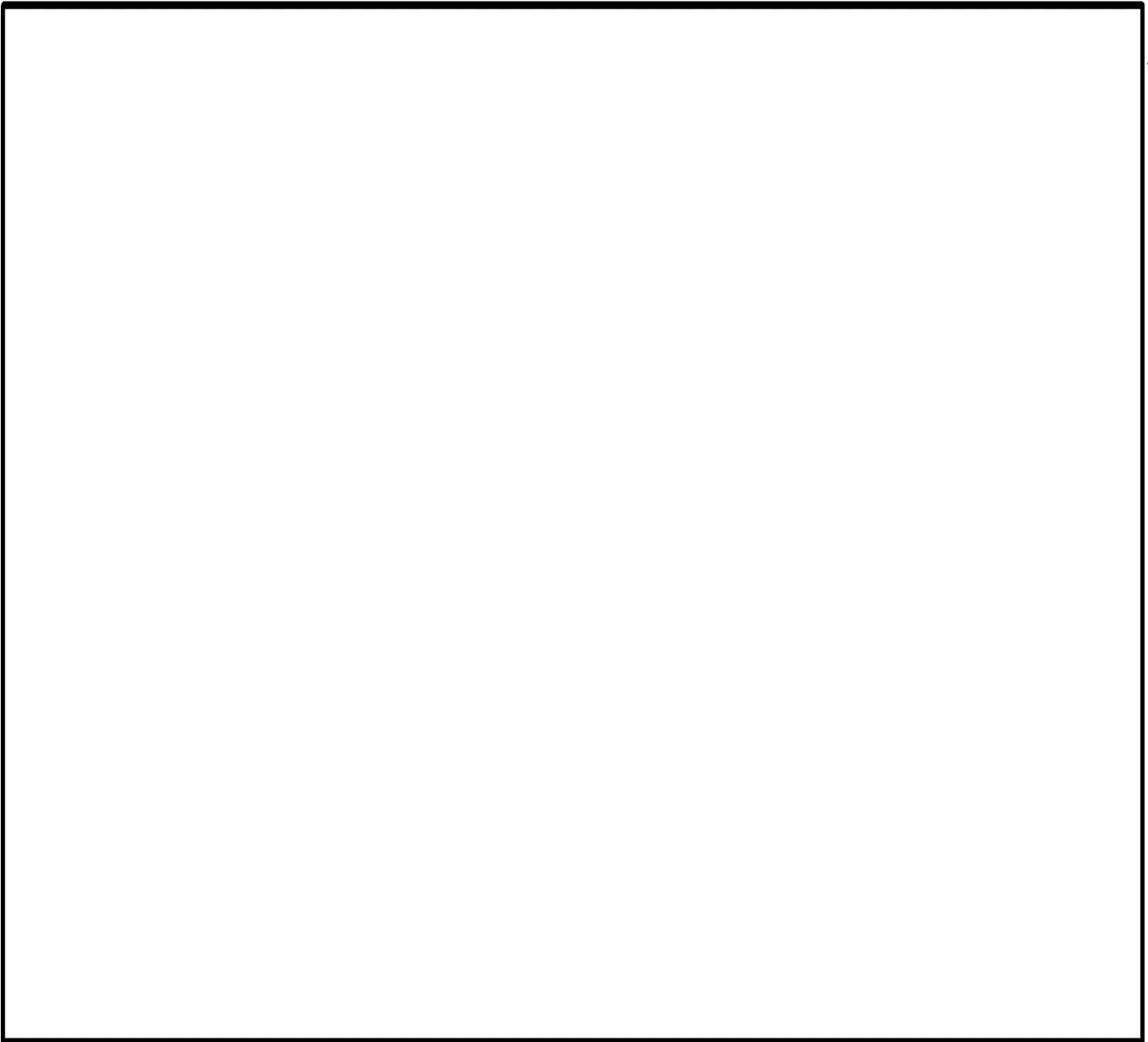
U.S. Citizenship  
and Immigration  
Services

Out-of-Scope



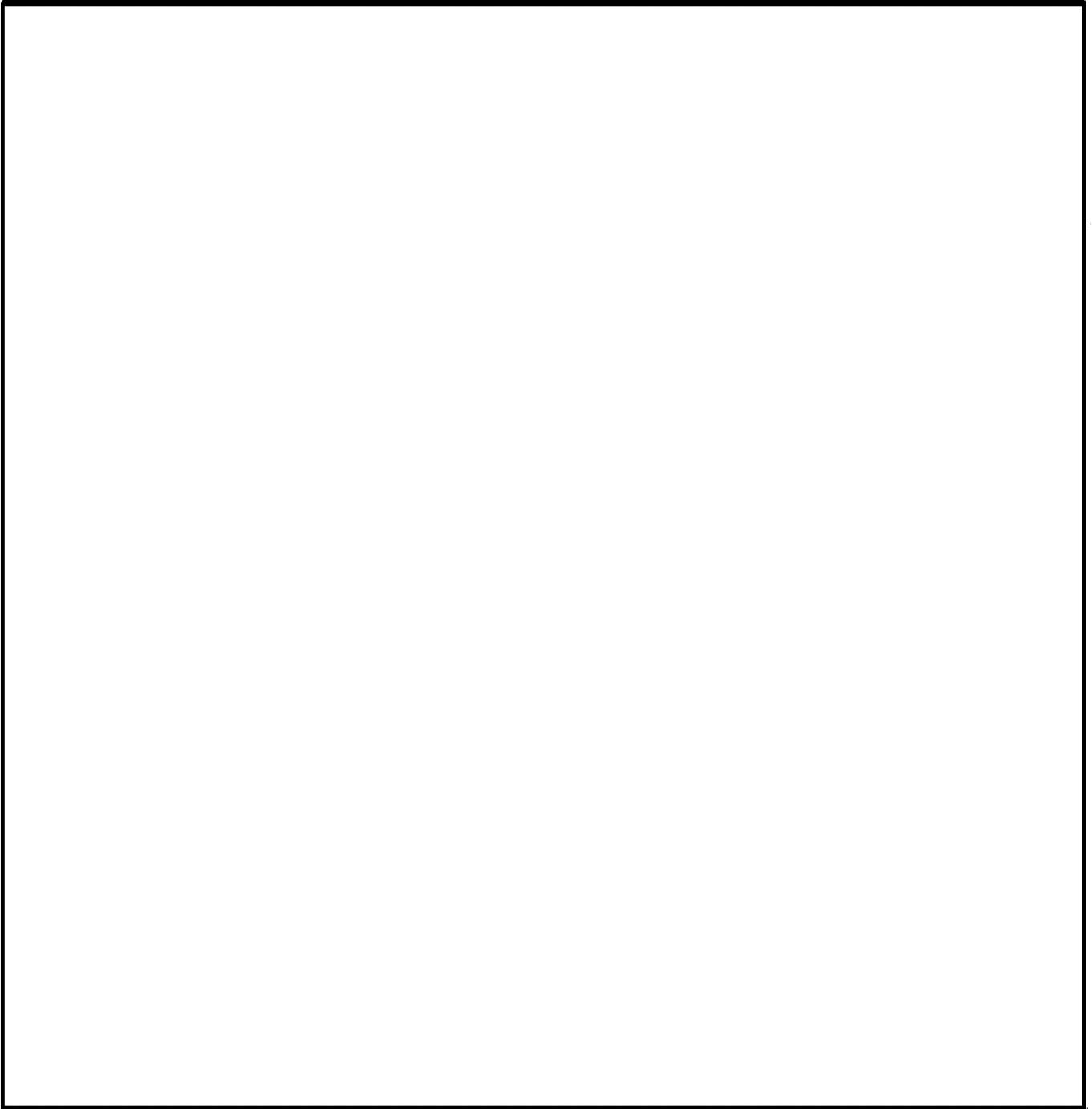
U.S. Citizenship  
and Immigration  
Services

Out-of-Scope



U.S. Citizenship  
and Immigration  
Services

Out-of-Scope



U.S. Citizenship  
and Immigration  
Services

# Two Basic Labor Certification Methods:

Out-of-Scope

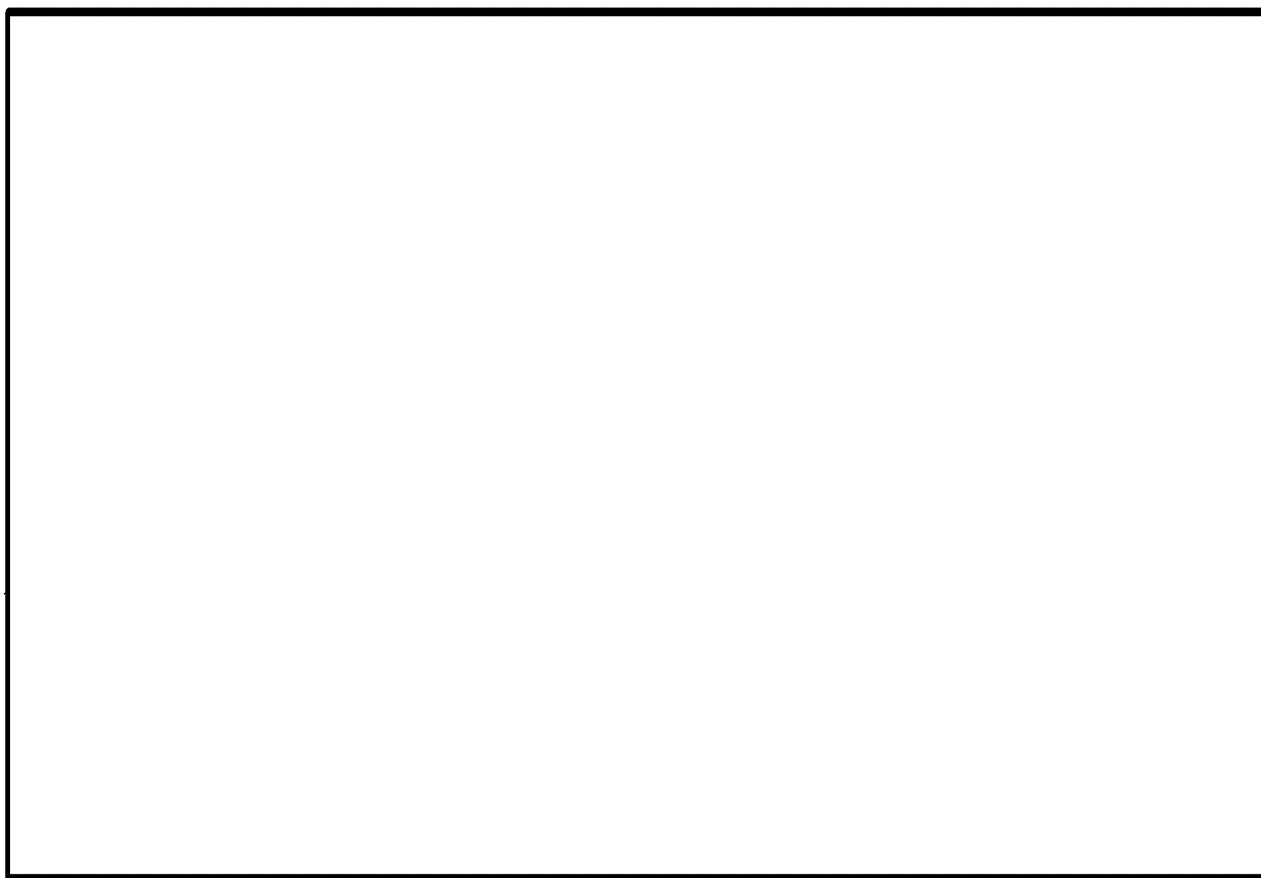


U.S. Citizenship  
and Immigration  
Services

# Two Basic Labor Certification Methods

(con't):

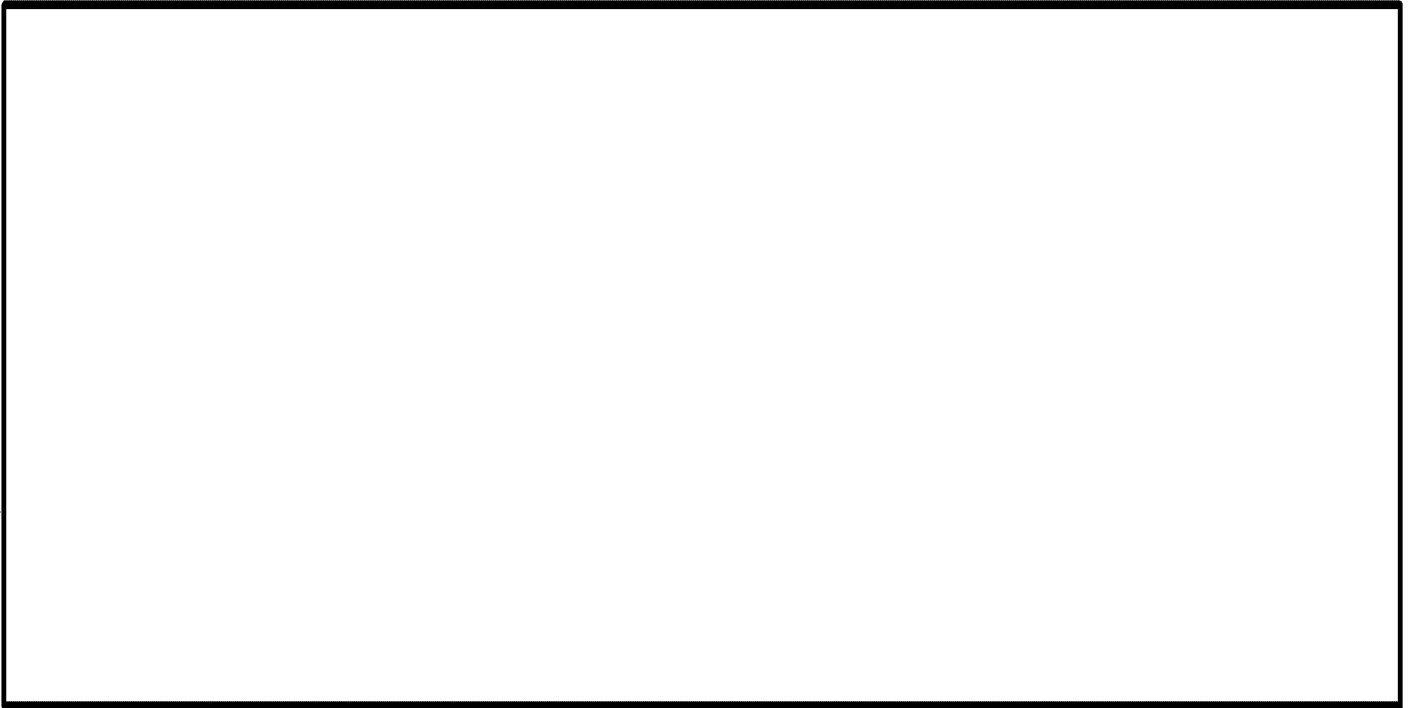
Out-of-Scope



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and Immigration  
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# Examination of ETA 9089 by DOL:

Out-of-Scope

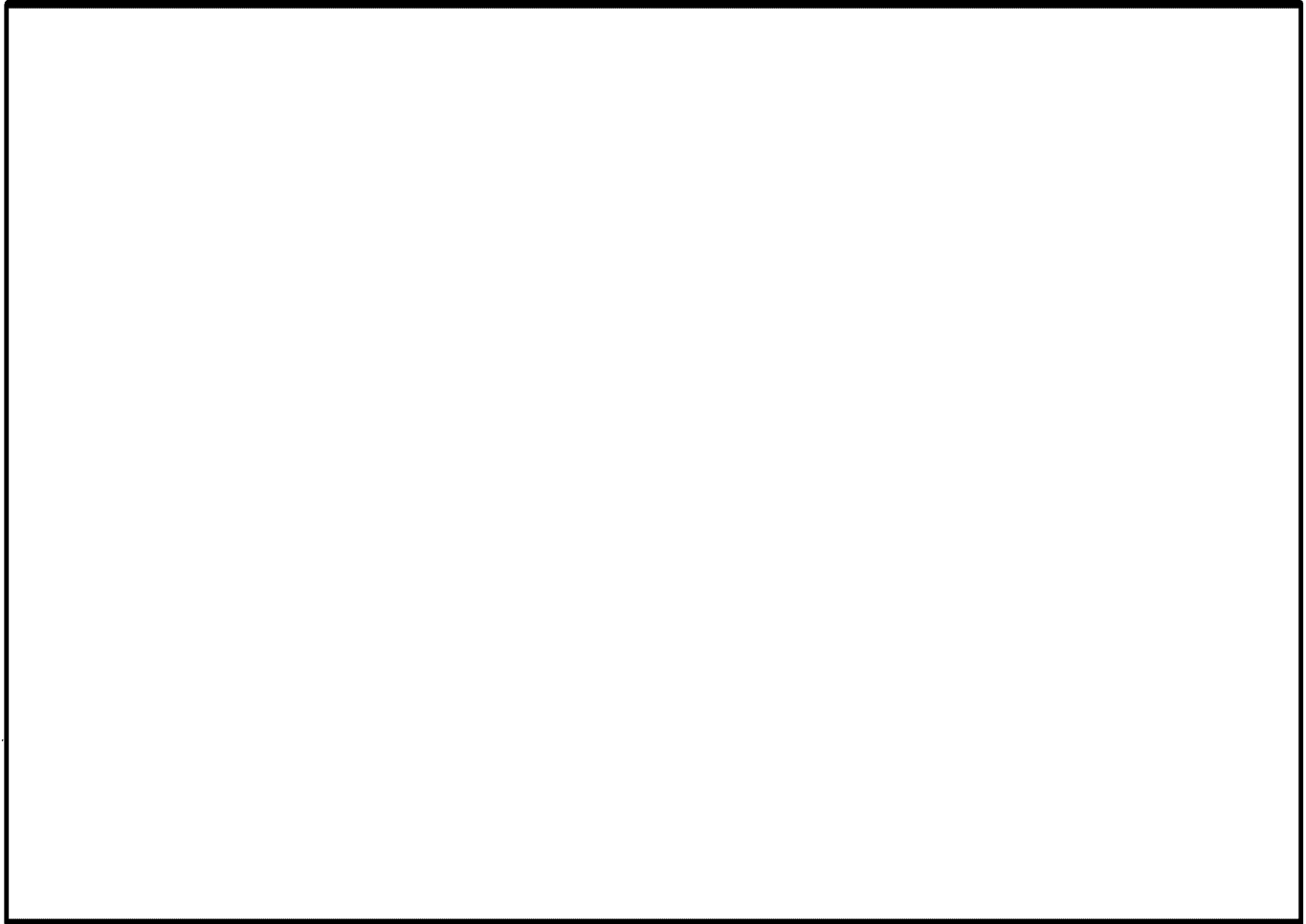


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Out-of-Scope

# Prospective Alien Employee:



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and Immigration  
Services

# Documentary Requirements for Employment Based Immigrants:

- Certain employment-based immigrants are required to have Affidavits of Support (Form I-864) when they immigrate to U.S.
  - If the petitioning employer is a relative of the alien
  - If a relative of the alien owns a significant ownership interest in the petitioning company (5% or more)
  - Sponsor who files the I-864 must be an individual
    - The I-864 cannot be filed by a corporation, organization, or other entity



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# Assessing Petitioner's Ability to Pay the Required Wage:

- Petition which requires a job offer must be accompanied by evidence that the U.S. employer had the ability to pay the proffered wage at the time the permanent employment certification application was filed, and continues to have the ability until the beneficiary obtains permanent residence
  - Refer to USCIS Operational Memo ("Determination of Ability to Pay Under 8 CFR 204.5(g)(2)" in Appendix dated May 4, 2004)
- Establishing that employer has the *ability* to pay the proffered wage is different from establishing that the employer *is already* paying the proffered wage



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and Immigration  
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# Assessing Petitioner's Ability to Pay the Required Wage (con't):

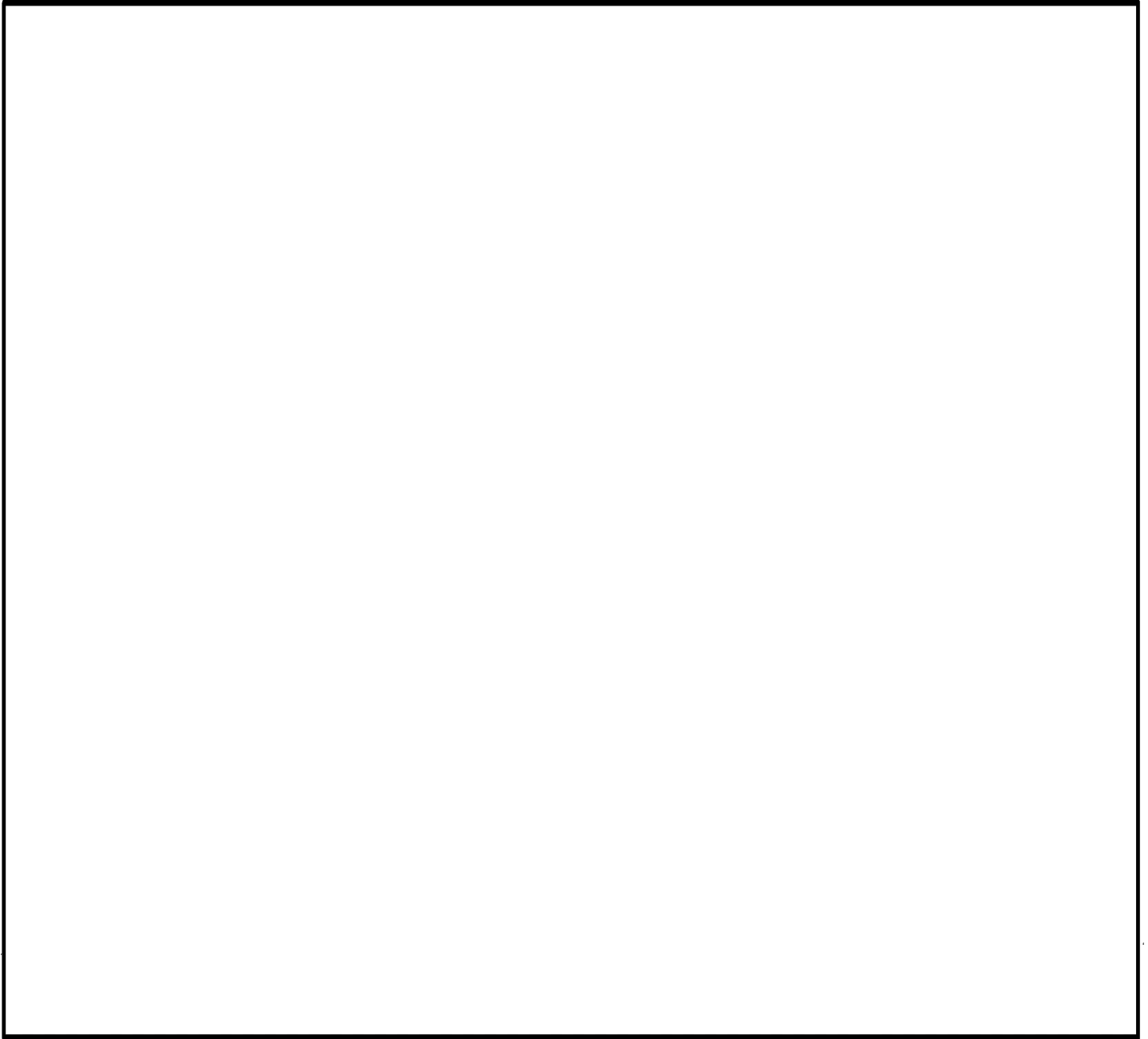
- 8 CFR § 204.5(g)(2) requires the evidence be in the form of
  - Annual reports,
  - federal tax returns, or
  - audited financial statements
- Where prospective employer employs 100 or more workers, ISOs may accept a statement from a financial officer of the organization regarding the ability to pay the proffered wage
- Petitioner may submit, or USCIS may request additional evidence such as profit/loss statements, bank account records, or personnel records
- Burden on petitioner to establish its ability to pay the wage



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# Suspect Elements in Form I-140:

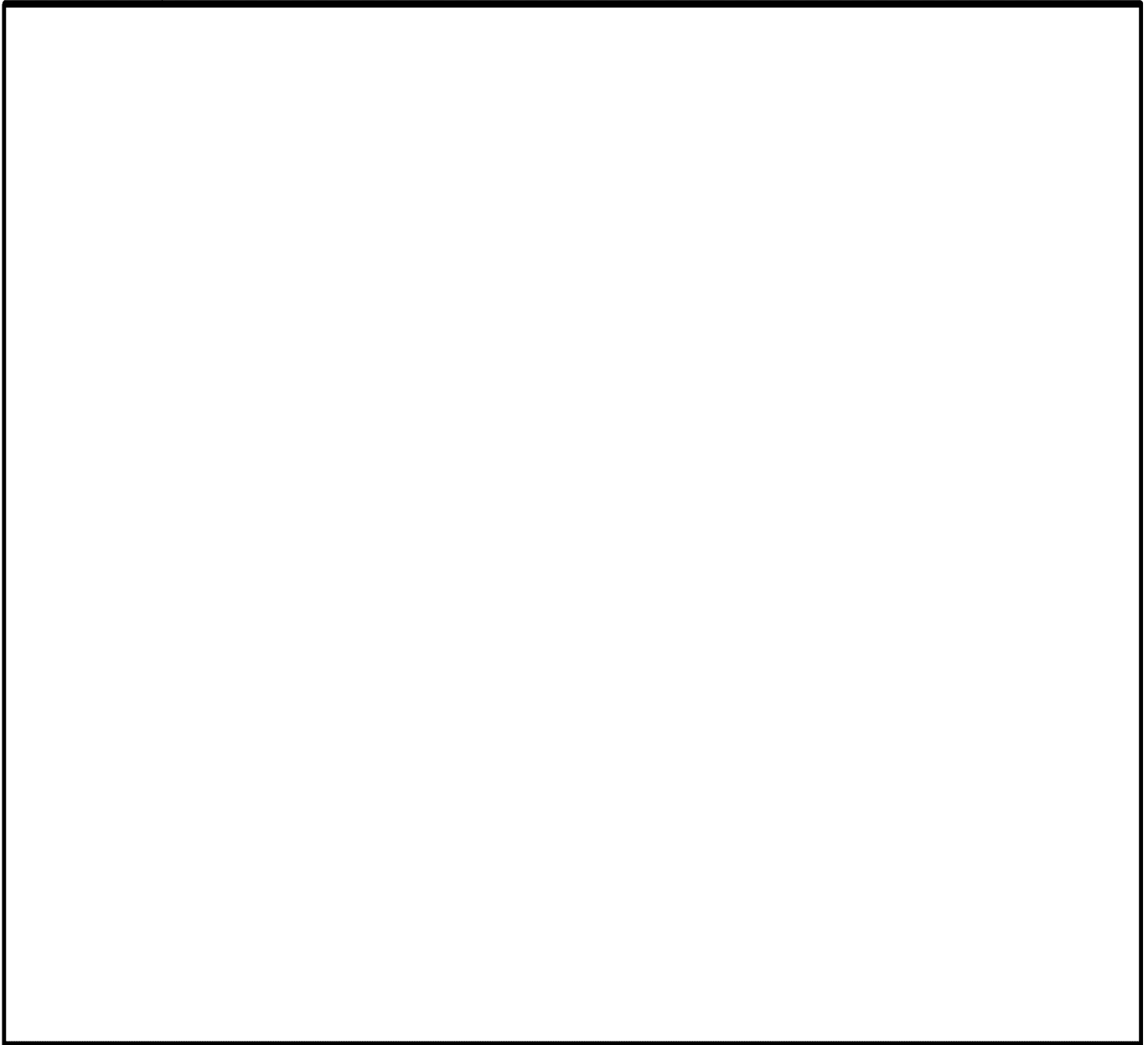
Out-of-Scope



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# Suspect Elements in I-140 (con't):

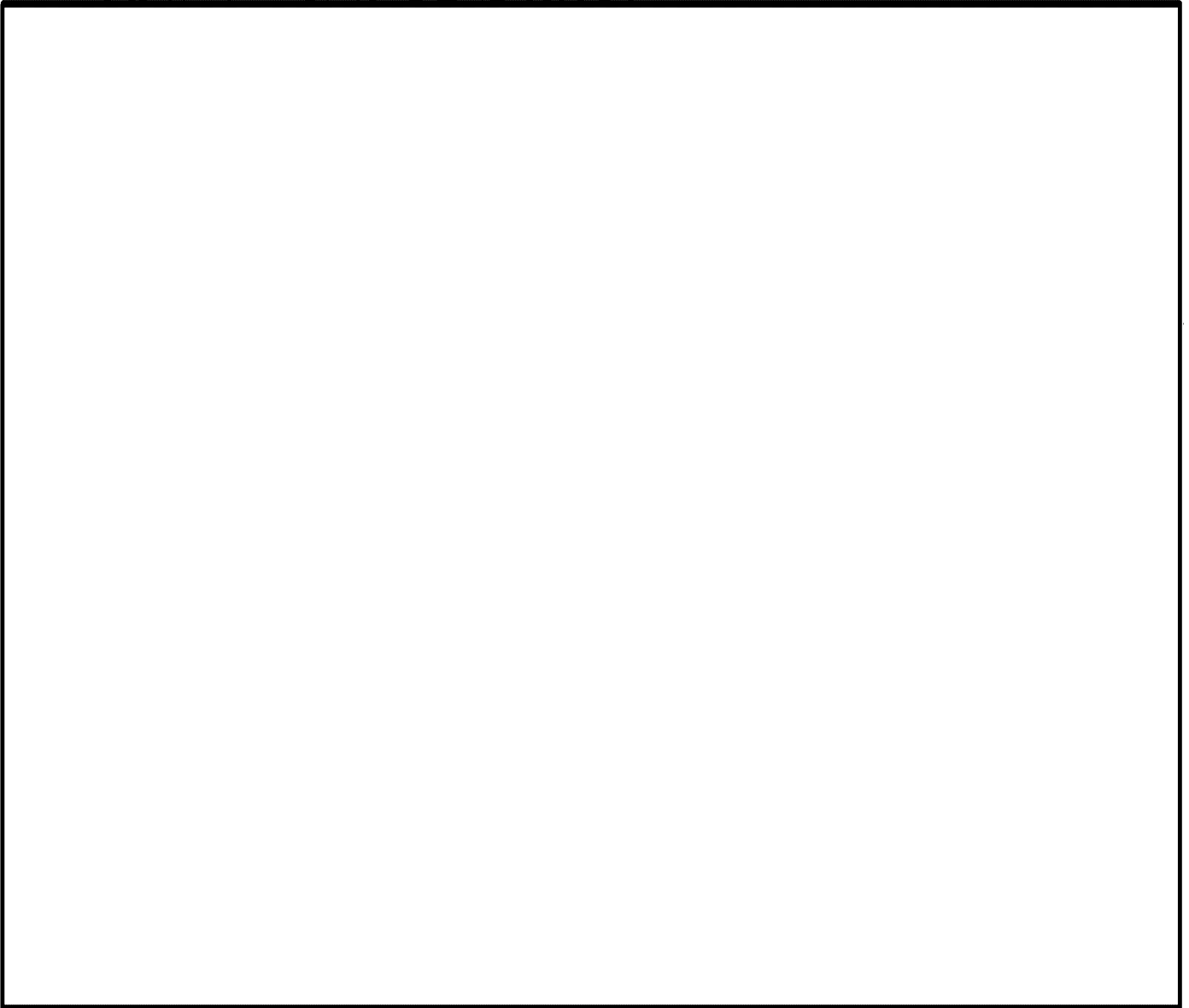
Out-of-Scope



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Out-of-Scope

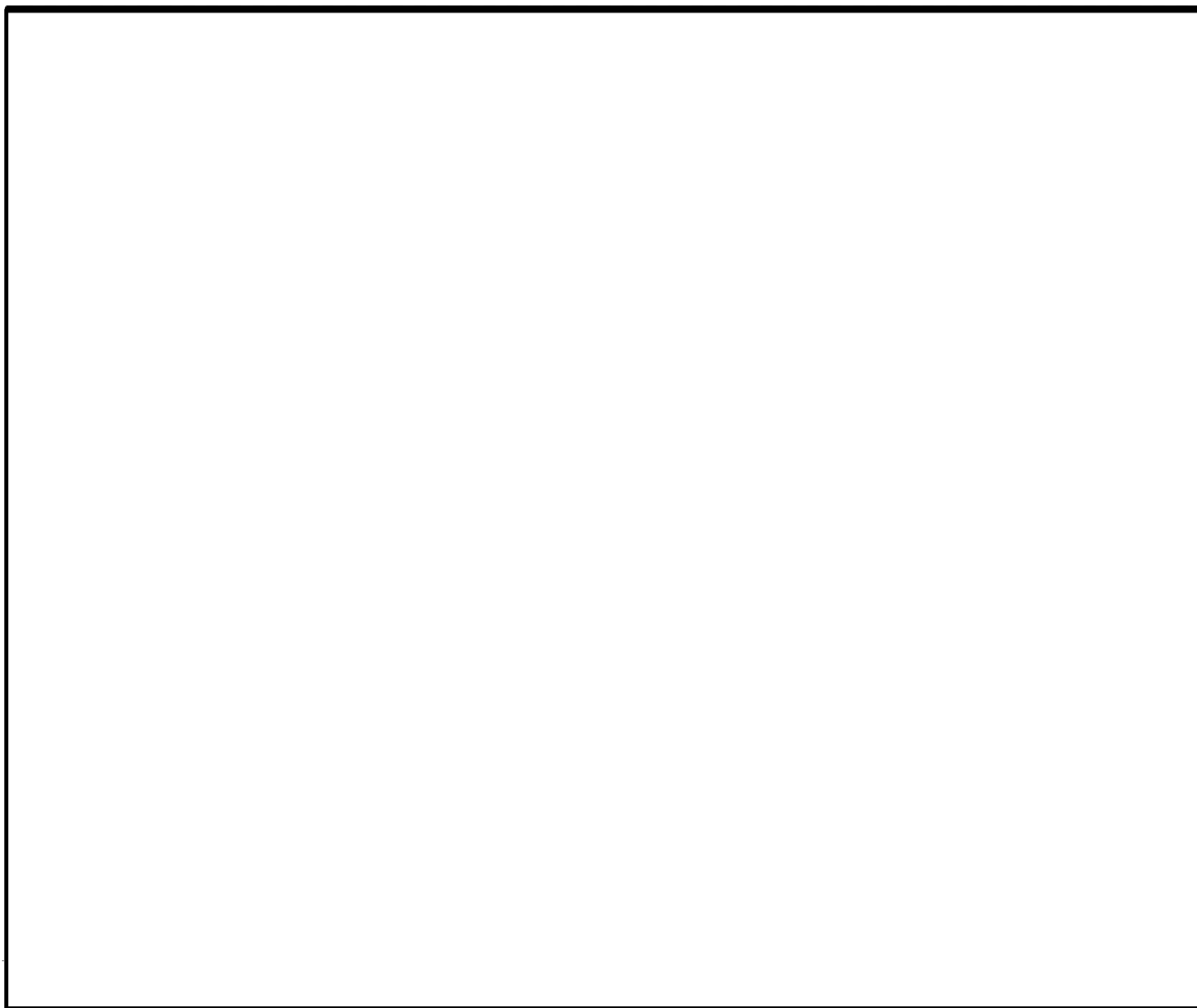
# Numerical Limits & Visa Issuance by Department of State:



U.S. Citizenship  
and Immigration  
Services

# Numerical Limits & Visa Issuance by Department of State (con't):

Out-of-Scope

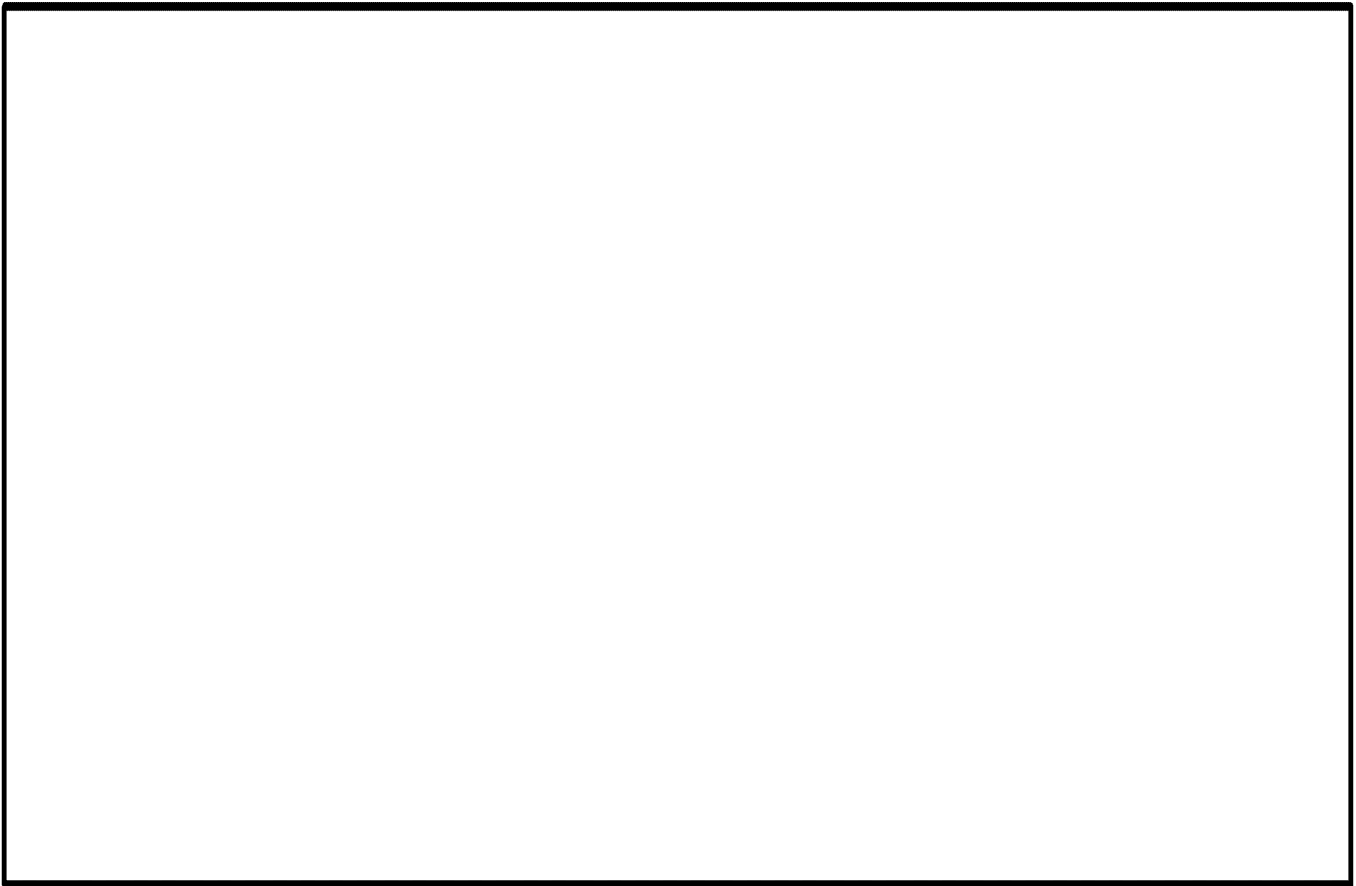


U.S. Citizenship  
and Immigration  
Services



# Numerical Limits & Visa Issuance by Department of State (con't):

Out-of-Scope



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and Immigration  
Services

# EPO #4

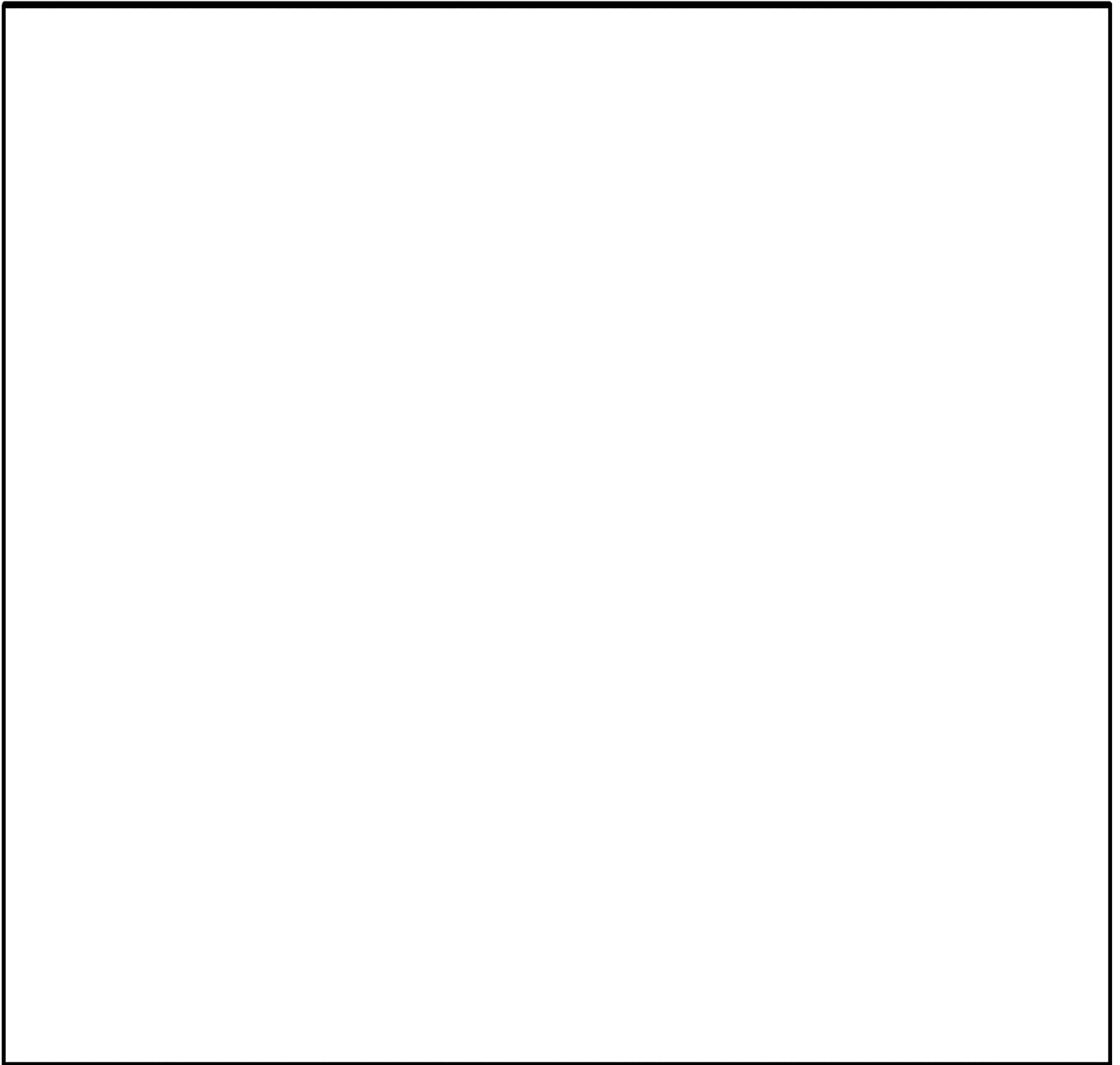
Out-of-Scope



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and Immigration  
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# First Preference:

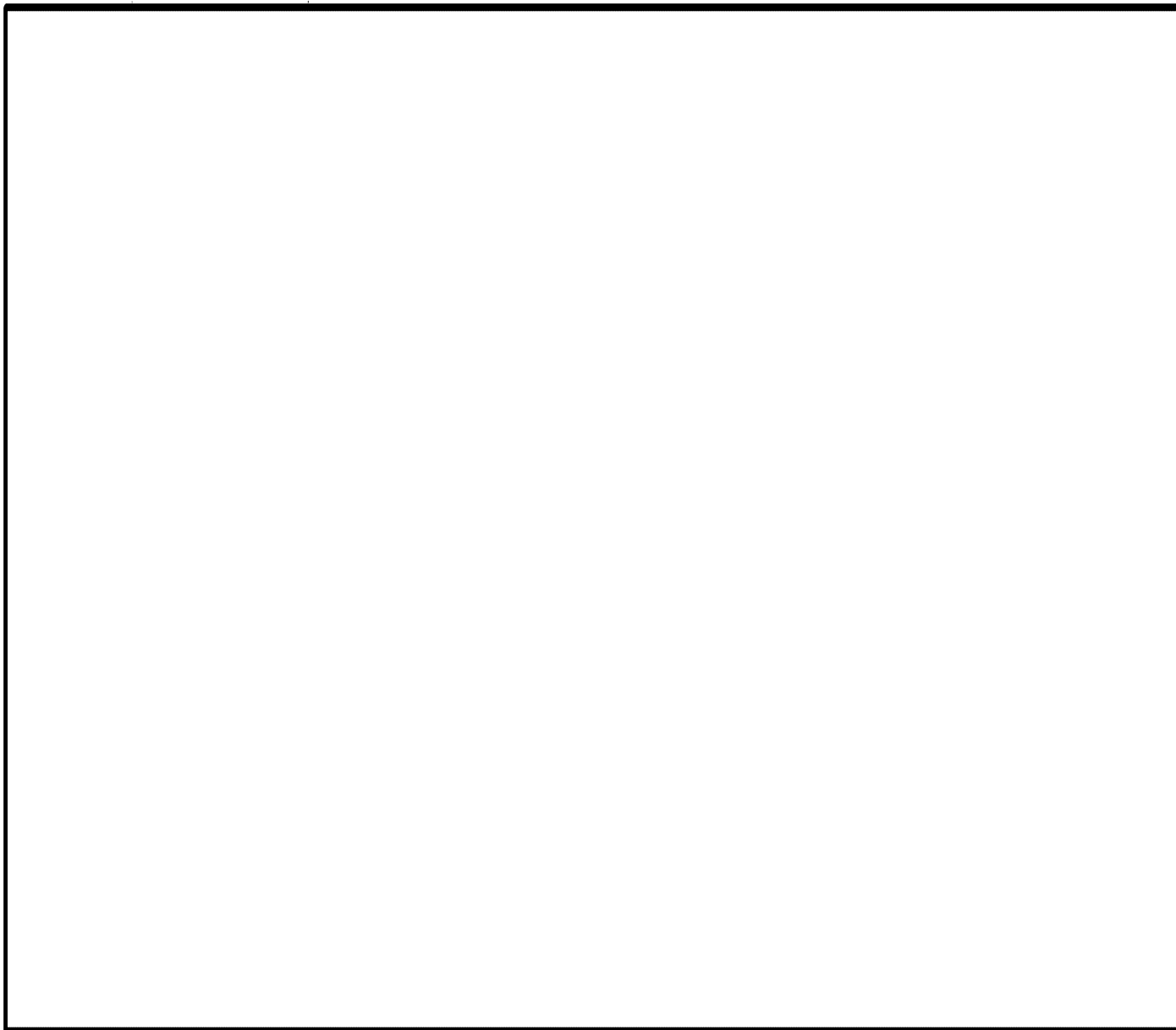
Out-of-Scope



U.S. Citizenship  
and Immigration  
Services

# First Preference (con't):

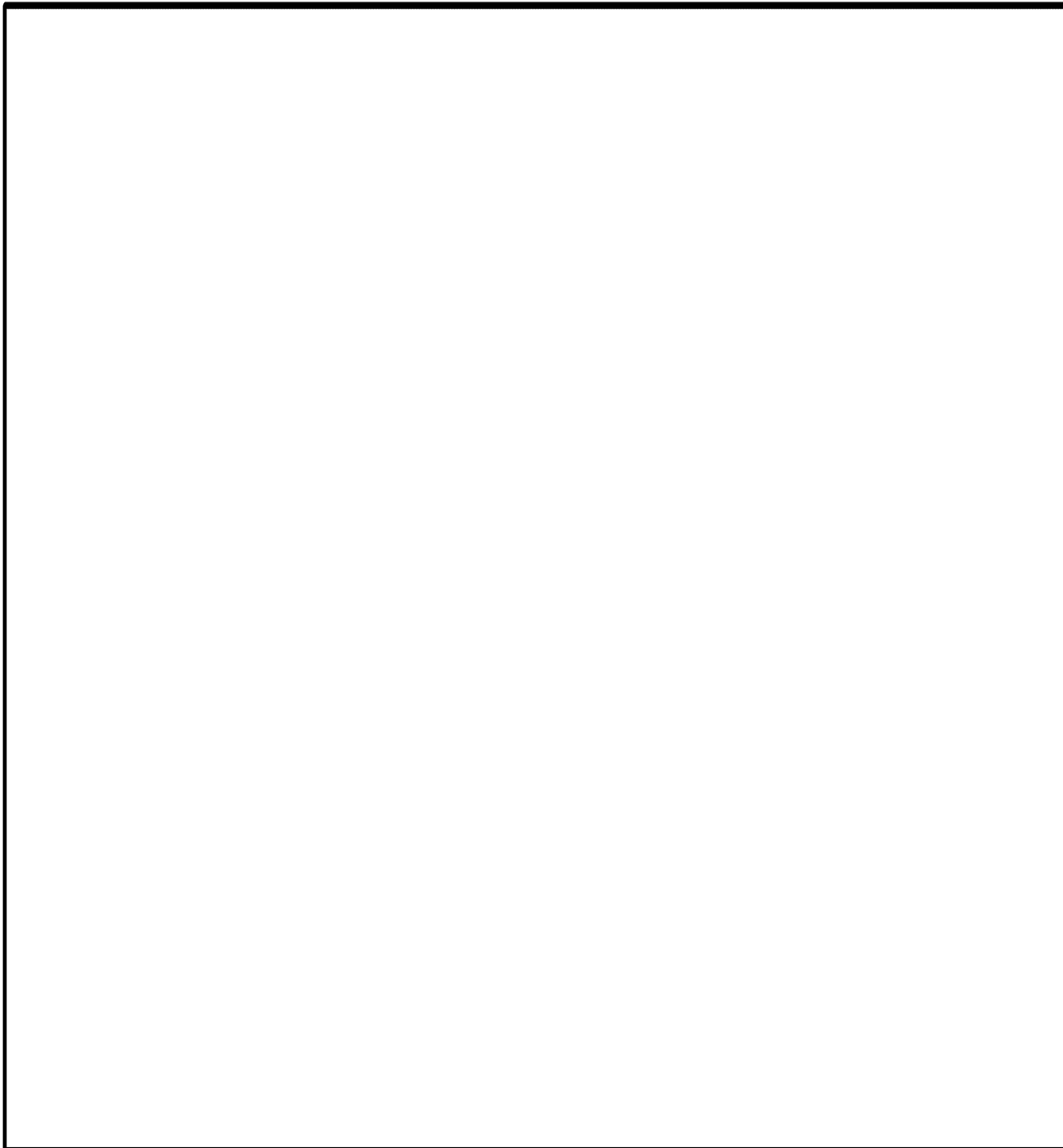
Out-of-Scope



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and Immigration  
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# First Preference (con't):

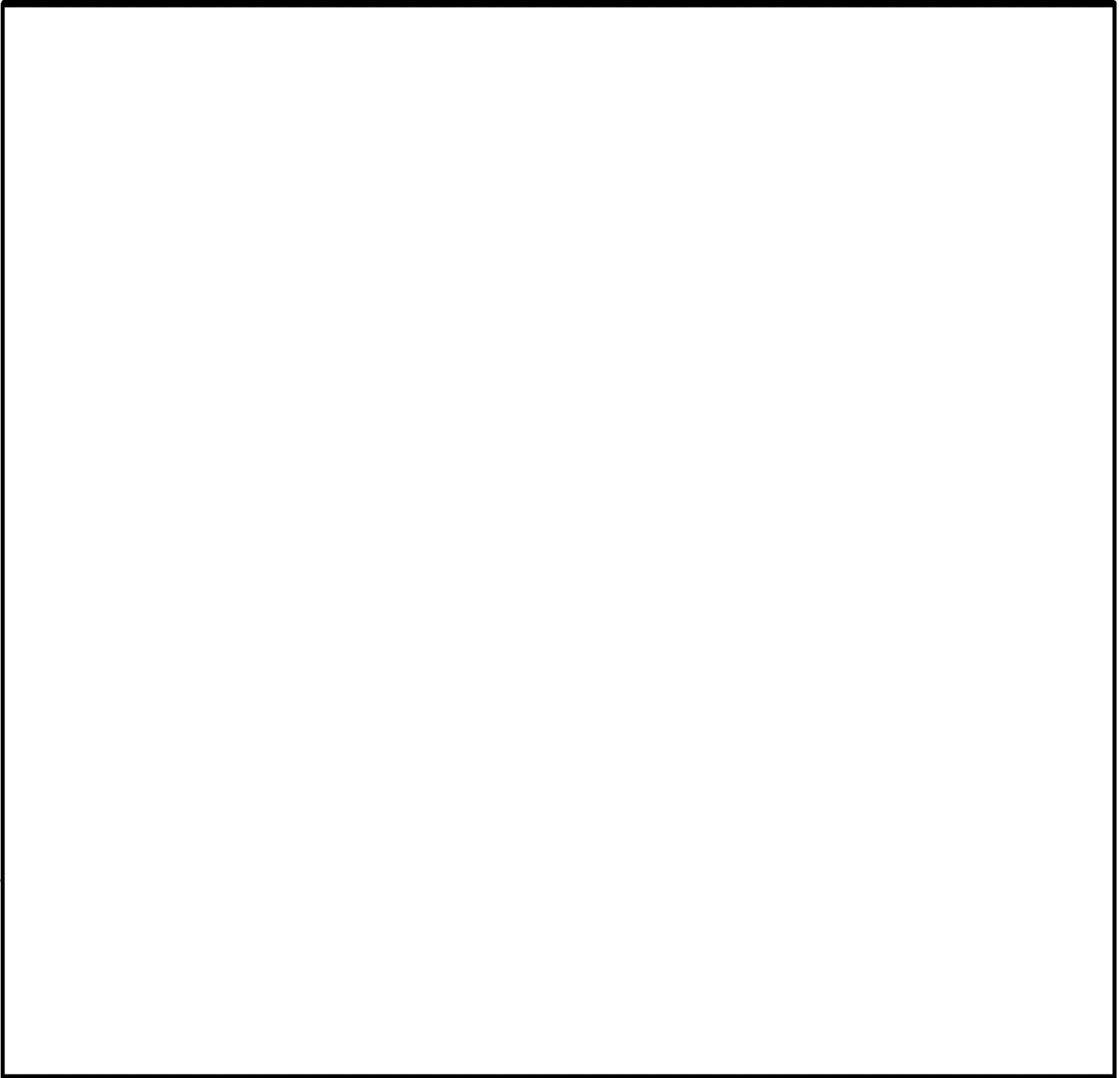
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and Immigration  
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# First Preference (con't):

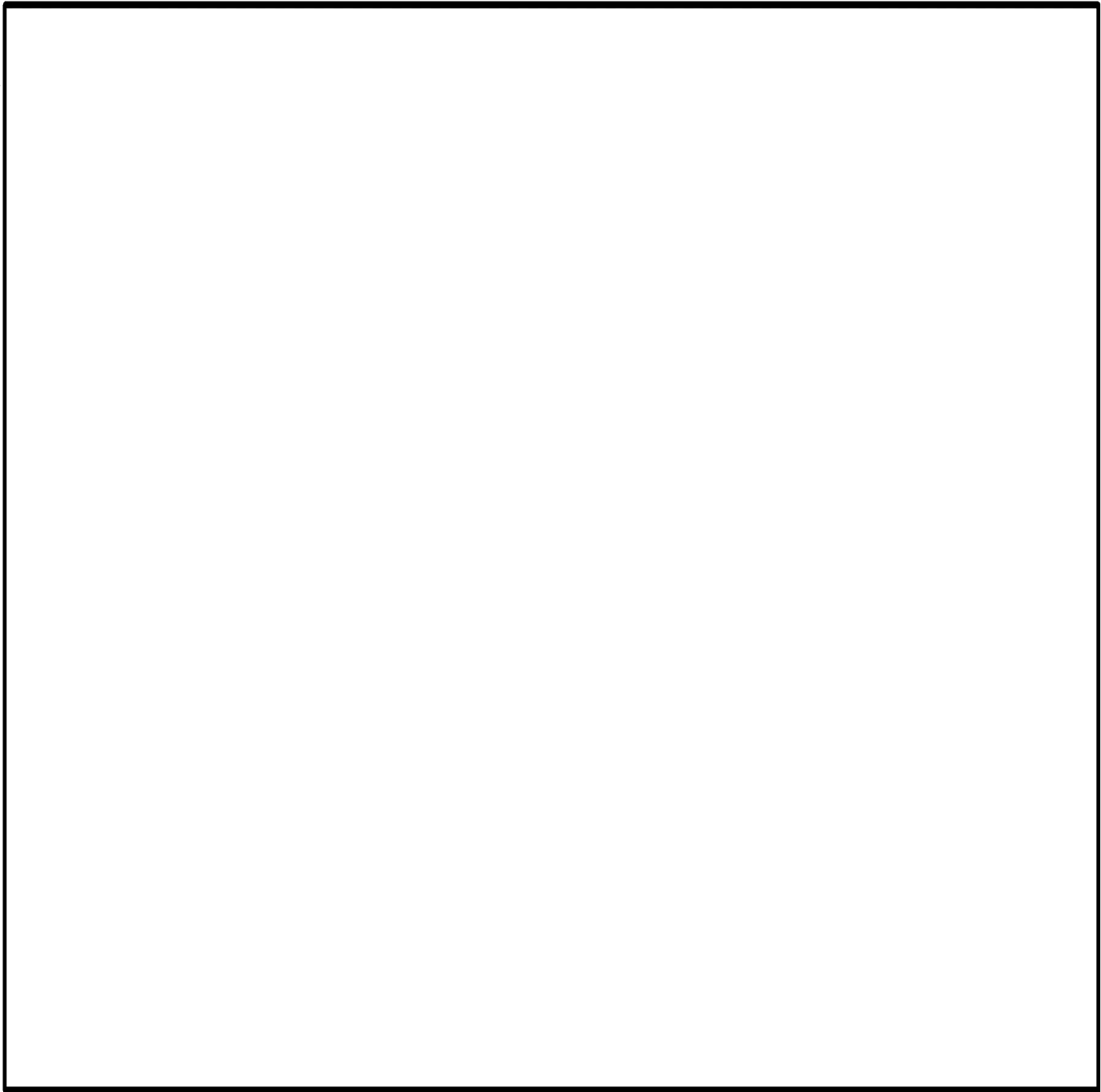
Out-of-Scope



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# Kazarian v USCIS

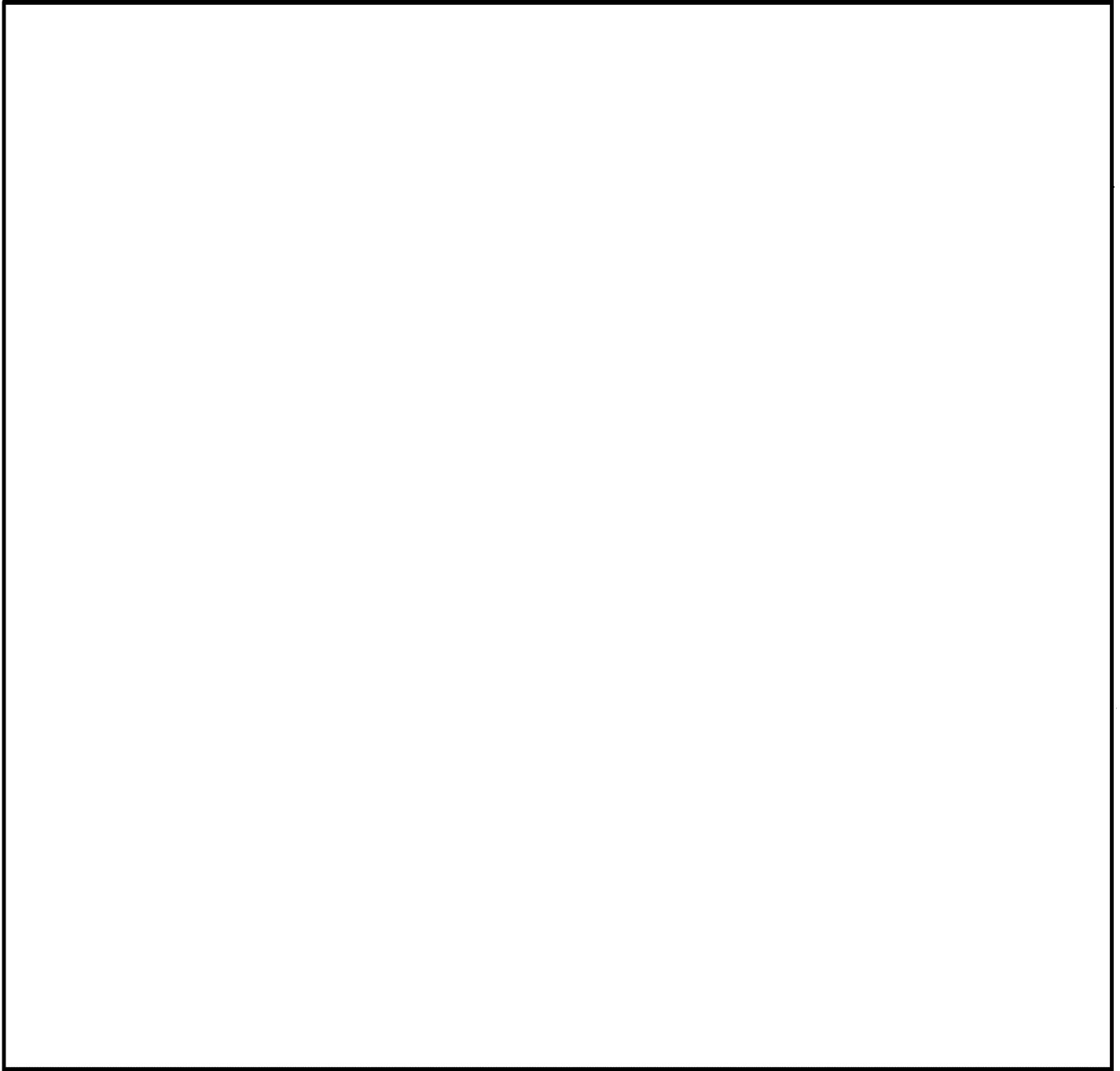
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and Immigration  
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# First Preference (con't):

Out-of-Scope

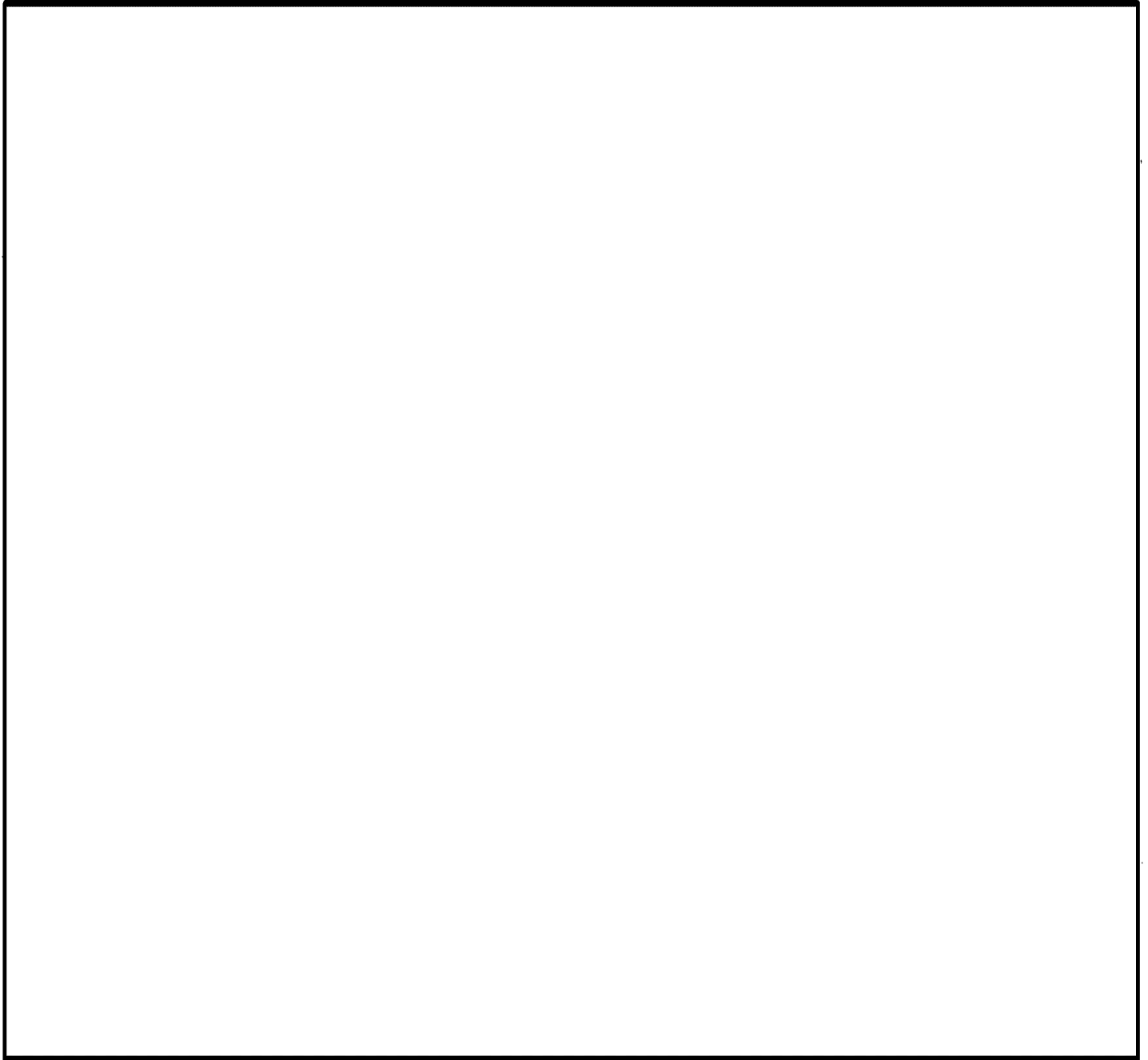


U.S. Citizenship  
and Immigration  
Services



# First Preference (con't):

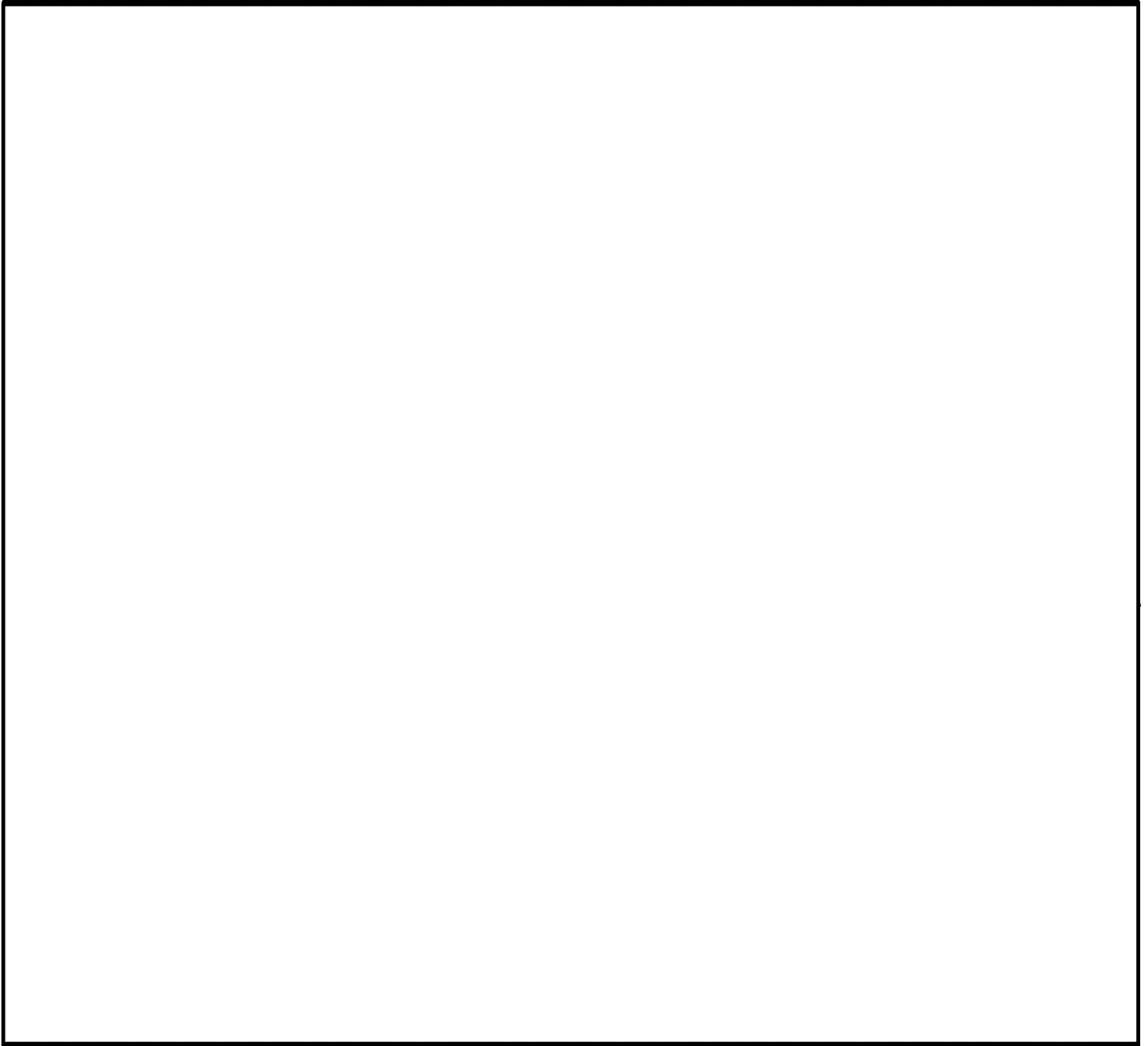
Out-of-Scope



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and Immigration  
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# Second Preference, 8 CFR § 204.5(k)

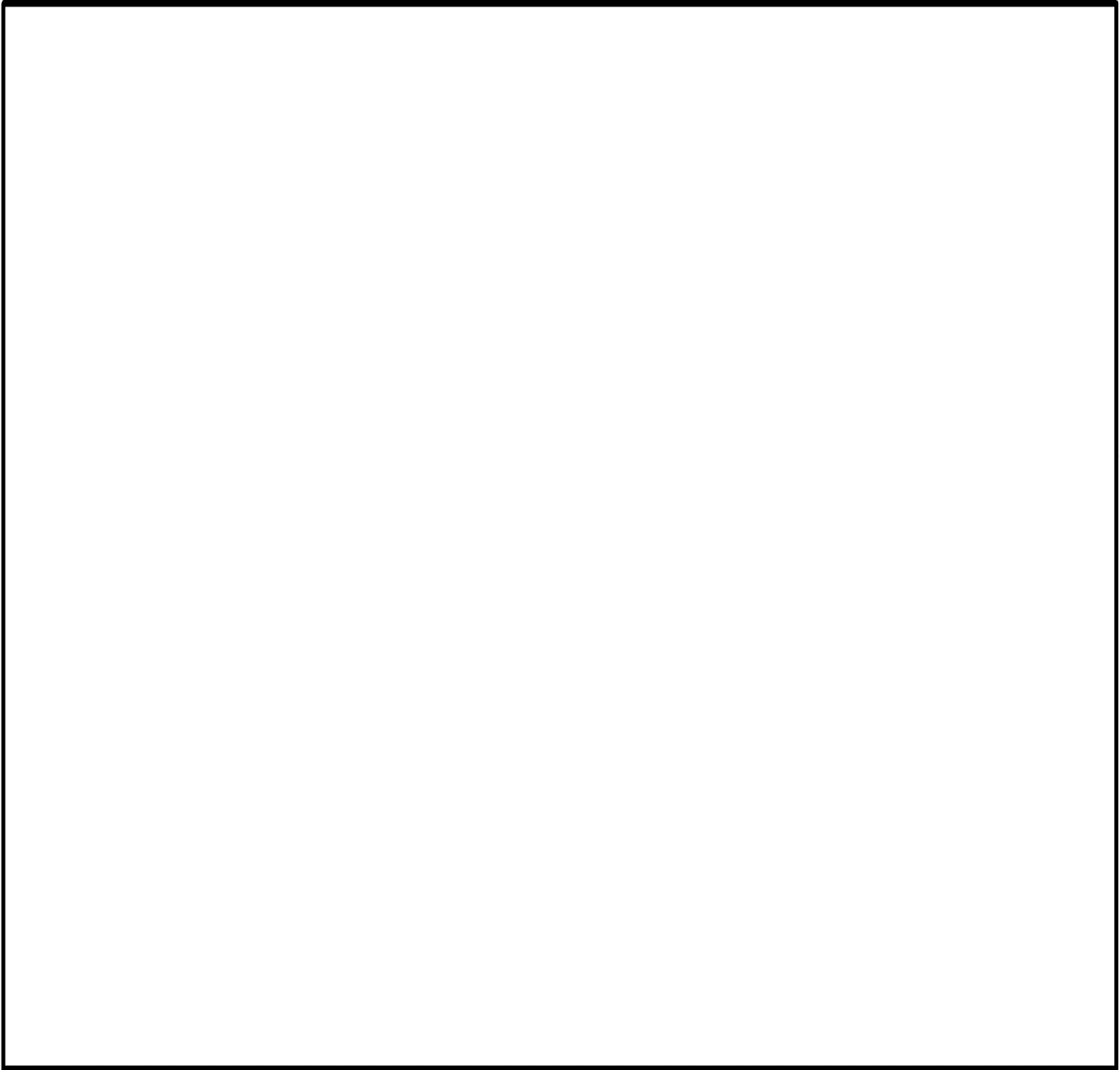
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and Immigration  
Services

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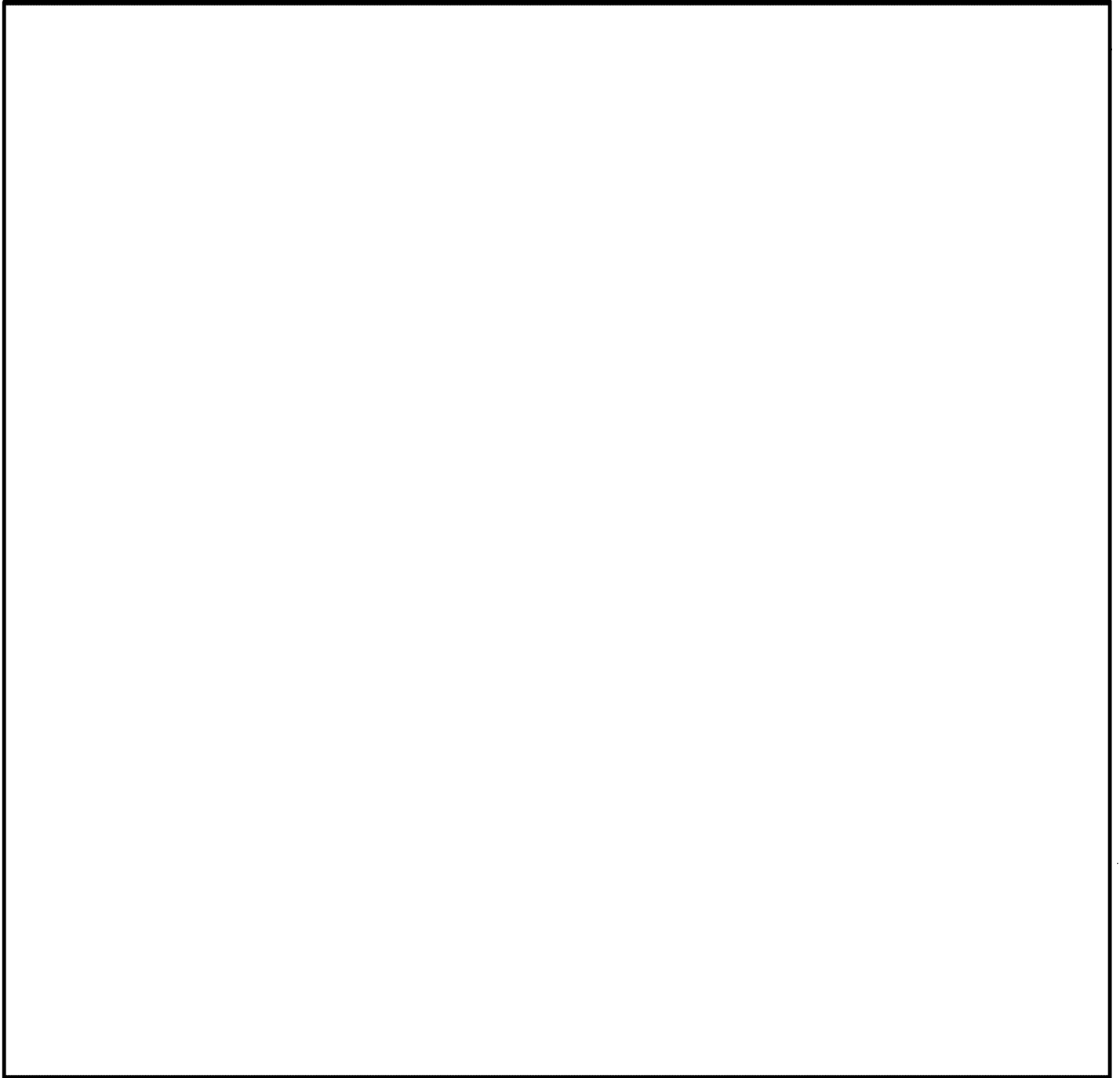
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and Immigration  
Services

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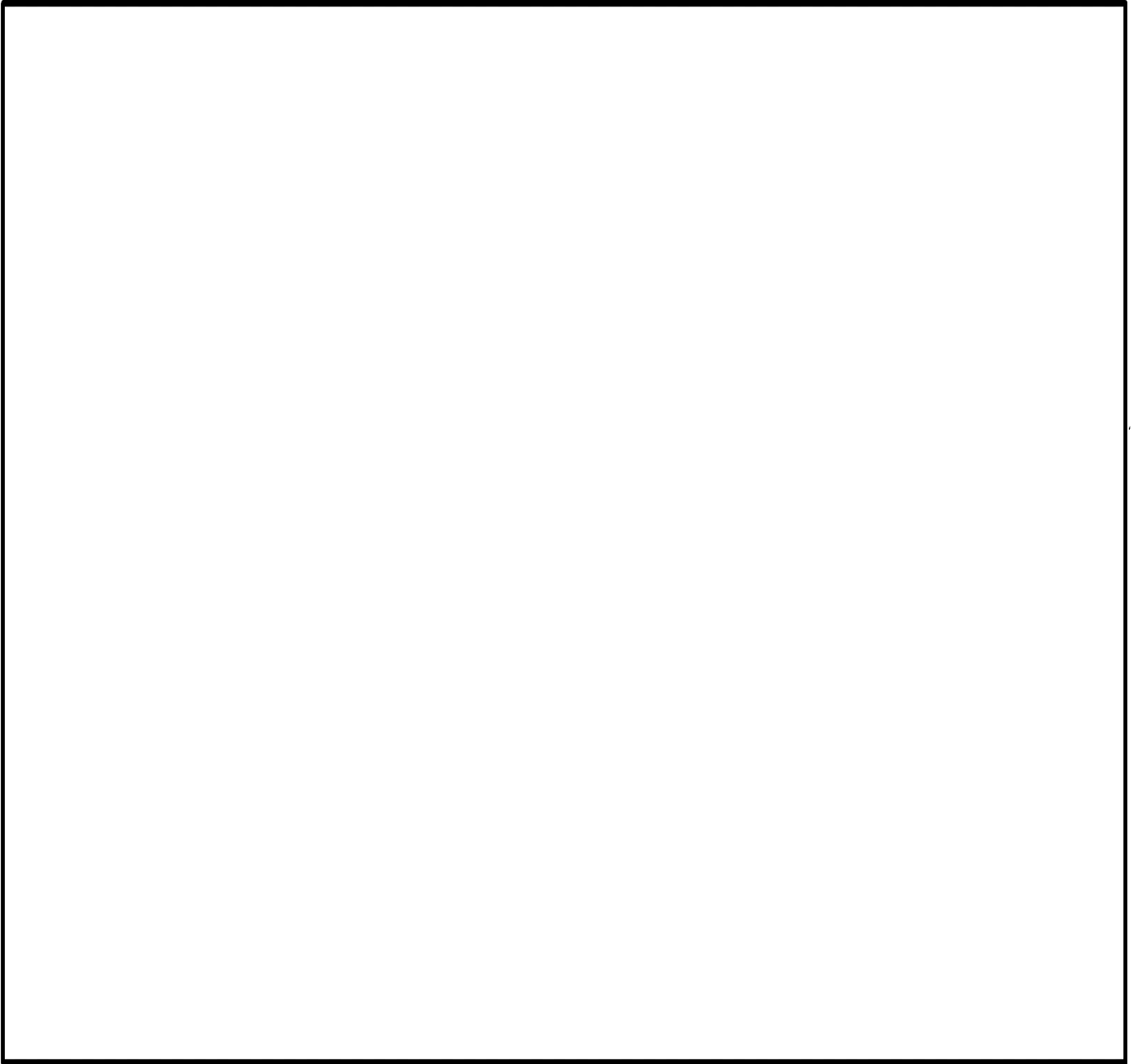
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and Immigration  
Services

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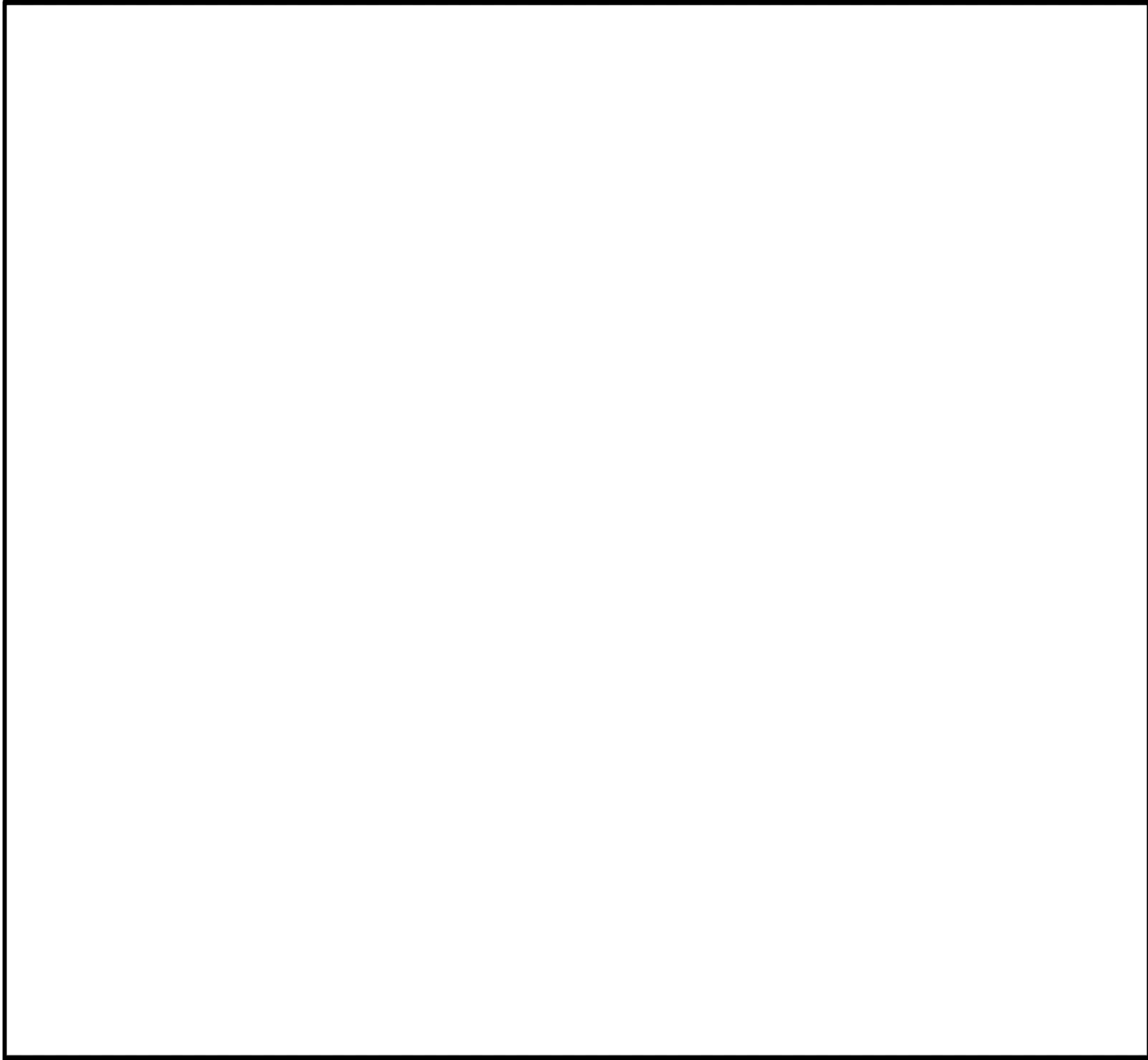
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and Immigration  
Services

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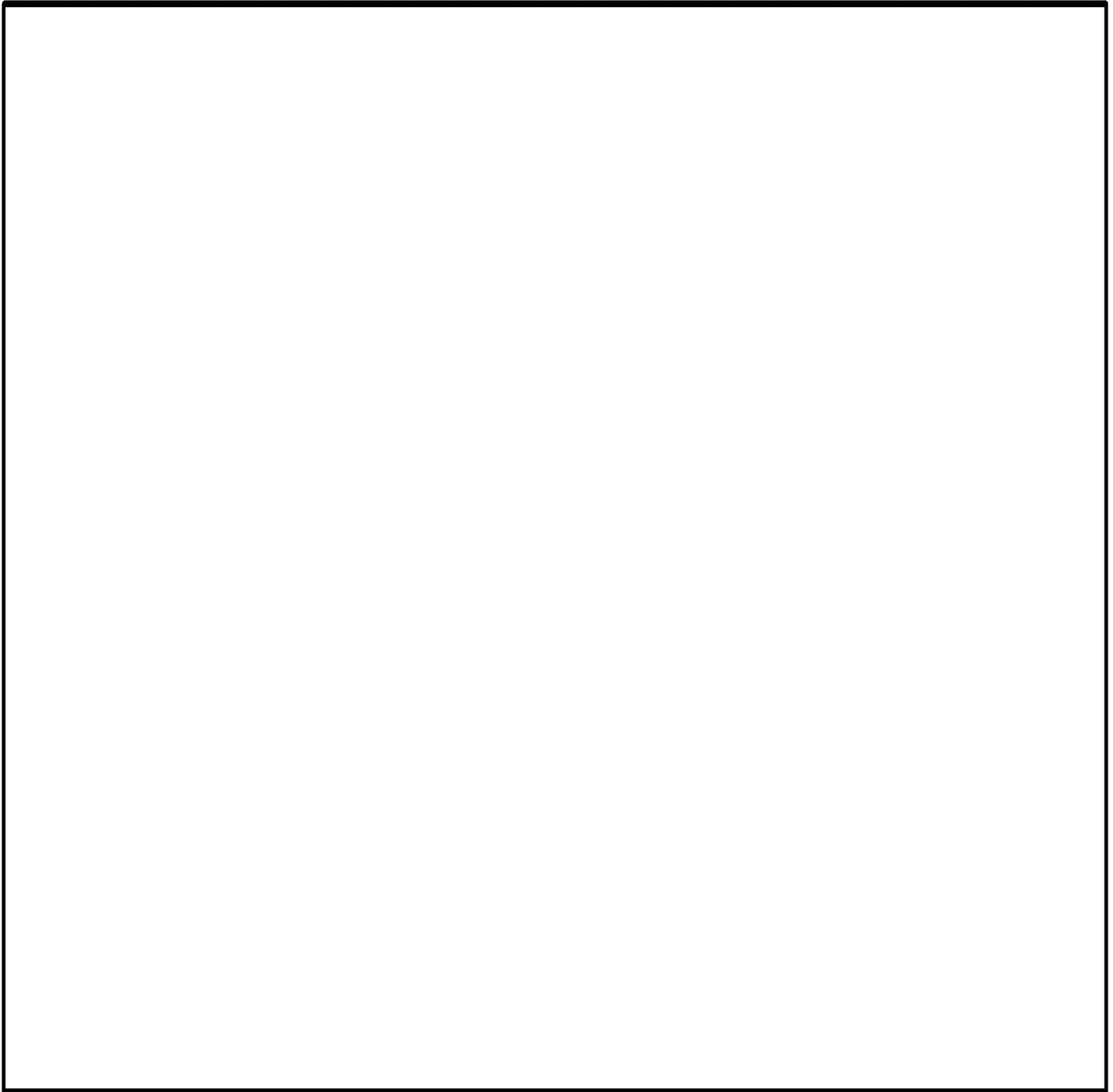
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# Third Preference

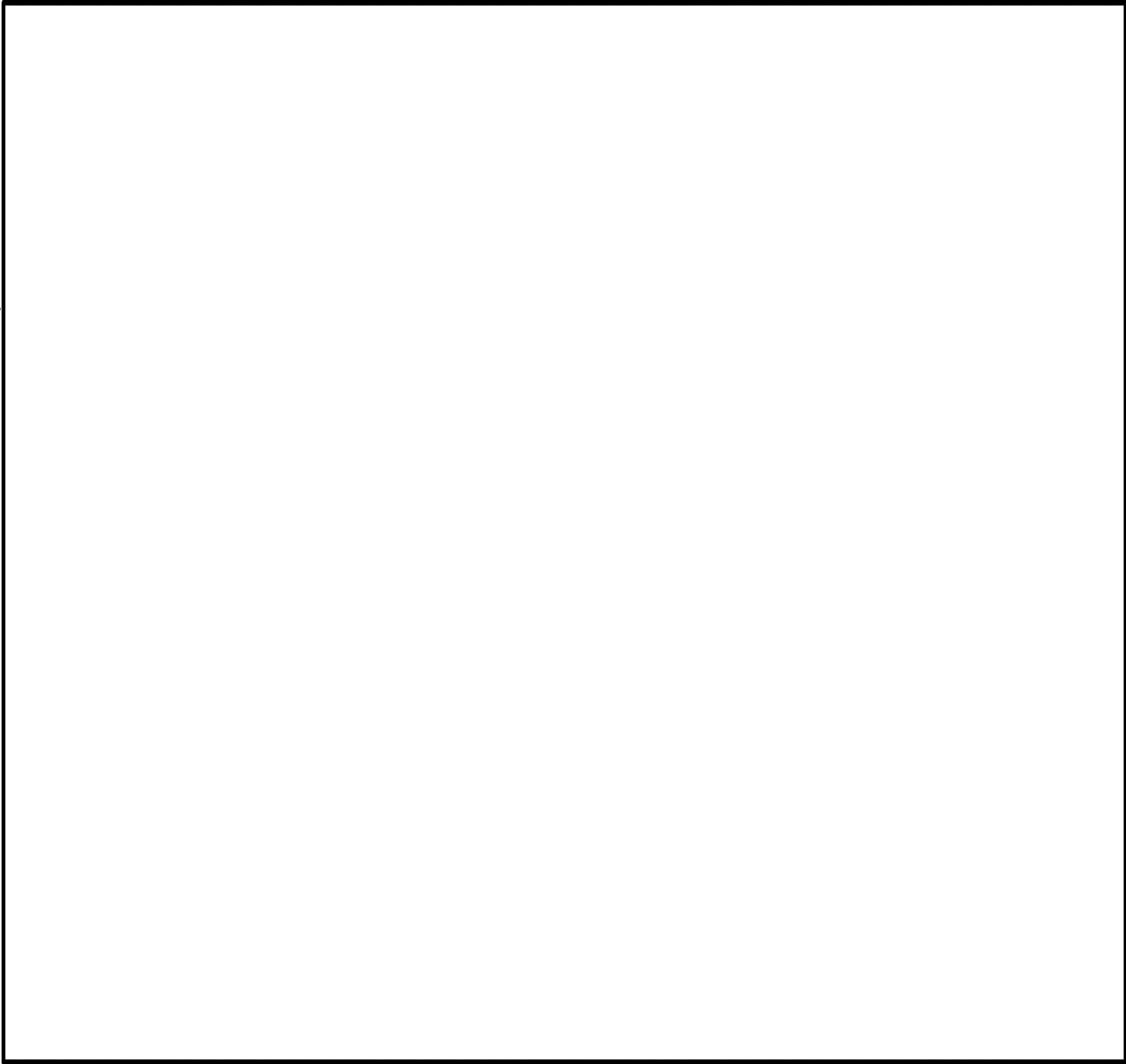
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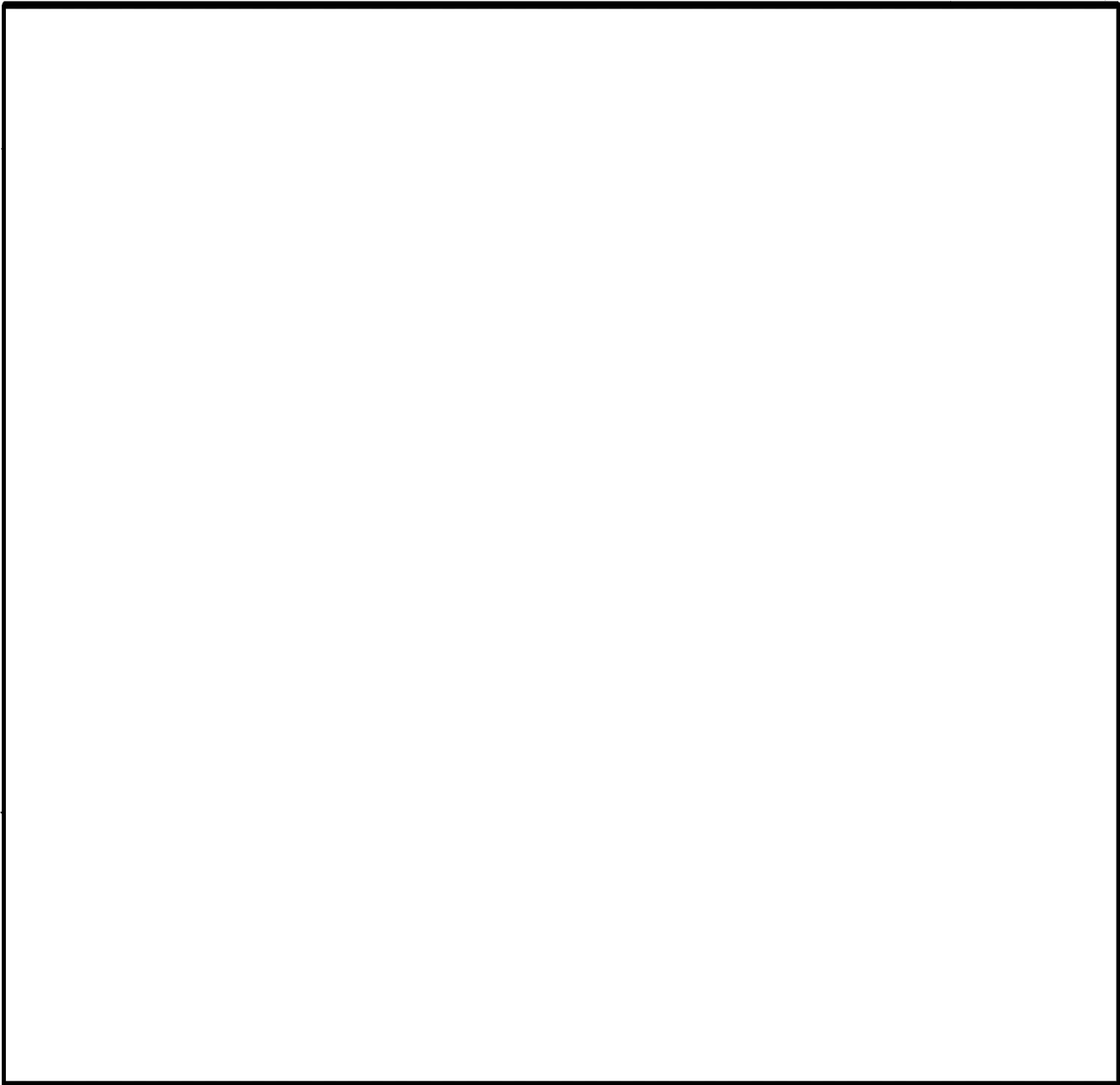


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Services



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# Third Preference (con't)



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# Third Preference (con't)



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# Third Preference (con't):

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# Fourth Preference

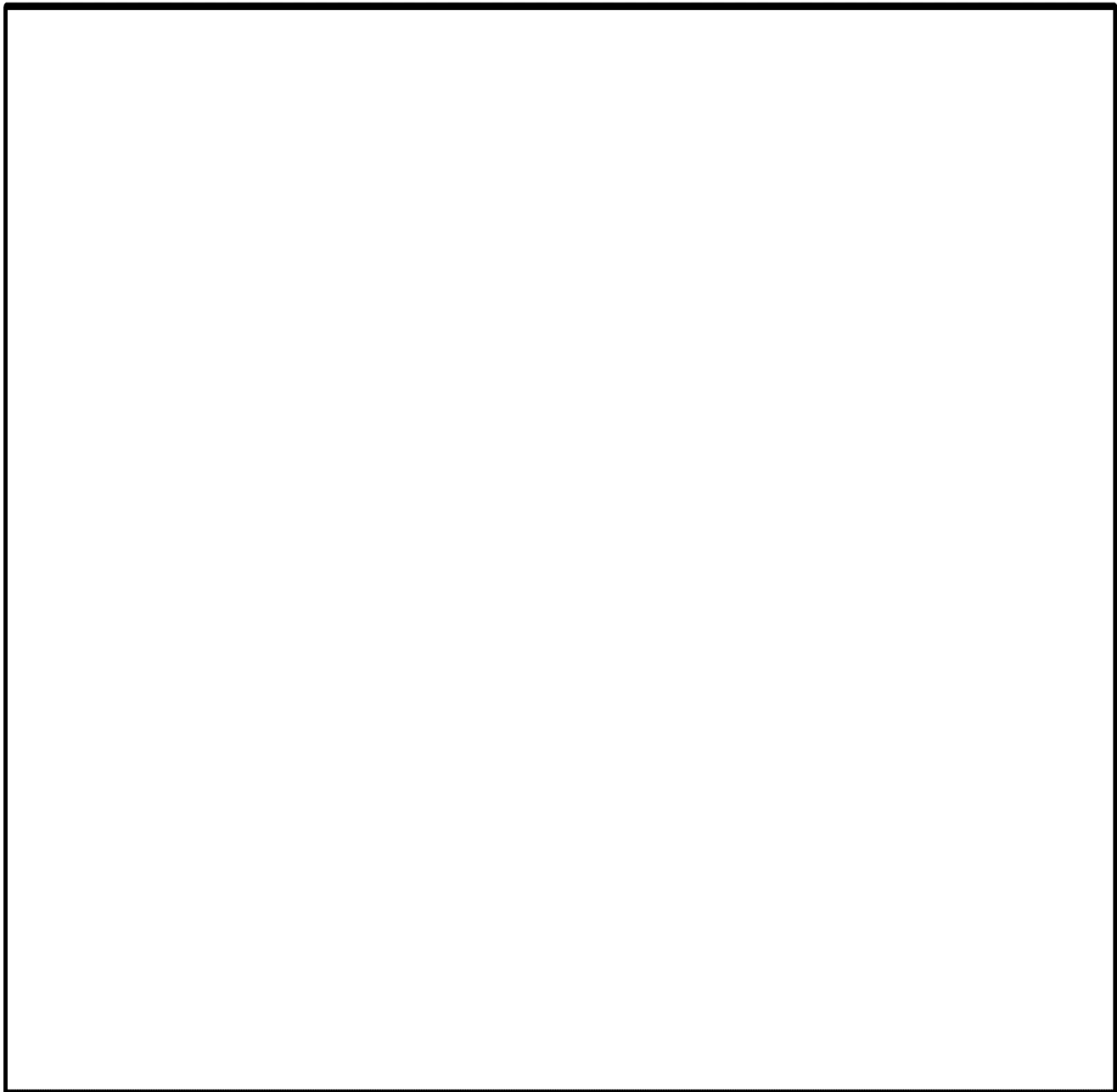
Out-of-Scope



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# Fifth Preference (Employment Creation), INA § 203(b)(5), 8 CFR § 204.6

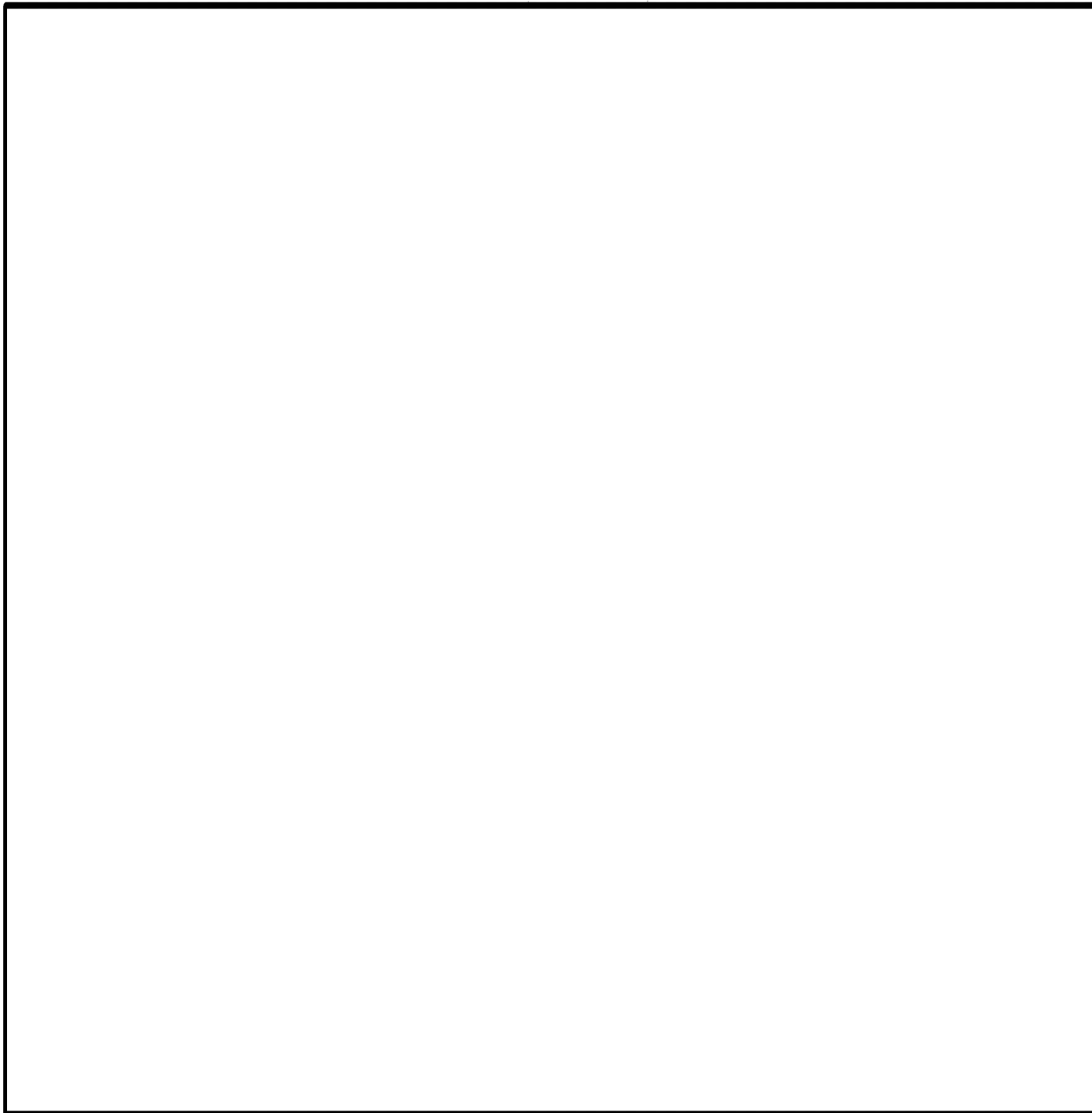
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Out-of-Scope

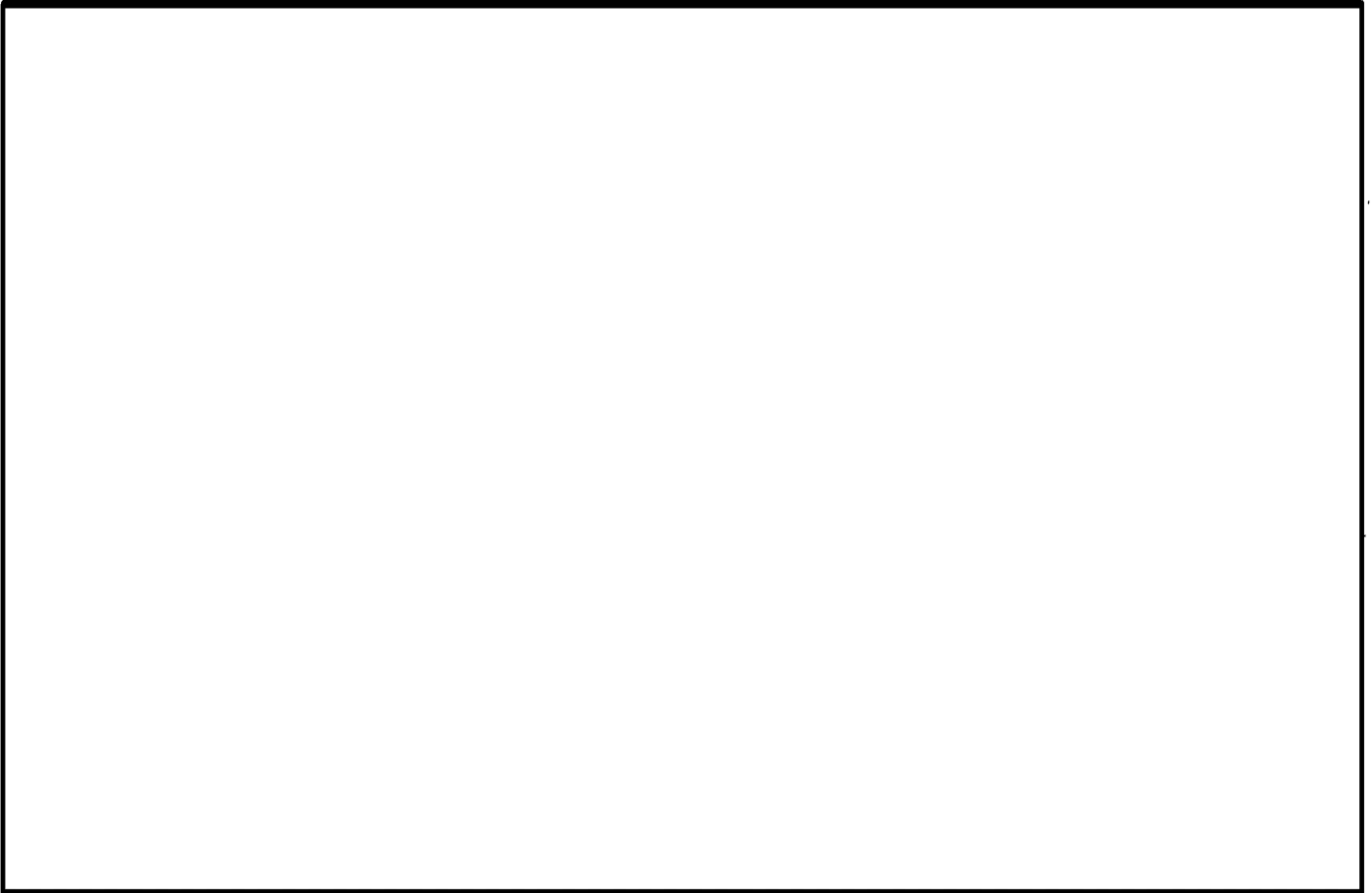
# Fifth Preference (con't):



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# Fifth Preference (con't):

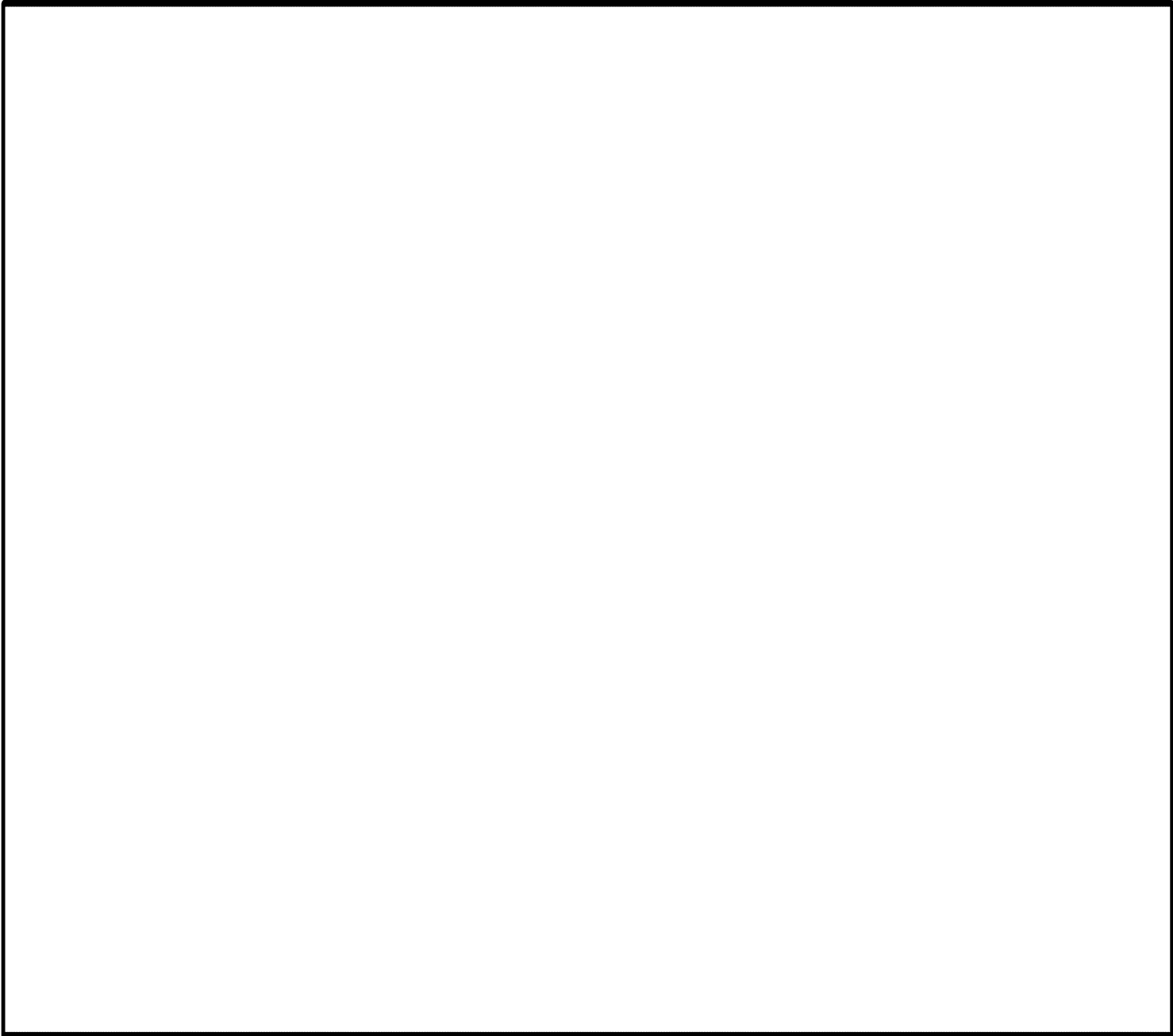
Out-of-Scope



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# Fifth Preference (con't):

Out-of-Scope



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# U.S. Citizenship and Immigration Services

# ADJUSTMENT OF STATUS

## Module 220



U.S. Citizenship  
and Immigration  
Services

# Description

This course presents eligibility requirements for adjustment of status.



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Out-of-Scope

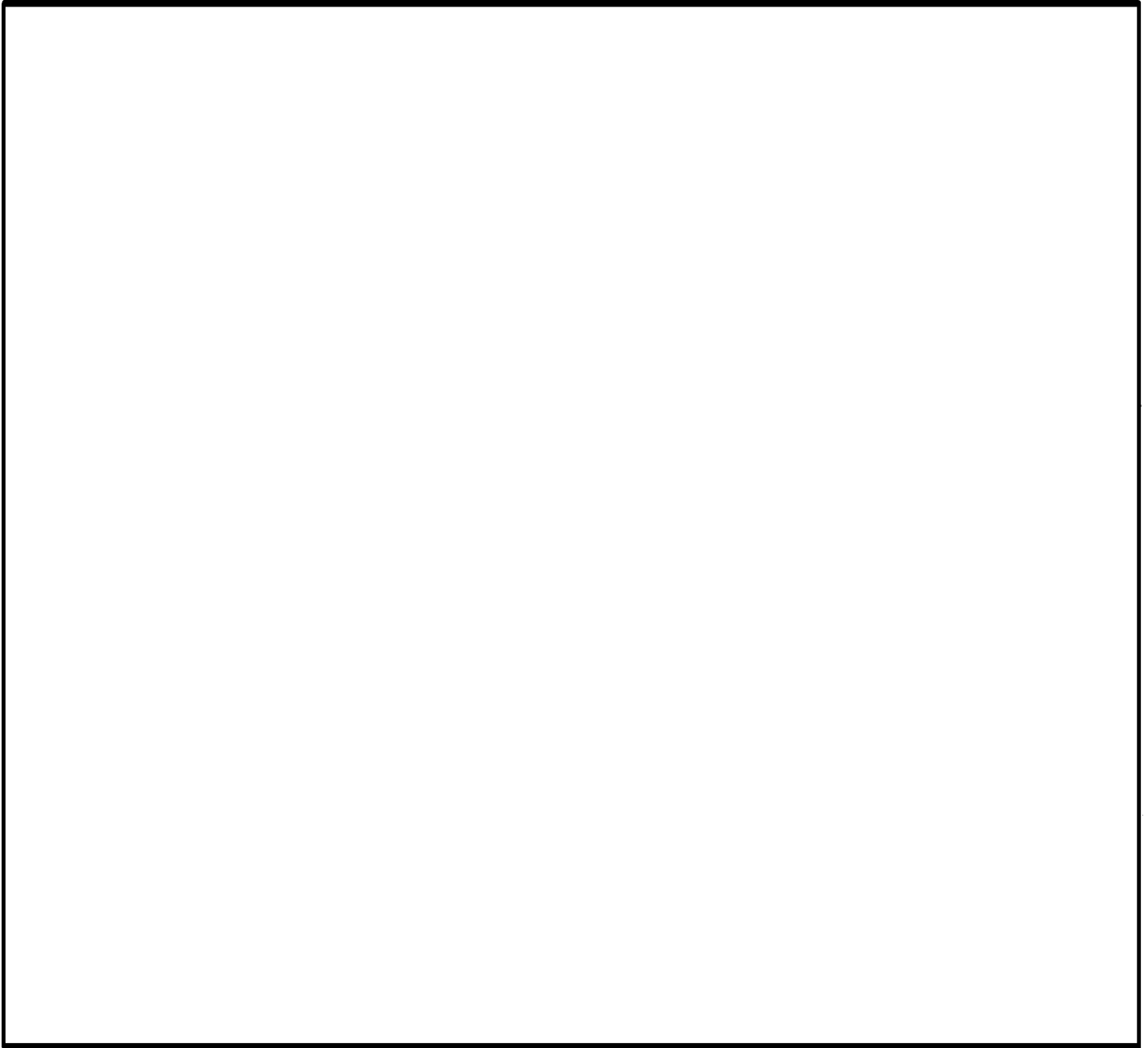
## Terminal Performance Objective



U.S. Citizenship  
and Immigration  
Services

Out-of-Scope

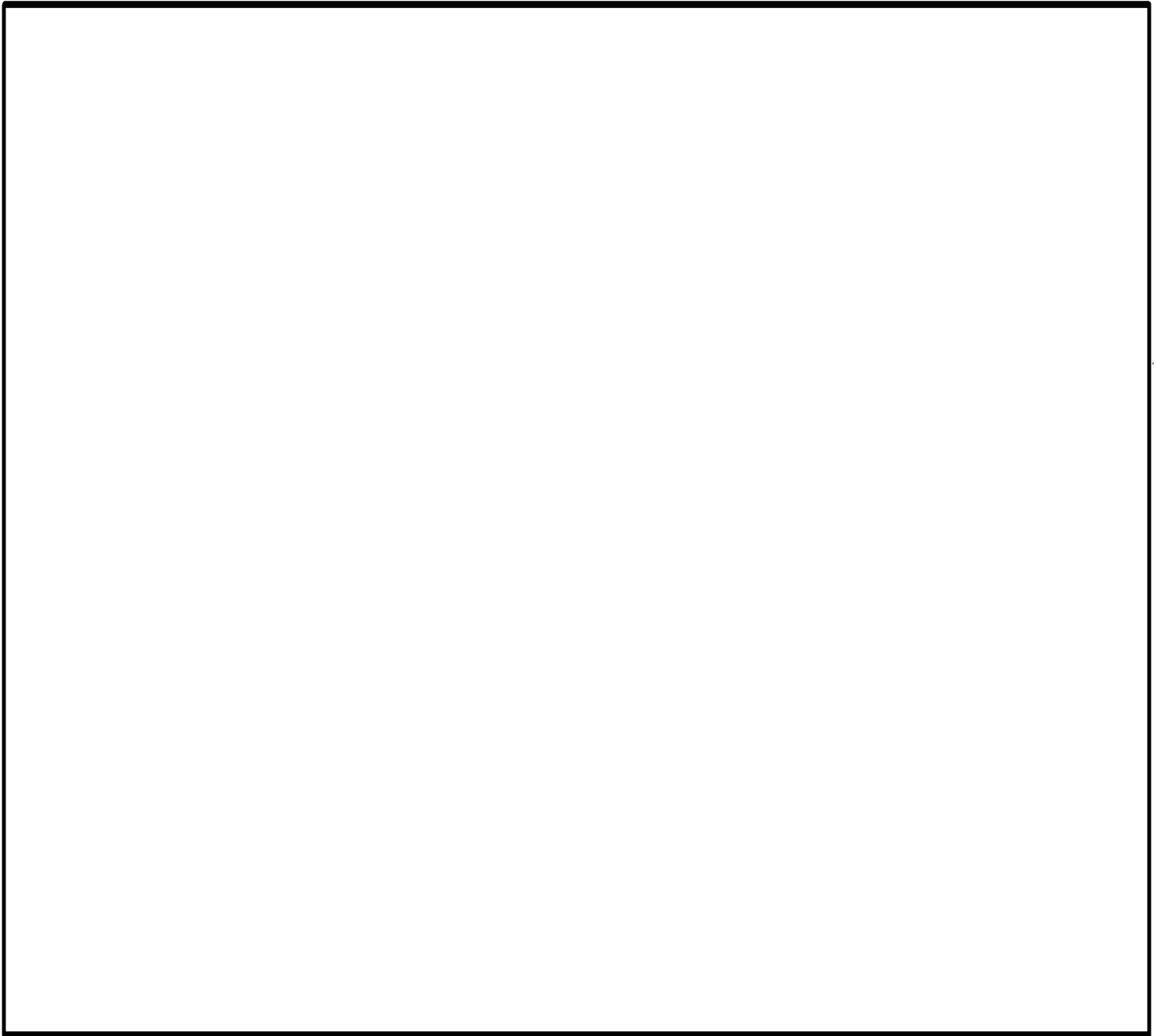
# Enabling Performance Objectives - EPOs



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and Immigration  
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Out-of-Scope

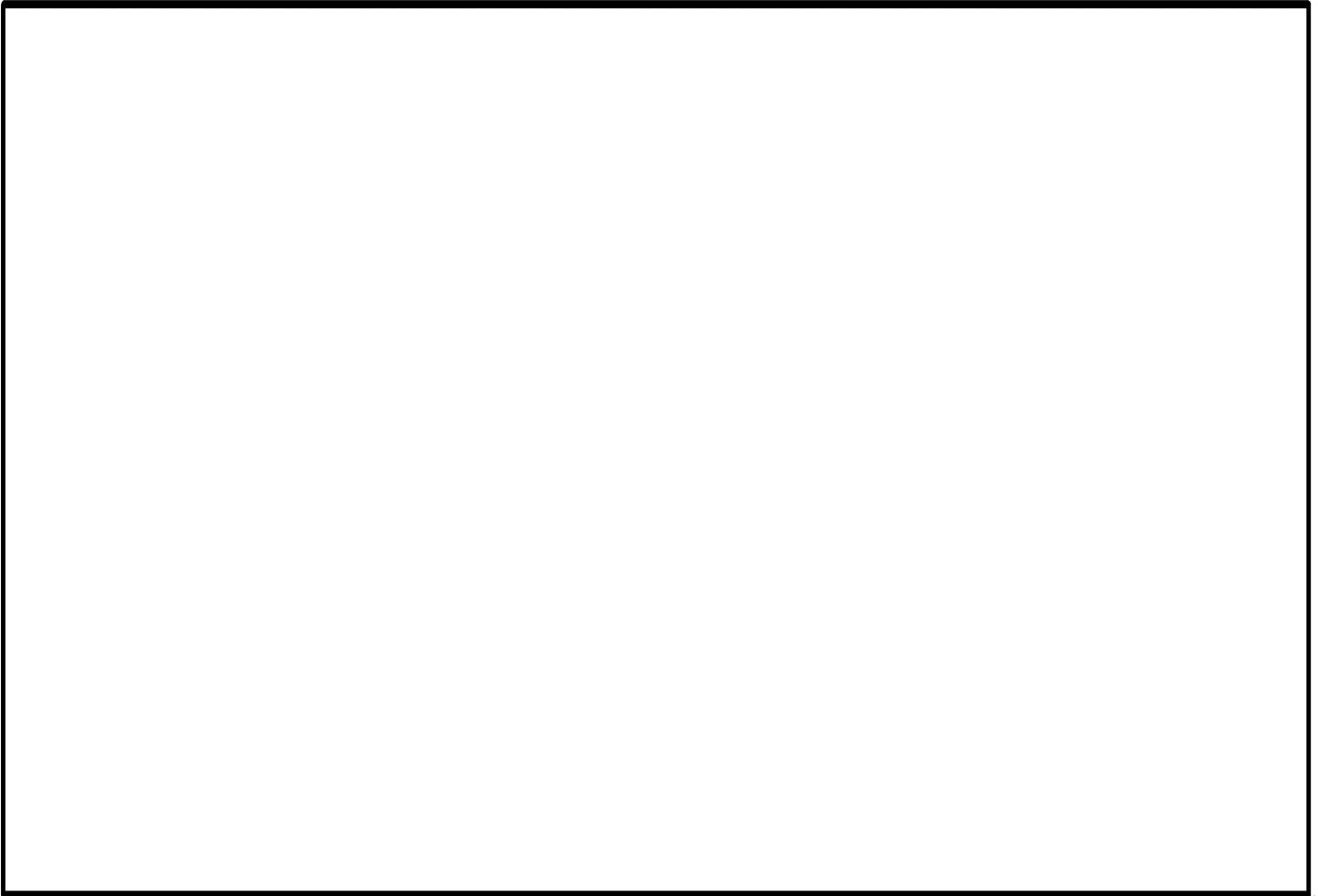
# Enabling Performance Objectives - EPOs



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# Introduction

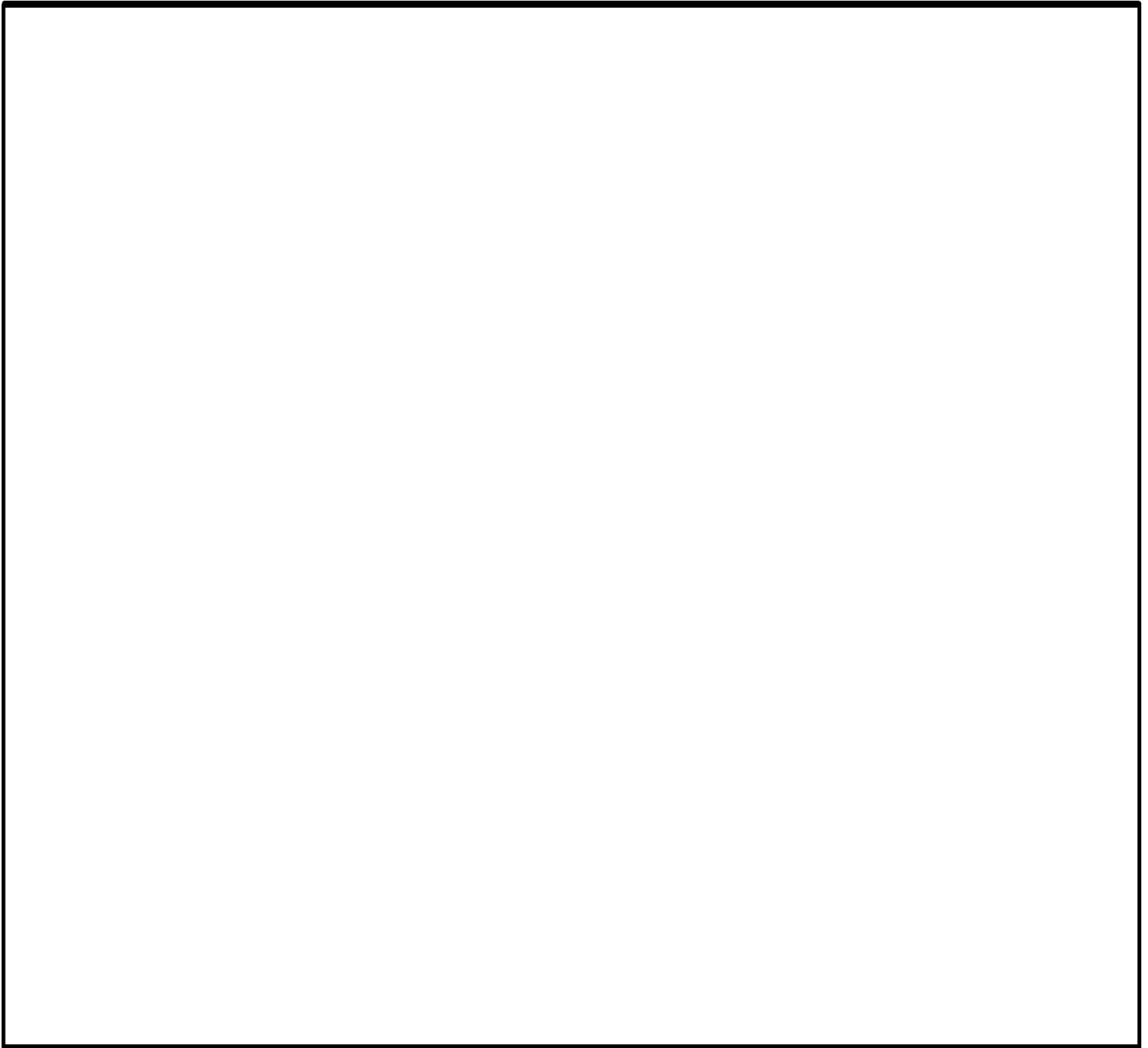
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U.S. Citizenship  
and Immigration  
Services

Out-of-Scope

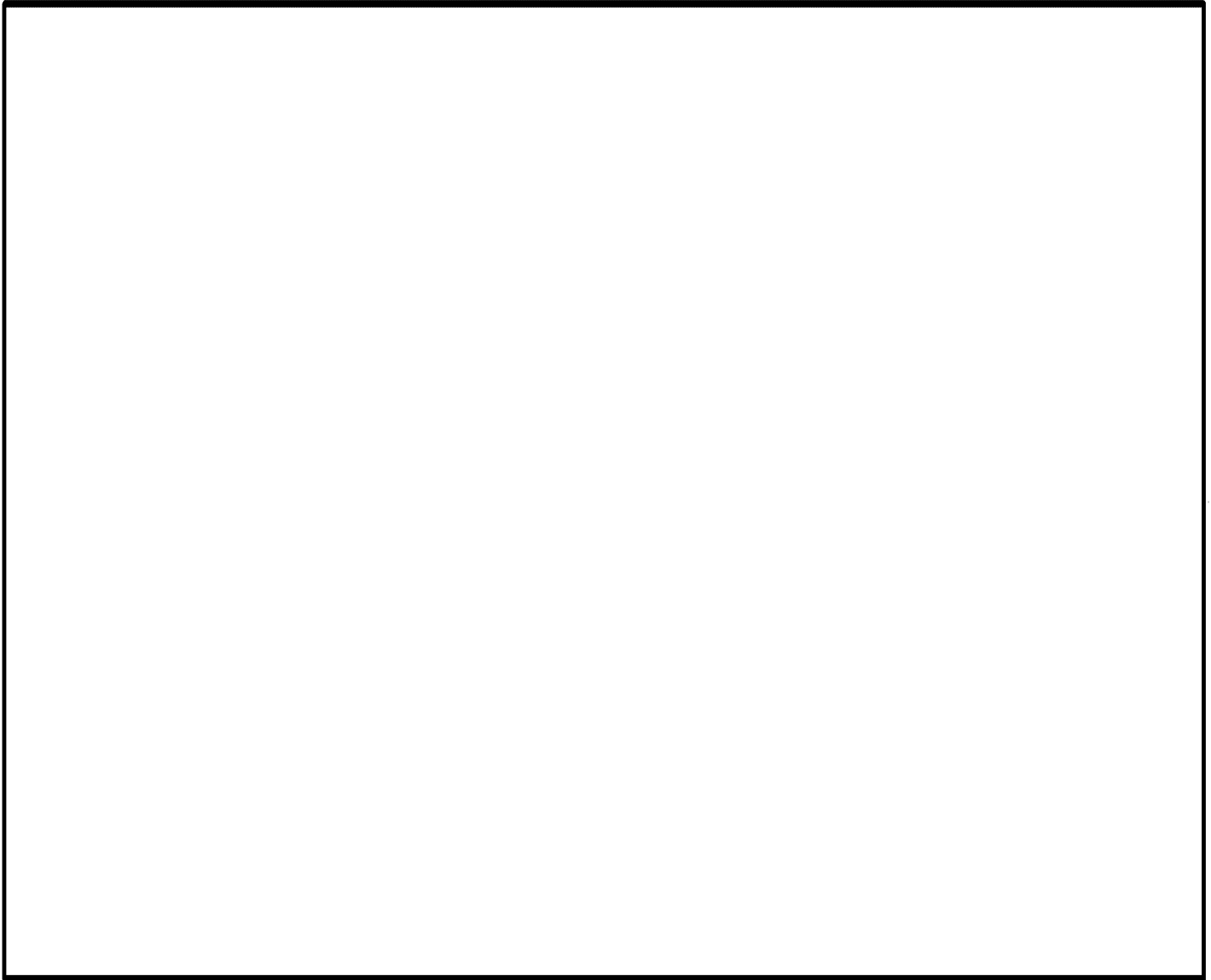
# Introduction (cont.)



U.S. Citizenship  
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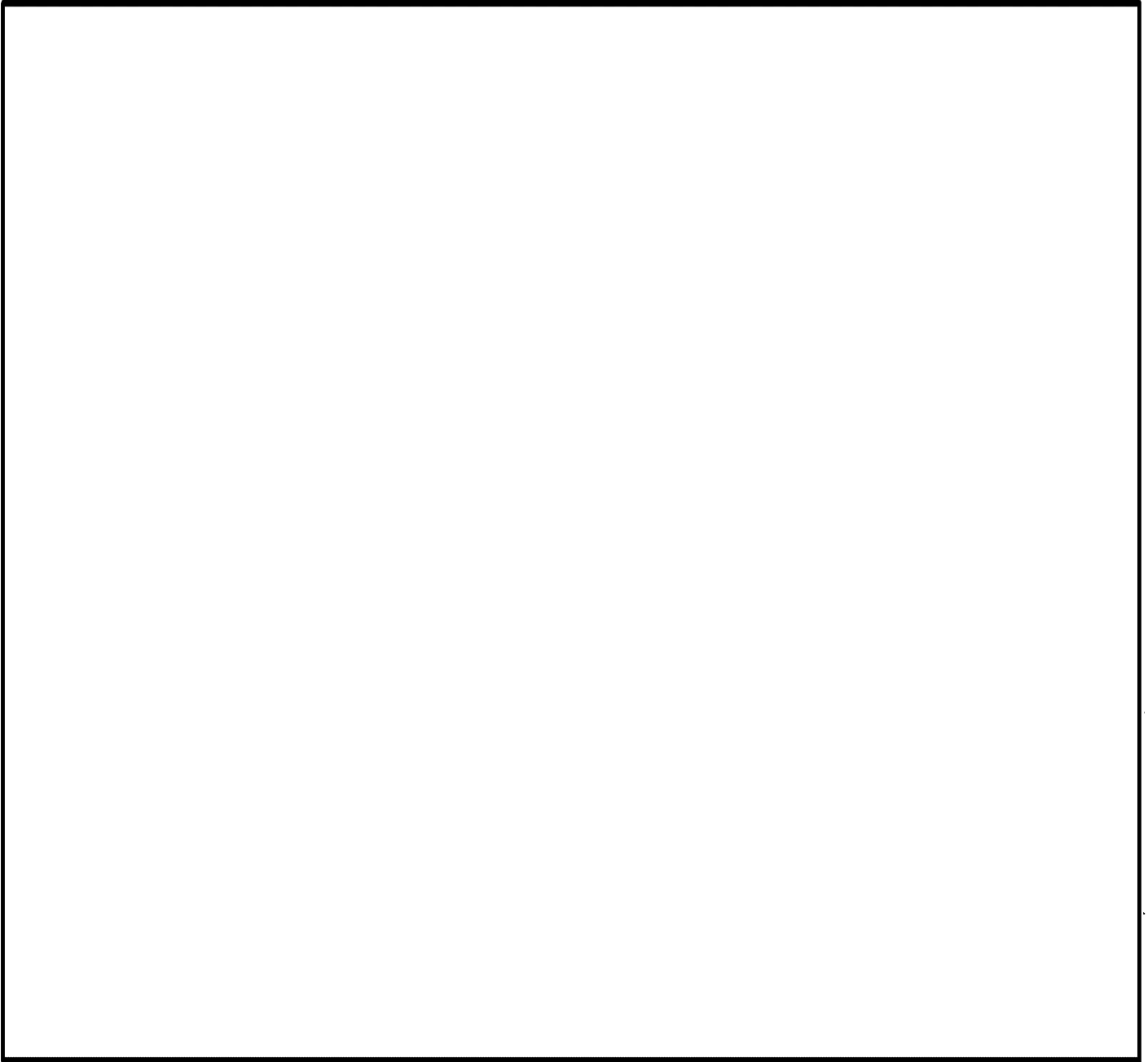
Out-of-Scope



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and Immigration  
Services

# What is an A-File?

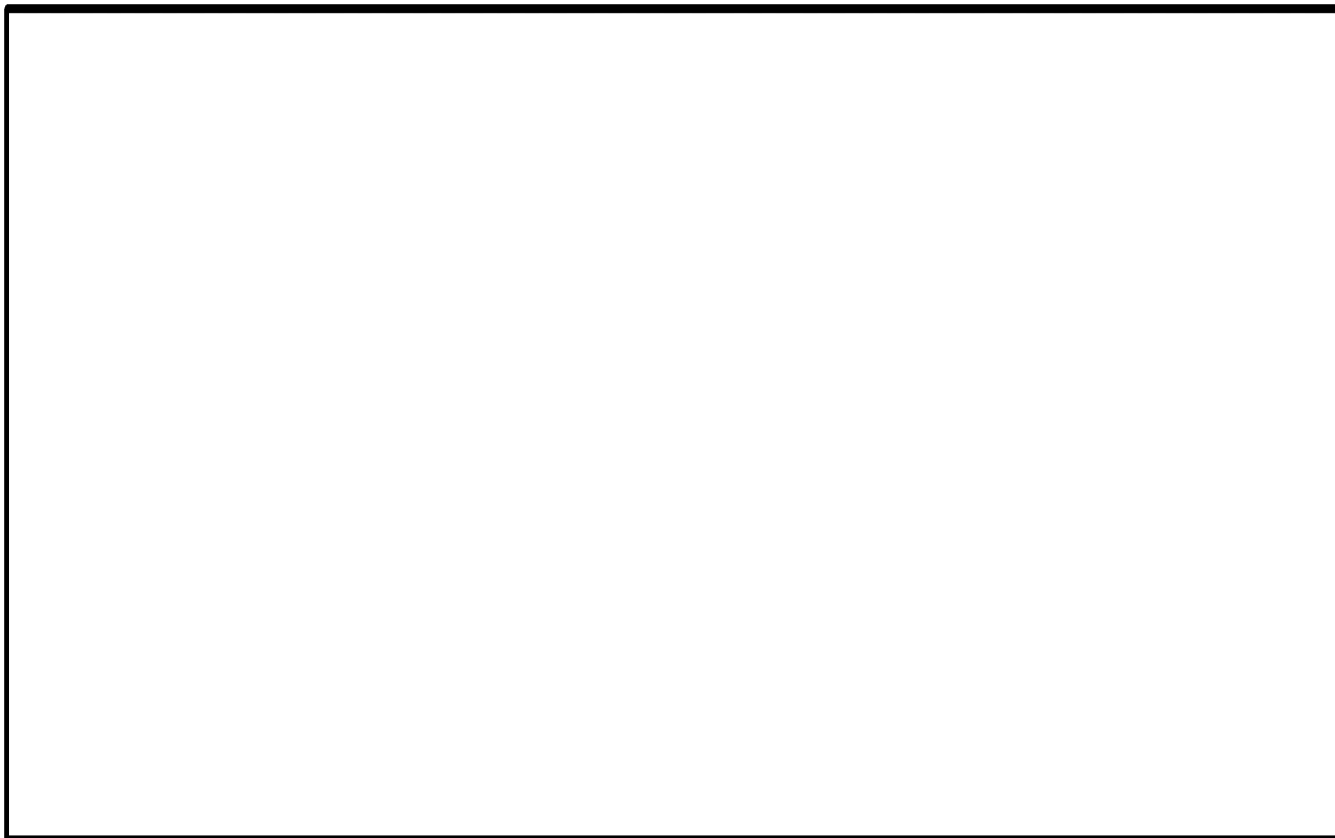
Out-of-Scope



U.S. Citizenship  
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# What is in an A-File?

Out-of-Scope



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# Central Index System (CIS) & National File Tracking System (NFTS)

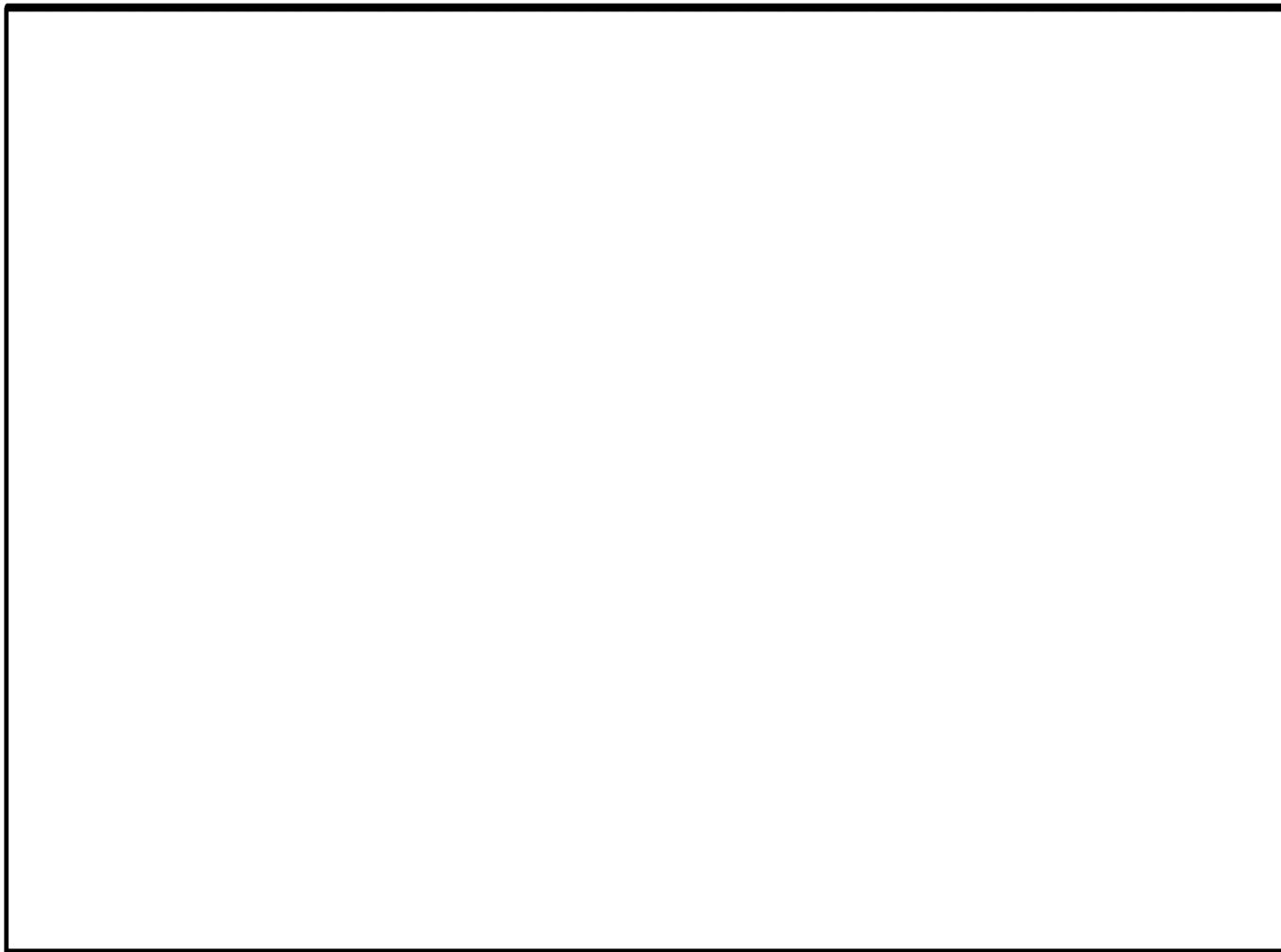
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# Record of Proceeding (ROP)

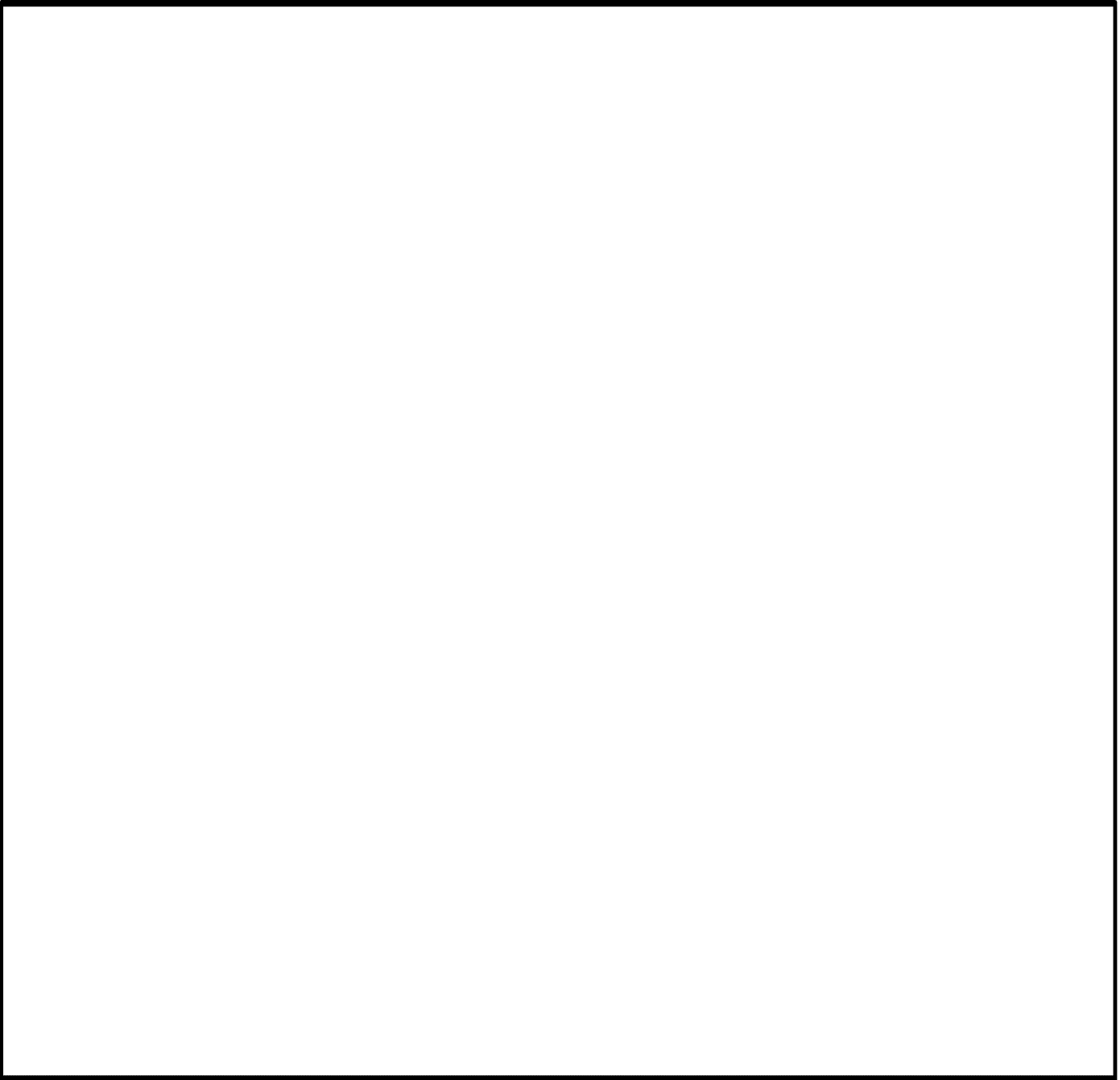
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# Setup of Record of Proceeding (ROP)

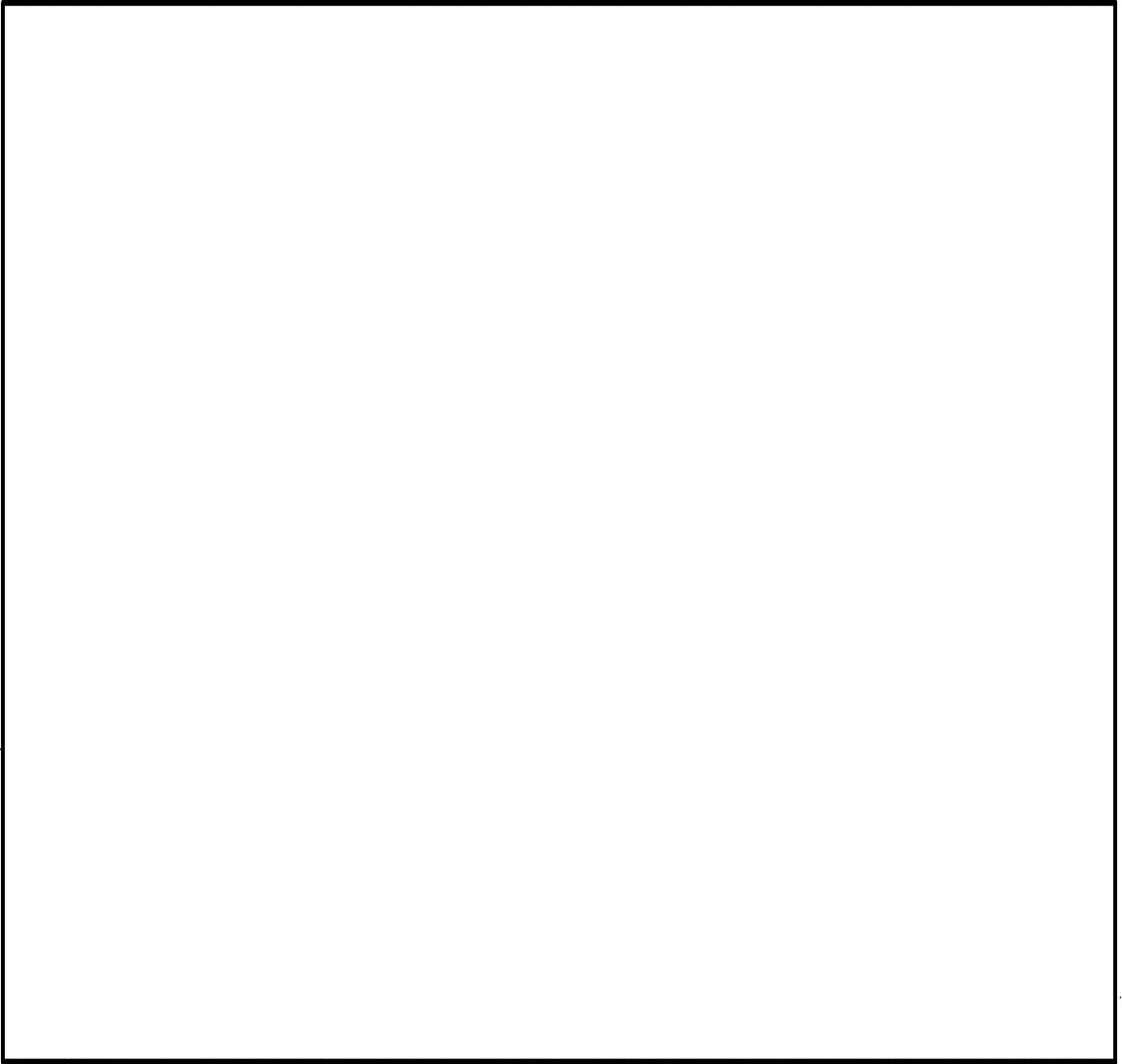
Out-of-Scope



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# Setup of Record of Proceeding (ROP)

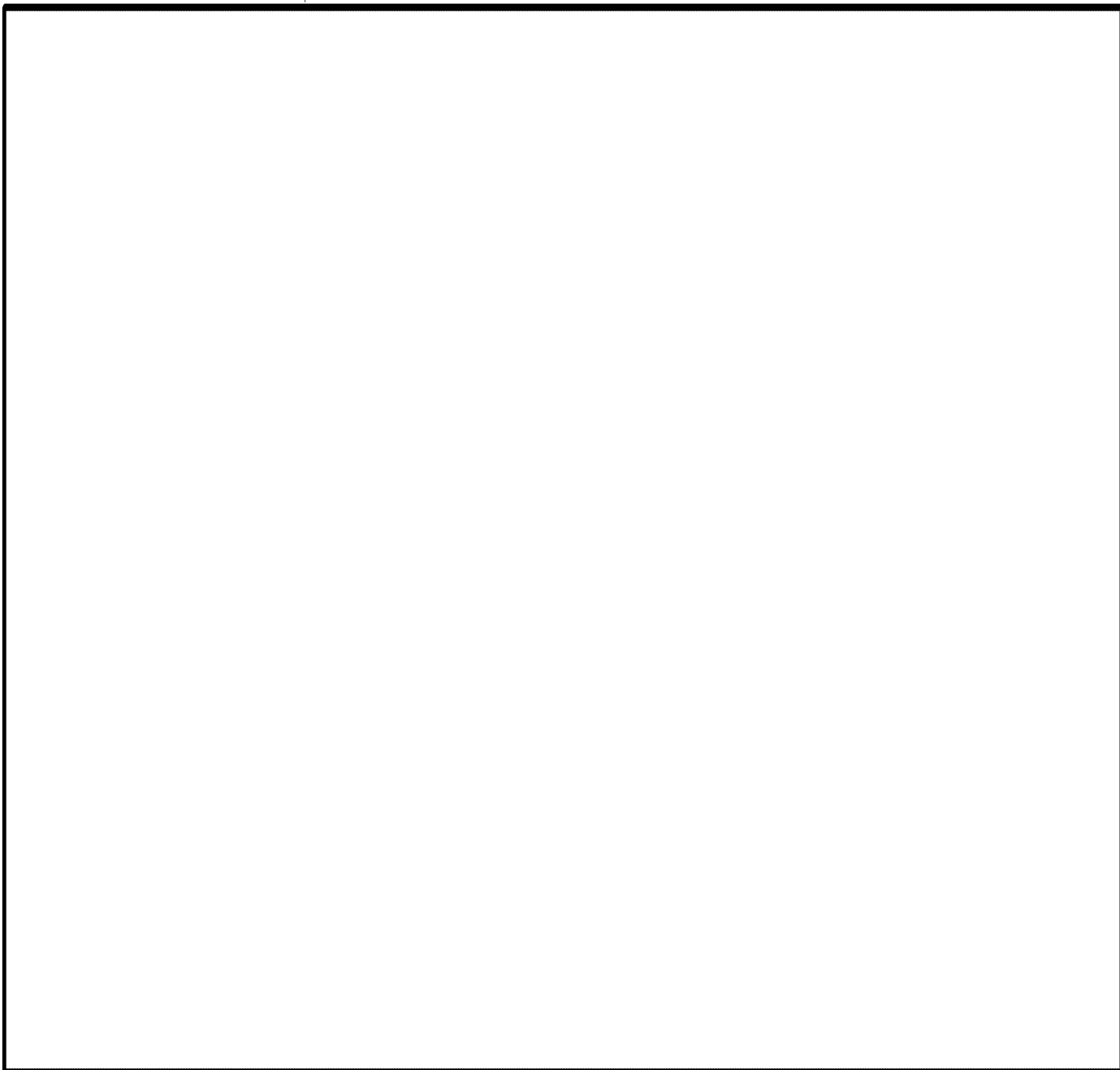
Out-of-Scope



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# Ensure that all security checks have been completed

Out-of-Scope



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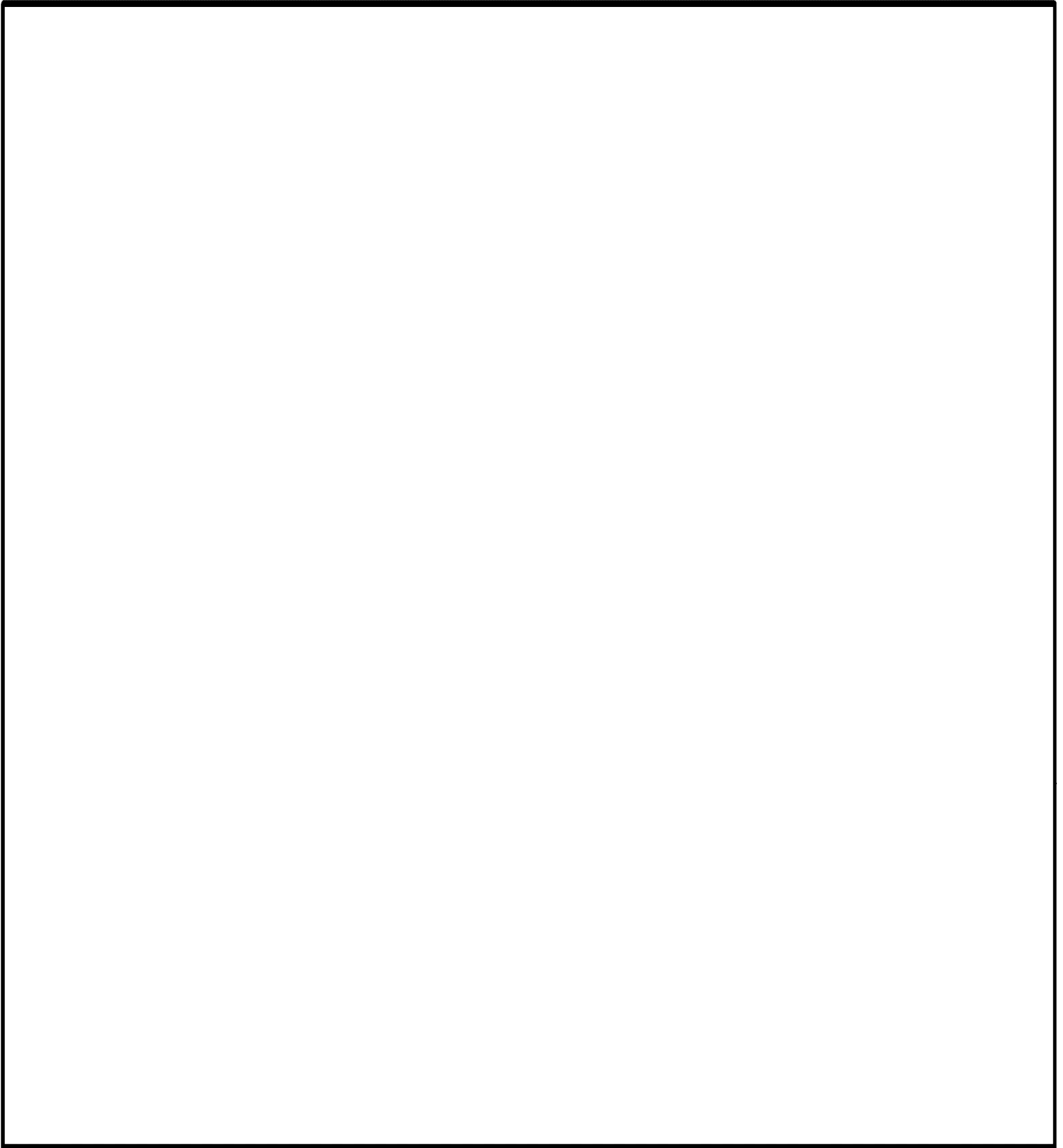


Out-of-Scope



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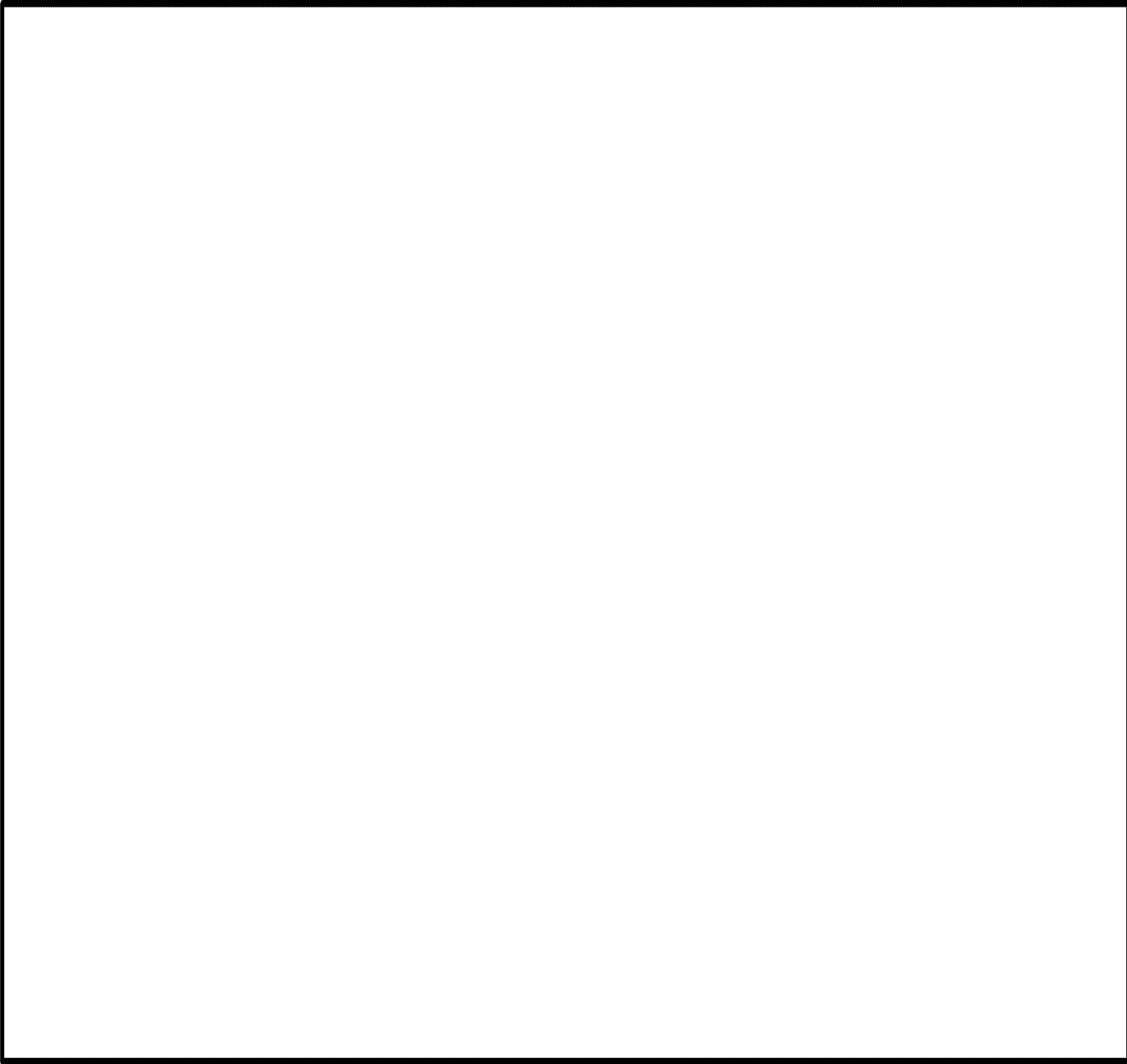
# INA §245(a)



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# INA §245(a) Requirements

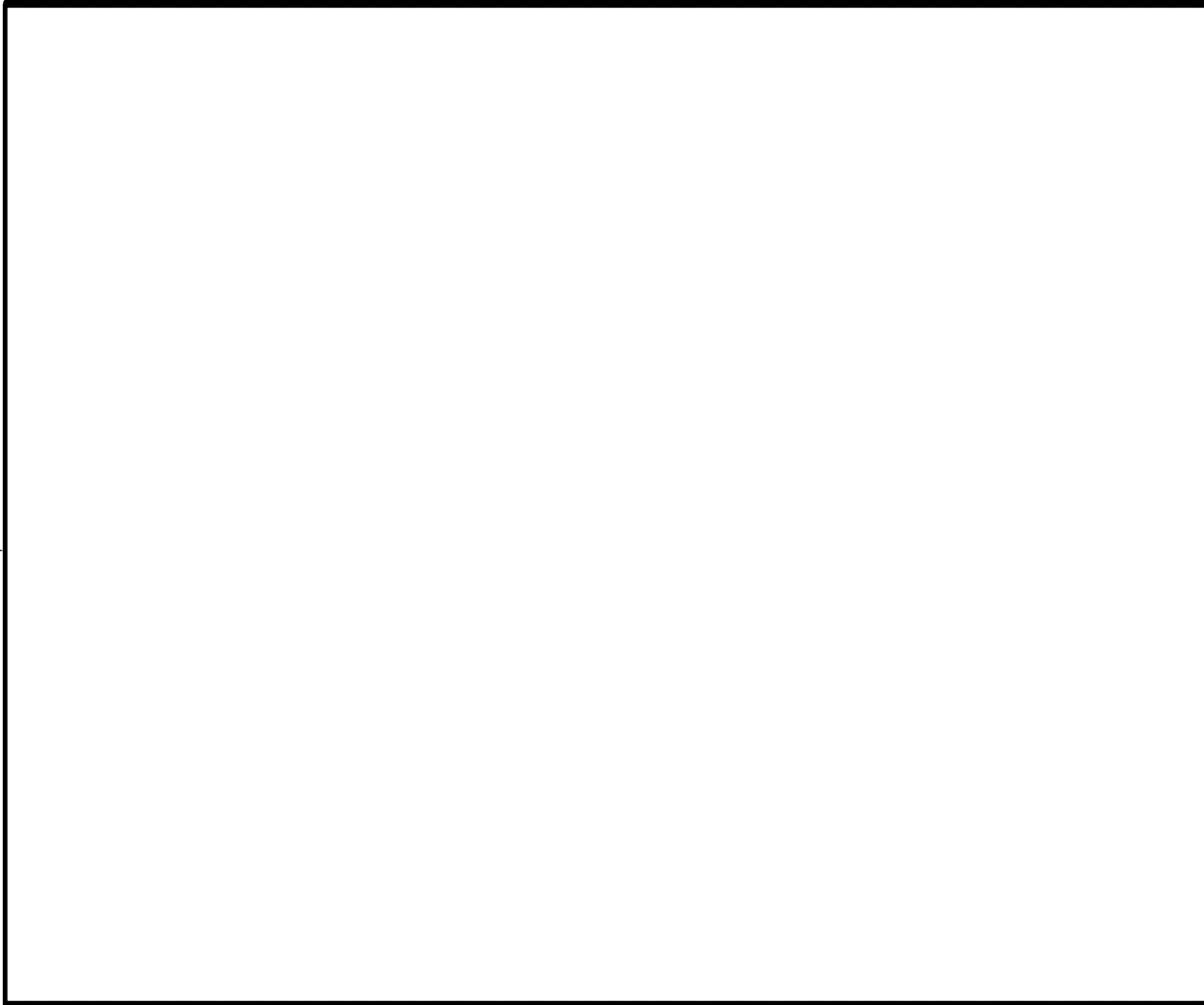
Out-of-Scope



U.S. Citizenship  
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# INA §245(a) Requirements (cont.)

Out-of-Scope

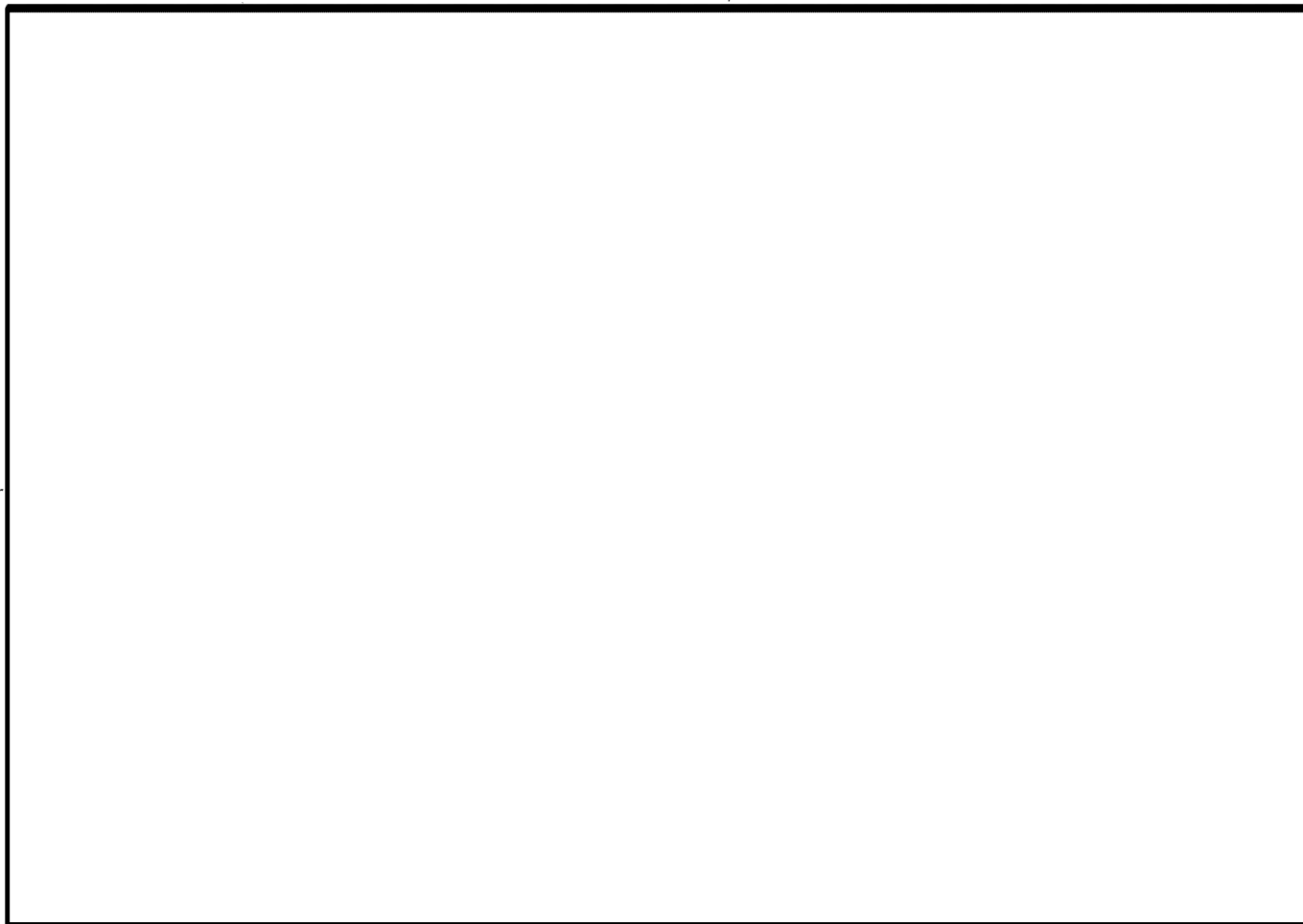


U.S. Citizenship  
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**Form I-485**

# INA §245(a) Requirements (cont.)

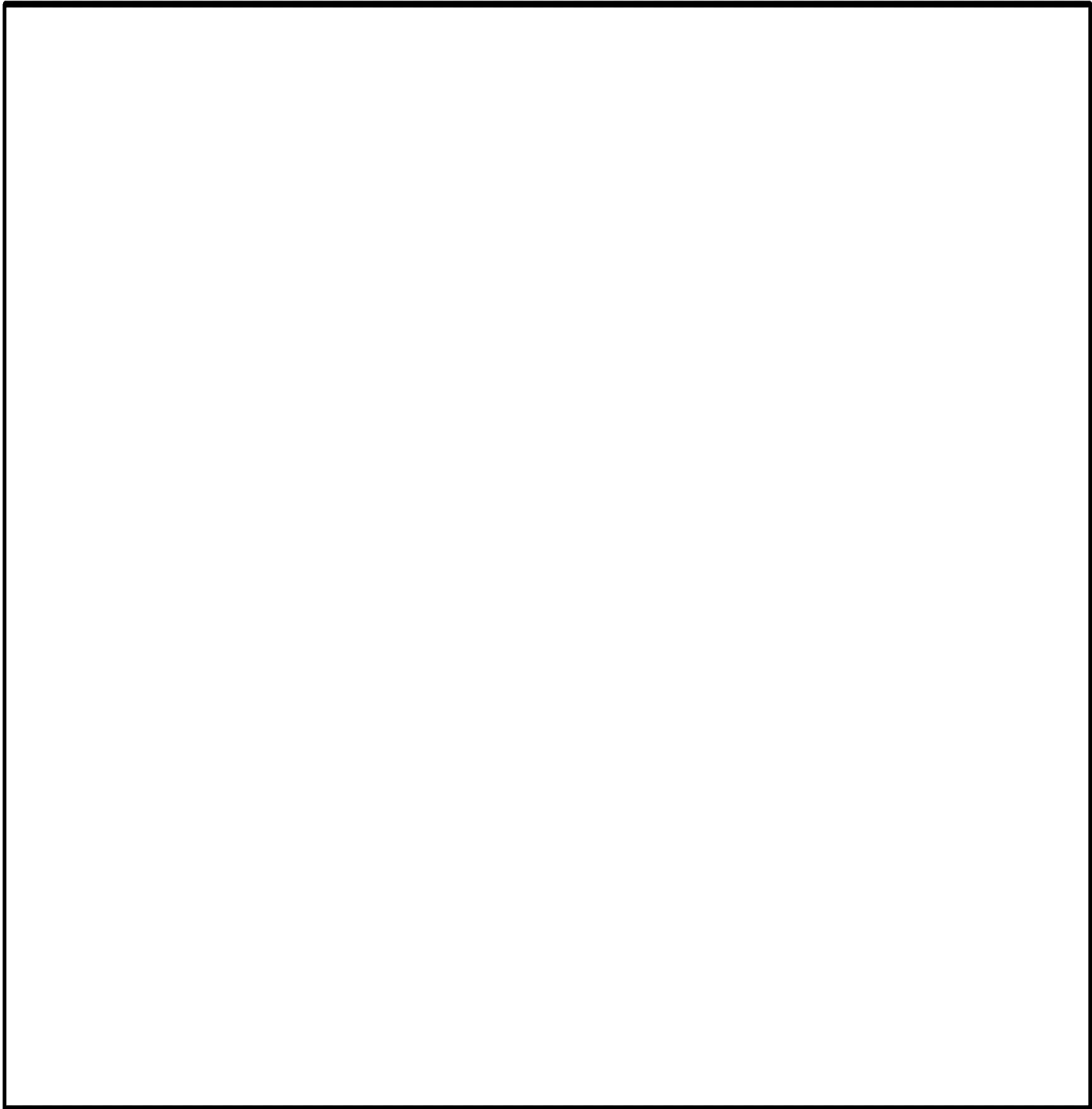
Out-of-Scope



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and Immigration  
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Out-of-Scope

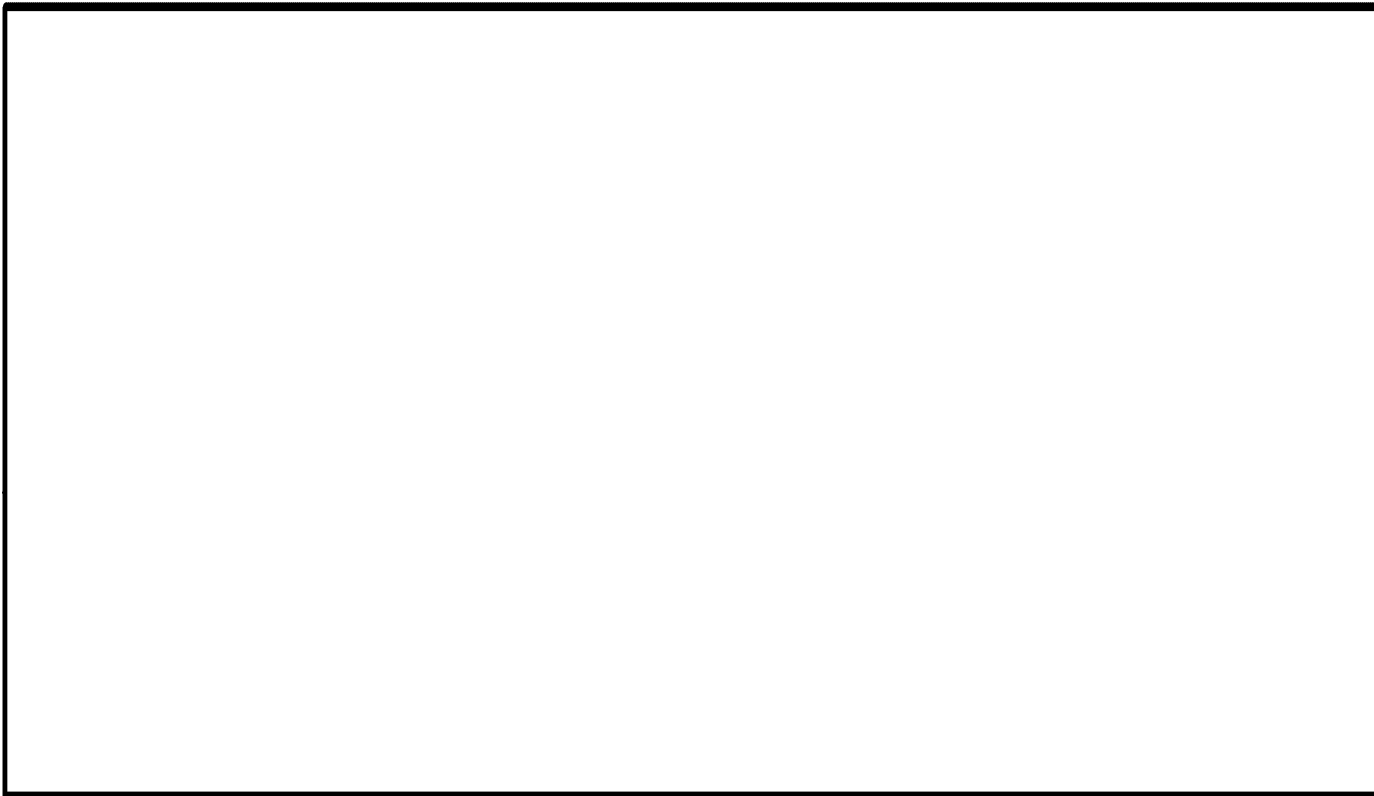
# INA §245(a) Requirements (cont.)



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# INA §245(a) Requirements (cont.)

Out-of-Scope

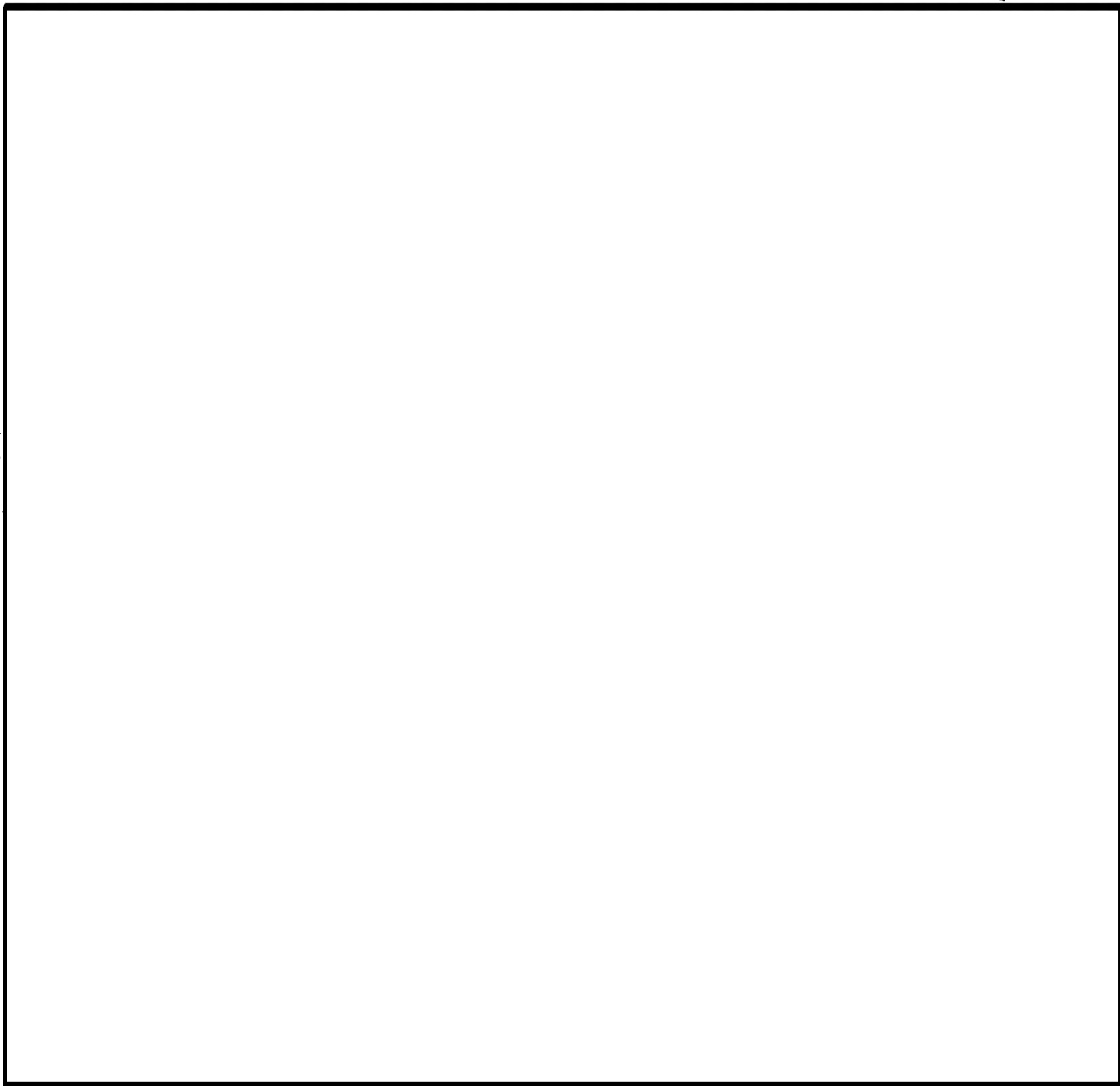


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and Immigration  
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# INA §245(a) Requirements (cont.)

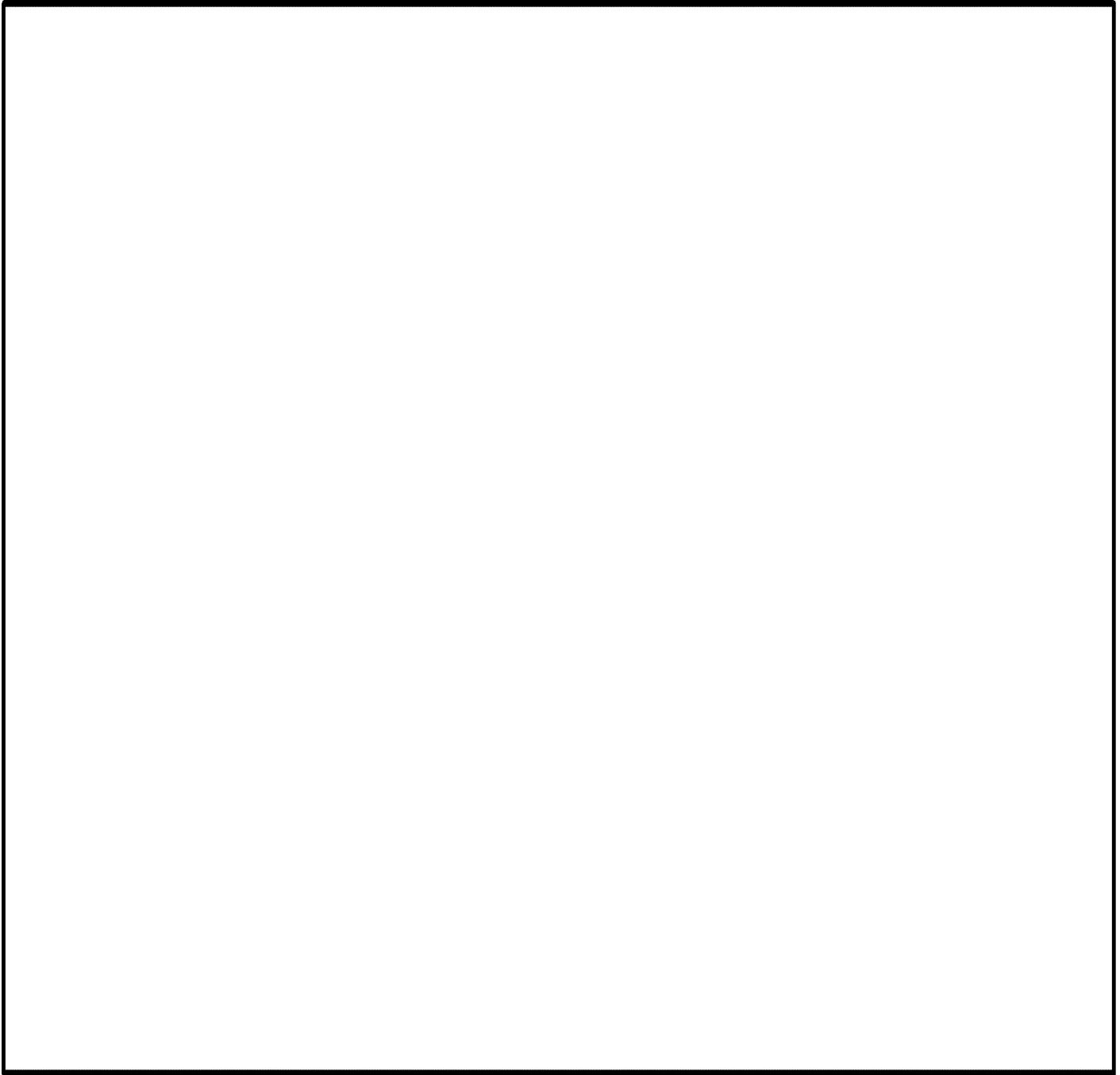
Out-of-Scope



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# INA §245(a) Requirements (cont.)

Out-of-Scope



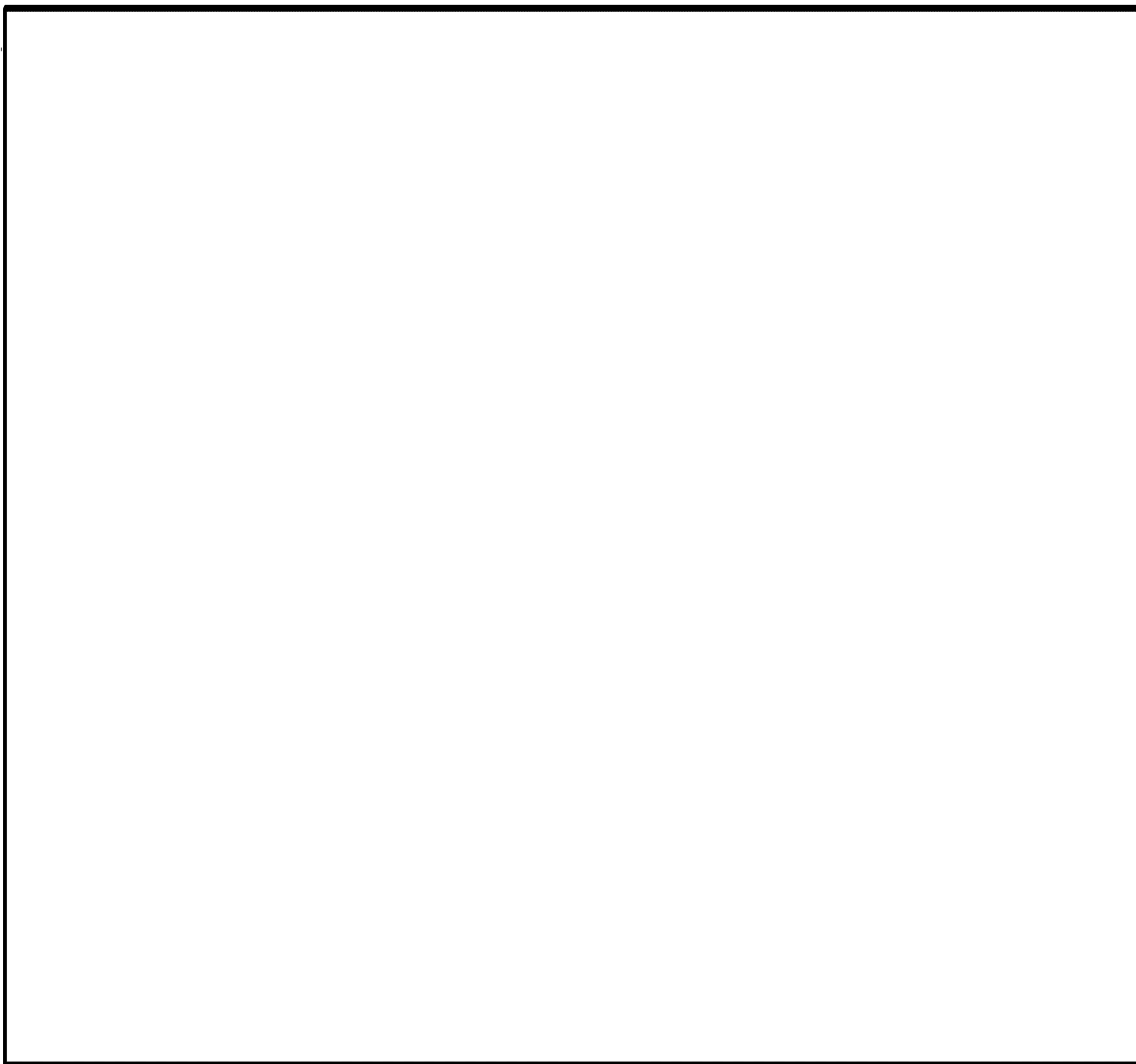
U.S. Citizenship  
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Out-of-Scope

Form I-130

# INA § 245(a) Requirements (cont.)

Out-of-Scope



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and Immigration  
Services

Out-of-Scope

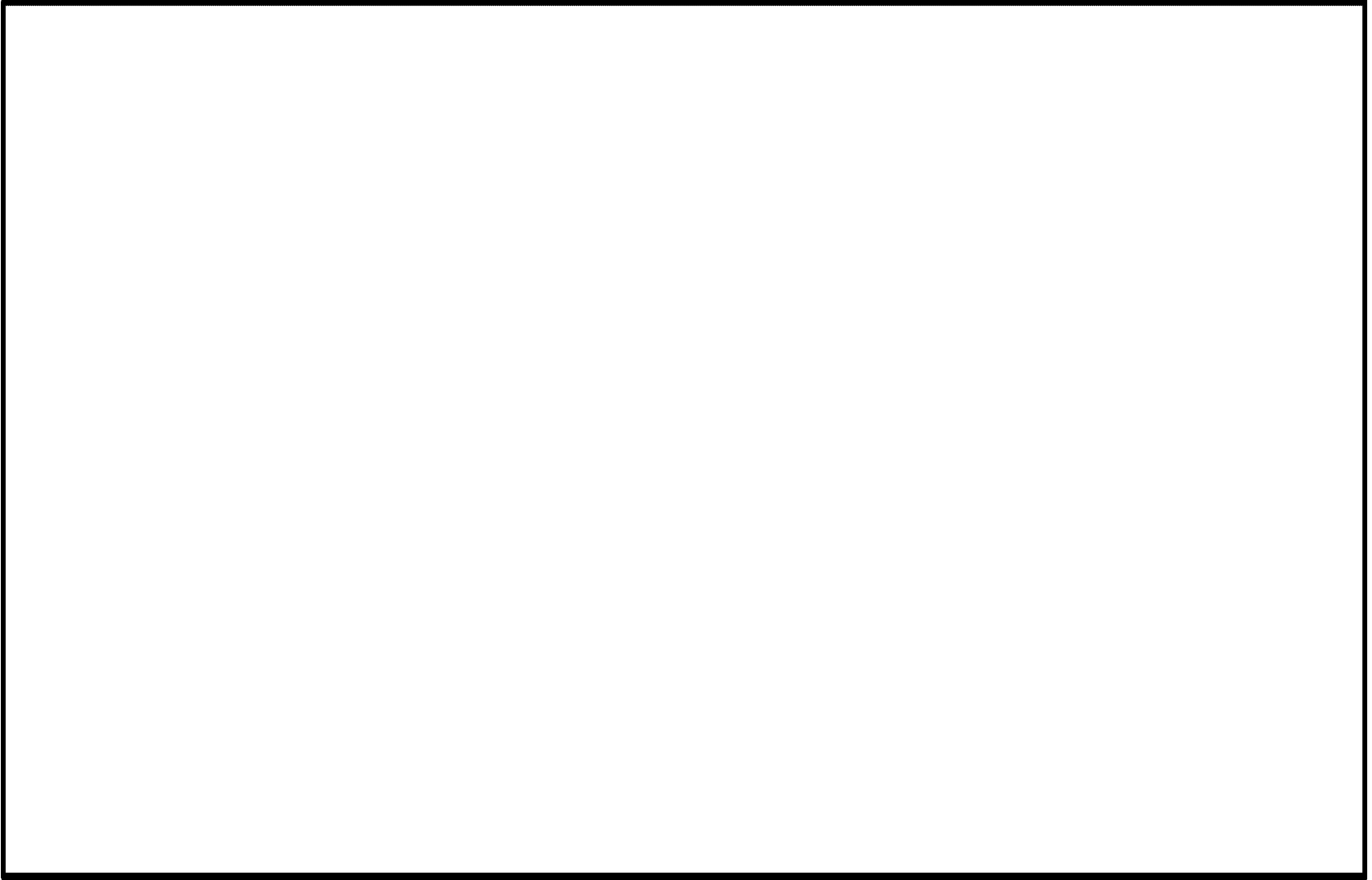
## INA §245(a) Requirements (cont.)



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# INA §245(a) Requirements (cont.)

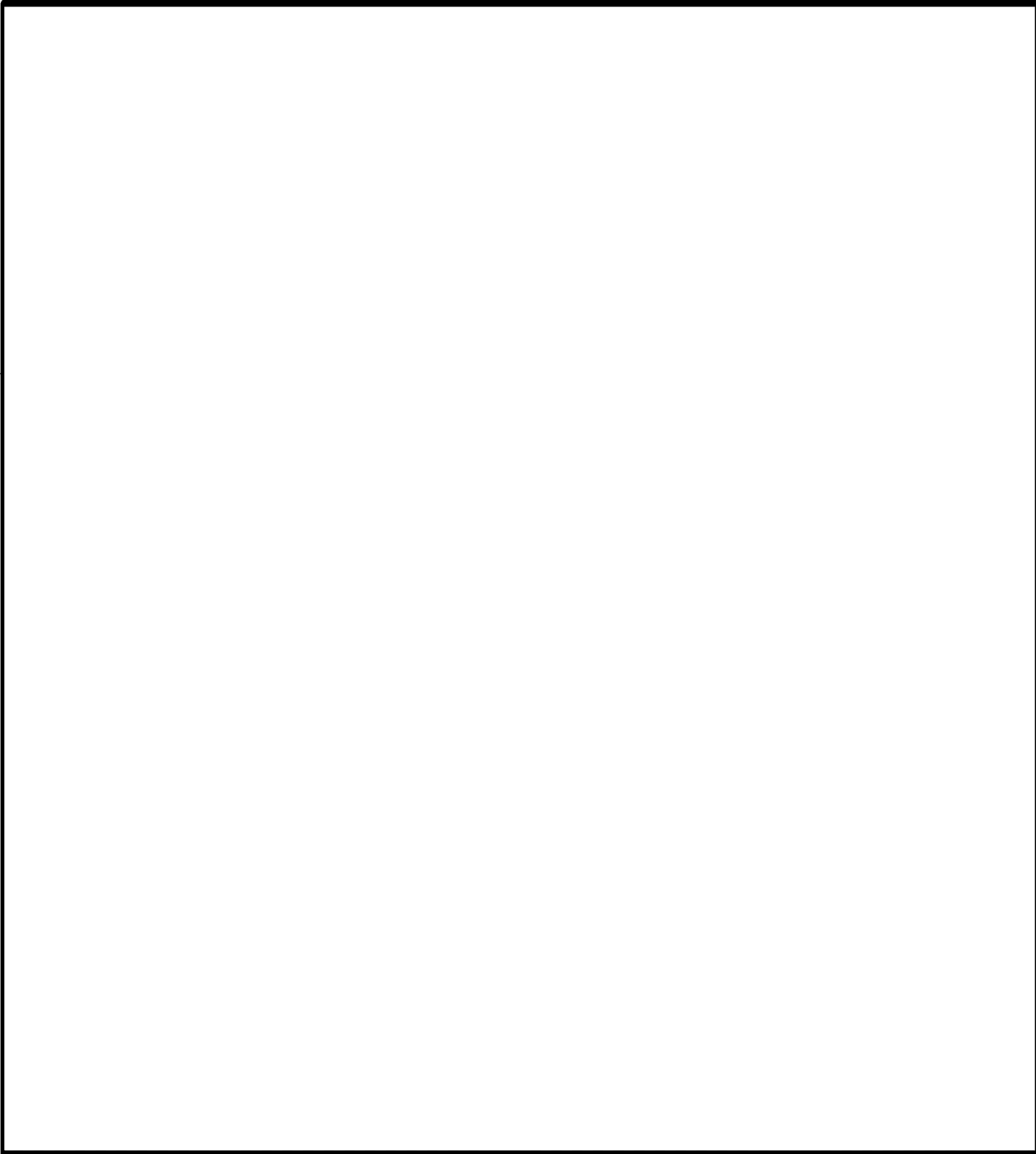
Out-of-Scope



U.S. Citizenship  
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# INA §245(a) Requirements (cont.)

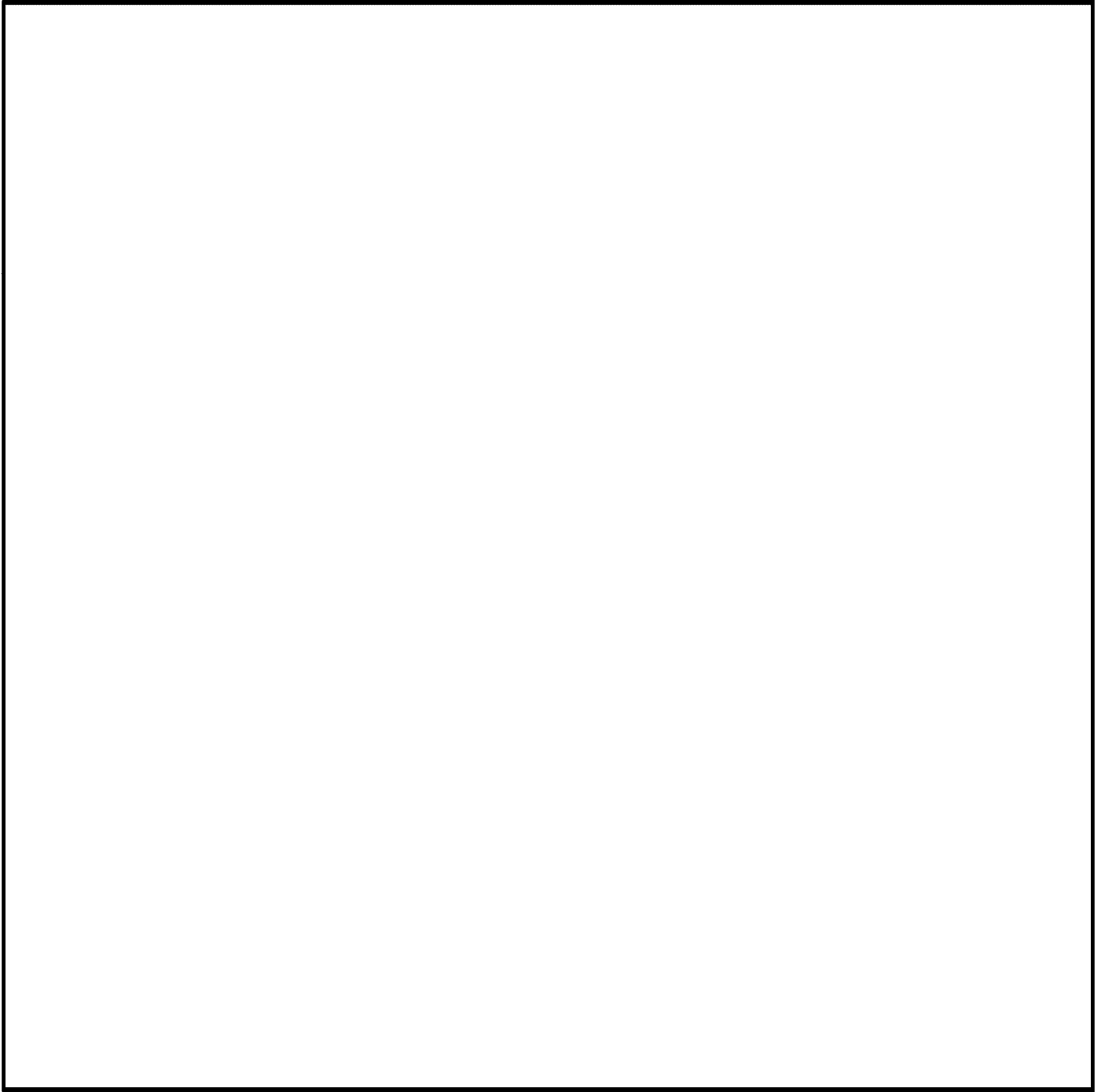
Out-of-Scope



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# INA §245(a) Requirements (cont.)

Out-of-Scope



U.S. Citizenship  
and Immigration  
Services



# INA §245(a) Requirements (cont.)

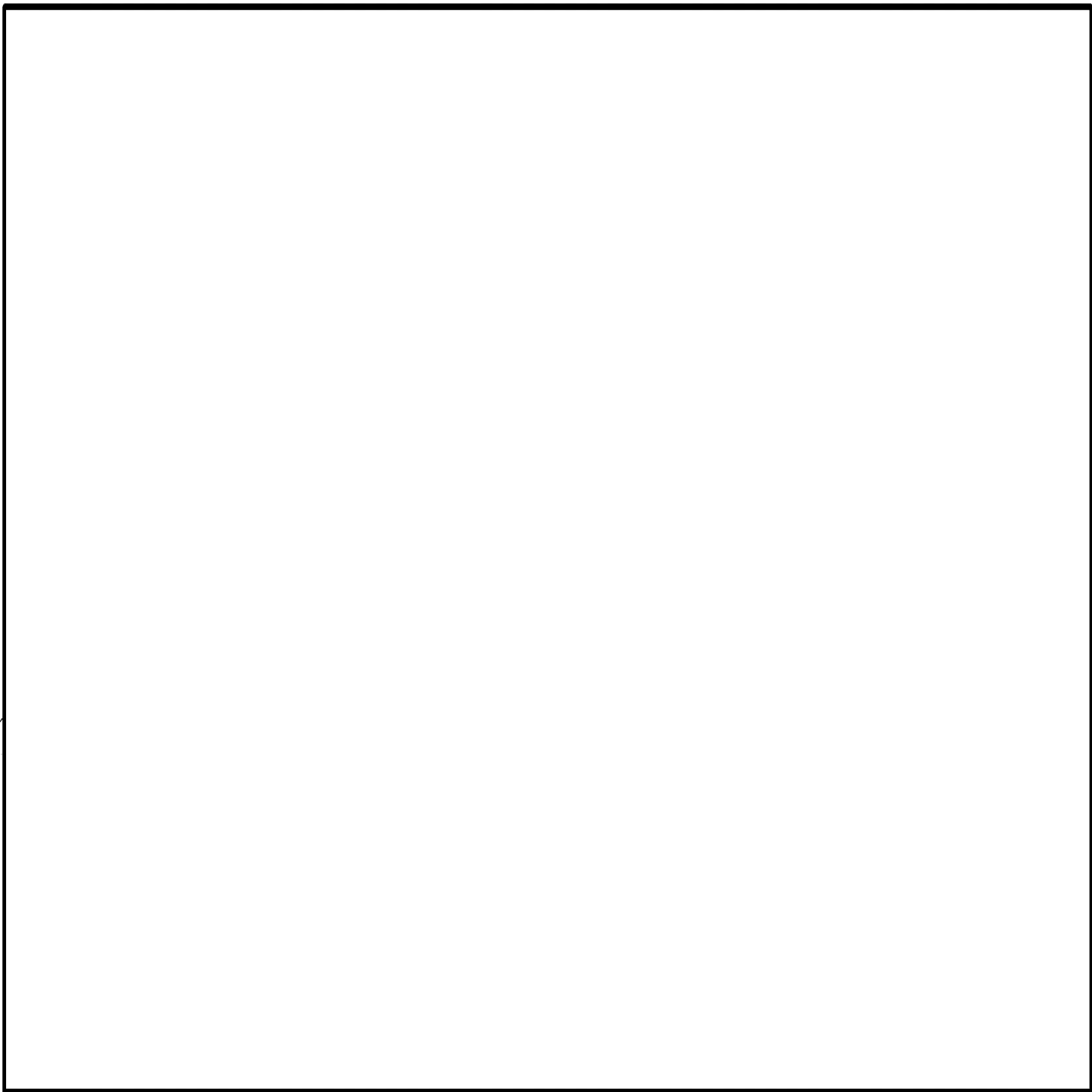
Out-of-Scope



U.S. Citizenship  
and Immigration  
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# INA §245(a) Requirements (cont.)

Out-of-Scope



U.S. Citizenship  
and Immigration  
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# Visa Bulletin

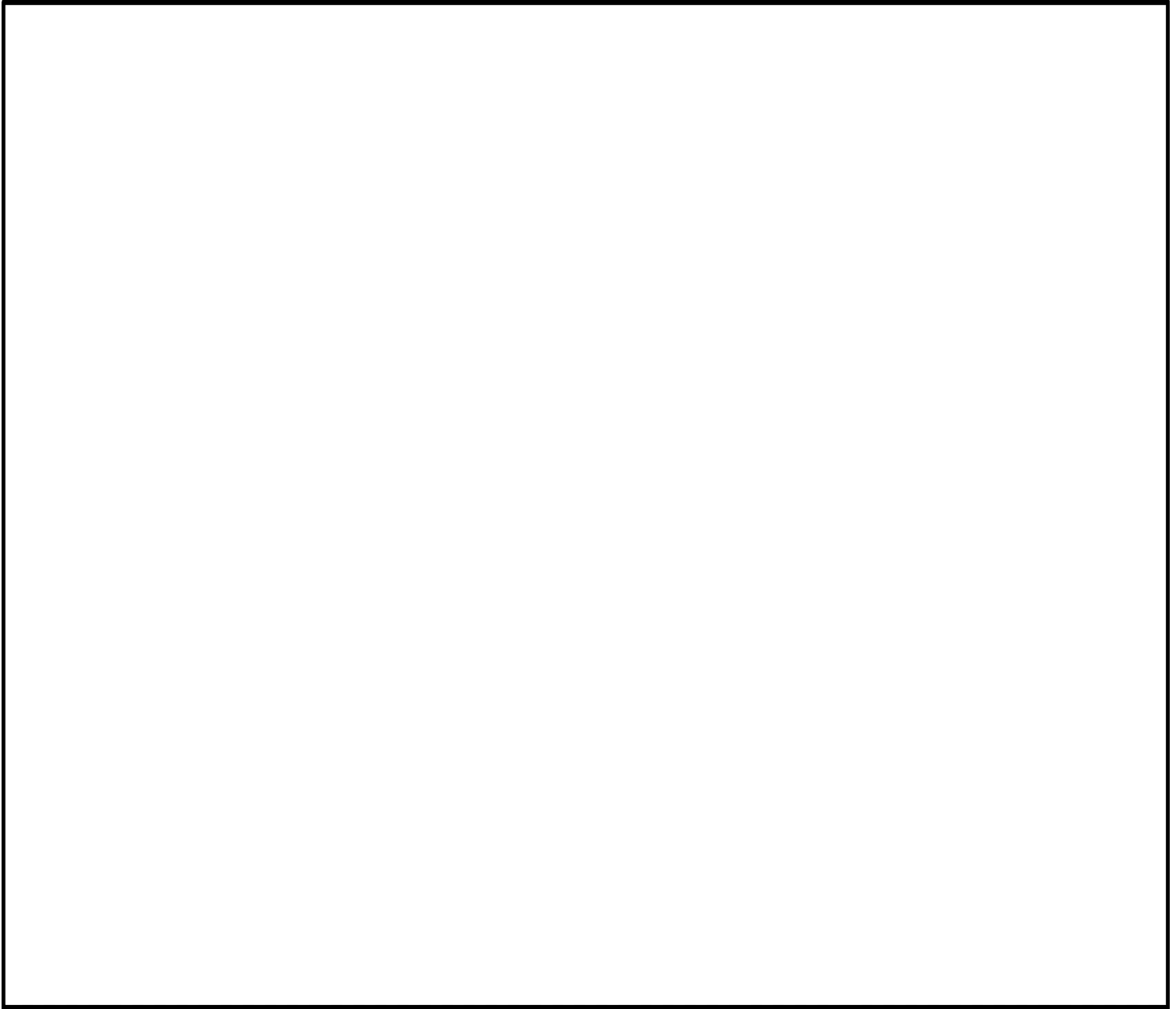
## Department of State



U.S. Citizenship  
and Immigration  
Services

# INA §245(a) Requirements (cont.)

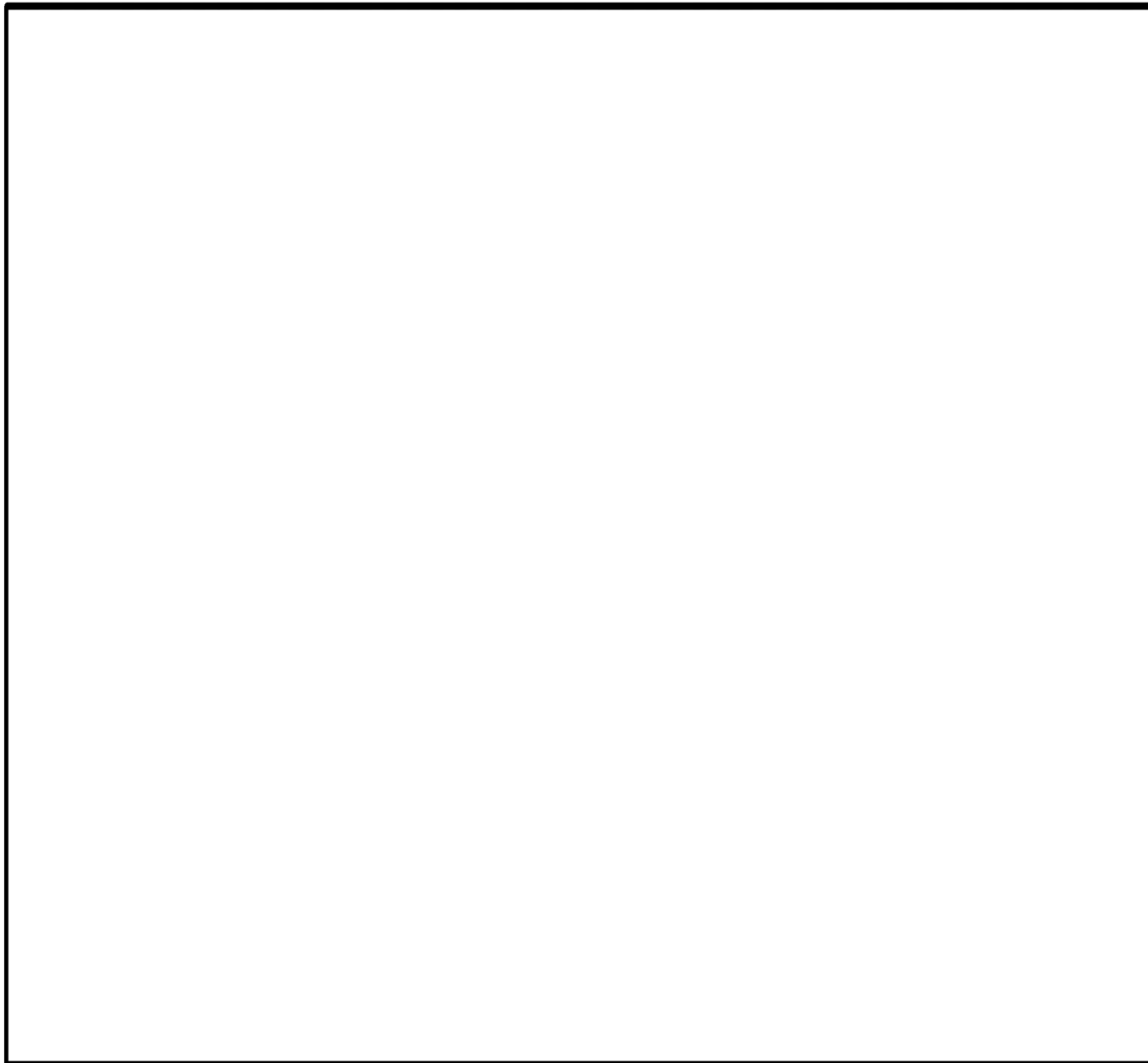
Out-of-Scope



U.S. Citizenship  
and Immigration  
Services

# INA §245(a) Requirements (cont.)

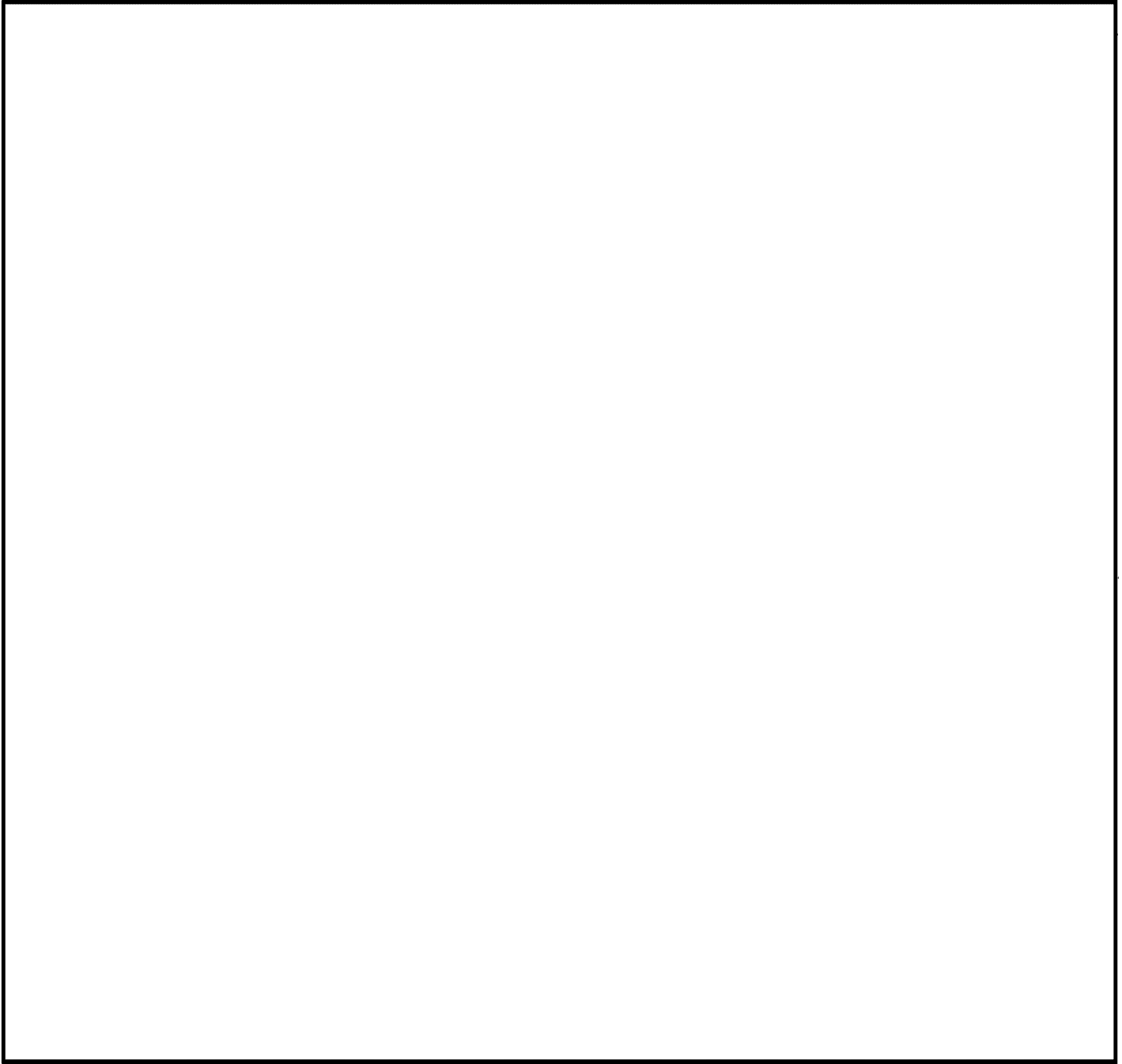
Out-of-Scope



U.S. Citizenship  
and Immigration  
Services

# INA §245(a) Requirements (cont.)

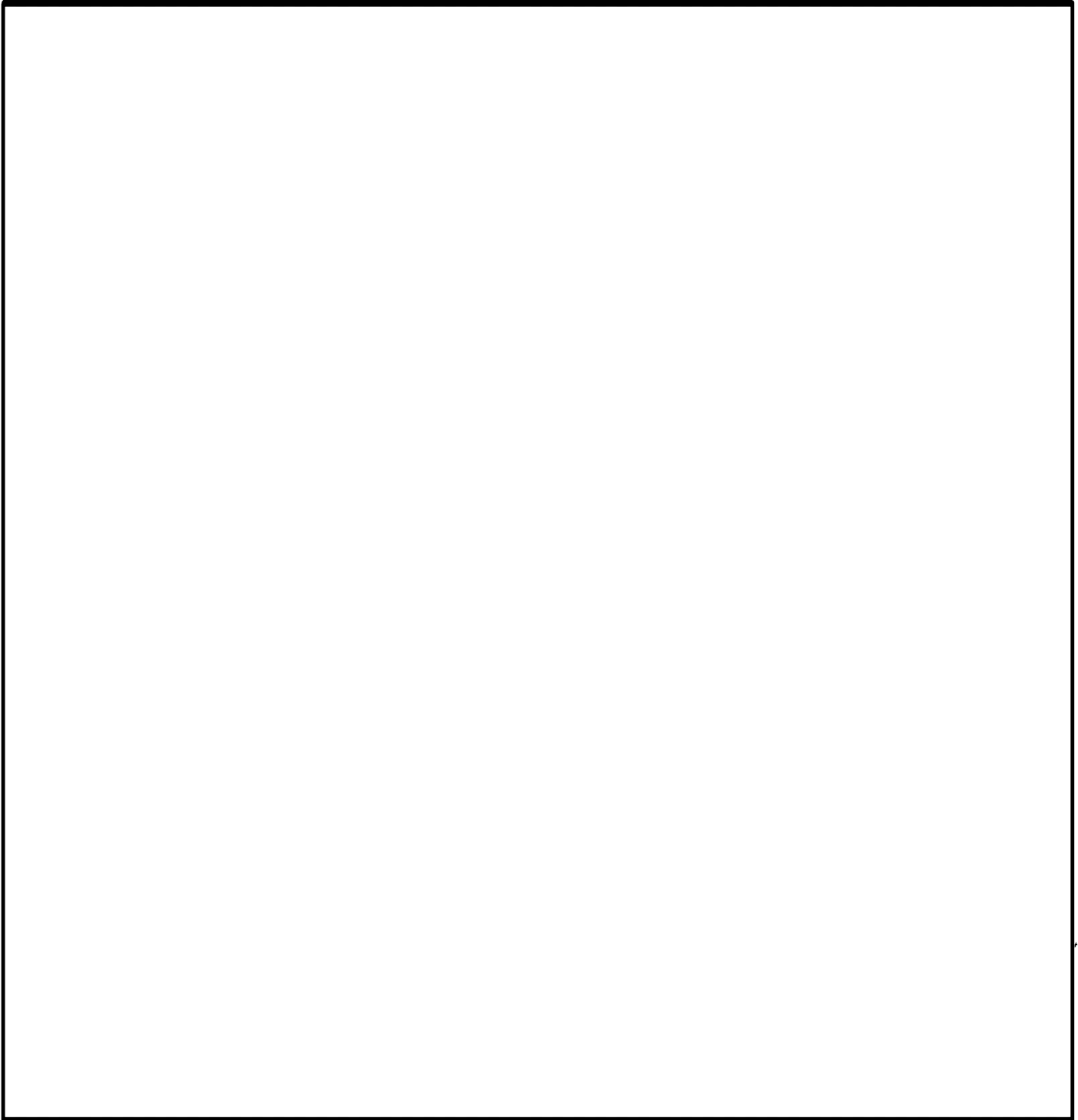
Out-of-Scope



U.S. Citizenship  
and Immigration  
Services

# INA §245(a) Requirements (cont.)

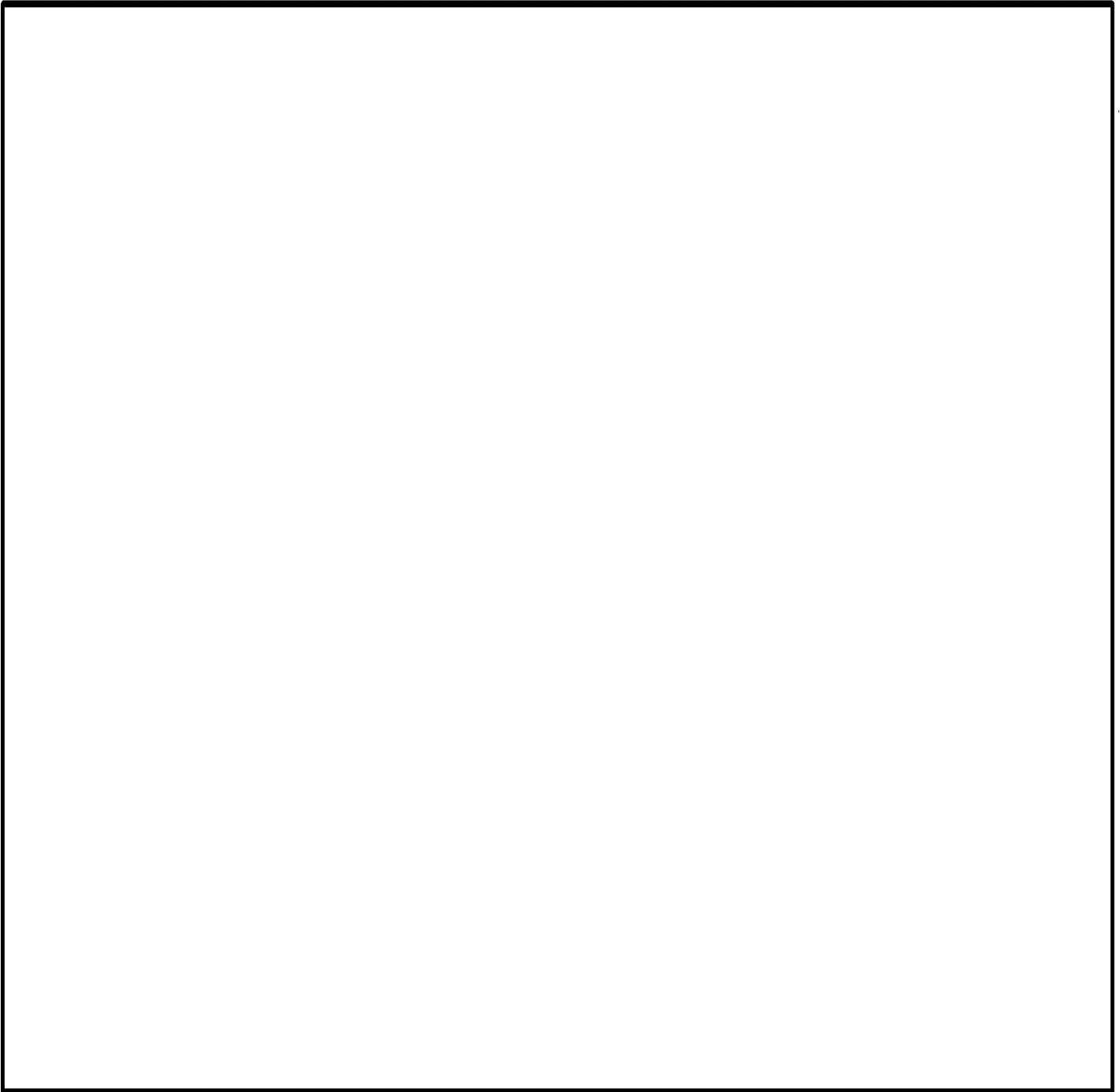
Out-of-Scope



U.S. Citizenship  
and Immigration  
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# INA §245(a) Requirements (cont.)

Out-of-Scope

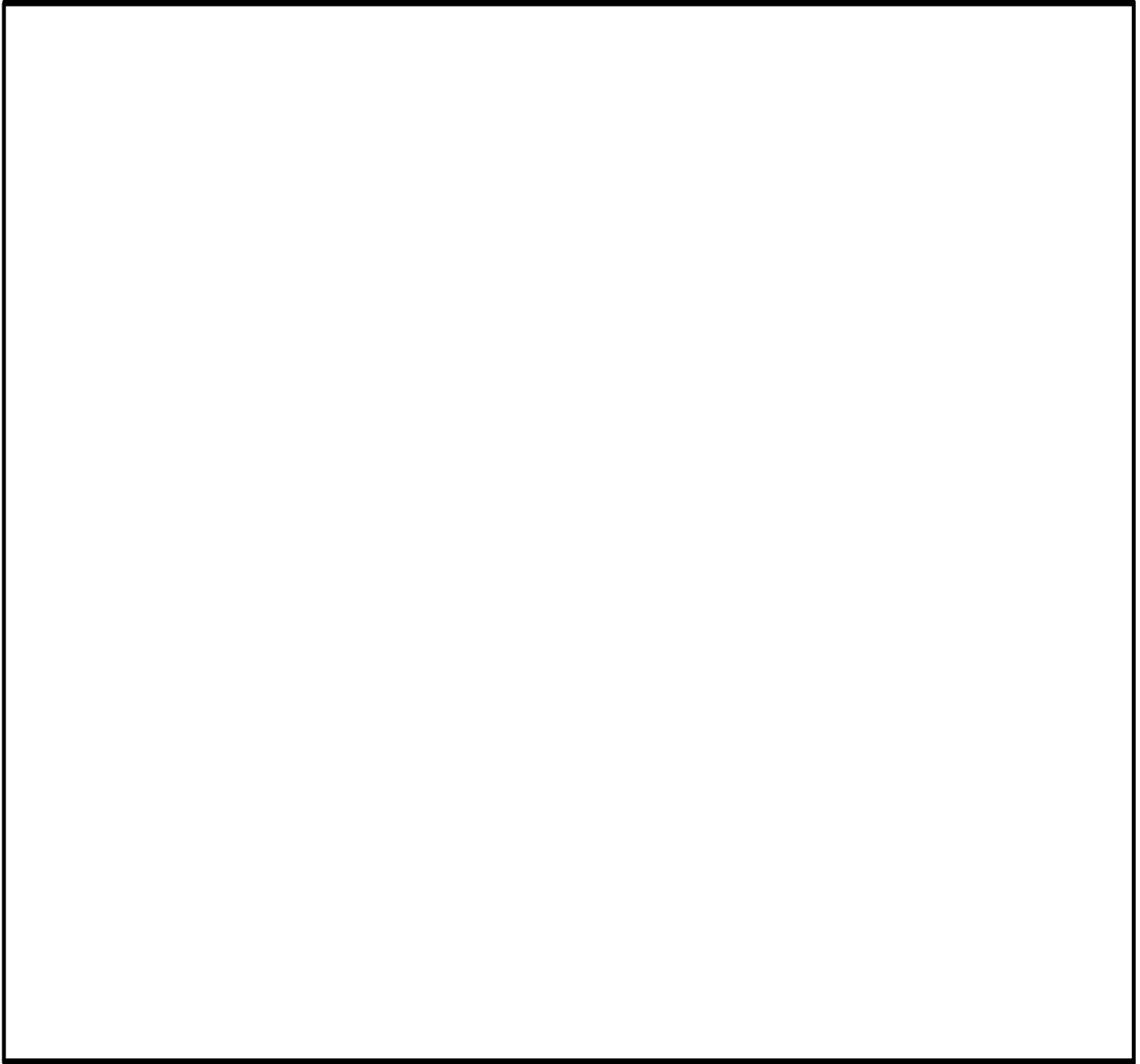


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# INA §245(a) Requirements (cont.)

Out-of-Scope



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# INA §245(a) Requirements (cont.)

Out-of-Scope



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## INA §245(a) Requirements (cont.)

### 6) Alien must be admissible

Pursuant to INA §212

Two of the ten grounds of inadmissibility require submission of additional documentation to overcome inadmissibility:

- Public Charge – INA §212(a)(4)
  - I-864 or I-864EZ, Affidavit of Support
- Health-related – INA §212(a)(1)
  - I-693, Medical Examination of Alien Seeking Adjustment of Status



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# INA § 245(a) Requirements (cont.)

## Affidavit of Support

Unless the alien qualifies for an exception, an affidavit of support (Form I-864 or Form I-864EZ) must be filed on behalf of any alien seeking adjustment of status on the basis of:

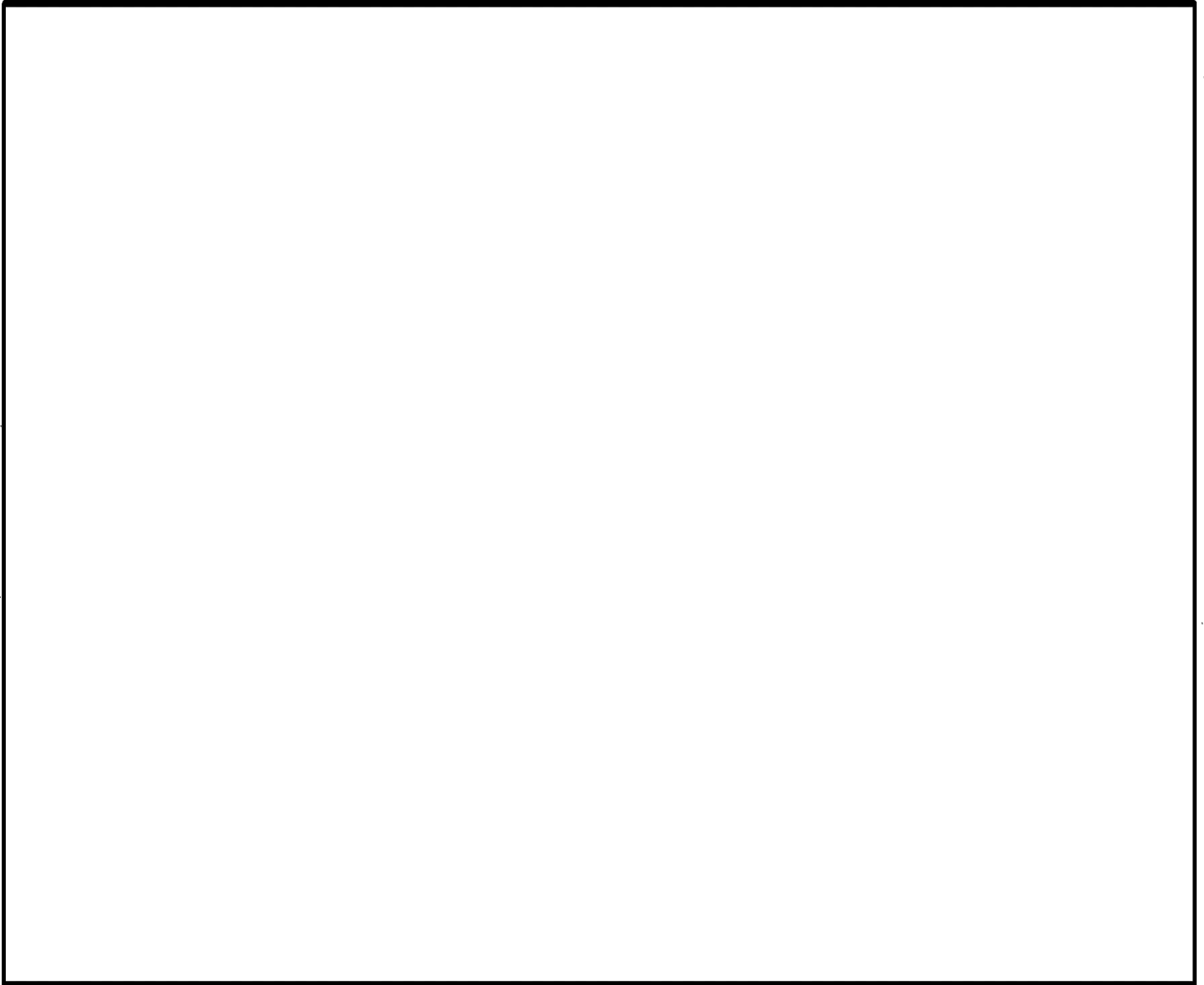
- Family-based petitions:
  - I-130
  - I-129F
  - I-600
- Employment-based:
  - I-140 filed by a qualifying relative or at least 5% or more ownership



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# INA § 245(a) Requirements (cont.)

Out-of-Scope



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# INA § 245(a) Requirements (cont.)

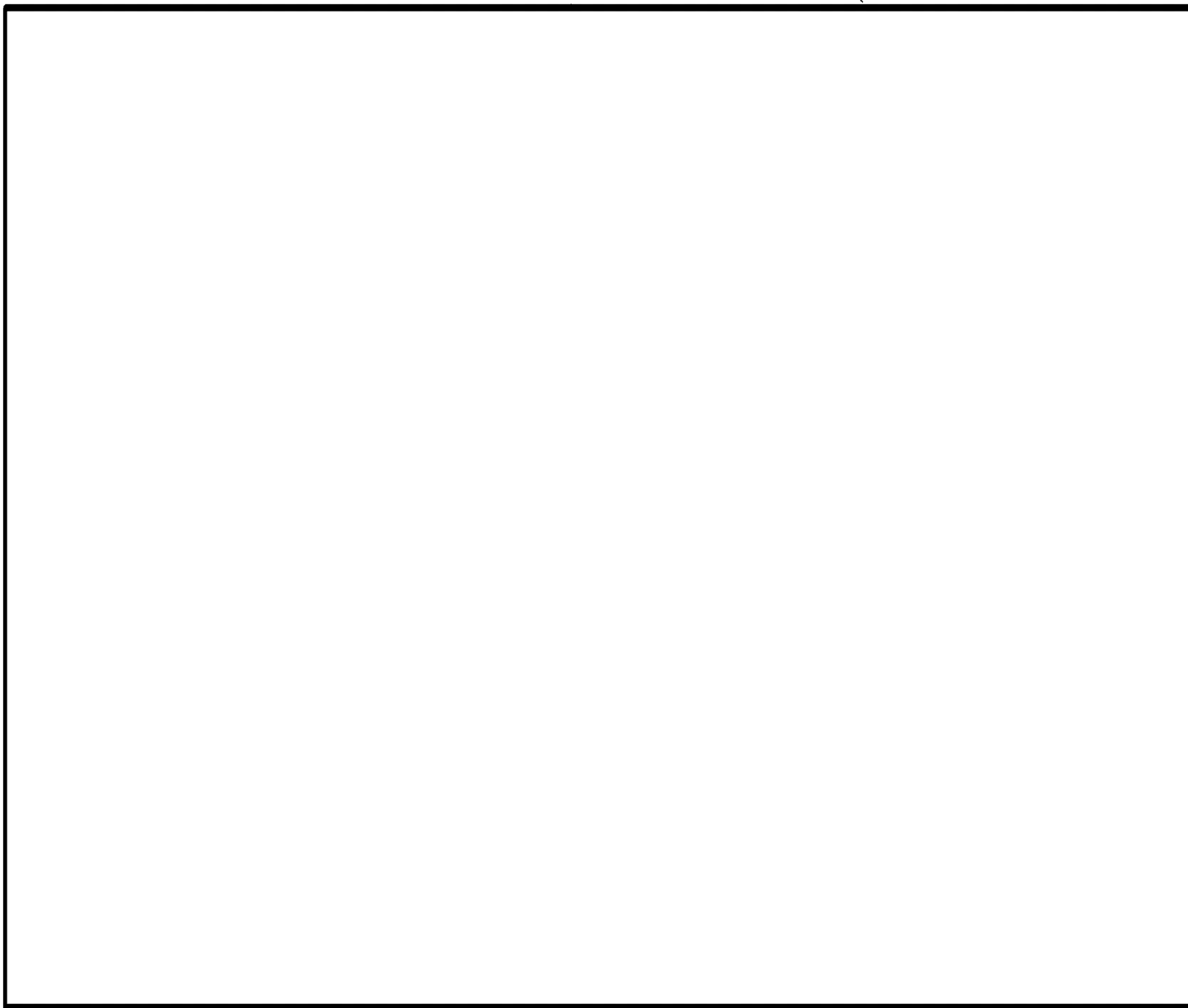
Out-of-Scope



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# INA § 245(a) Requirements (cont.)

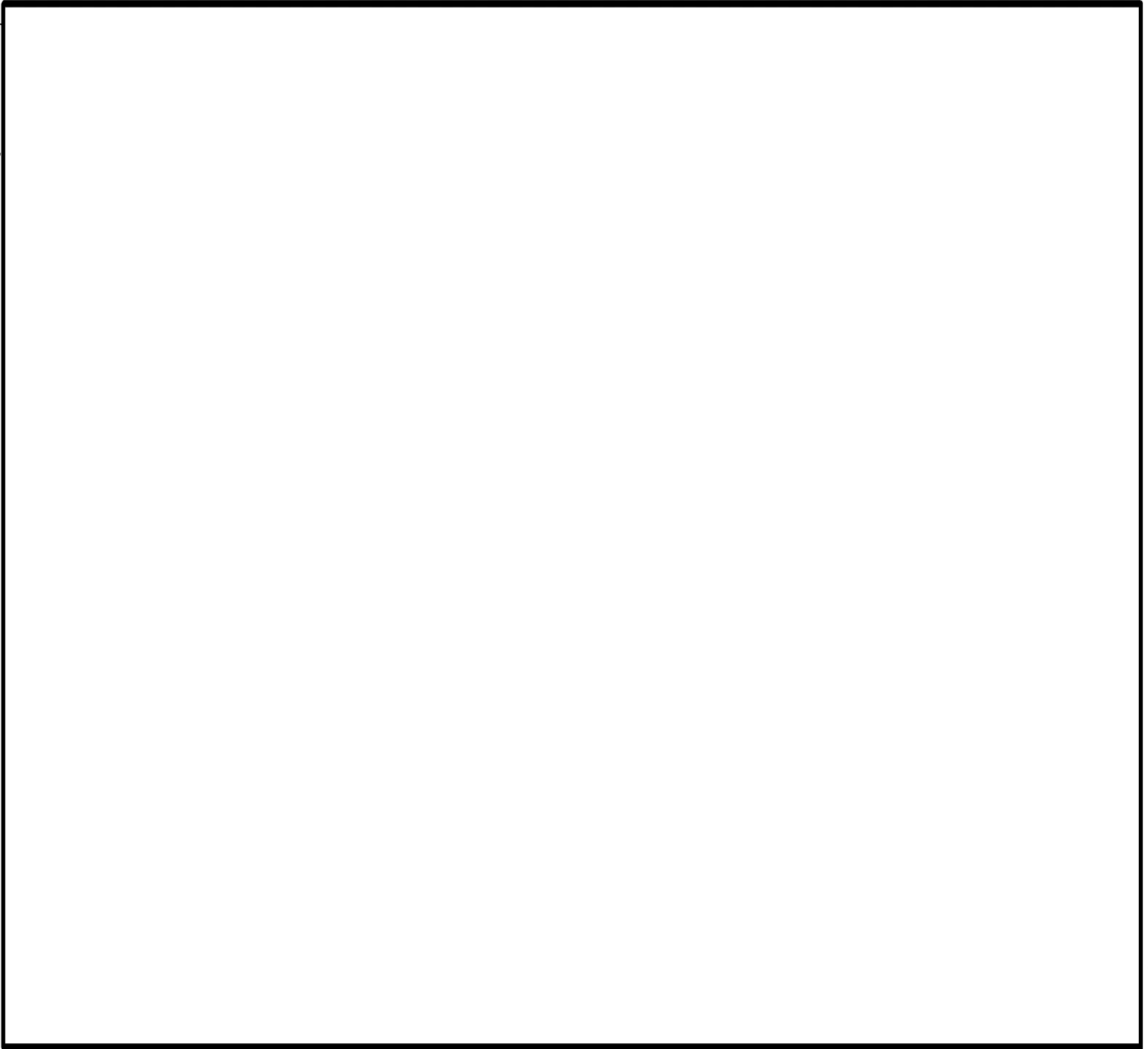
Out-of-Scope



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# INA § 245(a) Requirements (cont.)

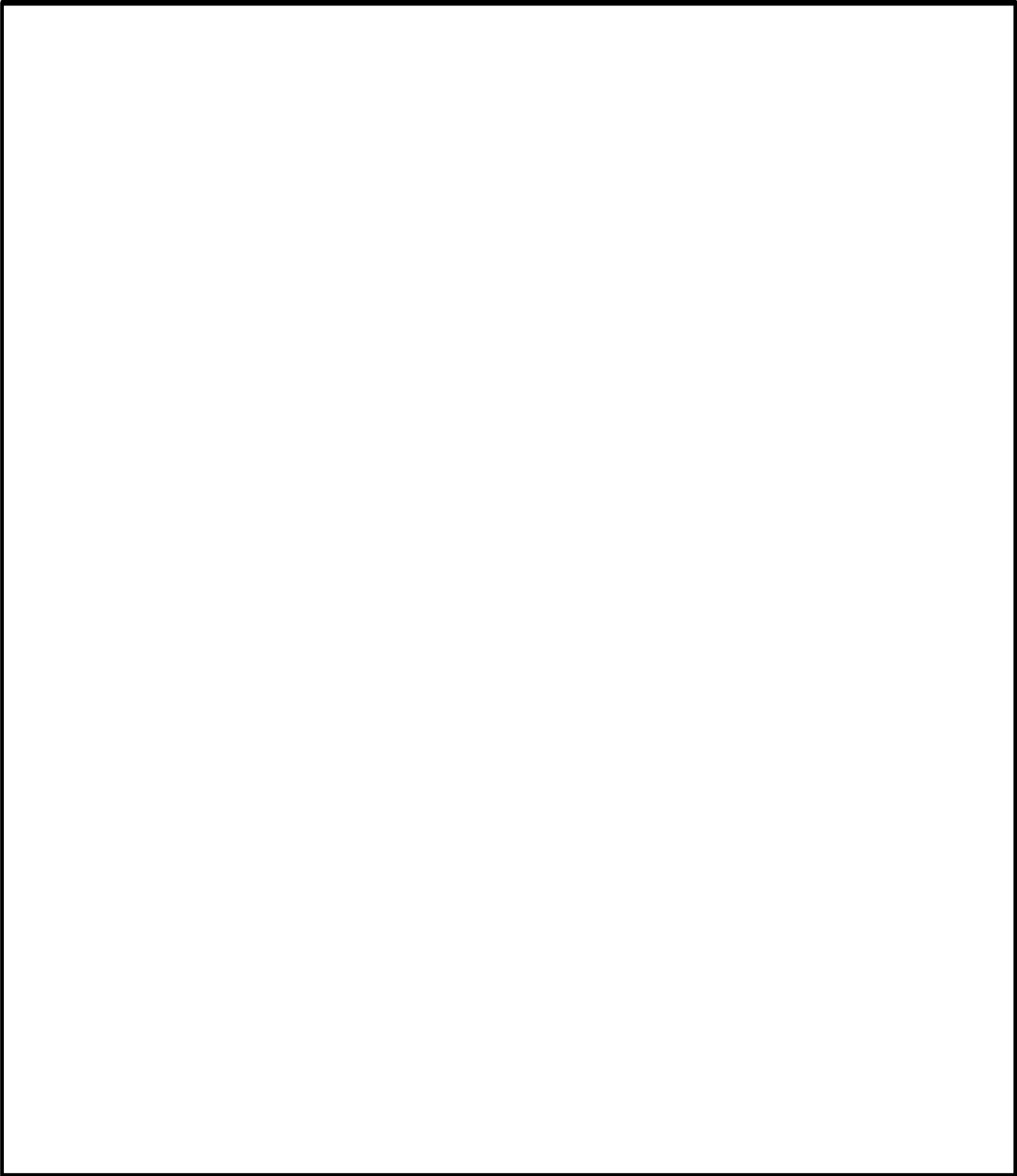
Out-of-Scope



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# INA § 245(a) Requirements (cont.)



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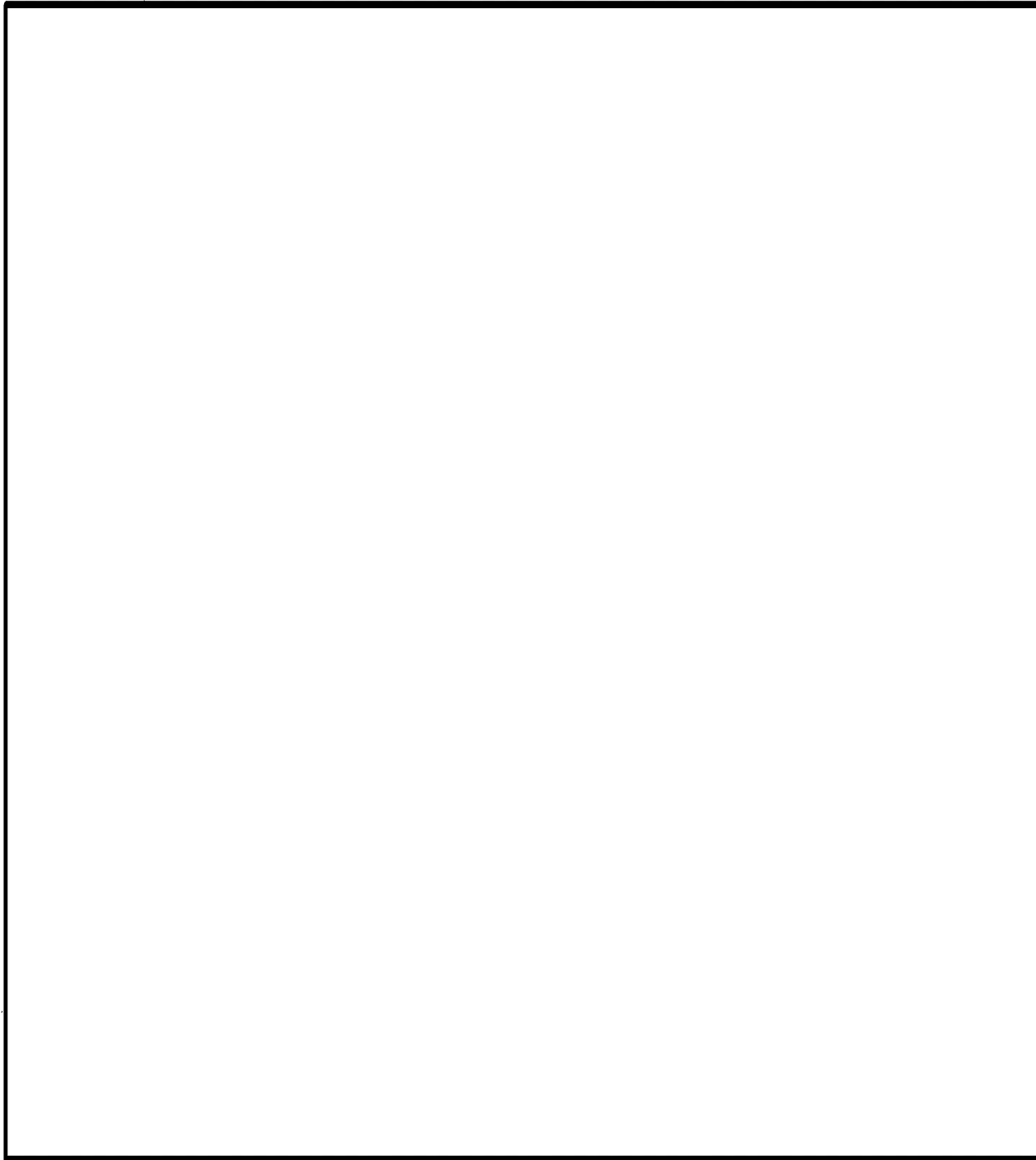
Out-of-Scope



**U.S. Citizenship  
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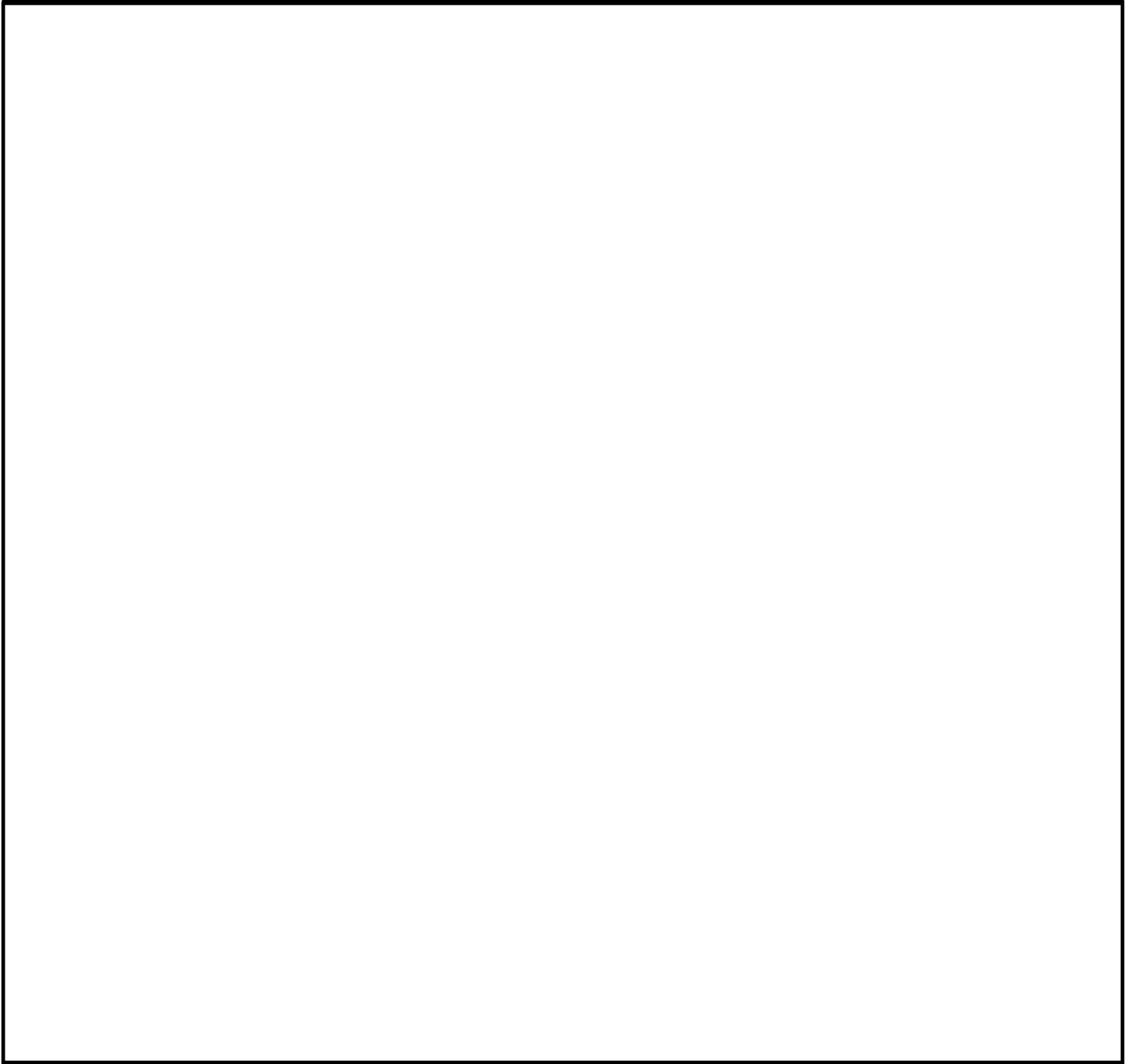
# Eight Bars to Adjustment – INA §245(c)



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# Eight Bars to Adjustment – INA §245(c) (cont.)

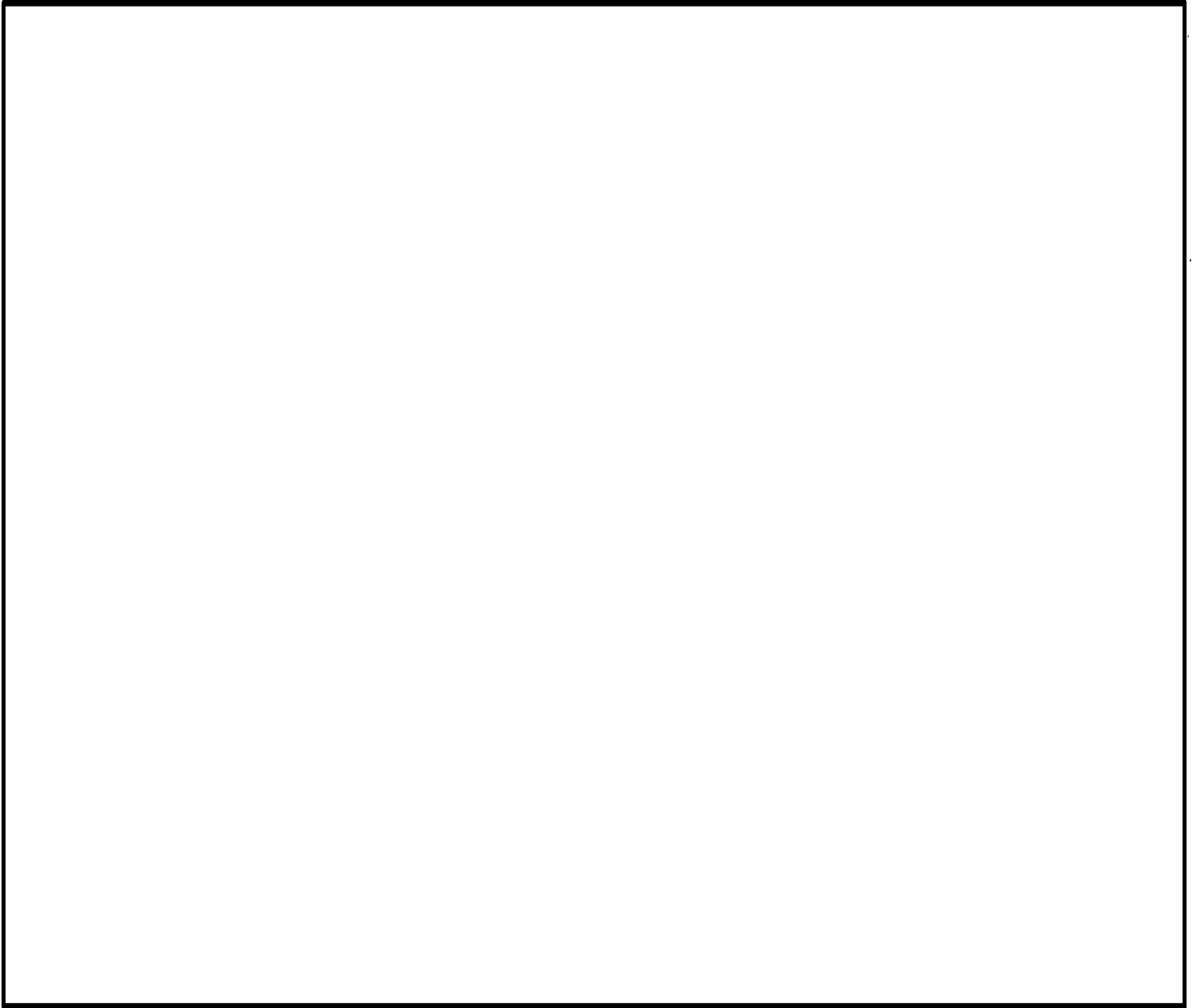
Out-of-Scope



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# Ineligible Aliens – 8 CFR 245.1(c)

Out-of-Scope



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and Immigration  
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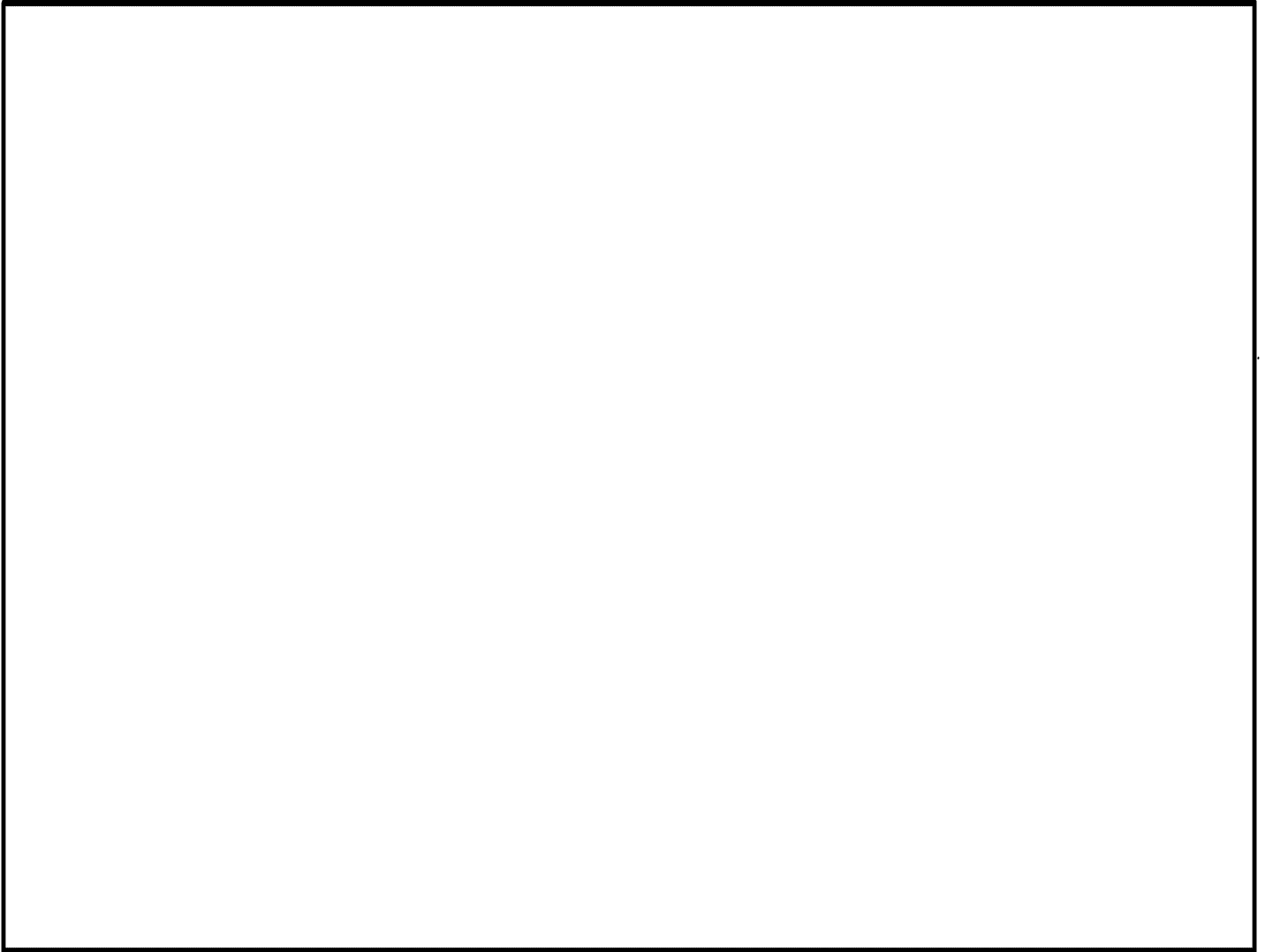
Out-of-Scope



U.S. Citizenship  
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# INA §245(k) Exception

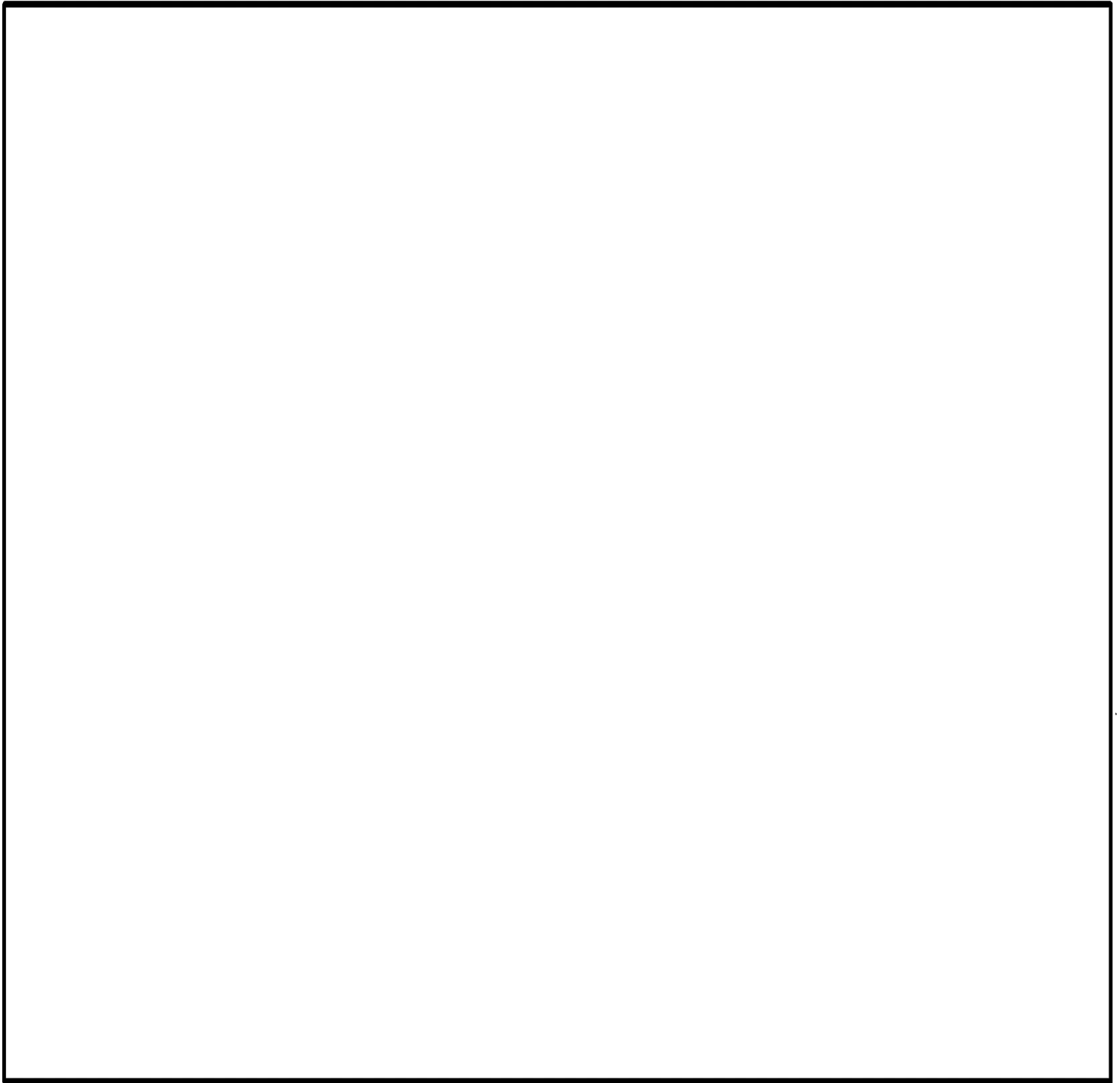
Out-of-Scope



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# INA §245(k) Exception – (cont.)

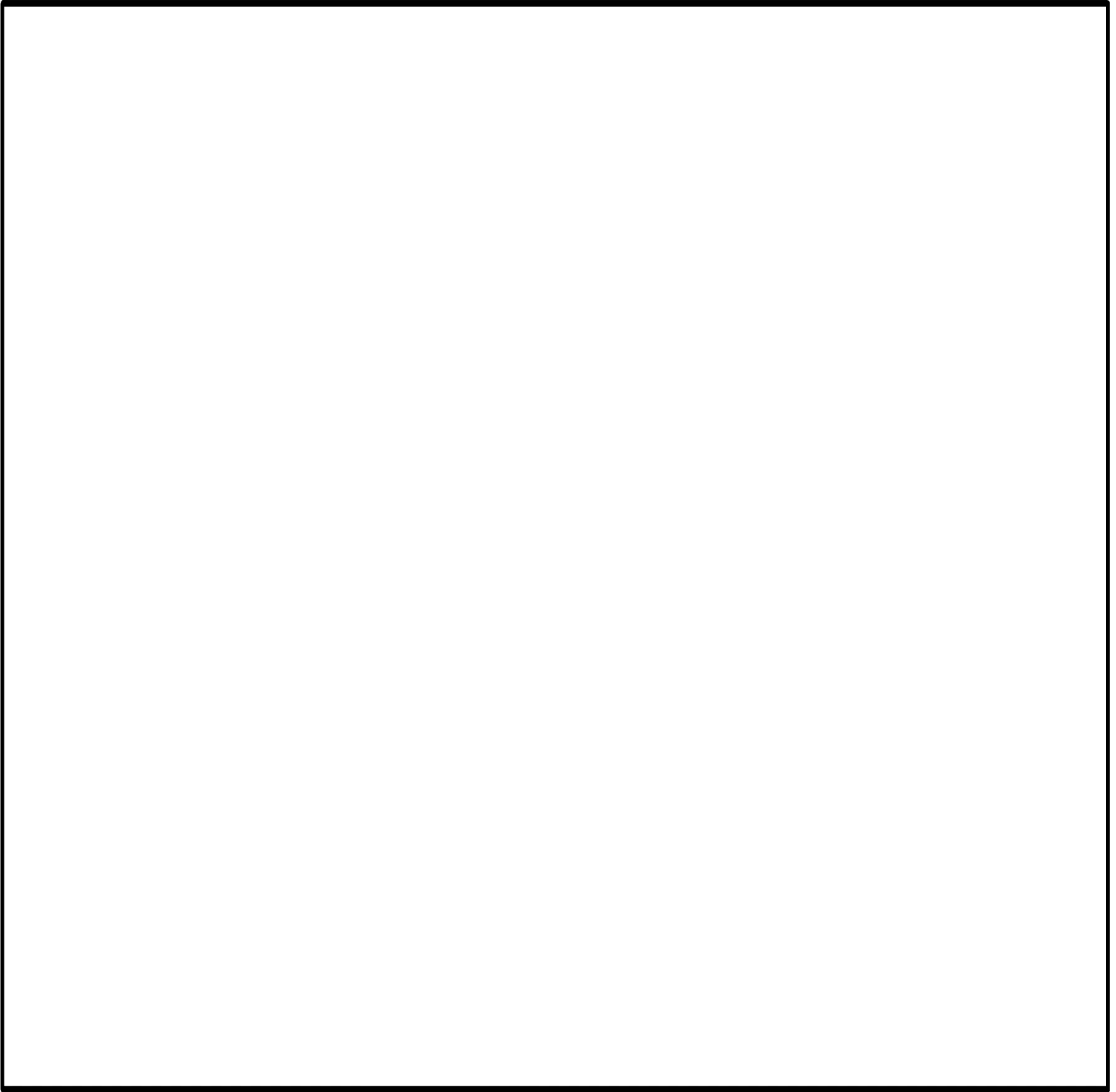


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and Immigration  
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# INA §245(k) Exception – (cont.)

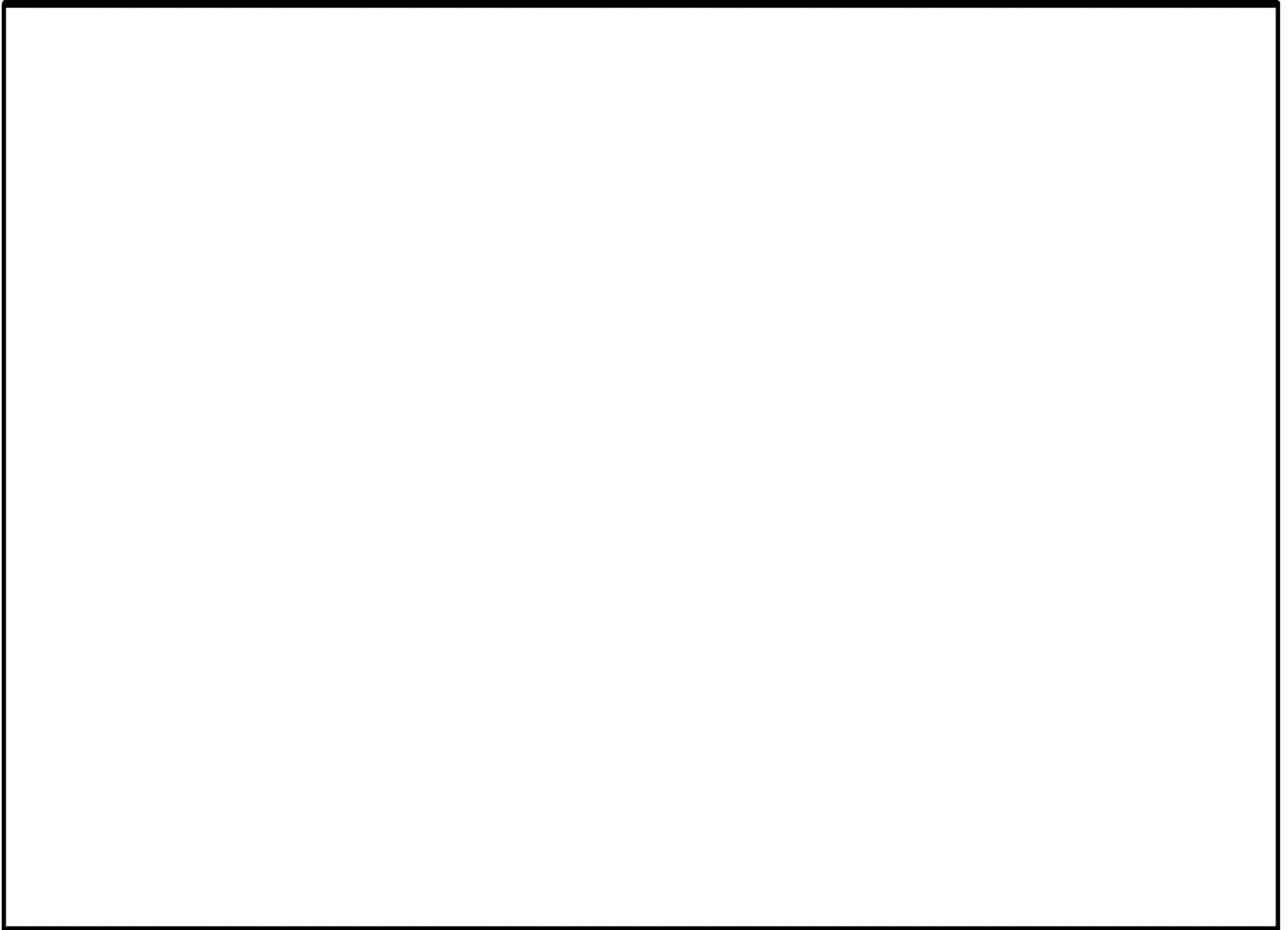
Out-of-Scope



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and Immigration  
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# INA §245(k) Exception – (cont.)

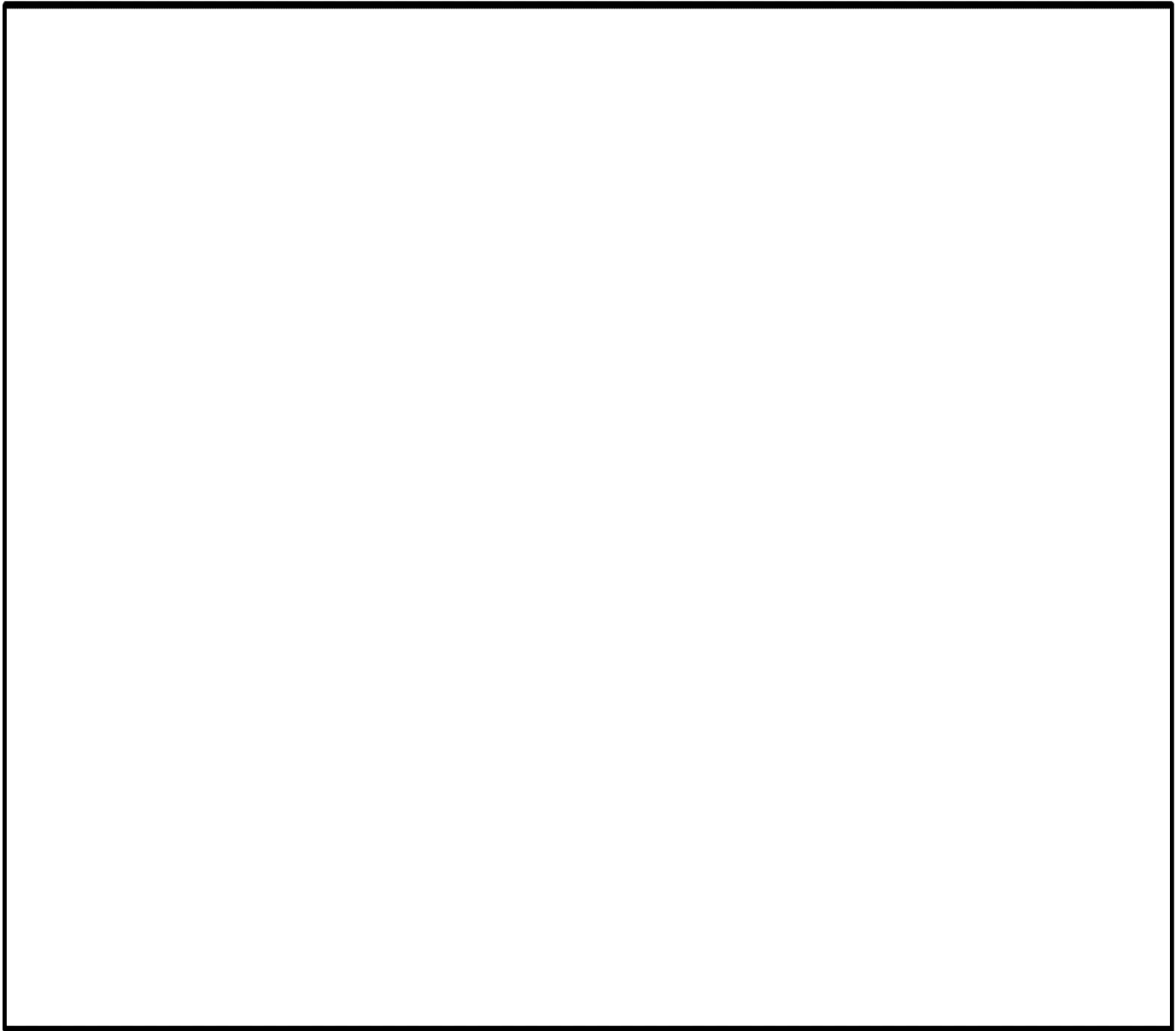
Out-of-Scope



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and Immigration  
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# INA §245(k) Exception – (cont.)

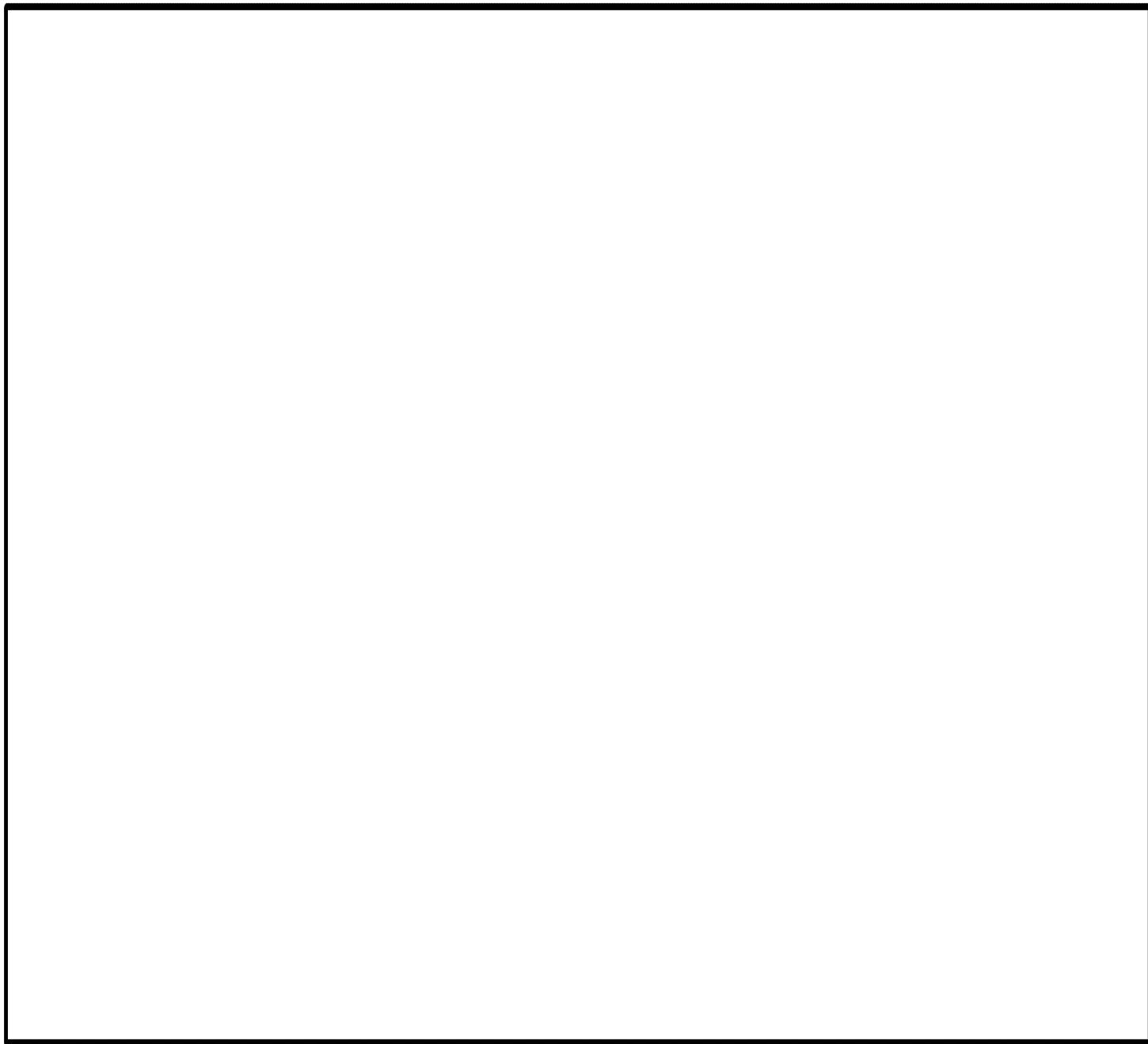
Out-of-Scope



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and Immigration  
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# INA §245(k) Exception – (cont.)

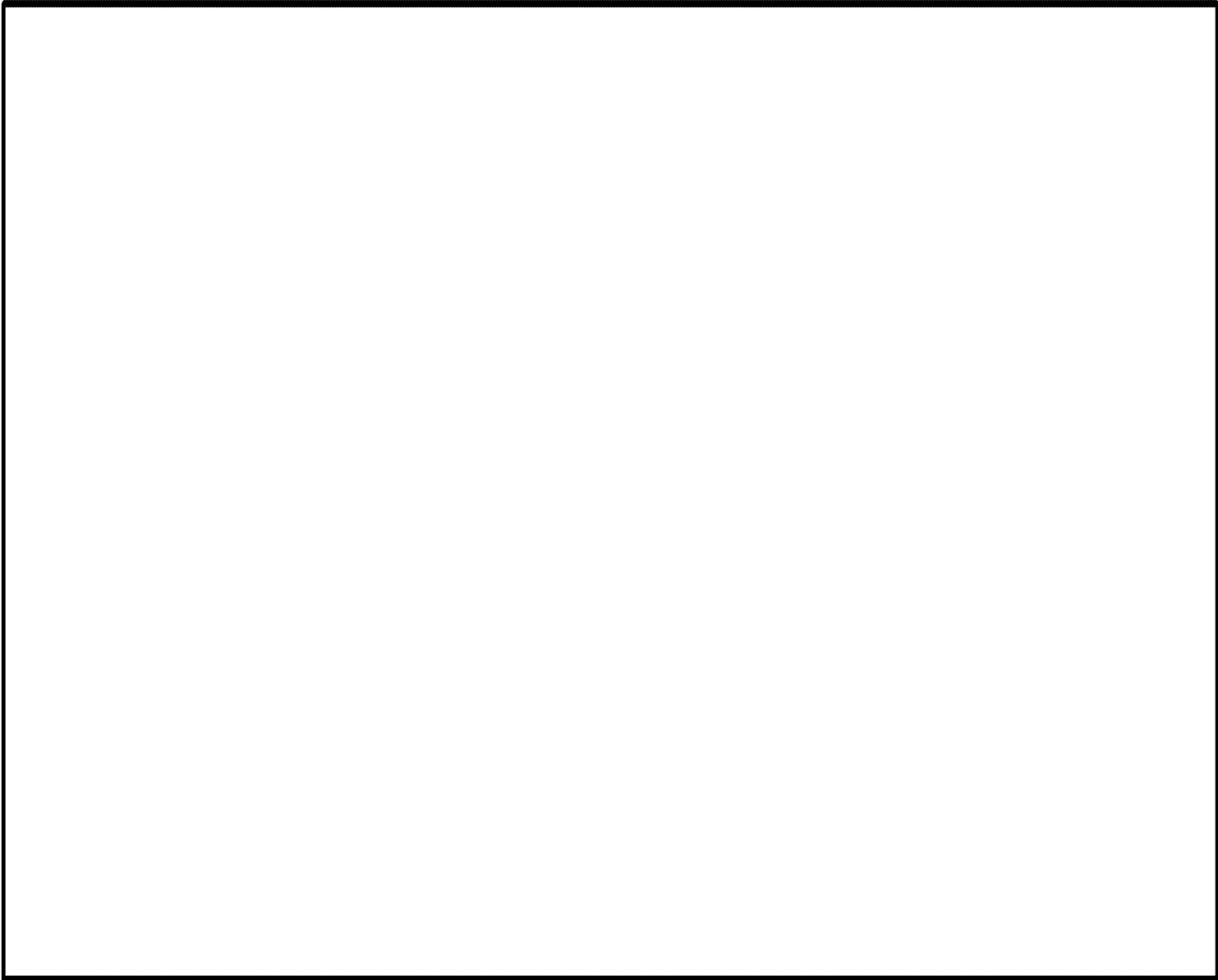
Out-of-Scope



U.S. Citizenship  
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# INA §245(k) Exception – (cont.)

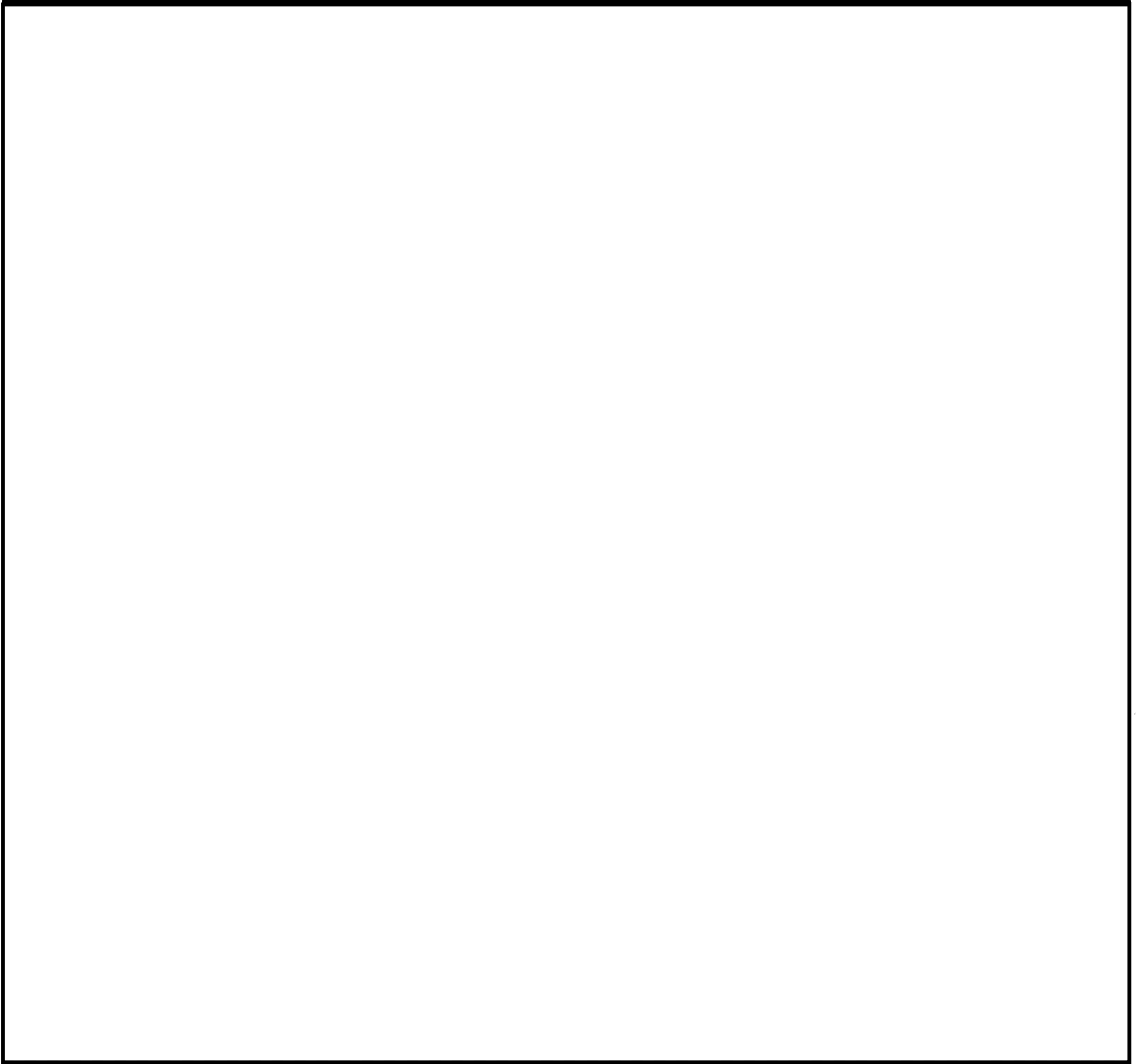
Out-of-Scope



U.S. Citizenship  
and Immigration  
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Out-of-Scope

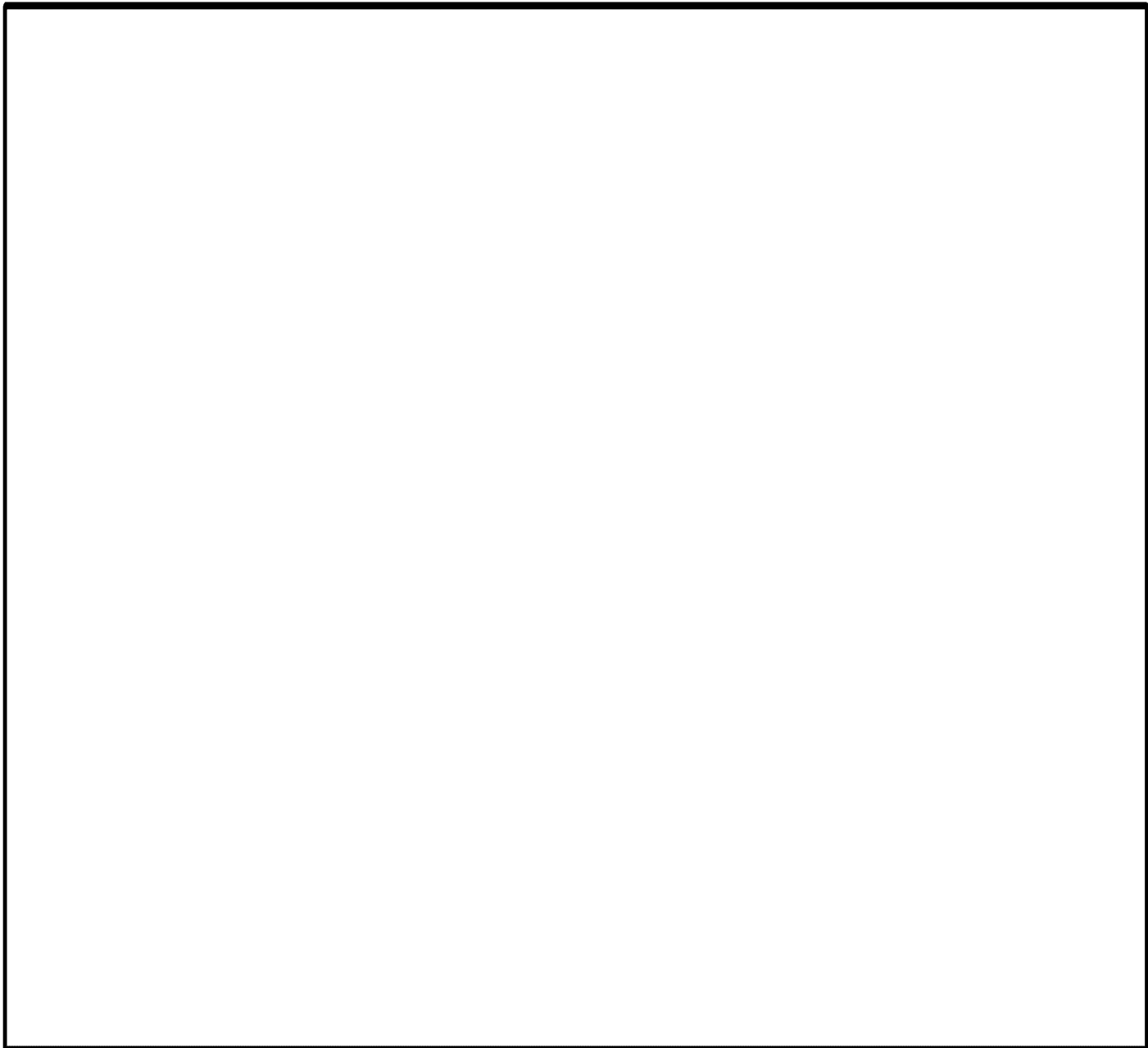
# Calculating 180 days



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and Immigration  
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# Calculating 180 days – (cont.)

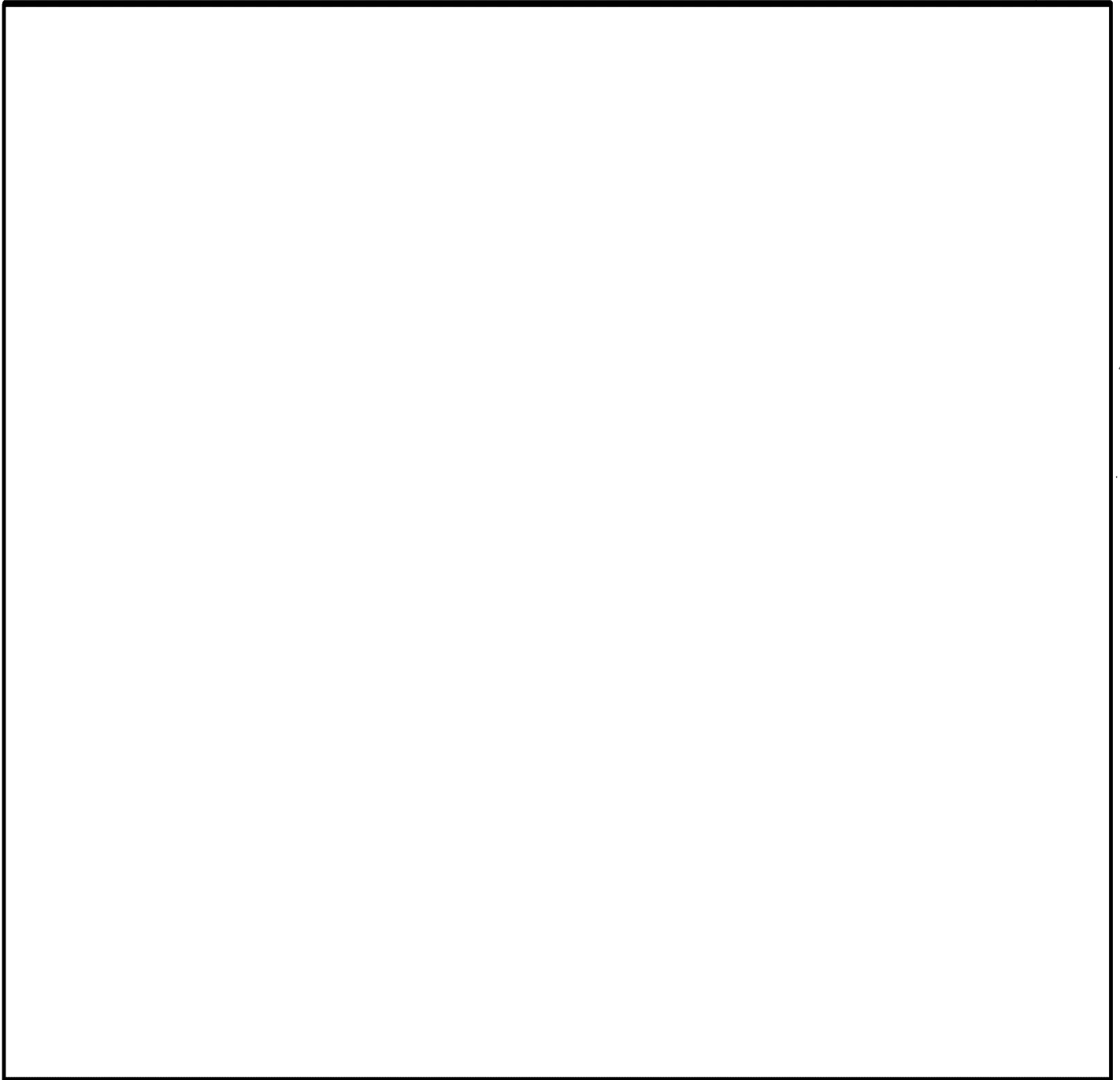
Out-of-Scope



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# Failed to Maintain Status

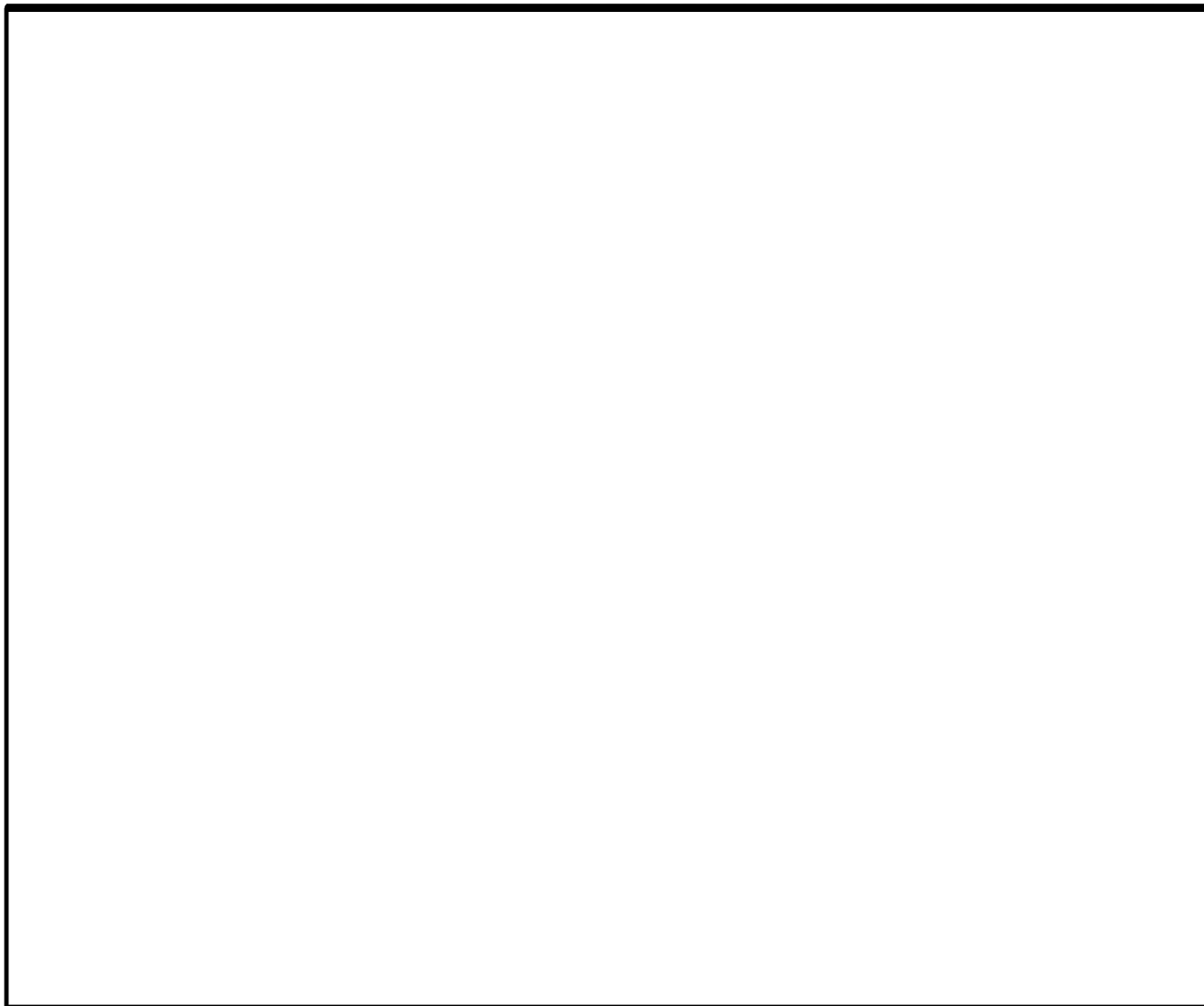


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# Otherwise Violated Terms of NIV

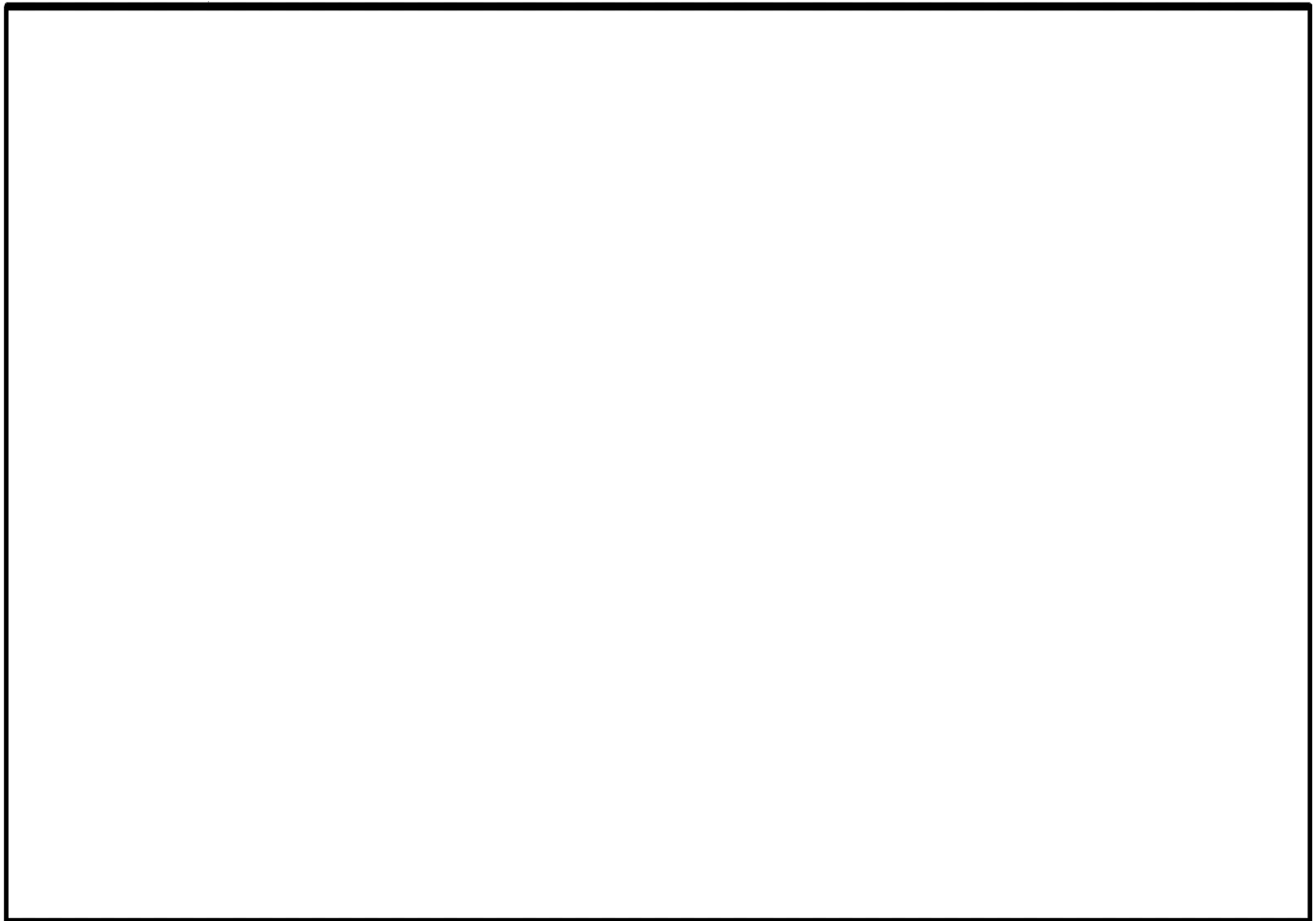
Out-of-Scope



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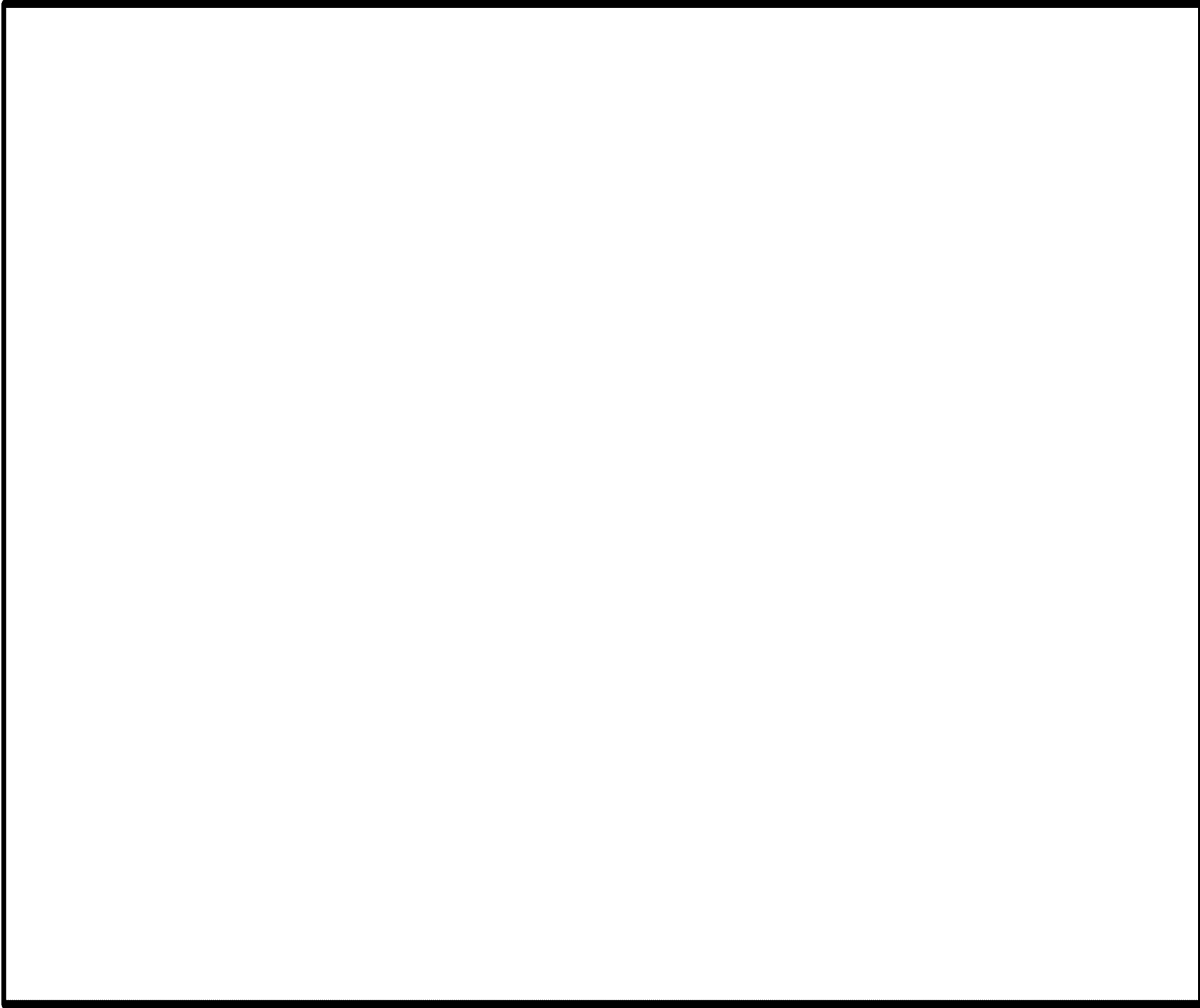
# Unauthorized Employment

Out-of-Scope



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and Immigration  
Services

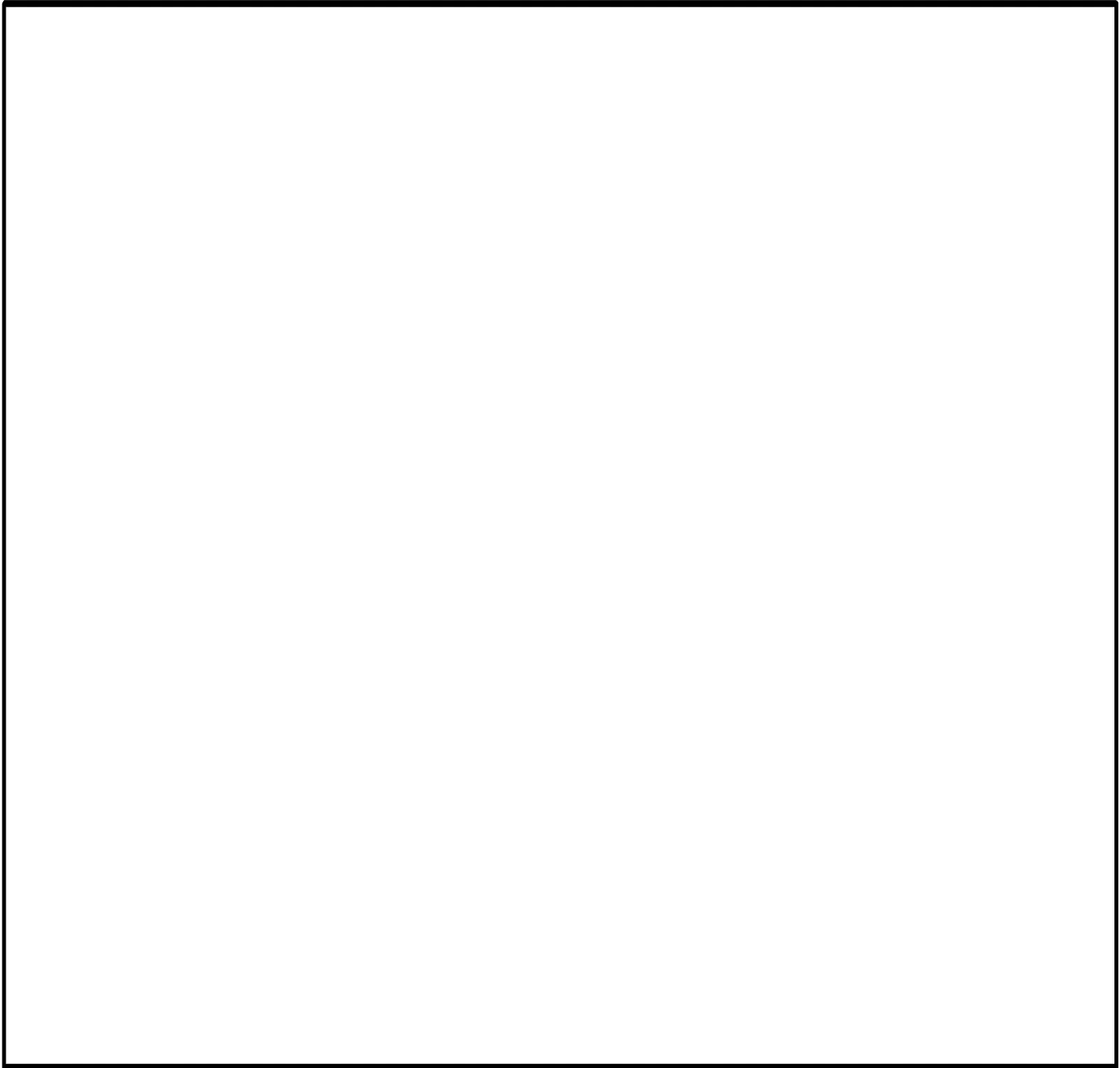
Out-of-Scope



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# INA §245(i)



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# INA §245(i) – (cont.)

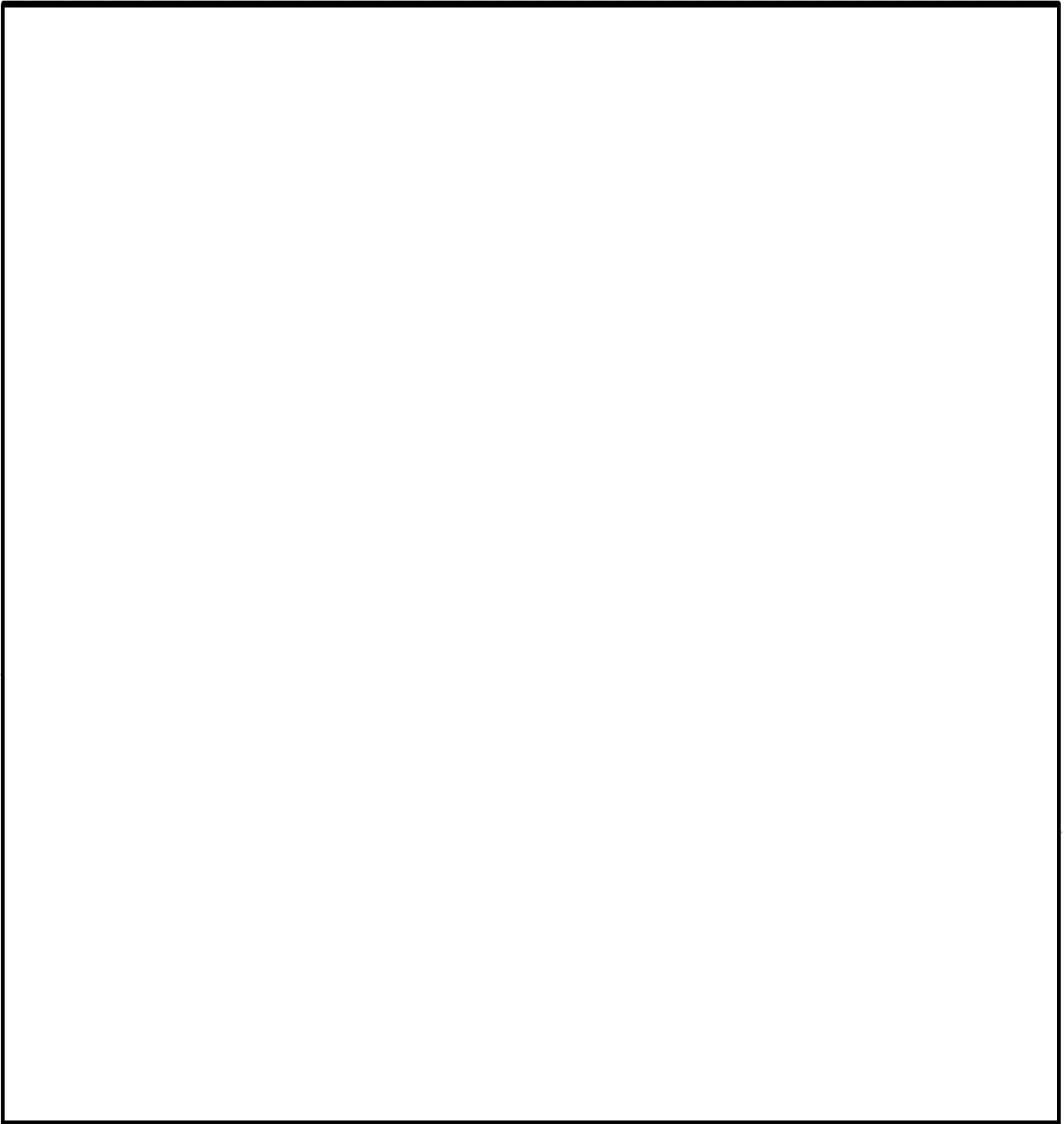
Out-of-Scope



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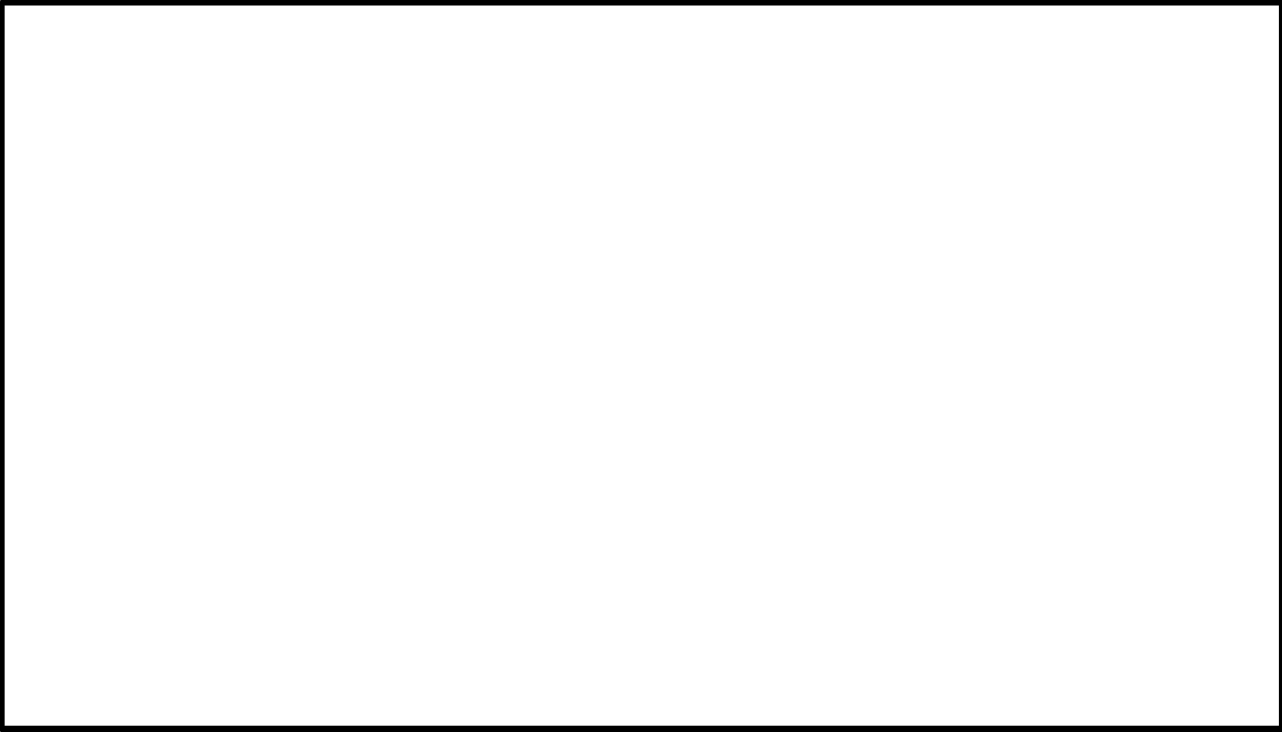
Out-of-Scope

# INA §245(i) – (cont.)



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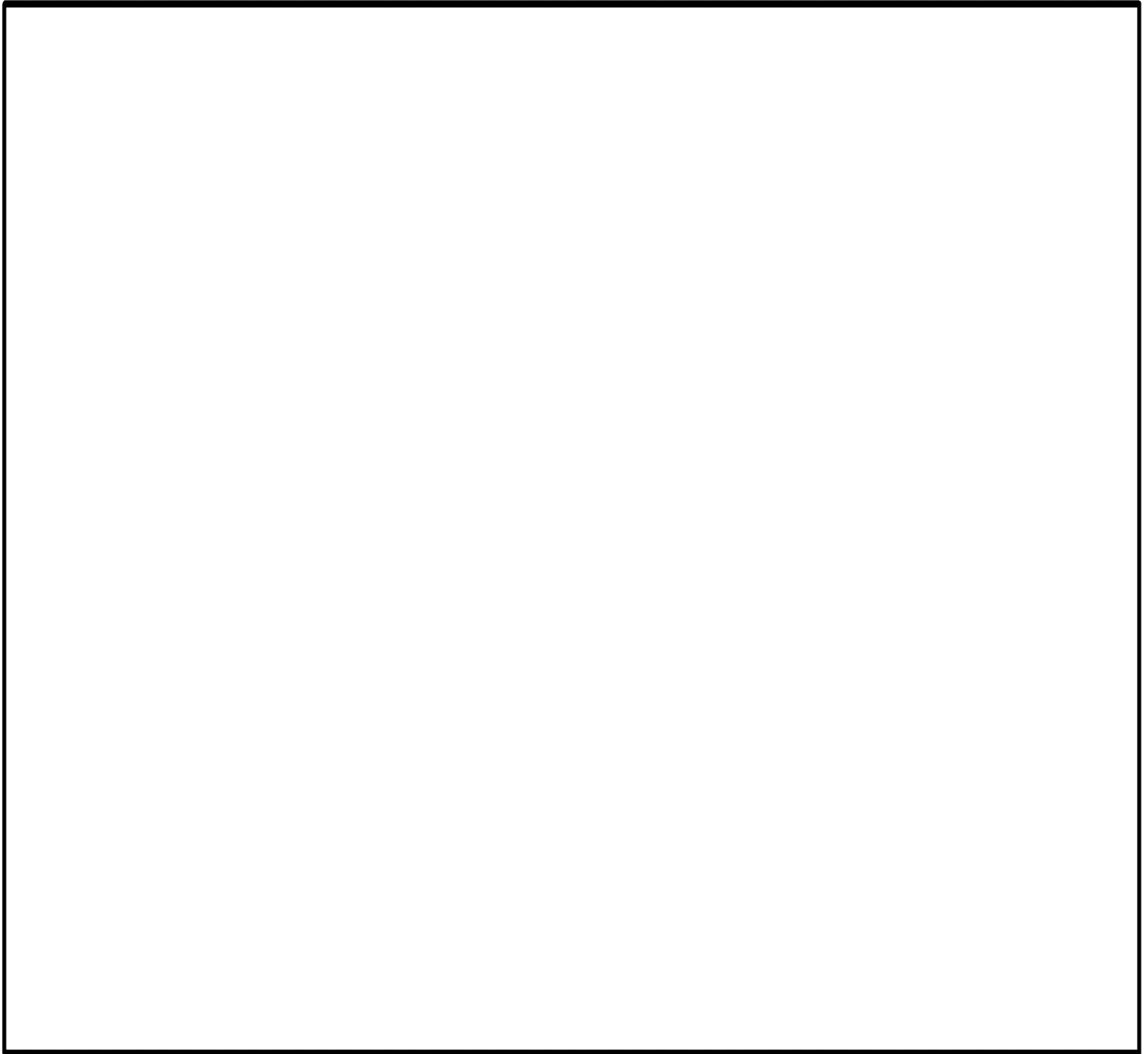
Out-of-Scope



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# INA §216

Out-of-Scope

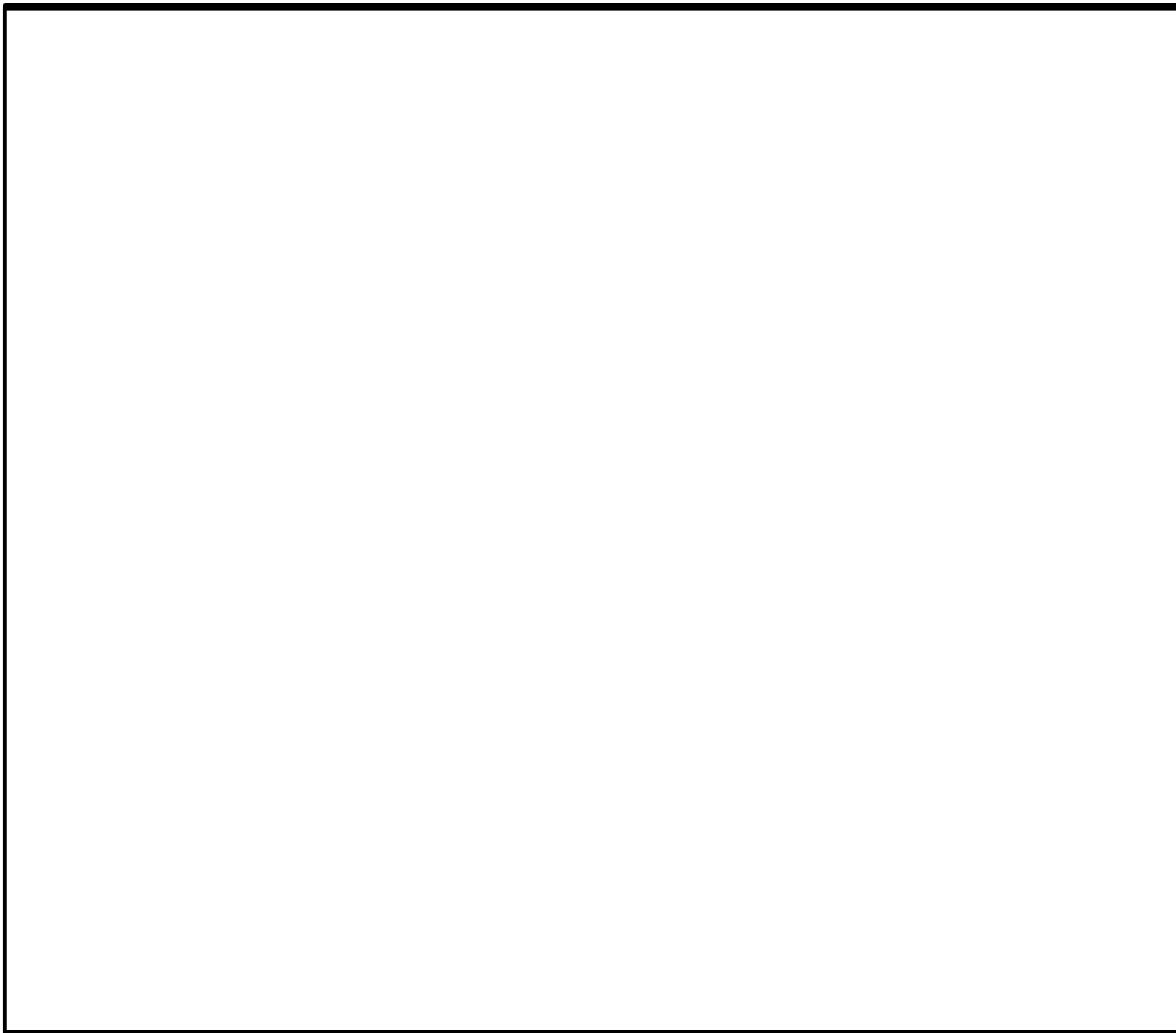


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Services



# INA §216 – (cont.)

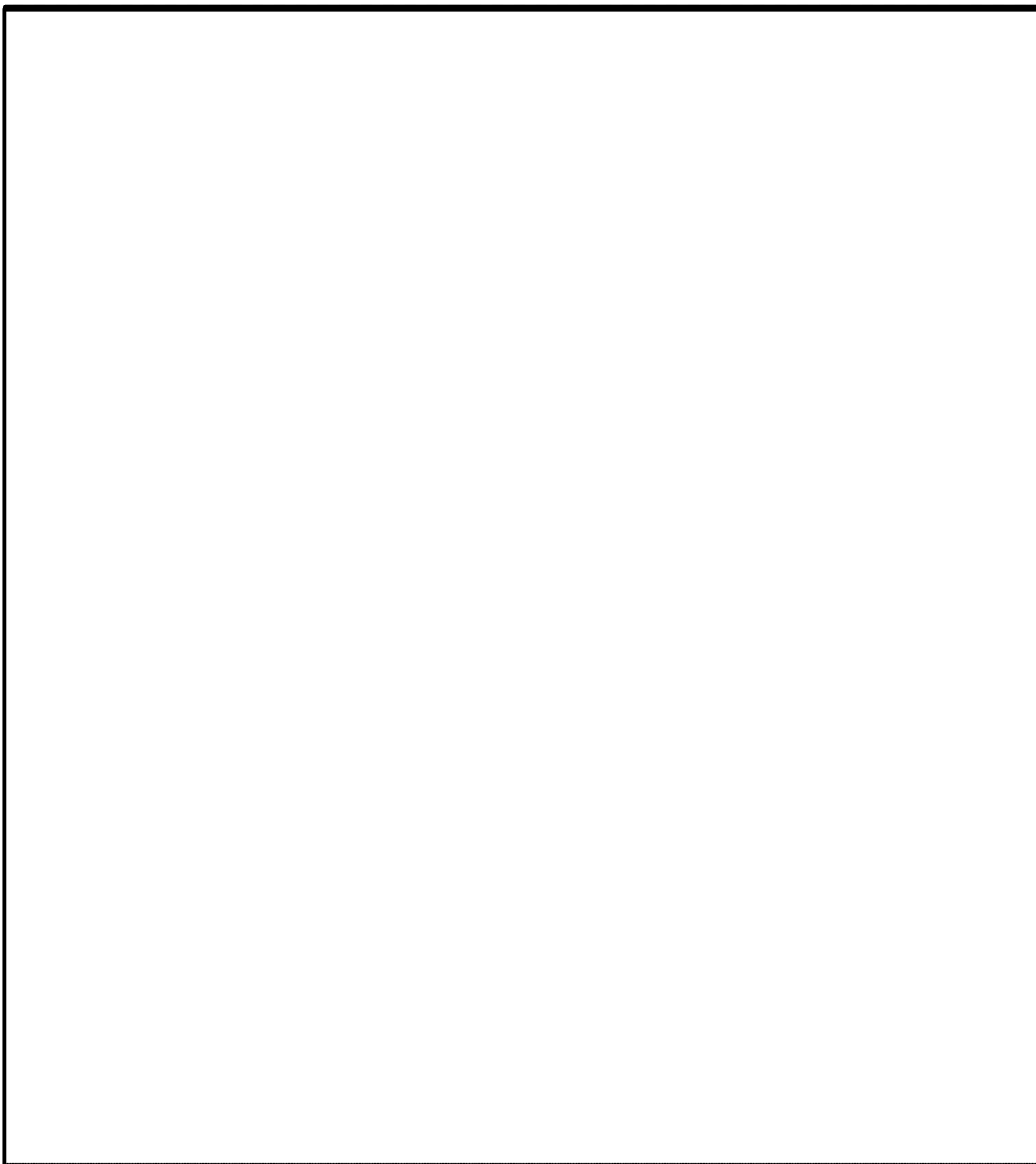
Out-of-Scope



U.S. Citizenship  
and Immigration  
Services

Out-of-Scope

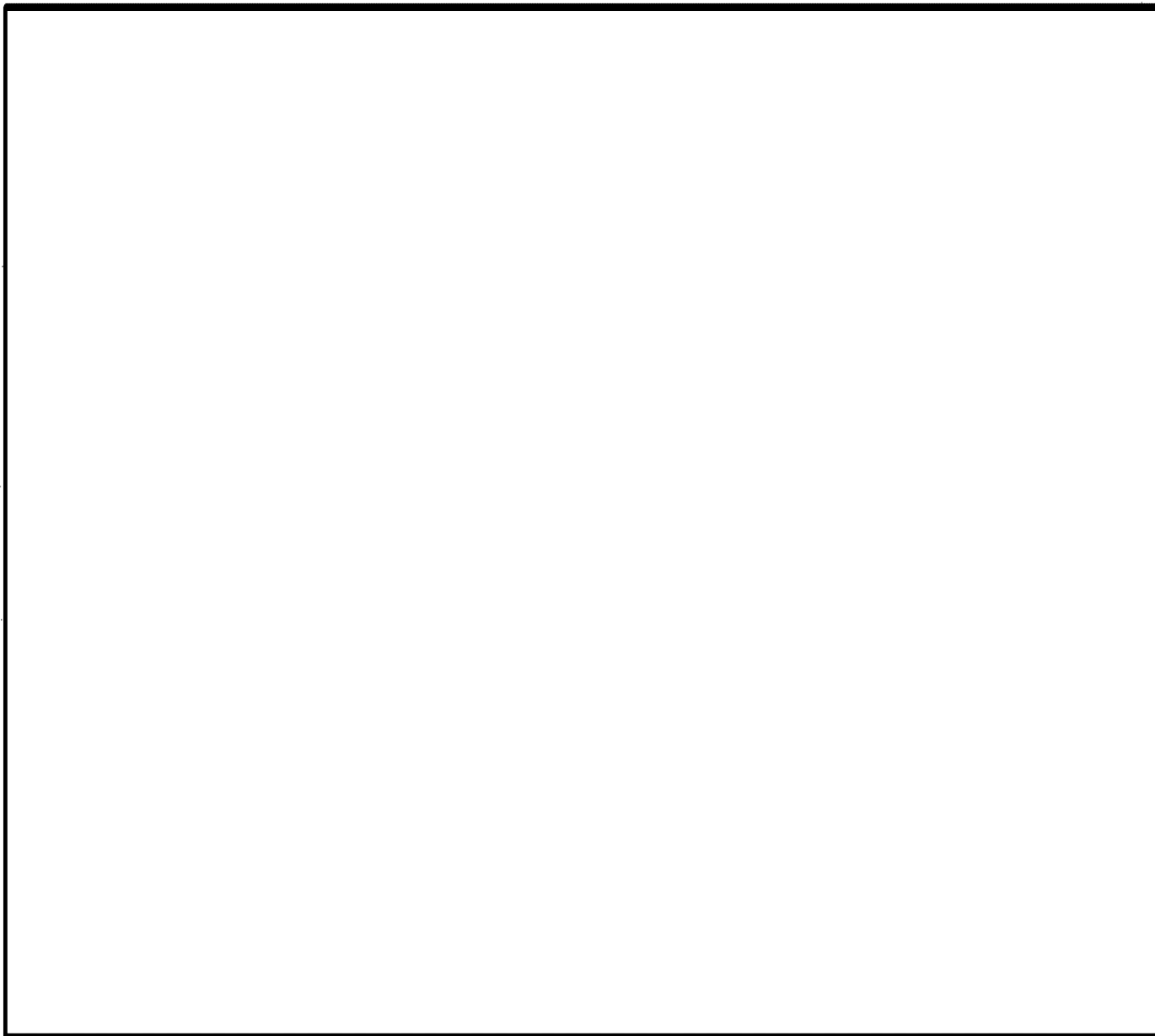
# INA §216 – Removal of Conditions



U.S. Citizenship  
and Immigration  
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# INA §216 – Removal of Conditions (cont.)

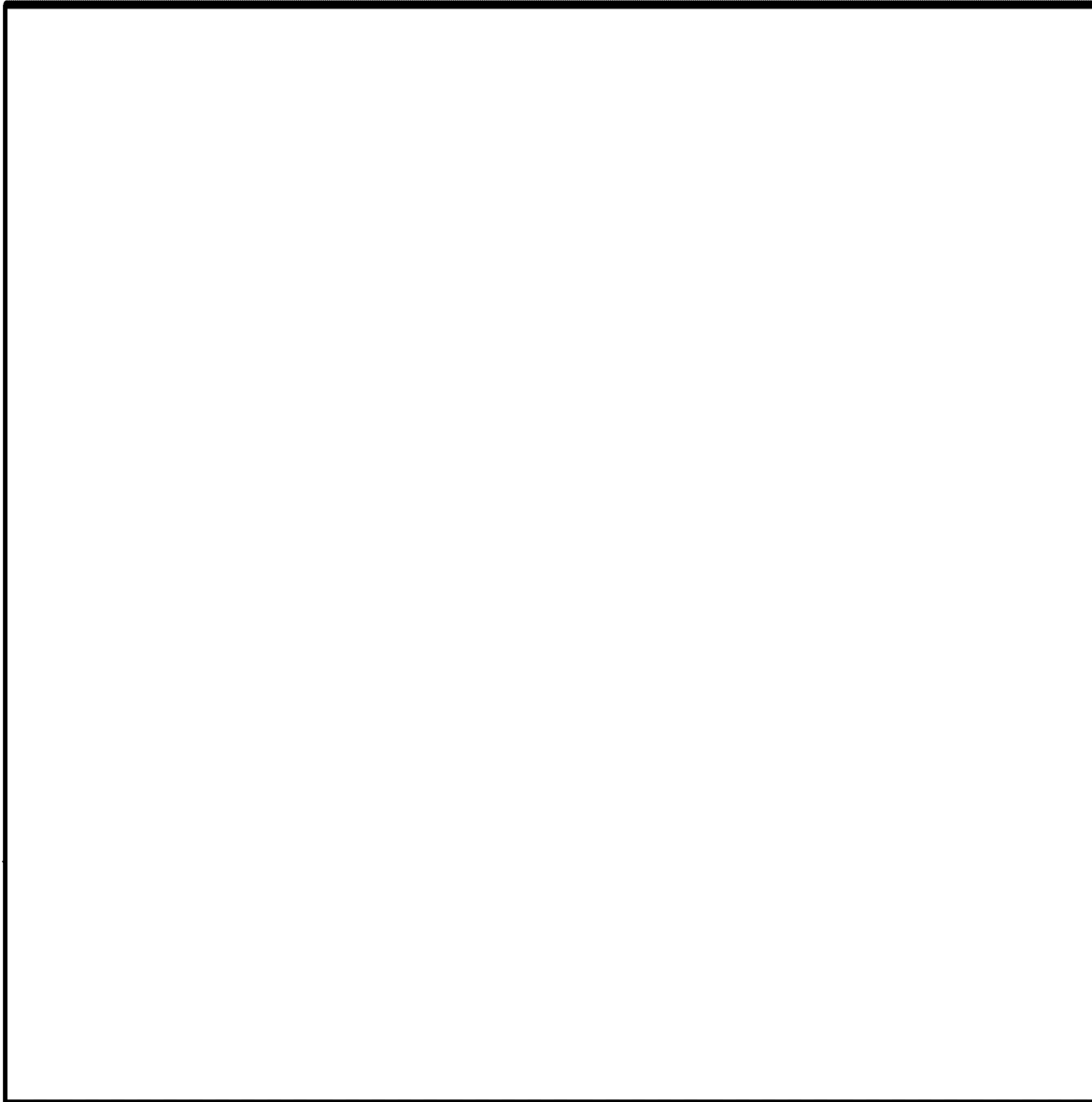
Out-of-Scope



U.S. Citizenship  
and Immigration  
Services

# Conditional Classifications

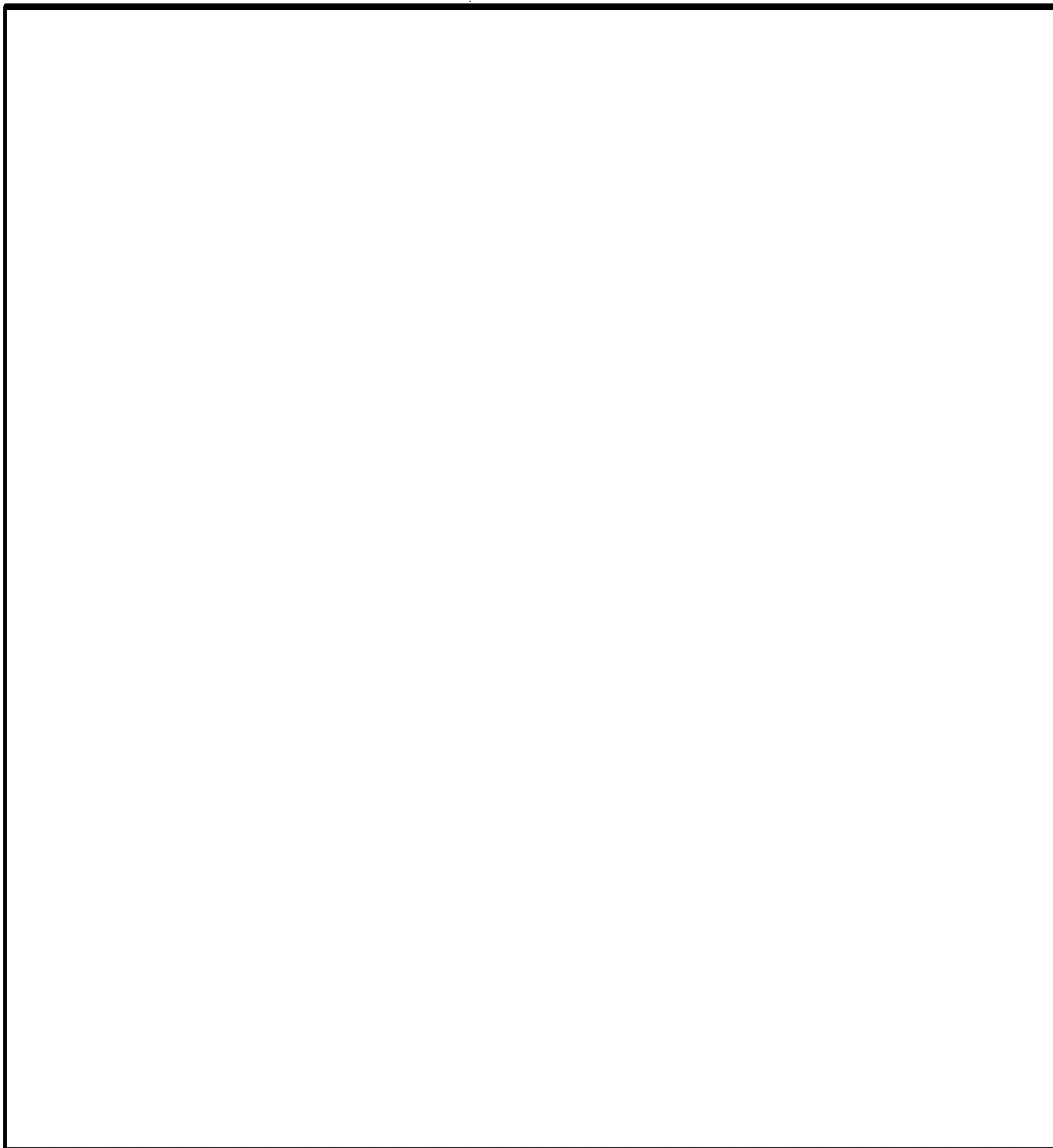
Out-of-Scope



U.S. Citizenship  
and Immigration  
Services

Out-of-Scope

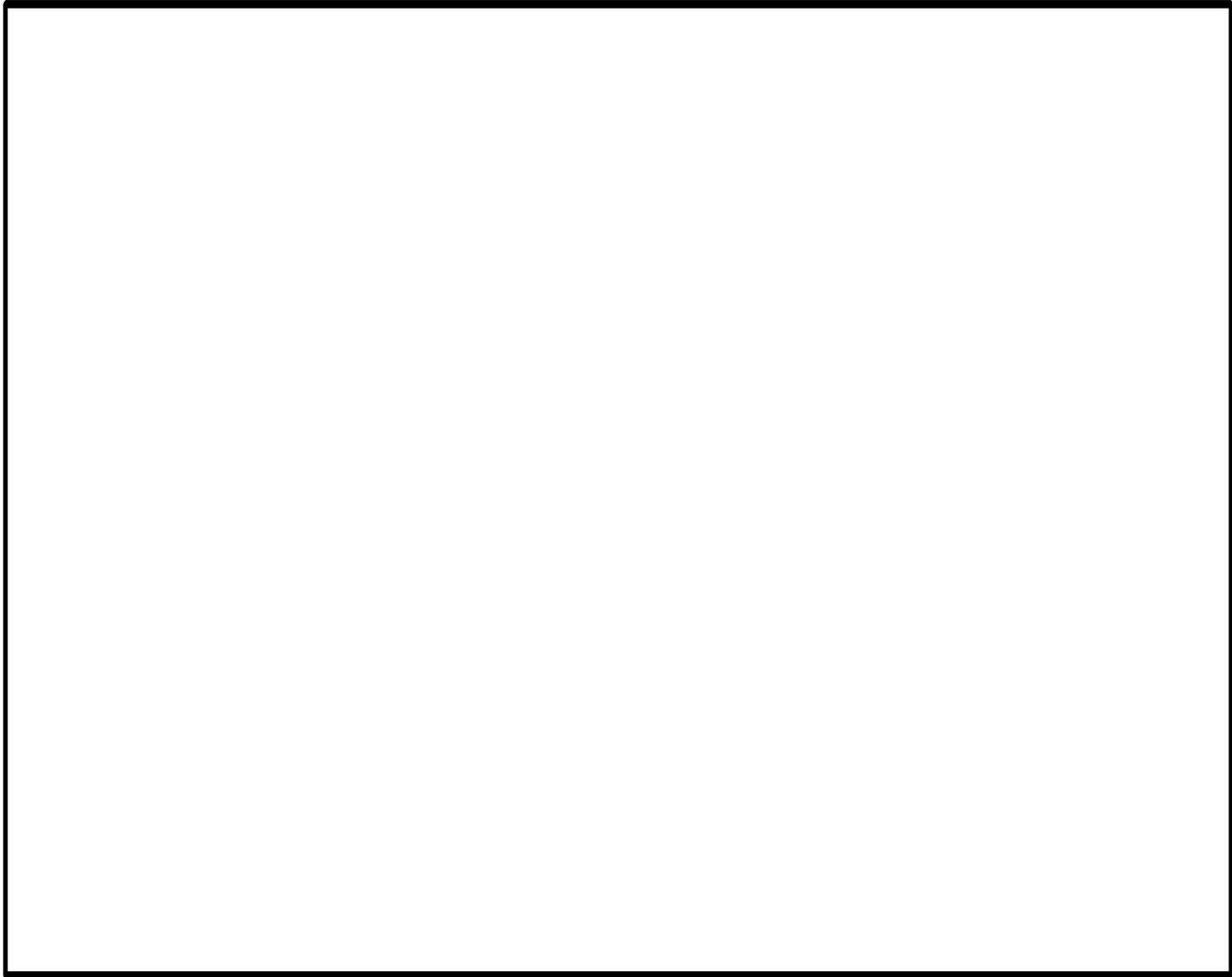
# INA §216 – Termination of Conditional Status



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# Denials & Notices to Appear

Out-of-Scope



U.S. Citizenship  
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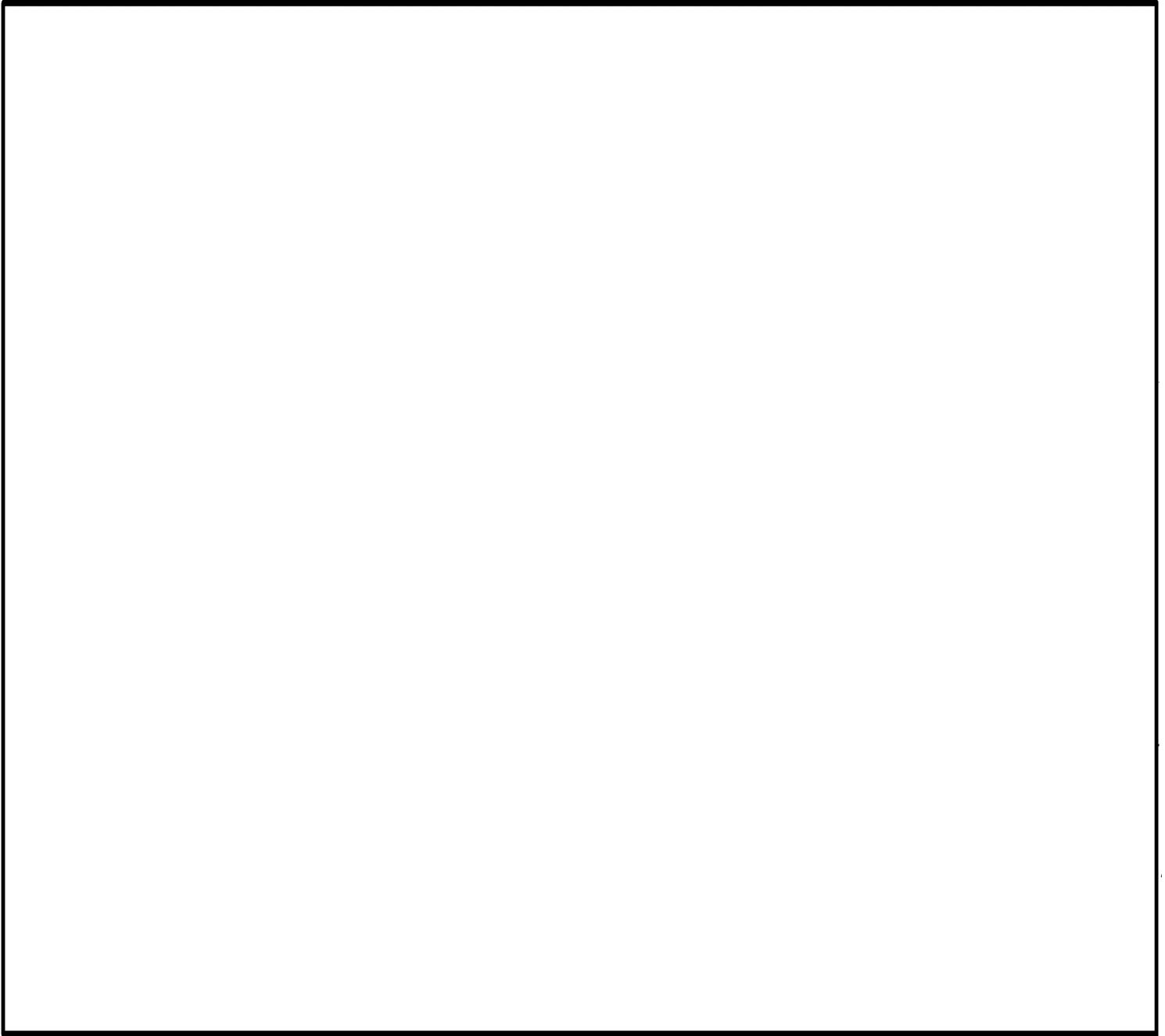
Out-of-Scope



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# INA §245(d)

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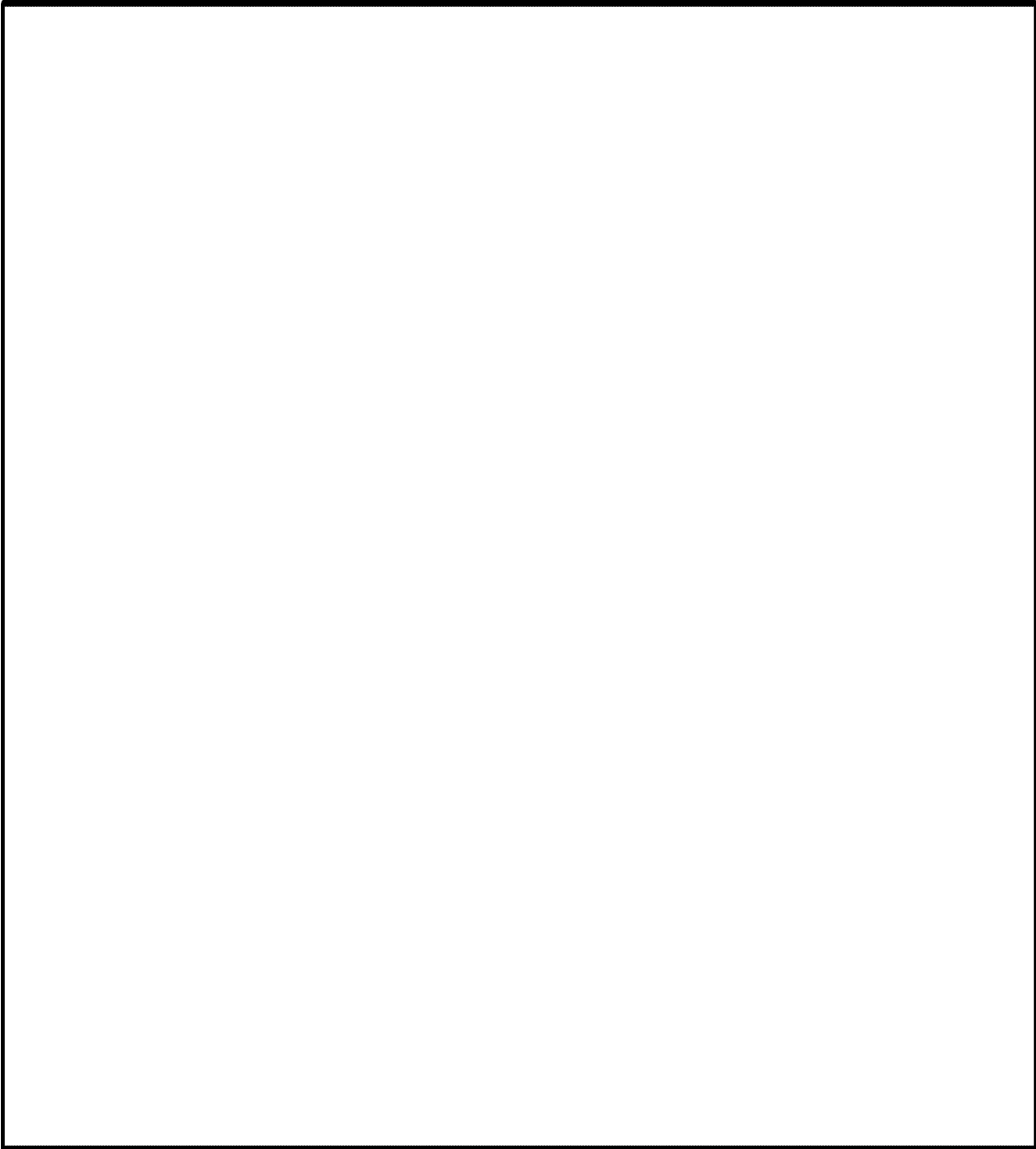
Out-of-Scope



U.S. Citizenship  
and Immigration  
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Out-of-Scope

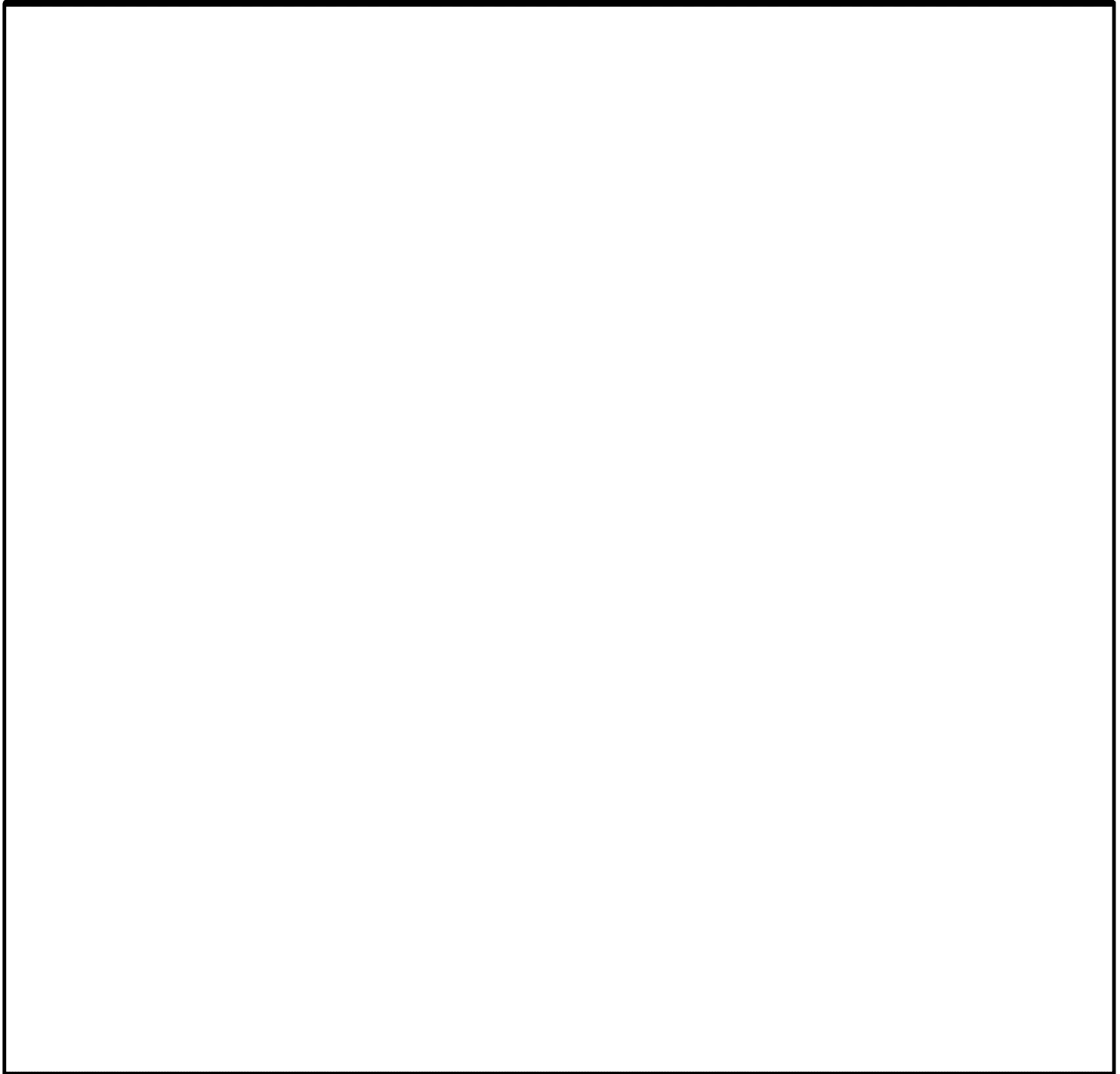
# 209 INA – Refugees and Asylees



U.S. Citizenship  
and Immigration  
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# 209 INA – Refugees and Asylees (cont.)

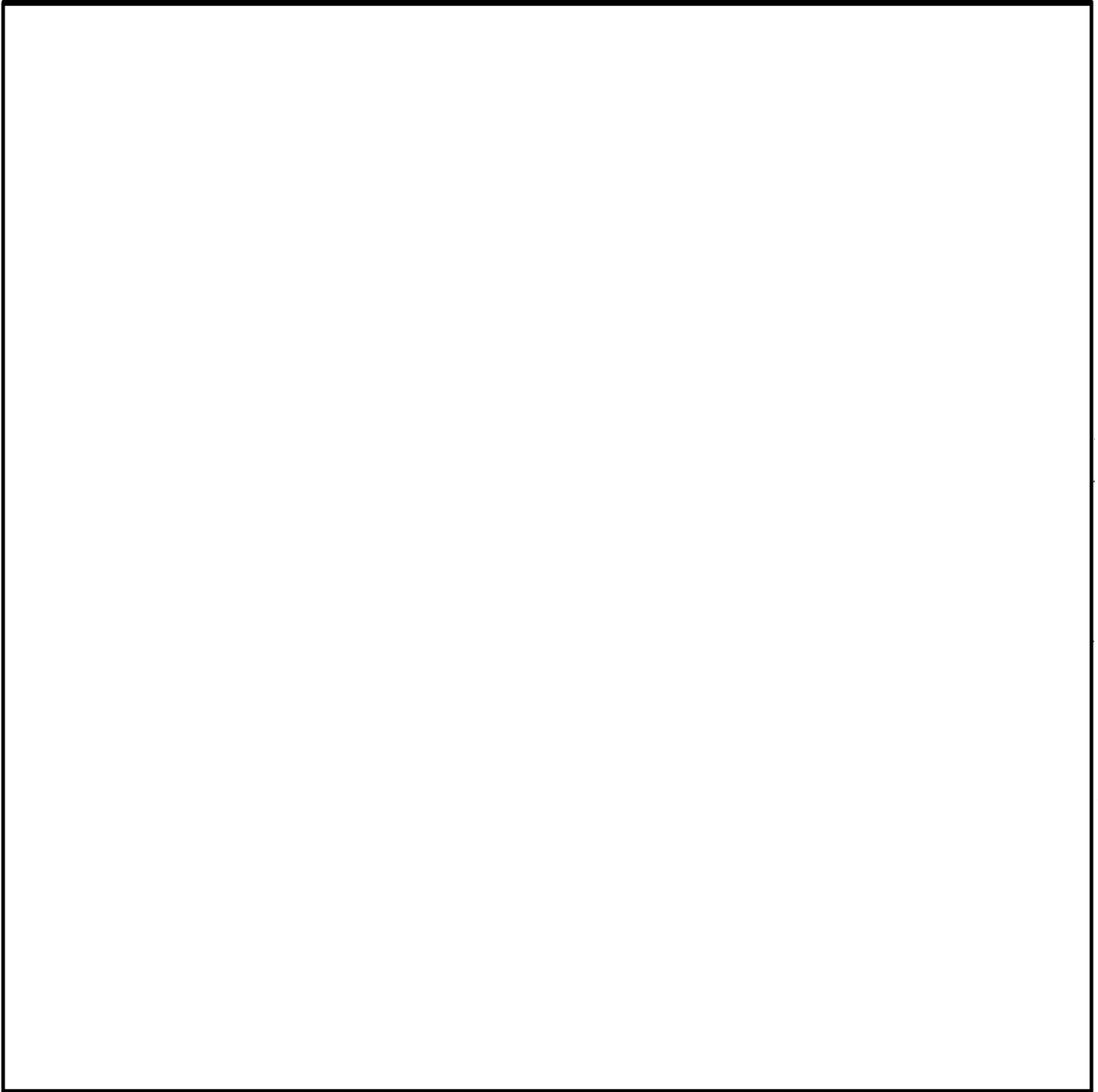
Out-of-Scope



U.S. Citizenship  
and Immigration  
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# 209 INA: Refugees and Asylees (cont.)

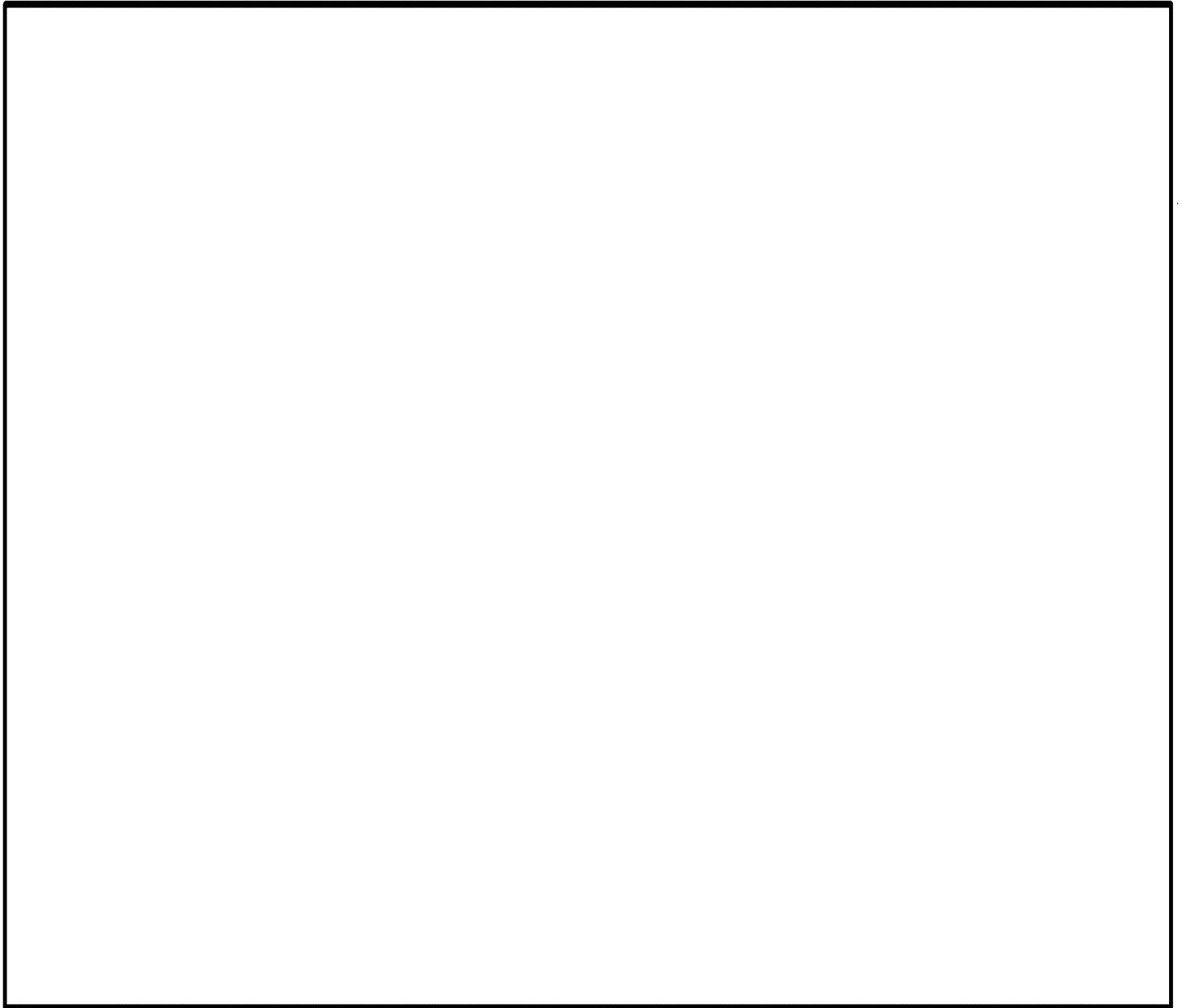
Out-of-Scope



U.S. Citizenship  
and Immigration  
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# 209 INA: Refugees and Asylees (cont.)

Out-of-Scope



U.S. Citizenship  
and Immigration  
Services

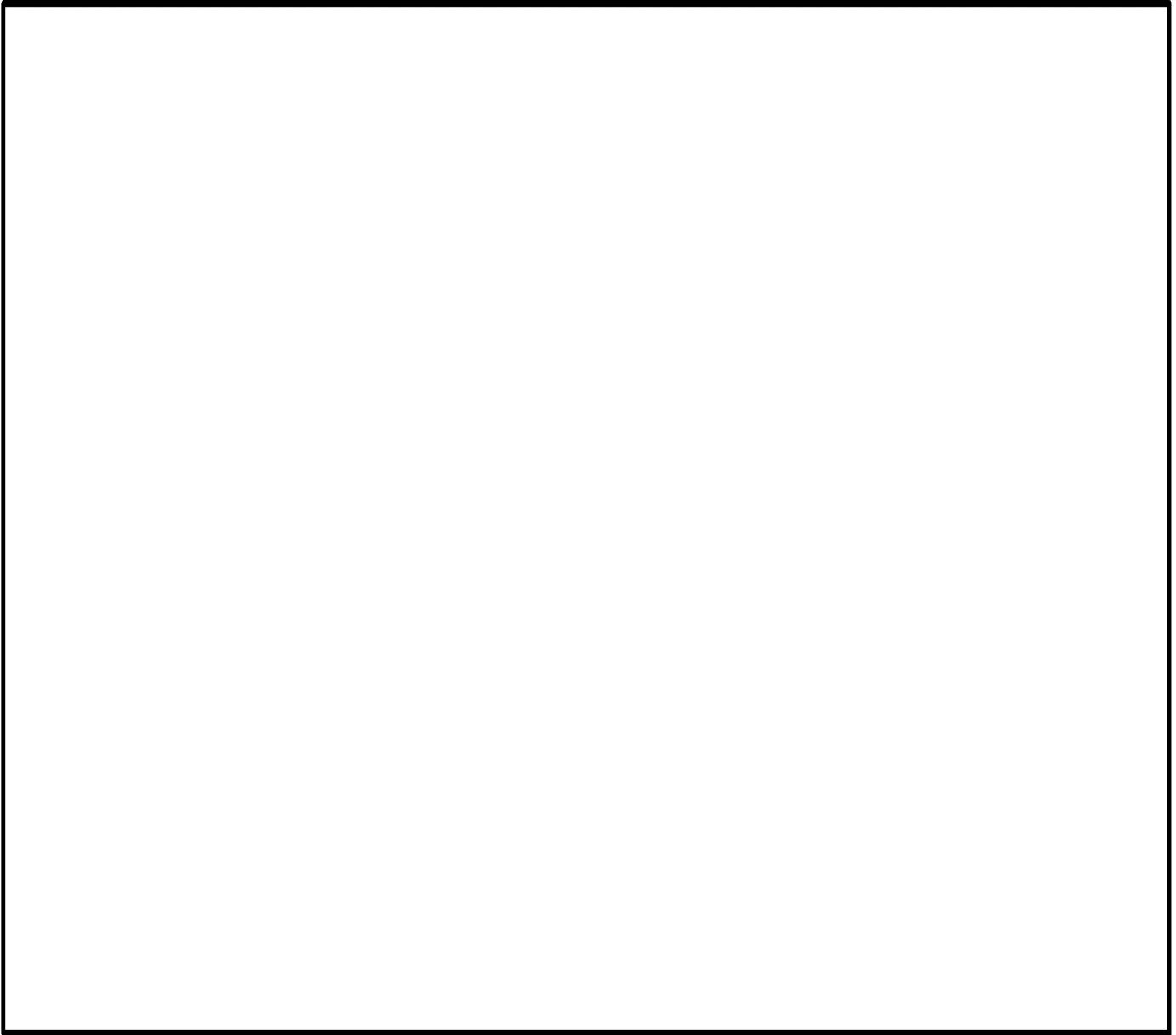
Out-of-Scope



U.S. Citizenship  
and Immigration  
Services

CSPA

Out-of-Scope



U.S. Citizenship  
and Immigration  
Services

# CSPA – (cont.)

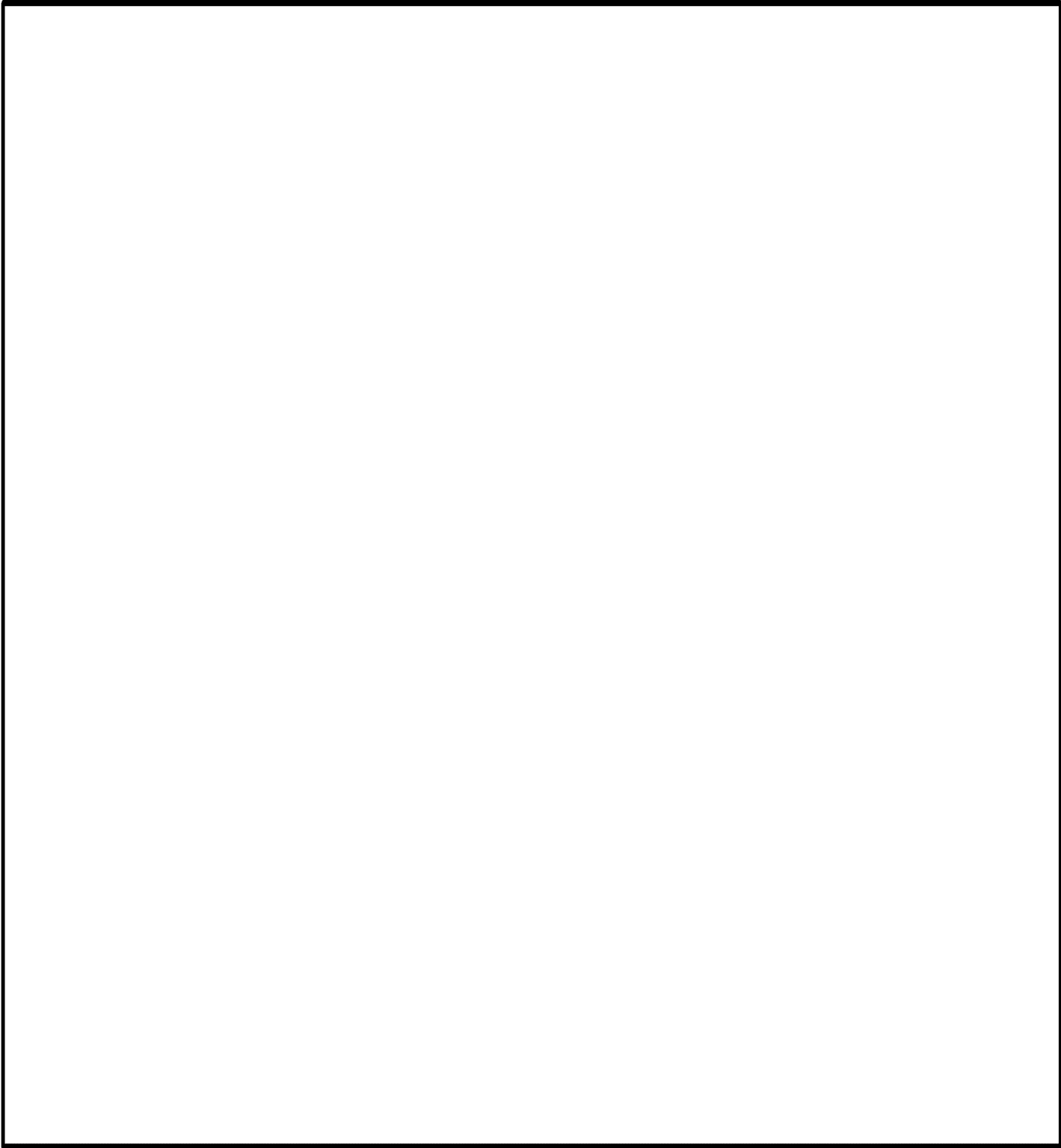
Out-of-Scope



**U.S. Citizenship  
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# CSPA – (cont.)



U.S. Citizenship  
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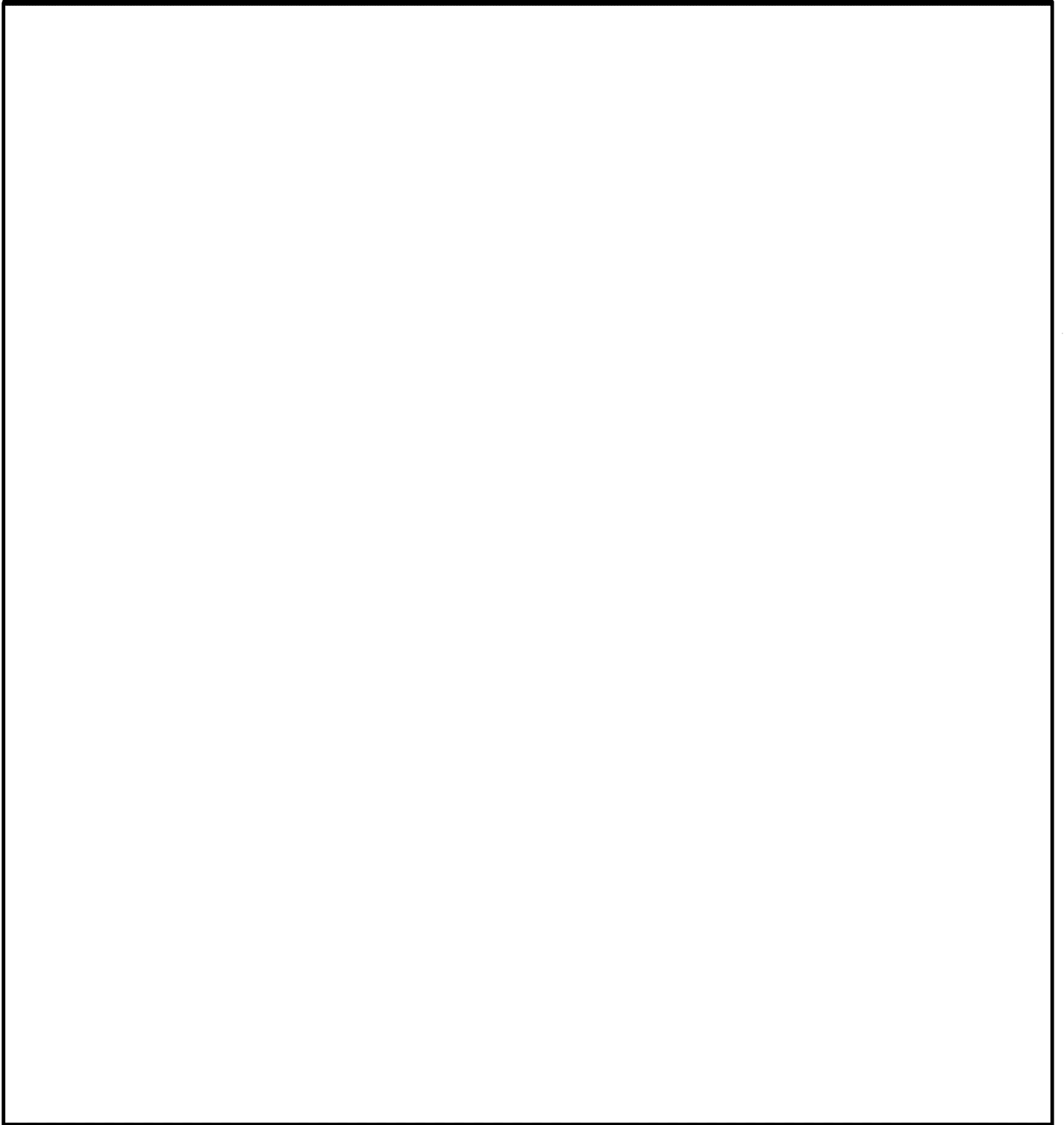


▪ See Appendix



**U.S. Citizenship  
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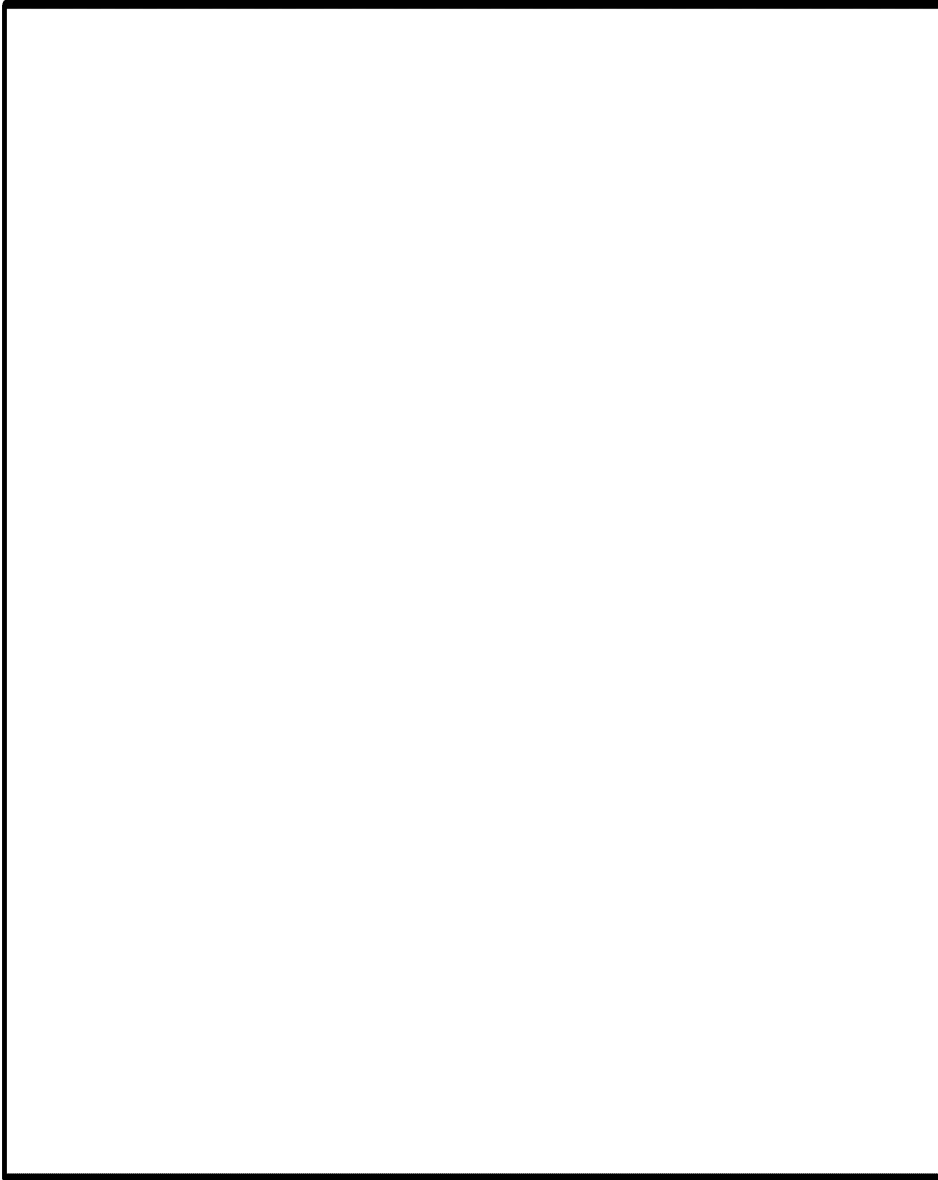
# CSPA (cont.)



U.S. Citizenship  
and Immigration  
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# CSPA (cont.)

Out-of-Scope



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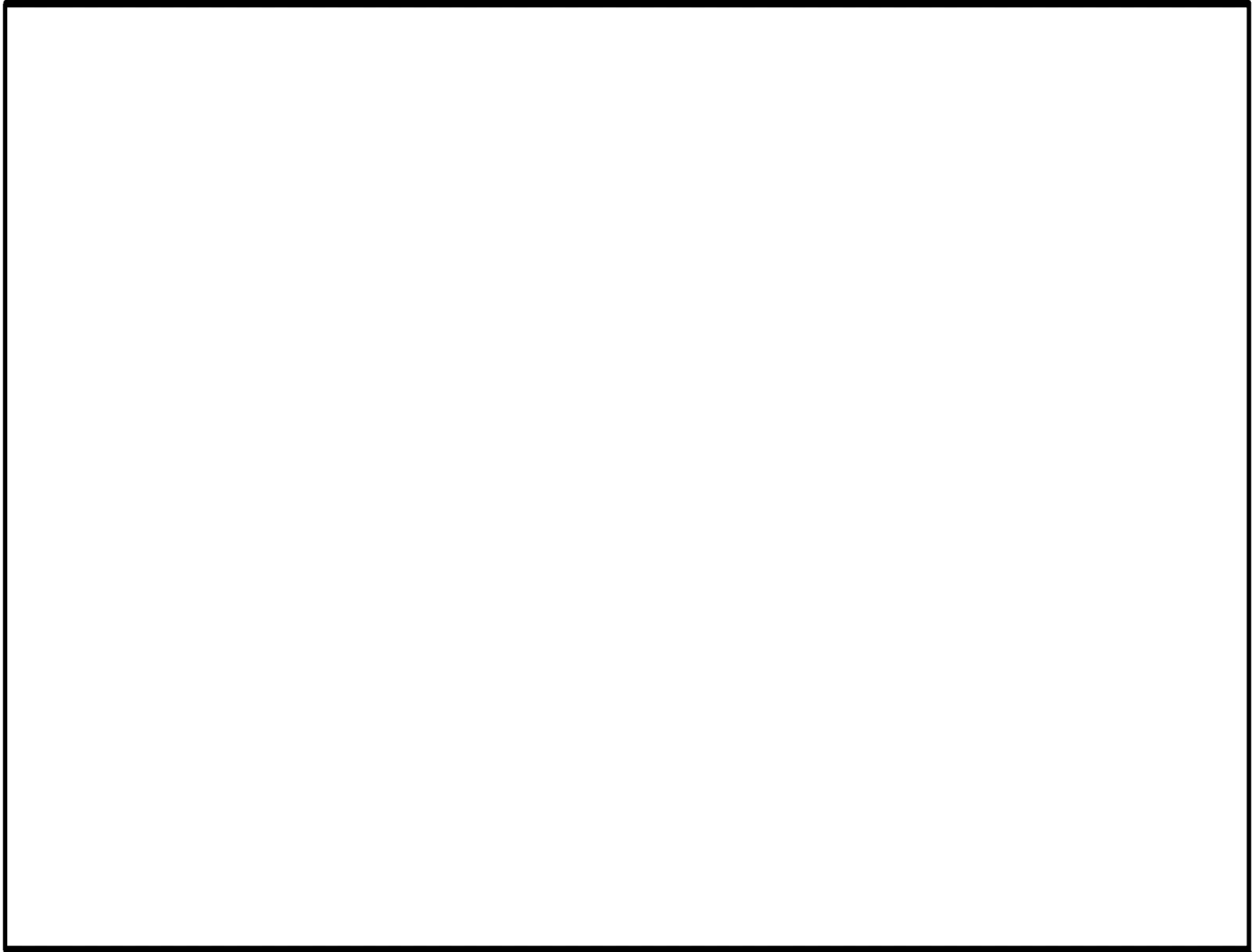
Out-of-Scope



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# Jurisdiction over Form I-485



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and Immigration  
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# NO Appeal of Denied I-485

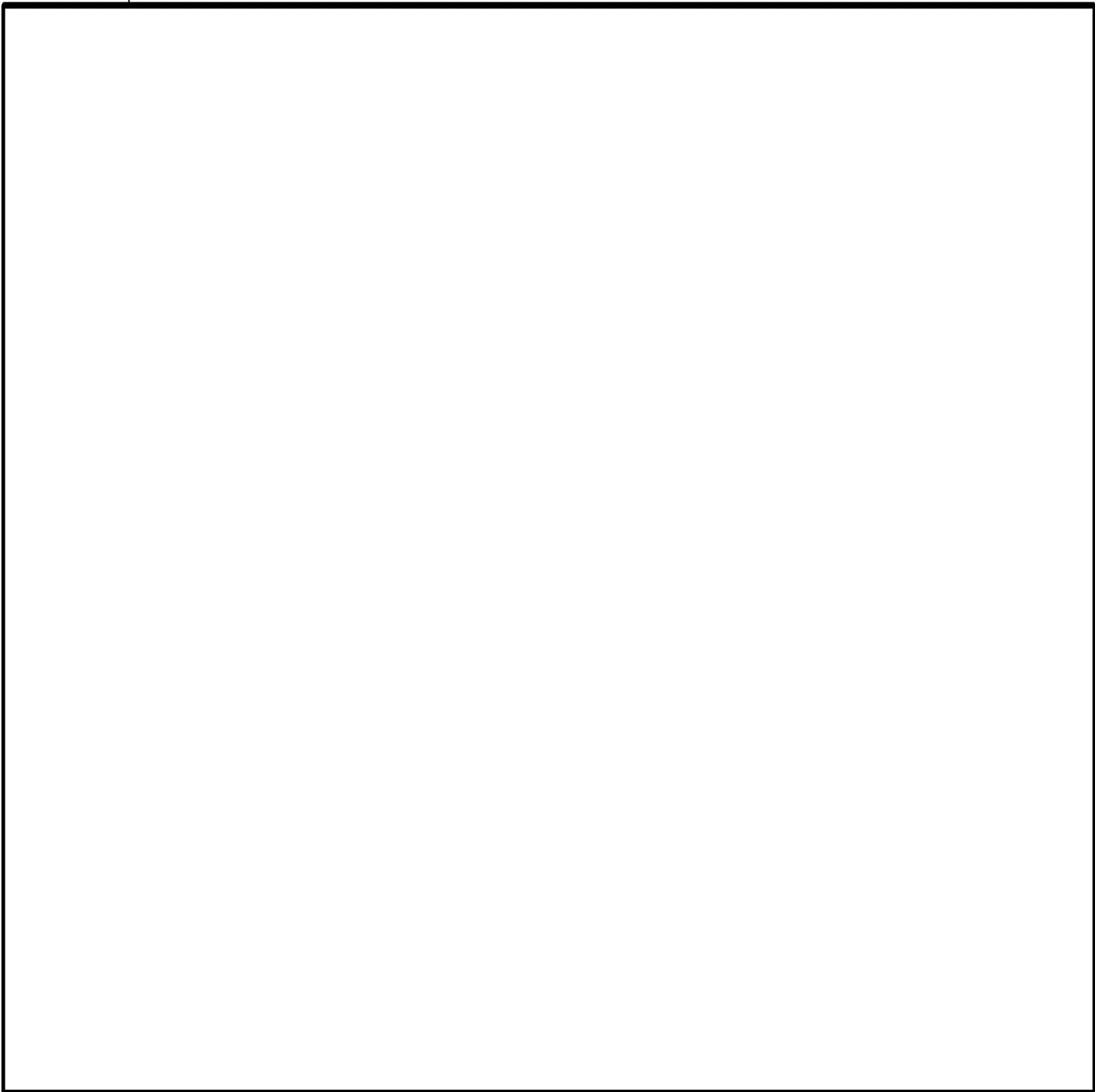
Out-of-Scope



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# Summary

Out-of-Scope

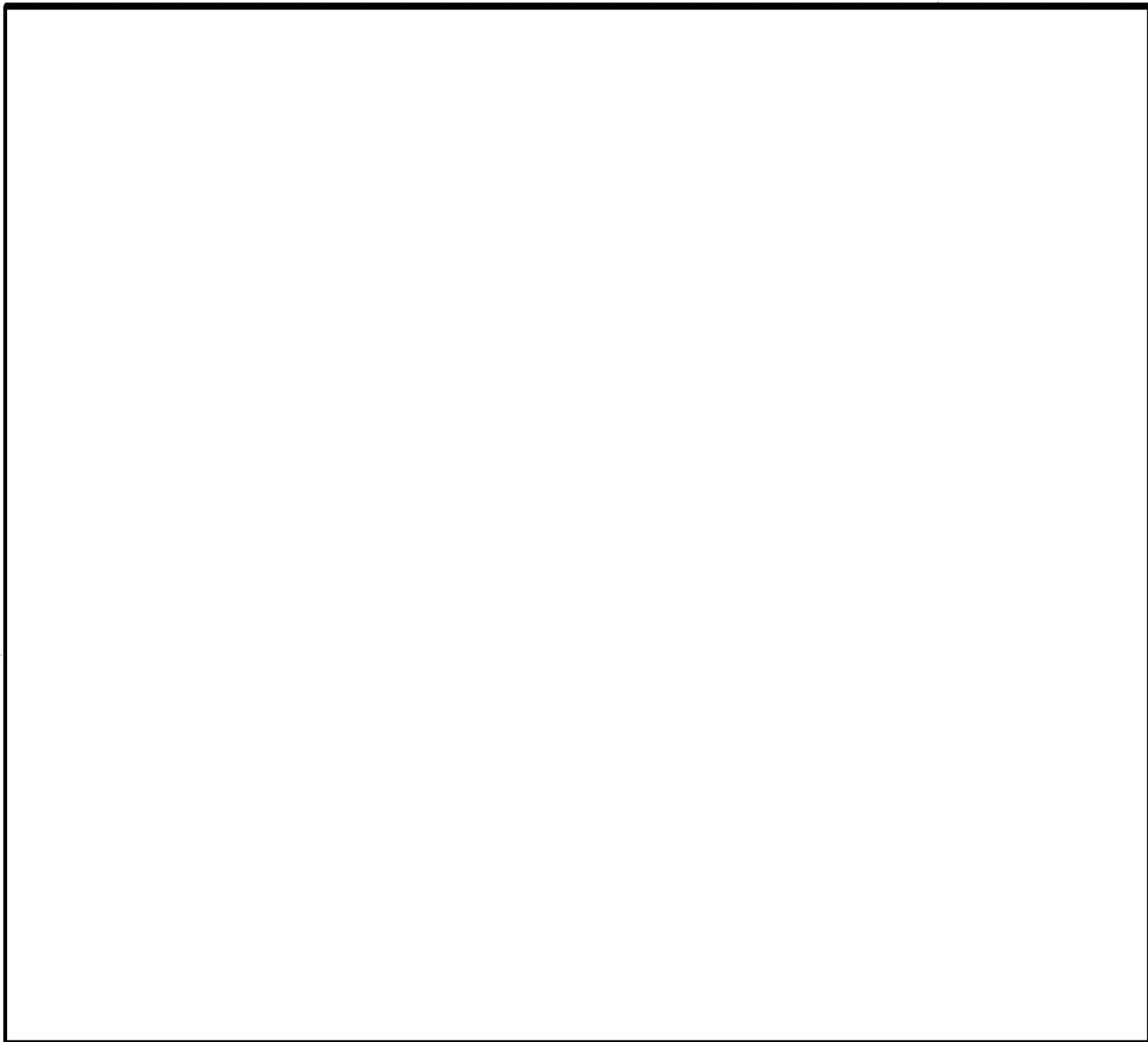


U.S. Citizenship  
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# Summary (cont.)

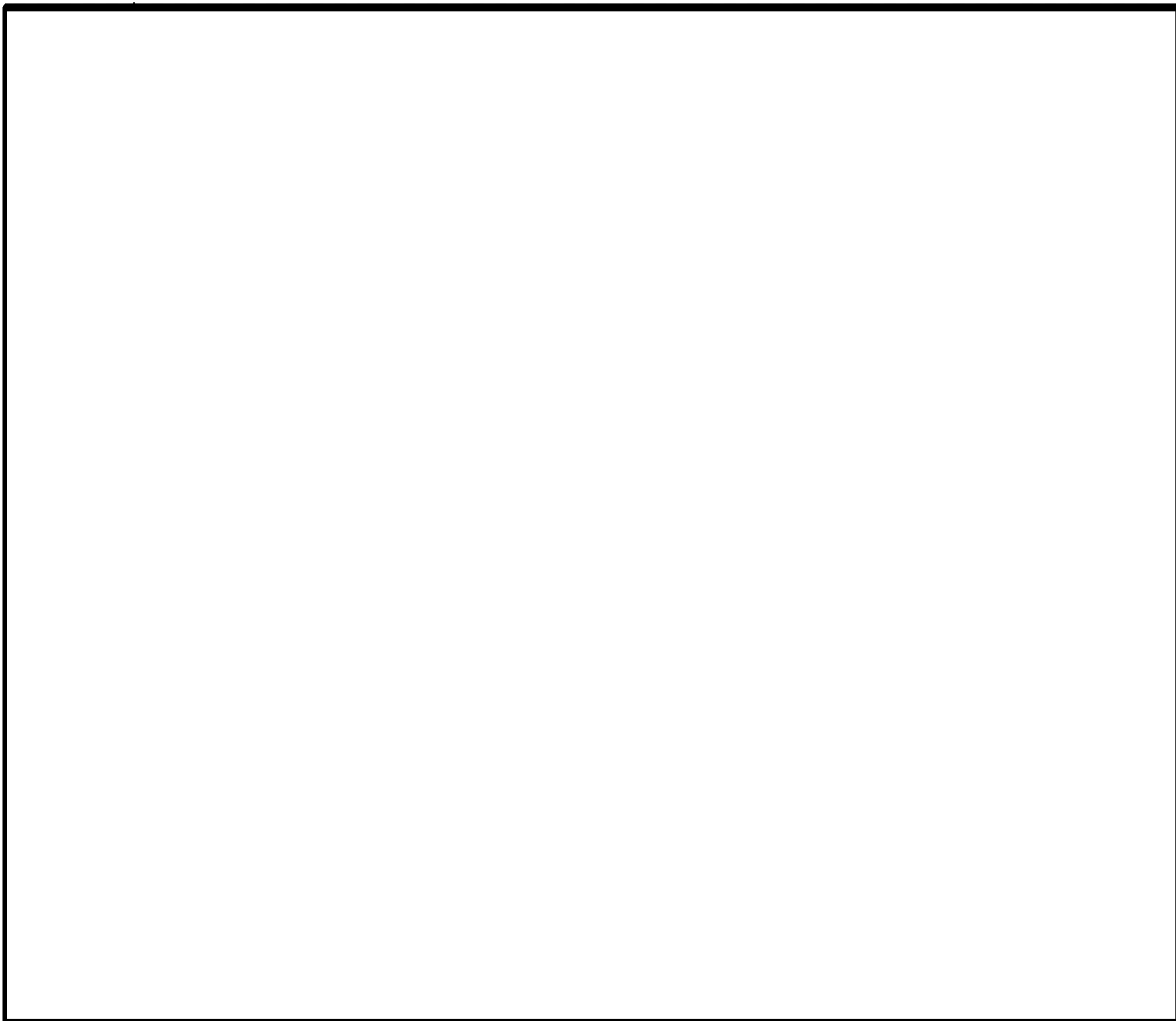
Out-of-Scope



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# Summary (cont.)

Out-of-Scope



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# Review Questions



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# Review Questions



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# Review Questions



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and Immigration  
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Out-of-Scope

# Review Questions



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and Immigration  
Services

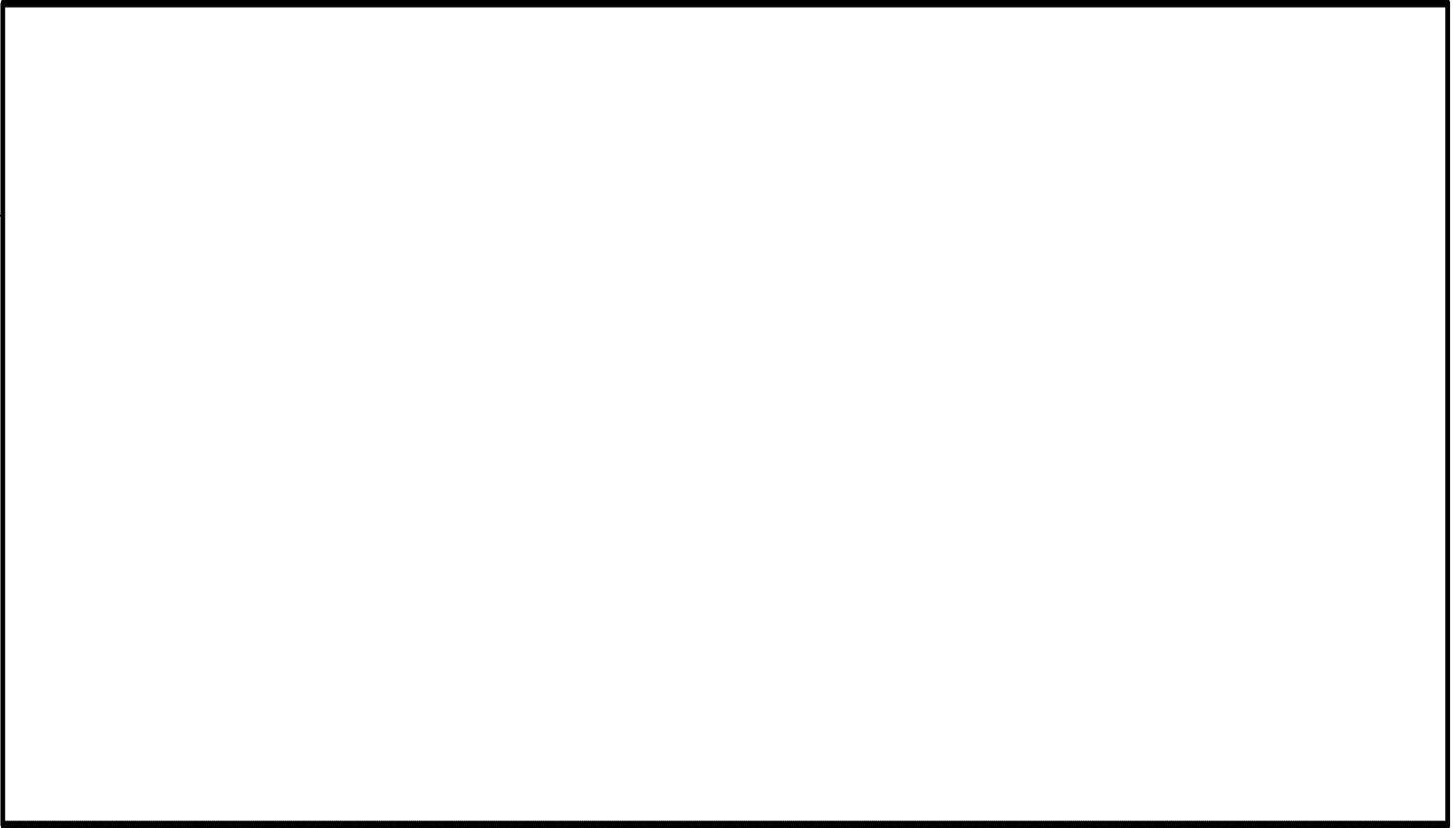
# Review Questions

Out-of-Scope



U.S. Citizenship  
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# Review Questions



U.S. Citizenship  
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# Review Questions



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# Review Questions



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# Review Questions



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# Review Questions



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# Review Questions



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# Review Questions



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# Review Questions



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# Review Questions



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# Review Questions



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Services**

# Review Questions



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# Review Questions



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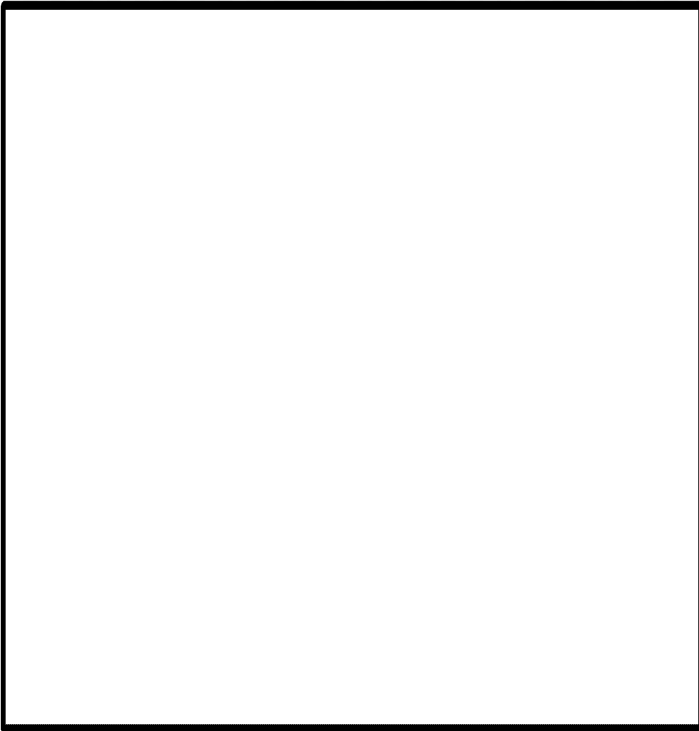
# Review Questions



U.S. Citizenship  
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# Review Questions



U.S. Citizenship  
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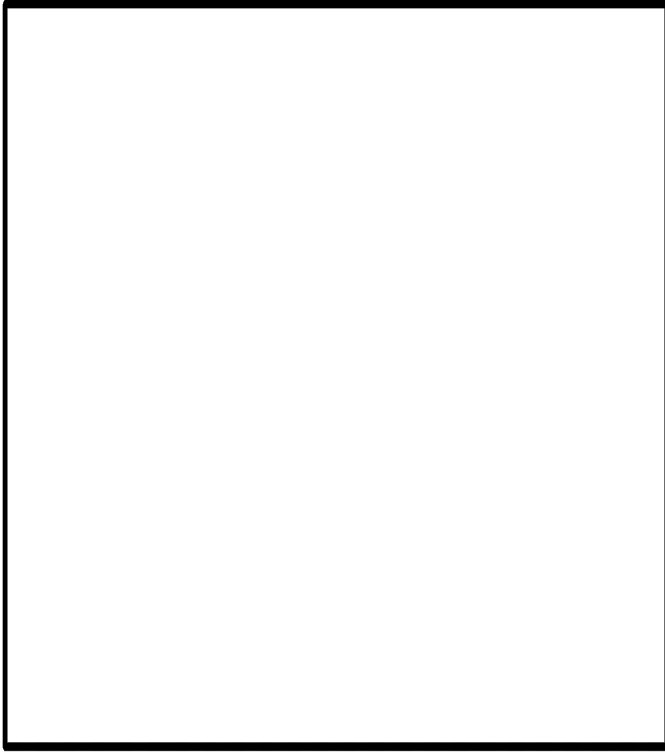
# Review Questions



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# Review Questions



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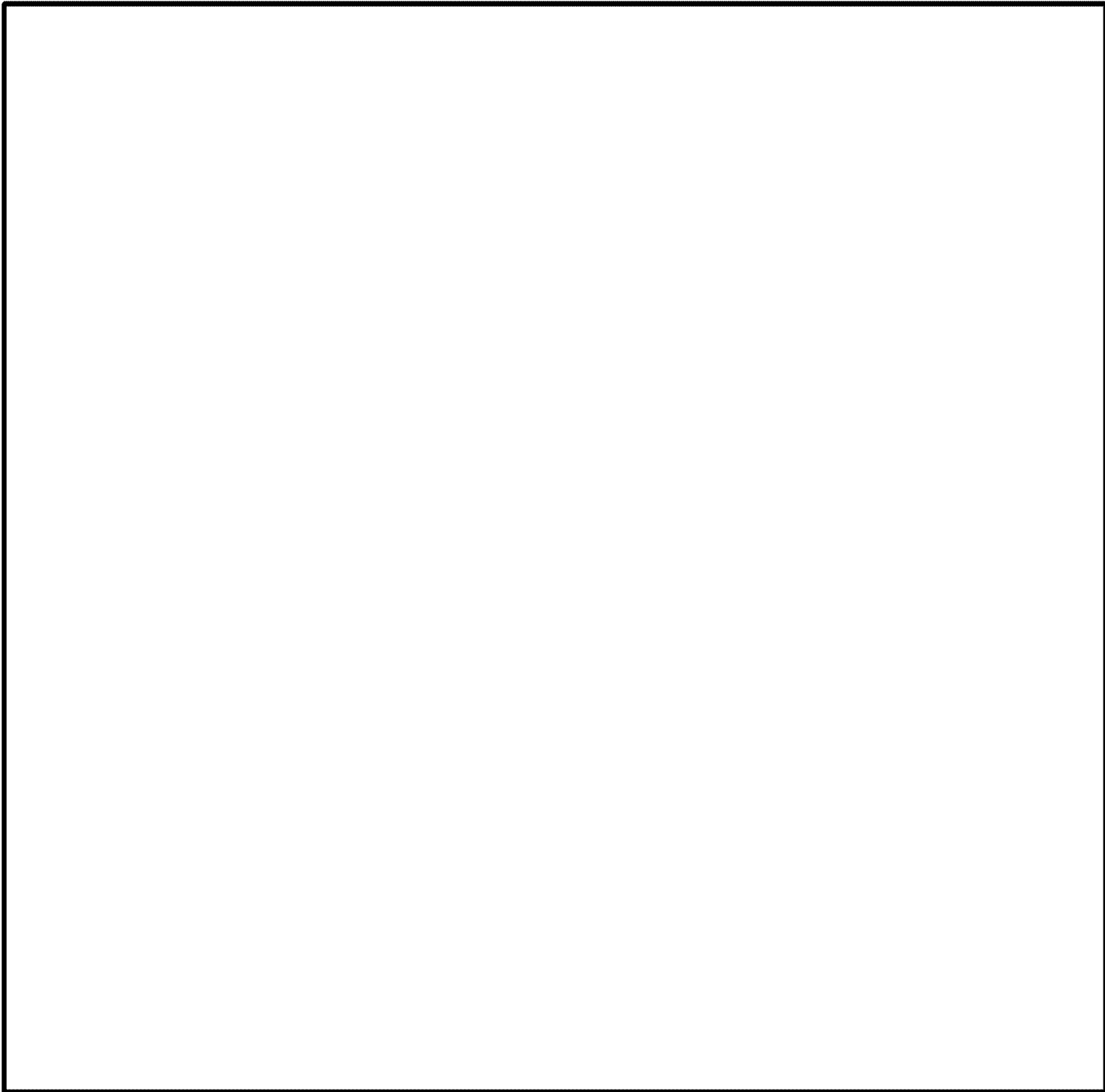


**U.S. Citizenship  
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# VOLUME 7: Adjustment of Status

Out-of-Scope



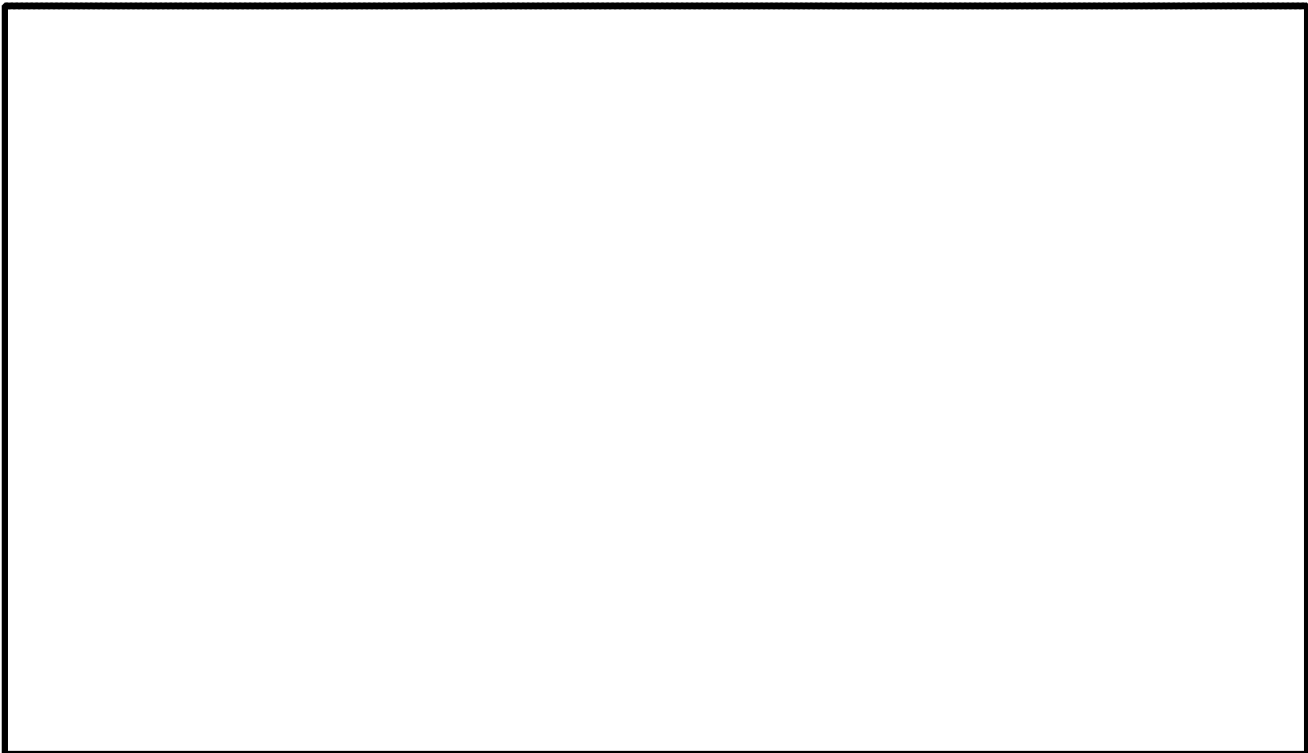
## 2. Affidavit of Support and Public Charge Considerations

While employment-based applicants and their derivatives are generally not required to provide a Form I-864, there is an exception for individuals petitioned for by USC or LPR relatives or an entity in which such a relative family member has a significant ownership interest (see [Chapter 9](#)). In these cases, the USC or LPR relative must file an Affidavit of Support on behalf of the beneficiary and any derivatives. If an employment-based adjustment applicant qualifying under [INA 204\(l\)](#) is not required to have a legally binding affidavit of support, then there is no need for a sponsor to submit a Form I-864, Affidavit of Support Under Section 213A of the Act. However, the individual is still subject to inadmissibility as a public charge and needs to show adequate income or financial means to satisfy public charge concerns (see [INA 212](#)).

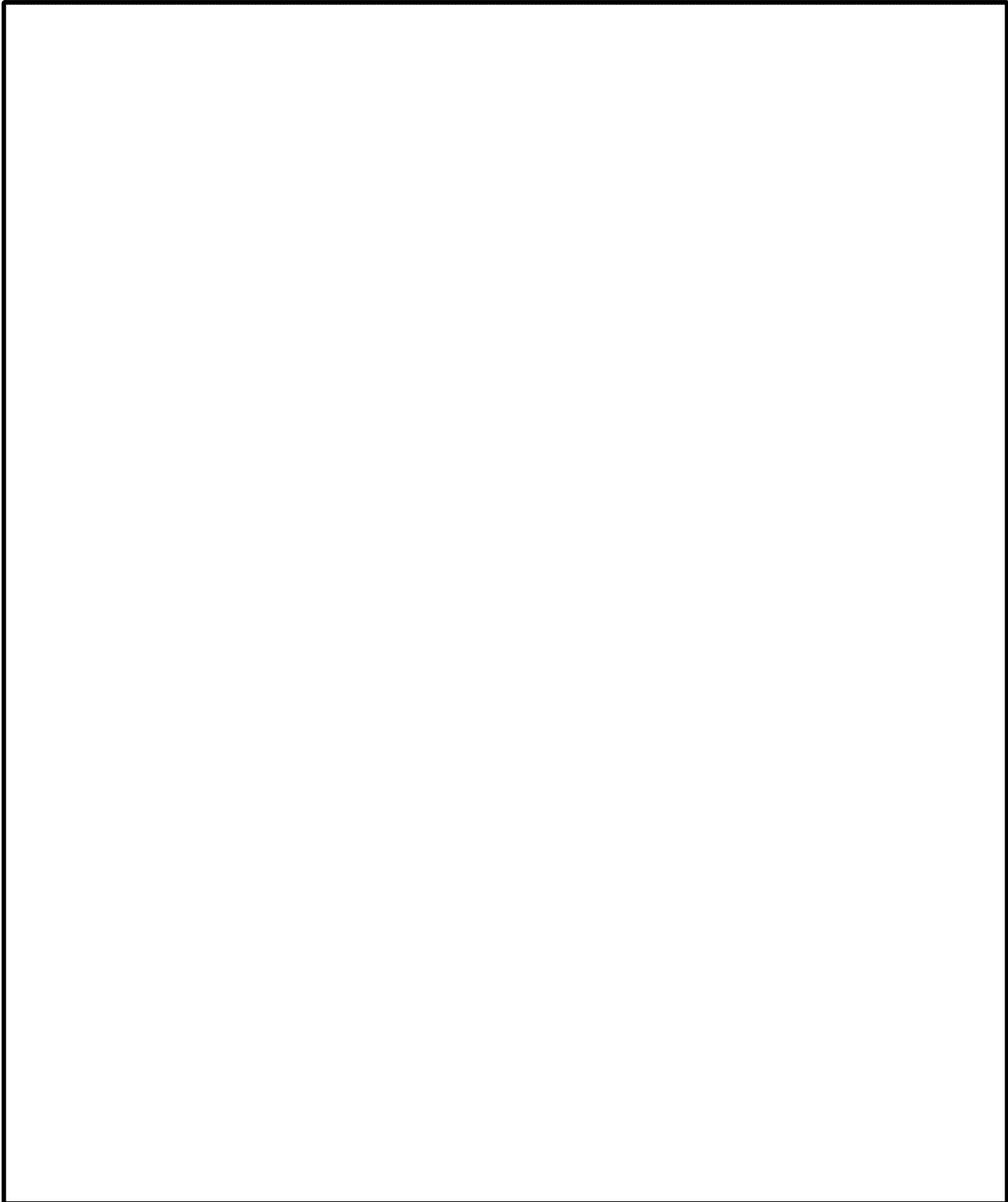
In employment-based cases where an I-864 is required, the death of the qualifying relative should have no bearing on an I-864 that has already been filed for the derivative, since it is the principal beneficiary and not the petitioner (sponsor) that is deceased. However, if the adjustment application and I-864 have not been filed, then the original petitioner will need to file an I-864 for the derivative applicants.

In employment-based cases where an I-864 is not required by INA 212(a)(4)(D), the surviving applicant may submit documentation such as tax returns, pay stubs, employment offers, insurance policies, and proof of assets to demonstrate his or her unlikelihood of becoming a public charge. Though not required, an applicant may submit a Form I-134, Affidavit of Support, with supporting documentation to demonstrate his or her income and/or assets. If the adjustment application does not contain documentation to overcome the public charge ground of inadmissibility, the officer should issue a RFE requesting that the applicant submit additional evidence.

In determining whether individuals are likely to become a public charge, the officer should consider the totality of the circumstances and make reasonable future projections based on an applicant's present situation. The officer should not speculate on "what if" scenarios such as loss of employment or medical emergencies. In making a public charge determination, the officer should consider the individual's age, health, family status, assets, financial status and resources, and education or skills. If the officer is satisfied that it seems unlikely that the individual will become dependent on the U.S. government for subsistence, then the individual has overcome the public charge ground of inadmissibility.



Out-of-Scope



**Chapter 9: Affidavit of Support and Public Charge under INA §212(a)(4)**

All adjustment applicants under INA 245(a) and INA 245(i) must be admissible.

As set forth in INA 212(a)(4)(D), employment based adjustment applicants are required to submit an Form I-864, Affidavit of Support Under Section 213A of the Act, if the adjustment applicant will work for a relative who is eligible to file a Form I-130 on behalf of the applicant. More specifically, this is if:

- The petitioning employer is a relative (as defined in 8 CFR 213a.1) of the applicant, and is a U.S. citizen or Lawful Permanent Resident; or
- A relative of the applicant has a significant ownership interest (5 percent or more) in the for-profit petitioning entity, and is a U.S. citizen or a Lawful Permanent Resident.

Accompanying spouses and children also need to submit Form I-864s. Each spouse or child must submit a photocopy of the principal's I-864, but they do not need to submit a photocopy of the supporting documentation. Spouses and children are considered to be "accompanying" a principal immigrant if they apply for an immigrant visa or adjustment of status either at the same time as the principal immigrant or within 6 months after the date the principal immigrant acquires LPR status.

Following-to-join spouses and children (those who apply for an immigrant visa or adjustment of status 6 months or more after the principal immigrant) require a new Form I-864, accompanied by supporting evidence, at the time they immigrate or adjust status.

In certain *limited* circumstances (e.g., the applicant has ported to a subsequent employer and does not now earn the DOL-determined prevailing wage) (see Chapter 4, Section H), may have reason to suspect that an applicant may become a public charge. In such limited circumstances, officers should confer with their supervisors to determine whether it is appropriate to request an affidavit of support to establish that the applicant is not inadmissible pursuant to INA 212(a)(4)(A).

**Example:**

Applicant "A" filed an adjustment application based on an approved I-140 filed on his behalf by Employer "X." DOL approved a prevailing wage of \$12.50/hour for the position. A year after filing his I-485, Applicant "A" properly ports to Employer "Y." Employer "Y" refuses to pay Applicant "A" \$12.50/hour, but offers a wage of \$10.00/hour. Applicant "A" is unmarried and has no children.

The adjudicating officer may not use Employer "Y's" refusal to pay the prevailing wage as a basis for denying Applicant "A's" I-485. However, Applicant "A" must also establish that he is not inadmissible. Based on Applicant "A's" salary and circumstances, though, there is no reasonable basis to conclude that he is likely to become a public charge if admitted.

# VIDEO SCRIPT

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- **TITLE: I Am a Lawful Permanent Resident. How Do I...Help My Relative Become a Lawful Permanent Resident of the United States?**
- **PREPARED FOR:**
- **PRODUCER:**
- **DRAFT: 1**
- **DATE: 8/1/2013**

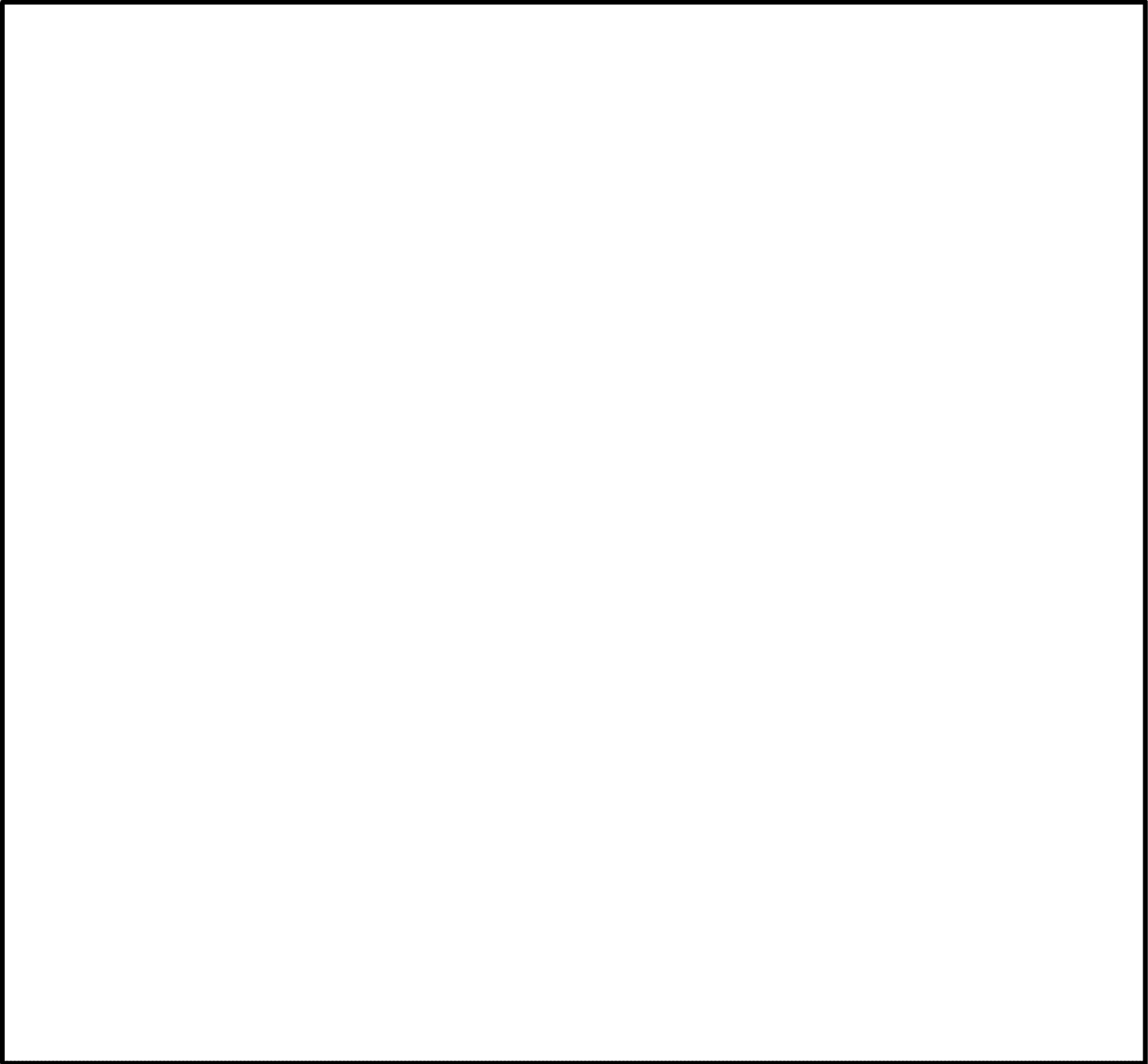
**NOTES:**

PAGE 1

(b)(5)

VISUAL

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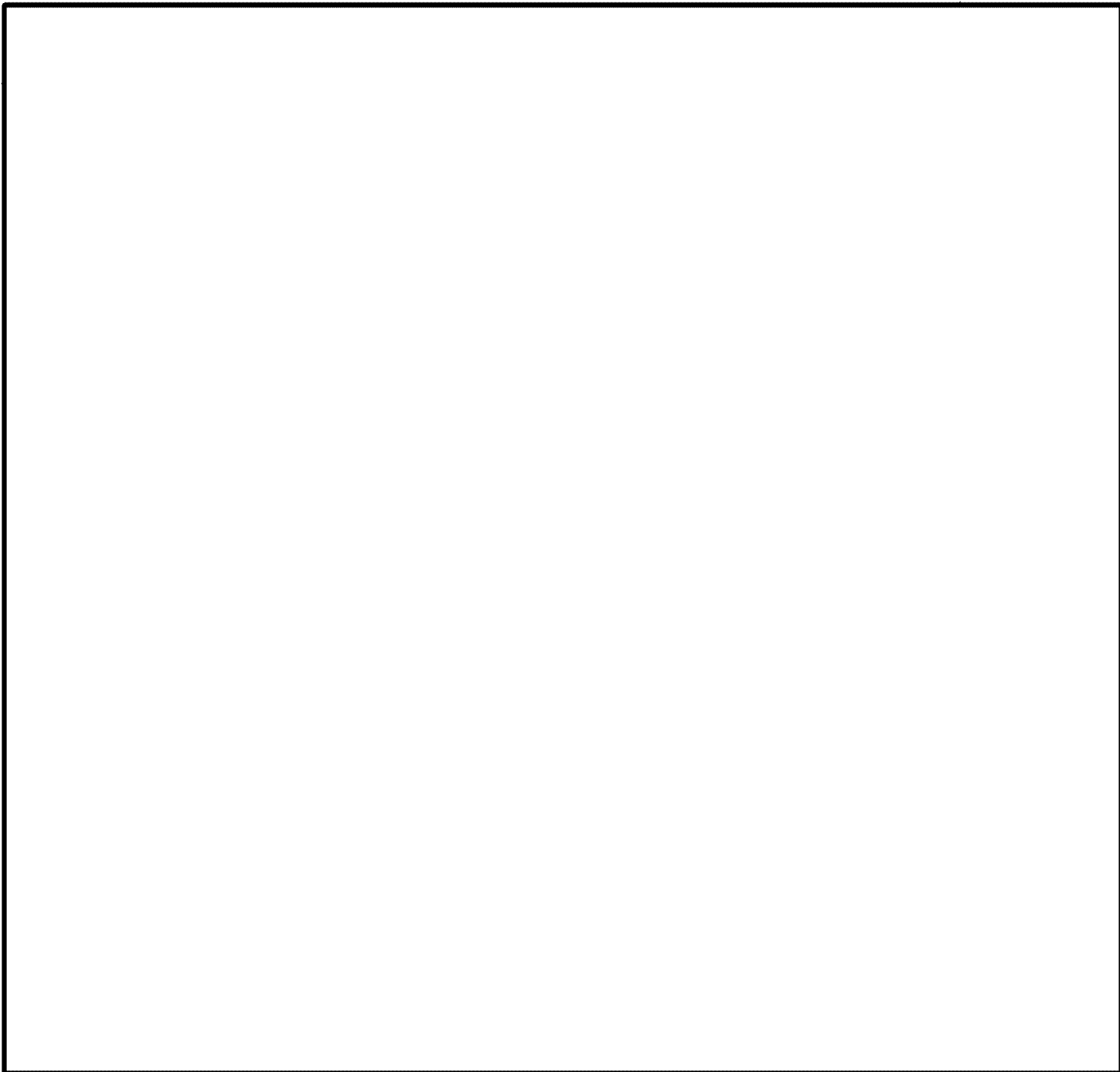


PAGE 2

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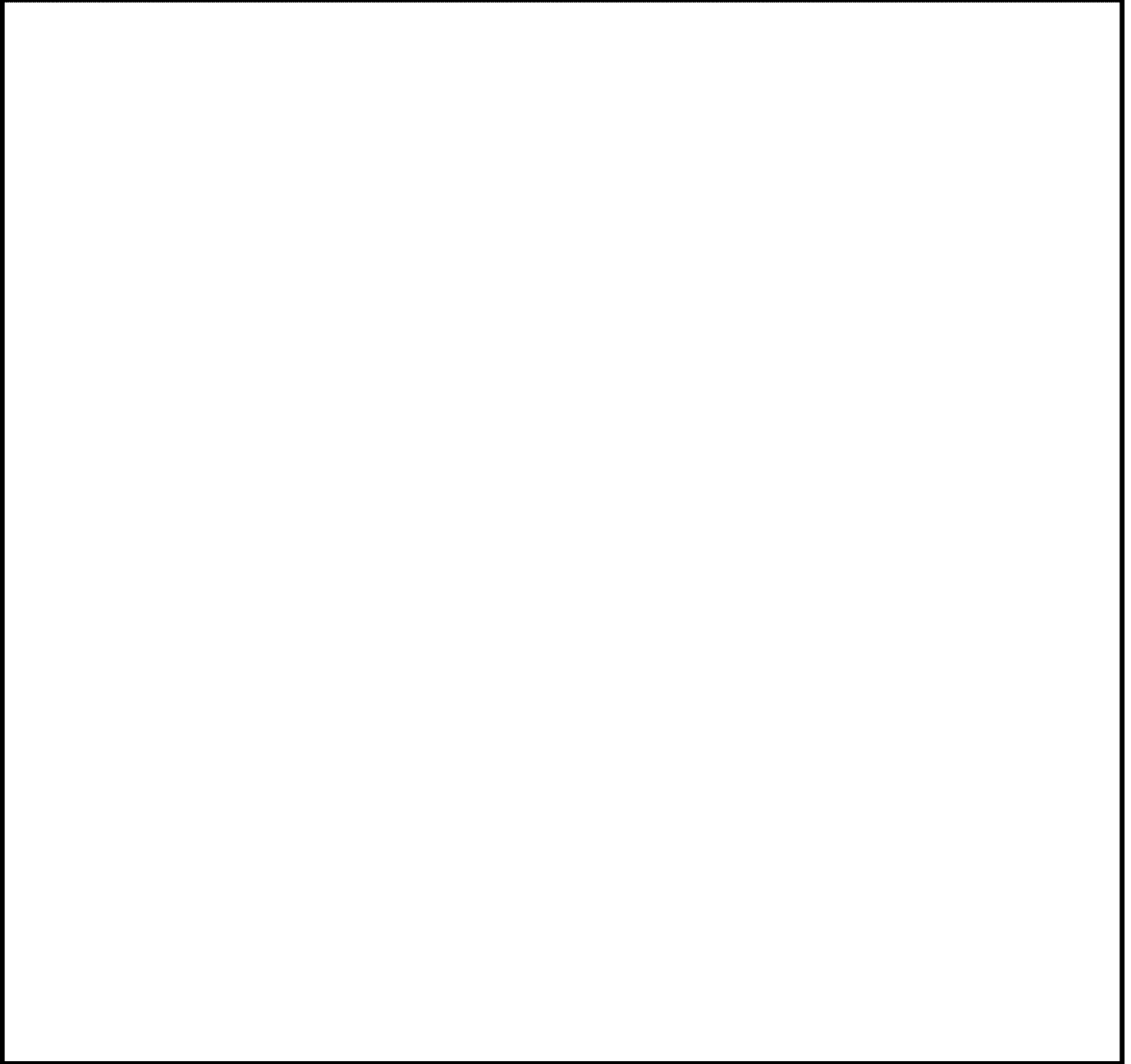


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PAGE 3

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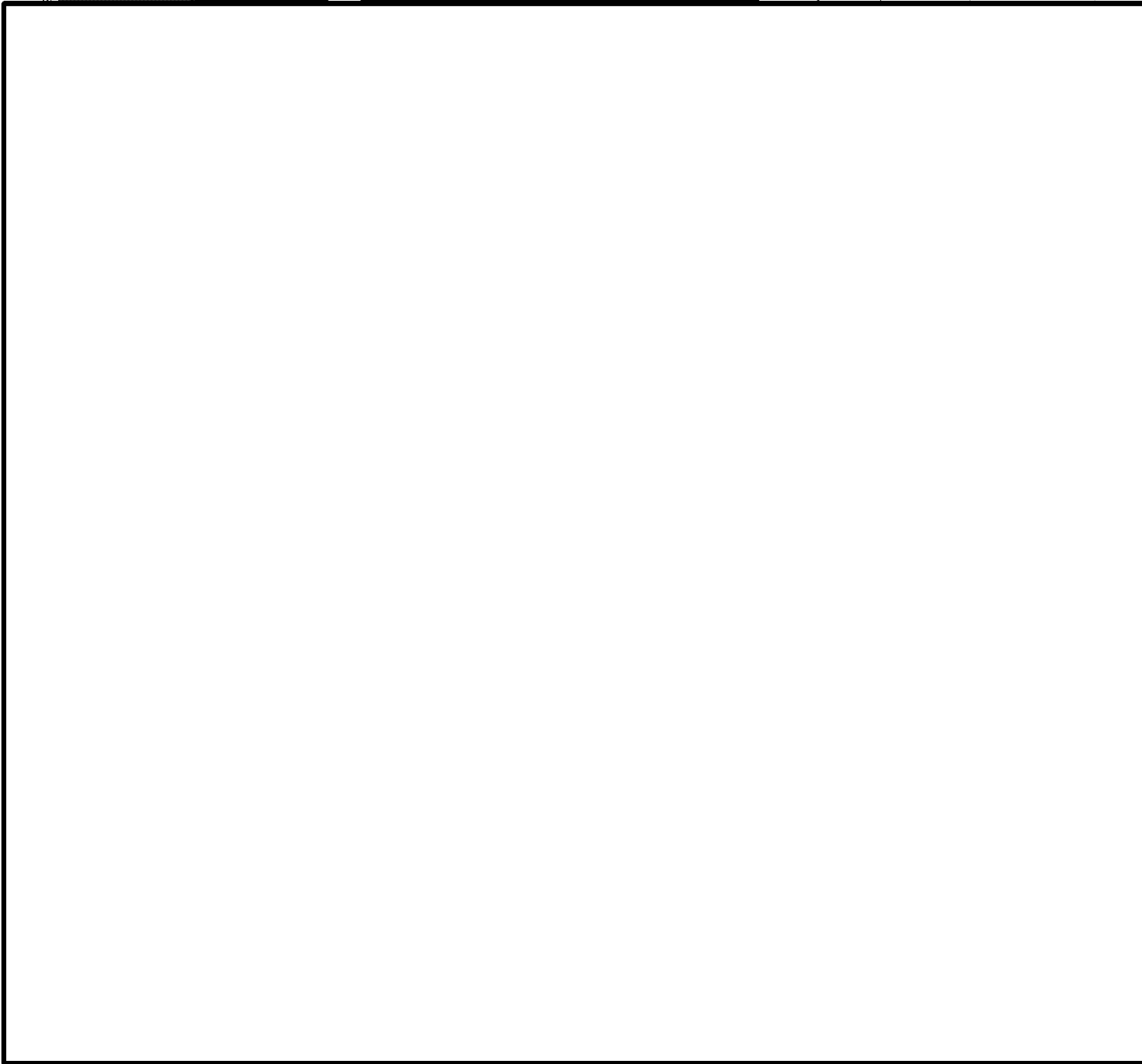


(b)(5)

PAGE 4

VISUAL

AUDIO



(b)(5)

PAGE 5

VISUAL

AUDIO





**Please note:** Economic depression, as is found in many regions of the world, is not considered to be an example of a harsh result contrary to the goal of family reunification unless it is of such an extreme nature as to possibly cause physical harm to the beneficiary.

- The new sponsor is required to submit an original Form I-864, Affidavit of Support, to show that he or she has adequate means of financial support and that the beneficiary of the petition is not likely to become a public charge.

- a. The substitute sponsor must complete the Form I-864, Affidavit of Support.
- b. The Form I-864 must contain an original signature of the sponsor.
- c. The new sponsor must be an immediate family member or a legal guardian of the beneficiary, such as a spouse, parent, mother-in-law, father-in-law, sibling, child, son, daughter, son-in-law, daughter-in-law, sister-in-law, brother-in-law, grandparent, or grandchild child at least 18 years of age.

d. Submit evidence that will establish the new sponsor's immigration status or U.S. citizenship.

- Other documentation;

- a. The petitioner's death certificate.
- b. The initial approval notice.
- c. Any correspondence received from the Department of State or the National Visa Center.
- d. Evidence of the relationship between the new sponsor and the beneficiary.

- If the death certificate submitted indicates that the lawful permanent resident (LPR) petitioner died while outside of the United States, you must establish that it was not the intent of the petitioner to abandon his or her LPR status. See Matter of Abdoulin, 17 I & N Dec. 458 (BIA 1980) and Matter of Abdelhadi, 15 I & N Dec. 383 (BIA 1975).

Such evidence may include but is not limited to:

- Evidence of a plan for a return to the United States,
- Evidence of an un-relinquished domicile in the United States, or
- Evidence of continued ties to the United States.

If it is determined that a request for reinstatement does not meet the statutory and regulatory requirements, any subsequent request will require the filing of a formal motion for reconsideration accompanied by the appropriate motion fee.




U.S. Citizenship  
and Immigration  
Services

HQ 70/21.1.13

OCT 23 2008

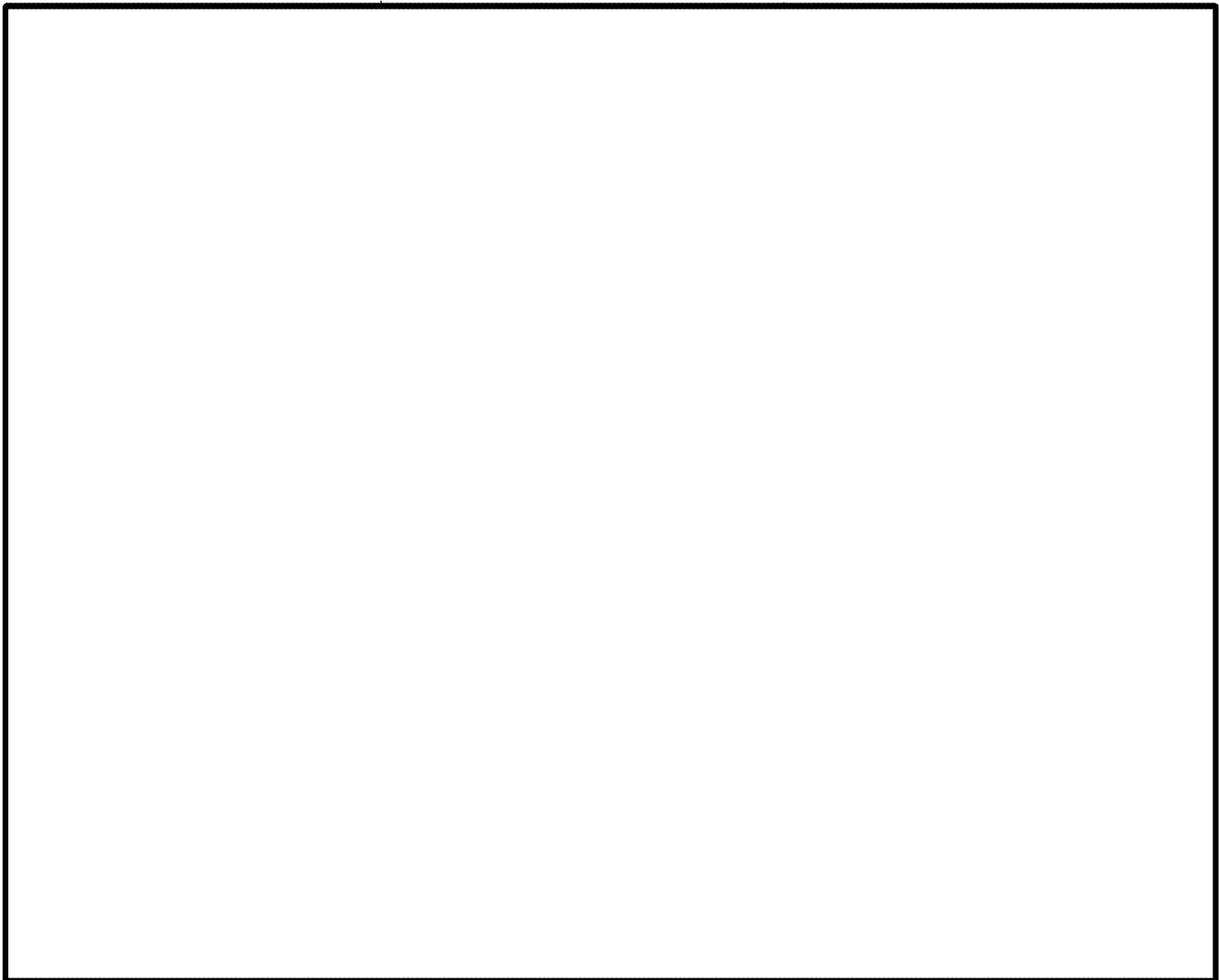
## Memorandum

TO: Field Leadership

FROM: Donald Neufeld   
Acting Associate Director

(b)(5)

SUBJECT: Form I-864, Affidavit of Support, Review Completed at the National Benefits Center

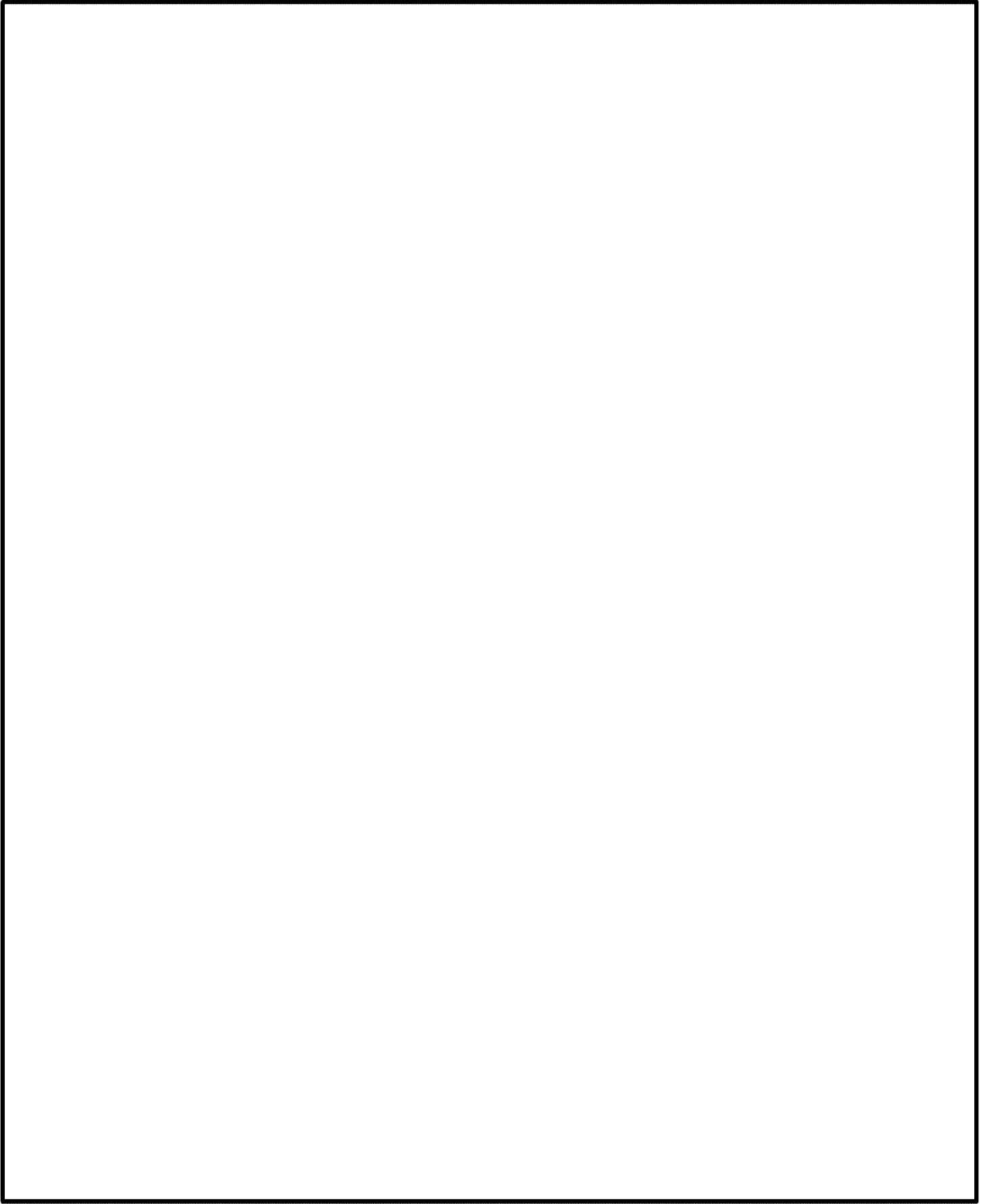


(b)(5)

**Form I-864, Affidavit of Support, Review Completed at the National Benefits Center**  
**Page 2**









U.S. Citizenship  
and Immigration  
Services

HQDOMO 130/1.3  
AFM Update AD08-04

## Interoffice Memorandum

To: FIELD LEADERSHIP

From: Mike Aytes /s/  
Associate Director of Domestic Operations  
U.S. Citizenship and Immigration Services

Date: November 8, 2007

Re: Effect of Form I-130 Petitioner's Death on Authority to Approve the Form I-130

Revisions to *Adjudicator's Field Manual (AFM)* Chapter 21.2  
(AFM Update AD08-04)

### **1. Purpose**

This memorandum reaffirms, for cases outside the 9<sup>th</sup> Circuit, USCIS policy concerning the effect of a visa petitioner's death, while the petition is still pending, on the authority to approve the petition. For cases within the 9<sup>th</sup> Circuit, the memorandum directs USCIS adjudicators to follow *Freeman v. Gonzales*, 444 F.3d 1031 (9<sup>th</sup> Cir. 2006), in cases involving the same essential facts.

### **2. Background**

The traditional view has been that if a Form I-130 visa petitioner dies before USCIS acts on the Form I-130, USCIS must deny the Form I-130. *Cf. Matter of Sano*, 19 I&N Dec. 299 (BIA 1985); *Matter of Varela*, 13 I&N Dec. 453 (BIA 1970). The U.S. Court of Appeals for the Ninth Circuit has rejected this interpretation of the statute. *Freeman v. Gonzales*, 444 F.3d 1031 (9<sup>th</sup> Cir. 2006). USCIS is legally obligated to follow the precedent decisions of the Board of Immigration Appeals, in the absence of a supervening precedent decision of a court of appeals. 8 CFR 1003.1(g). Thus, USCIS adjudicators must follow *Sano* and *Varela*, and not *Freeman*, in any case arising outside the Ninth Circuit.

In addition to noting that *Freeman* does not apply outside the Ninth Circuit, the USCIS position is that *Freeman* was wrongly decided. A person who had been married is no longer, legally, a

Re: Effect of Form I-130 Petitioner's Death on Authority to Approve the Form I-130  
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Page 2

“spouse” once the other spouse has died. Moreover, even if the statute may be considered ambiguous, the Ninth Circuit failed to give the deference to the Board’s interpretation of the statute that, under decisions of the Supreme Court, a court is legally bound to give. See *National Cable & Telecomm. Assn v. Brand X Internet Services*, 545 U.S. 967 (2005); *Chevron, U.S.A., Inc., v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

Nevertheless, the *Freeman* decision is a controlling precedent for cases in the Ninth Circuit, unless the Ninth Circuit were to overrule *Freeman* or the Supreme Court were to decide a case involving the same issue in a manner contrary to *Freeman*.

USCIS adjudicators are reminded that, under the circumstances specified in 8 CFR 204.2(i)(1)(iv) and 205.1(a)(3)(i)(C)(1), *as amended*, 71 FR 35732, 35749 (2006), a spousal Form I-130 is converted to a widow(er)’s Form I-360 if, on the date of the Form I-130 petitioner’s death, the couple were married for at least 2 years and the widow(er) would be otherwise eligible to file a widow(er)’s Form I-360.

USCIS adjudicators are also reminded that, if the visa petitioner dies *after* approval of a Form I-130 – in both immediate relative and family-preference cases – then USCIS has discretion to reinstate the pre-death approval. 8 CFR 205.1(a)(3)(i)(C)(2), *as amended*, 71 FR 35732, 35749 (2006). This discretion will be exercised favorably only if there is a substitute sponsor who has submitted a Form I-864 in place of any Form I-864 that was filed, or would have been filed, by the deceased petitioner. *Id.*

### **3. Field Guidance and Adjudicator’s Field Manual (AFM) Update**

The adjudicator is directed to comply with the following guidance.

1. Chapter 21.2 of the AFM entitled “Factors Common to the Adjudication of All Relative Visa Petitions” is amended by:

- a. Adding a new chapter 21.2(a)(4); and
- b. Revising the Note at the end of chapter 21.2(g)(1)(C).

The revisions read as follows:

#### **21.2 Factors Common to the Adjudication of All Relative Visa Petitions.**

##### **(a) Filing and Receipting of Relative Petitions.**

\*\*\*\*\*

(4) Effect of the petitioner's death before approval. (A)(1) Except as provided in paragraph (a)(4)(B) of this chapter for cases governed by the precedent decisions of the Ninth Circuit, a Form I-130 must be denied if the visa petitioner dies after the visa petitioner filed the Form I-130 and before USCIS has adjudicated the Form I-130. *Matter of Sano*, 19 I&N Dec. 299 (BIA 1985) and *Matter of Varela*, 13 I&N Dec. 453 (BIA 1970). A USCIS adjudicator will actually deny a Form I-130 in this situation, and not just "terminate action" on it. The denial will give as reasons for the denial the reasoning stated in paragraph (a)(4)(A)(2) of this chapter.

(A)(2) Effect of *Freeman v. Gonzales* outside the Ninth Circuit. USCIS adjudicators shall *not* follow the decision in *Freeman v. Gonzales*, 444 F.3d 1031 (9<sup>th</sup> Cir. 2006) in any case arising outside the Ninth Circuit. The USCIS position is that *Freeman* was wrongly decided, for the reasons set forth in this chapter 21.2(a)(4)(A)(2). USCIS adjudicators, moreover, are legally obligated to follow *Sano* and *Varela*, since the Board designated them as precedents. 8 CFR 1003.1(g).

Unless Congress clearly intended a specific, technical meaning, a statute is to be interpreted according to the common, ordinary meaning of the words of the statute at the time of enactment. See *BedRoc Ltd, LLC v. United States*, 541 U.S. 176, 184 (2004); *Perrin v. United States*, 444 U.S. 37, 42 (1979); *Burns v. Alcalá*, 420 U.S. 575, 580-81 (1975). Like the term "material," the term "spouse" "is not a *hapax legomenon*." Cf *Kungys v. United States*. 485 U.S. 759, 769 (1988). The common, ordinary meaning of the term "spouse" is a married person. See definition of "spouse," Black's Law Dictionary (8<sup>th</sup> Ed. 2004). Federal law has adopted this same basic definition of "spouse" for purposes of the administration of every Federal statute and regulation. 1 U.S.C. § 7. A person is a "spouse" only if he or she is either the husband or the wife of a legal marriage. *Id.*

The general rule in the United States, moreover, is that marriage ends upon the death of one spouse. See 52 Am. Jur. 2d, Marriage, § 8.

The *Freeman* panel considered it significant that neither § 201(b)(2)(A)(i), nor any other provision of the Act, clearly provides that a person's status as a "spouse" ends when the marriage ends. 444 F.3d at 1039-40. But if the term "spouse" is given its ordinary meaning, there is no need for such a specific provision. Citing the Supreme Court's decision in *BedRoc Ltd, LLC, supra*, the *Freeman* panel did acknowledge that statutory terms are to be given their common, ordinary meaning. Despite this, the *Freeman* panel simply took no notice of the legal effect of death upon a marriage. As a matter of law, a marriage ends upon the death of one spouse. The other person, then, is no longer a married person and, by definition, no longer a spouse.

Moreover, although the *Freeman* panel said it was reading § 201(b)(2)(A)(i) in light of the statute as a whole, the *Freeman* panel did not consider § 204(b) of the Act, 8

U.S.C. § 1154(b). Under § 204(b), USCIS may approve a Form I-130 only if, after investigation, USCIS finds that the "facts stated in the petition *are true*" (*emphasis added*). It is not enough, as the court thought in *Freeman*, 444 F.3d at 1039-40, that the facts *were* true when the petition was filed. At the time of adjudication, USCIS must find that the facts are true otherwise USCIS may not approve the Form I-130. See INA § 204(b), 8 U.S.C. § 1154(b). See *id.* Once the petitioner dies, the claim that the petitioner *is* related to the beneficiary in the legally relevant way is *no longer* true. The general rule in immigration cases, moreover, is that cases are decided based on the facts as they exist on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992).

This conclusion that a Form I-130 cannot be approved after the petitioner dies does not, as the *Freeman* panel thought, 444 F.3d at 1039, "import" into the first sentence of § 201(b)(2)(A)(i) any requirement concerning how long the Form I-130 petitioner and the alien beneficiary must be married in order for USCIS to approve the Form I-130. What the first sentence of § 201(b)(2)(A)(i) and § 204(b), when read together, require is that the petitioner and beneficiary must still be legally married, in order for USCIS to approve the Form I-130. This factor readily distinguishes the case of a deceased petitioner from *Dabaghian v. Civiletti*, 607 F.2d 868 (9<sup>th</sup> Cir. 1979), upon which the *Freeman* panel relied in concluding that it was "untenable" to say that a visa petitioner's death ends the beneficiary's claim to be an immediate relative. 444 F.3d at 1041. The petitioner and the beneficiary in *Dabaghian* were still legally married when the alien in that case had obtained permanent residence. 607 F.2d at 869. If the petitioner has died, by contrast, the beneficiary is no longer married to the petitioner. Their marriage dissolved upon the petitioner's death. Thus, the beneficiary is not the spouse of a citizen, and so, is not an immediate relative. INA § 201(b)(2)(A)(i), 8 U.S.C. § 1151(b)(2)(A)(i).

The *Freeman* panel also failed to consider INA § 205, 8 U.S.C. § 1155, and the related regulations. Under § 205, for example, USCIS may revoke approval of a Form I-130 in any case in which USCIS finds good cause for doing so. Had USCIS approved Form I-130 in a case before a petitioner's death, the approval would have been revoked, automatically, upon his death. See 8 C.F.R. § 205.1(a)(3)(i)(C)(2), *as amended* 71 *Fed. Reg.* 35,732, 35,749 (2006). There is discretion to leave an approval in place. As the Ninth Circuit has held in earlier cases, however, this discretion is not available if the petitioner dies while the Form I-130 was still pending. See *Abboud v. INS*, 140 F.3d 843, 849 (9<sup>th</sup> Cir. 1998); and *Dodig v. INS*, 9 F.3d 1418 (9<sup>th</sup> Cir. 1993). Under DHS regulations, moreover, USCIS may reinstate approval of a Form I-130 only if some qualified person is willing and able to submit a Form I-864, affidavit of support, as a substitute for the petitioner. 8 C.F.R. § 205.1(a)(3)(C)(2), *as amended*, 71 *Fed. Reg.* at 35,749. The statute, in turn, permits a substitute sponsor only if the petitioner dies *after* approval of the Form I-130. INA § 213A(f)(5)(B), 8 U.S.C. § 1183a(f)(5)(B).

The most reasonable inference from the provision for a substitute sponsor only if the Form I-130 was approved before the petitioner's death is that the petitioner's death ends the beneficiary's ability to immigrate.

This inference is all the stronger, since Congress has provided several statutes under which a person may obtain permanent residence based on a relationship that has been dissolved by death. The *Freeman* panel did consider one of these provisions, the second sentence of § 201(b)(2)(A)(i). Under this provision, the widow(er) of a citizen can still qualify as an immediate relative, if the widow(er) and the citizen were married at least 2 years at the time of the citizen's death. Similar provisions are found in the FY2004 National Defense Authorization Act, Pub. L. 108-136, Division A, § 1703, 117 Stat. 1392, 1693-96 (2003) and the USA Patriot Act, Pub. L. 107-57, §§ 421 and 423, 115 Stat. 272, 356-363. USCIS acknowledges, as the *Freeman* panel did, 444 F.3d at 1039, that the second sentence of § 201(b)(2)(A)(i) permits a widow(er) to file his or her own petition. The salient point to be drawn from these provisions, however, is that, when Congress has wanted to permit an alien to obtain permanent residence based on a relationship that no longer exists, Congress has done so explicitly.

Section 421 of the Patriot Act is particularly relevant on this point. Under § 421, Congress provided a special benefit for the beneficiary of a Form I-130 if the Form I-130 was "revoked or terminated (or otherwise rendered null), either before or after its approval" because the petitioner died as a result of the September 11, 2001, terrorist attacks on the United States. Pub. L. 107-57, § 421(a) and (b)(1)(B)I, and § 428(b), 115 Stat. at 356-7. In particular, the beneficiaries of § 421 immigrate as "special immigrants," and *not* as "immediate relatives." *Id.* There would have been no need for Congress to enact § 421(a), if, as the *Freeman* panel and the district court in this case concluded, a visa petitioner's death does not "terminate (or otherwise render null)," *id.* § 421(b)(1)(B), 115 Stat. at 356, the Form I-130.

The *Freeman* panel, moreover, misconstrued the Board's precedents in *Matter of Sano* and *Matter of Varela*. The actual result in each case was the same: the Board affirmed the INS decisions denying the respective Forms I-130 due to the petitioner's death. The only difference between these two decisions was the reason given. In *Matter of Varela*, the Board assumed it had jurisdiction and decided the case on the merits, holding that the visa petitioner's death required denial of the Form I-130 because the beneficiary was no longer the spouse of a citizen. 13 I&N Dec. at 454. The Board did not, in *Sano*, question its conclusion in *Varela* that a person is no longer a "spouse" after the other spouse had died. Rather, in *Sano*, the Board held that the beneficiary's lack of standing would have been the more proper basis for the decision in *Varela*. 19 I&N Dec. at 300-01. The Secretary and the Attorney General, moreover, have specifically endorsed the conclusion from *Varela* that "[t]here is no authority to approve a visa petition after the petitioner dies." 71 *Fed. Reg.* at 35,735.

The *Freeman* panel was also mistaken in saying that the Board in *Sano* acted "summarily," 444 F.3d at 1038, and without statutory analysis. The Board concluded that the beneficiary in *Sano* was no longer a "spouse" of a citizen because the citizen had died. 13 I&N Dec. at 454. The Board's conclusion was fully consistent with the general rule in the United States that marriage ends with the death of one spouse. See 52 Am. Jur. 2d, Marriage, § 8. That the Board's opinion may have been brief does not change the fact that the Board gave a legally sound and sufficient basis for its conclusion.

(A)(3) Effect of other judicial decisions. If a *district court* outside the Ninth Circuit follows *Freeman* in an individual case, and the Government does not appeal the decision, USCIS will comply with the district court's judgment *with respect to that specific case*. USCIS will not, however, consider the district court judgment to be a binding precedent for any subsequent case, since the Board has held that district court judgments do not have binding effect for other cases. *Matter of K- S-*, 20 I&N Dec. 715 (BIA 1993).

If a court of appeals other than the Ninth Circuit follows *Freeman*, and *designates its own decision as a precedent*, then the guidance in chapter 21.2(a)(4)(B) of the AFM will apply in that Circuit, as well as in the Ninth Circuit. If a different Circuit follows *Freeman* in a decision that is *not* designated a precedent, USCIS adjudicators should consult with their regional counsel to determine whether, under the law of that Circuit, the decision is nevertheless binding in subsequent cases.

(B)(1) Special rule for Ninth Circuit cases involving *spousal immediate relative* petitions. Chapter 21.2(a)(4)(A) of the AFM does not apply to a case that is governed by the precedent decisions of the Ninth Circuit. In the Ninth Circuit, if the visa petitioner dies after filing the *spousal immediate relative* Form I-130 and after the beneficiary has filed the related Form I-485, but before there is a final decision on the Form I-130, the *spousal immediate relative* Form I-130 may still be approved, based on the Ninth Circuit decision in *Freeman v. Gonzales*, 444 F.3d 1031 (9<sup>th</sup> Cir. 2006). The beneficiary still bears the burden of proving that the beneficiary would qualify as an immediate relative if the petitioner were still alive. Establishing that the beneficiary would qualify as an immediate relative if the petitioner were still alive requires the beneficiary to prove that, before the petitioner's death, the petitioner and beneficiary were related in a way that would have made the beneficiary eligible for classification as an immediate relative under section 201(b)(2)(A)(i). A Form I-130, *Petition for Alien Relative*, which is based on a spousal (immediate relative) relationship may still be denied if the beneficiary fails to establish that the marriage that forms the basis for the classification was bona fide, and not entered into to acquire an immigration benefit.

Note AFM chapter 21.2(a)(4)(B) applies only to cases involving the same essential facts as the *Freeman* case. One fact that played a critical role in the panel's decision is that the beneficiary in *Freeman* had filed her Form I-485 before the petitioner had died. 444 F.3<sup>rd</sup> at 1042-43. In cases where the petitioner dies before the beneficiary filed a Form I-485, the case results in a significant factual distinction from that presented in *Freeman*. In such cases, the Form I-130 should be denied, based on this distinction, as specified in chapter 21.2(a)(4)(A)(2). AFM chapter 21.4(a)(4)(B) does not apply to family based petitions under section 203(a) of the Act or immediate relative petitions filed for the *parents or children* of citizens, rather than for *spouses*.

(B)(2) The beneficiary of a spousal immediate relative Form I-130 petition that is approved under AFM chapter 21.2(a)(4) must still submit a Form I-864 in order to overcome inadmissibility on public charge grounds. Except as provided in paragraph 21.2(a)(4)(C) of this chapter, therefore, the post-death approval of any Form I-130 that is approved under the *Freeman* decision and this paragraph 21.2(a)(4) will be revoked automatically under 8 CFR 205.1(a)(3)(i)(C), unless the beneficiary presents a request under 8 CFR 205.1(a)(3)(i)(C)(2) for humanitarian reinstatement, supported by a properly completed Form I-864 from an individual who qualifies under section 213A(f)(5)(B) of the Act as a qualifying substitute sponsor. USCIS may, as a matter of discretion, reinstate the approval pursuant to section 213A(f)(5)(B) of the Act and 8 CFR 205.1(a)(3)(i)(C)(2) if a qualifying substitute sponsor submits a Form I-864 in place of any Form I-864 that was submitted, or would have been submitted, by the deceased petitioner. If the beneficiary requests reinstatement under 8 CFR 205.1(a)(3)(i)(C)(2) before USCIS has actually adjudicated the Form I-130, and reinstatement is appropriate under 8 CFR 205.1(a)(3)(i)(C)(2), the decisions to approve the Form I-130 and to leave approval unrevoked will be made in a single written notice.

(C) Paragraph 21.2(a)(4)(B) of this AFM does not apply to any Form I-130 that is converted upon the petitioner's death to a widow(er)'s Form I-360, as provided for in 8 CFR 204.2(i)(1)(iv) and 205.1(a)(3)(i)(C)(1).

\*\*\*\*\*

**(g) Revocation of Approval.** \*\*\*

**(1) Automatic Revocation.**

\*\*\*\*\*

**(C) Discretionary Authority to Not Automatically Revoke Approval.**



Re: Effect of Form I-130 Petitioner's Death on Authority to Approve the Form I-130  
(AFM Update AD08-04)  
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**Note:** See chapter 21.2(a)(4) of this AFM for guidance concerning the effect of a petitioner's death *before* approval of a Form I-130.

#### **4. Use**

This memorandum is intended solely for the training and guidance of USCIS personnel in performing their duties relative to the adjudication of applications. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law of by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

#### **5. Contact Information**

Operational questions regarding this memorandum may be directed to Andrew Perry, Regulation and Product Management Division, Domestic Operations Directorate. Inquiries should be vetted through appropriate supervisory channels.

Distribution List:      Regional Directors  
                                 Service Center Directors  
                                 District Directors  
                                 National Benefits Directors  
                                 Field Office Directors (Including Overseas Field Office Directors)




U.S. Citizenship  
and Immigration  
Services

HQDOMO 70/6.1.1-P  
70/6.1.3-P  
AFM Update AD10-09

## Interoffice Memorandum

To: Executive Leadership

From: Donald Neufeld   
Acting Associate Director  
Domestic Operations Directorate

  
Lori Scialabba  
Associate Director  
Refugee, Asylum, and International Operations Directorate

Pearl Chang   
Acting Chief  
Office of Policy and Strategy

Date: **DEC - 2 2009**

SUBJECT: Additional Guidance Regarding Surviving Spouses of Deceased U.S. Citizens and their Children (REVISED)

Effect of FY2010 DHS Appropriations Act on eligibility to immigrate after death of visa petitioner

Revisions to Adjudicator's Field Manual (AFM) Chapter(s) 21.2(a)(4) and (h)(1)(C)  
(AFM Update AD10-09)

### I. Purpose

This memorandum supersedes an earlier memorandum on this subject, dated November 13, 2009, and provides updated guidance to U.S. Citizenship and Immigration Services (USCIS) field offices and service centers regarding the processing of Forms I-130, petitions for alien relative, and I-485, application to register permanent residence or adjust status, filed by surviving spouses of deceased U.S. citizens and the qualifying children of the surviving spouses. This new guidance is based on the enactment of section 568(c) of the Department of Homeland Security Appropriations Act, 2010, Pub. L. No. 111-83, 123 Stat. 4142, 4186 (2009), which provides

relief for these aliens. Section 568(c) entered into force on October 28, 2009, the date of enactment.

Sections 568(d) and (e) of the FY2010 DHS Appropriations Act, which provide relief for aliens who are surviving beneficiaries of certain pending or approved petitions filed by certain qualifying categories of noncitizens, will be addressed in a separate memorandum.

## **II. Background**

### **A. Prior Policy and Related Litigation**

For many years, U.S. immigration policy has been that a Form I-130 could not be approved if the petitioner died while the Form I-130 was pending. See *Matter of Sano*, 19 I&N Dec. 299 (BIA 1985); *Matter of Varela*, 13 I&N Dec. 453 (BIA 1970). As far back as 1938, our immigration regulations have provided for the revocation of the approval of a visa petition upon the petitioner's death. More recently, the regulations, while maintaining that general policy, have provided for discretion, for "humanitarian reasons," to reinstate the approval. 8 C.F.R. § 205.1(a)(3)(i)(C)(2). Also, since 2006, 8 C.F.R. § 204.2(i)(1)(iv) and 205.1(a)(3)(i)(C)(1) have provided that the automatic revocation provision does not apply to a spousal immediate relative visa petition, if the deceased petitioner and the alien widow(er) had been married at least two years when the petitioner died.

Over the past several years, widow(er)s of citizens who had died before the second anniversary of the underlying marriages have challenged this long-standing policy as being inconsistent with the statute. The federal courts of appeals have split on the legal issue. Compare *Robinson v. Napolitano*, 554 F.3d 358 (3d Cir. 2009) (sustaining agency view that petitioner's death while a Form I-130 is pending ends the beneficiary's eligibility); *petition for cert. filed*, No. 09-94 (U.S. filed July 23, 2009), with *Taing v. Napolitano*, 567 F.3d 19 (1st Cir. 2009) (holding agency policy violative of statute); *Lockhart v. Napolitano*, 561 F.3d 611 (6th Cir. 2009) (same); and *Freeman v. Gonzales*, 444 F.3d 1031 (9th Cir. 2006) (same). The issue has engendered much litigation before the federal district courts in recent months, with most courts ruling against the agency. Among the unfavorable decisions is the class action ruling in *Hootkins v. Napolitano*, \_\_\_ F. Supp. 2d \_\_\_, 2009 WL 2222839 (C.D. Cal. Apr. 28, 2009), which is on appeal to the Ninth Circuit Court of Appeals. Other cases are pending in district courts throughout the United States.

### **B. Section 568(c) of FY2010 DHS Appropriations Act**

Congress, however, recently acted to resolve the issue. On October 28, 2009, the President signed into law the FY2010 DHS Appropriations Act. Section 568(c) of the new law amends the second sentence in section 201(b)(2)(A)(i) of the INA so that, for a widow(er) of a citizen to qualify as an immediate relative, it is no longer necessary for the couple to have been married at least two years when the citizen died. The second sentence of section 201(b)(2)(A)(i) now reads,

In the case of an alien who was the spouse of a citizen of the United States and was not legally separated from the citizen at the time of the citizen's death, the alien (and each child of the alien) shall be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen's death but only if the spouse files a petition under [section 204(a)(1)(A)(ii) of the INA] within 2 years after such date and only until the date the spouse remarries.

When a widow(er) qualifies as an immediate relative under the second sentence in section 201(b)(2)(A)(i) of the INA, his or her children, as defined in sections 101(b)(1) and 201(f) of the INA, also qualify. The amendment made by section 568(c) applies equally to aliens abroad who are seeking immigrant visas and aliens in the United States who are seeking adjustment of status. The amendment applies to any alien whose spouse died before October 28, 2009, and who had a Form I-130 pending on October 28, 2009. If no Form I-130 was pending, then an alien whose U.S. citizen spouse died before October 28, 2009, and before the second anniversary of their marriage, may file a visa petition under section 204(a)(1)(A)(ii) of the INA so long as (a) the alien has not remarried, and (b) the petition is filed no later than October 28, 2011.

Section 568(c) relates only to the impact of the citizen's death on the alien's eligibility for classification as an immediate relative. All other requirements for approval of a visa petition remain in force. In particular, the alien must still establish that he or she was the citizen's legal spouse, and that the marriage was a bona fide marriage and not an arrangement solely to confer immigration benefits on the alien. If the alien was in removal proceedings at the time of the marriage, the "clear and convincing evidence" standard in section 245(e)(3) of the INA will still apply to the adjudication of the visa petition. If the necessary visa petition is approved, the alien may then seek an immigrant visa or adjustment of status. The alien must still establish that he or she is admissible as an immigrant and, in an adjustment case, that he or she meets all other adjustment eligibility requirements and merits a favorable exercise of discretion.

In light of this new legislation, the policy guidance stated in the November 8, 2007, memorandum entitled "Effect of Form I-130 Petitioner's Death on Authority to Approve the Form I-130" (AFM Update AD08-04) is obsolete. This memorandum amends the Adjudicator's Field Manual to remove the material added in that earlier memorandum.

### **III. Policy Guidance and AFM Update**

#### ***AFM Update***

1. Chapter 21.2 of the *AFM* entitled "Factors Common to the Adjudication of All Relative Visa Petitions" is amended by
  - a. Removing chapter 21.2(a)(4)
  - b. Removing the Note at the end of chapter 21.2(h)(1)(C).

**A. Widow(er)s with pending cases**

Section 568(c)(2)(A) of the FY2010 DHS Appropriations Act makes the amendment to the second sentence in INA section 201(b)(2)(A)(i) applicable to any visa petition or adjustment application "pending on or after the date of enactment." As noted, the date of enactment is October 28, 2009.

*1. Reopening of pending Form I-130 cases*

For purposes of this amendment, a Form I-130 will be deemed "pending" on October 28 2009, if the deceased citizen had filed a Form I-130 on or before that date but:

- USCIS has not adjudicated the Form I-130;
- USCIS denied the Form I-130, but USCIS granted a motion to reopen or reconsider, so that the Form I-130 is, again, pending;
- USCIS denied the Form I-130, but has not yet ruled on a motion to reopen or reconsider;
- USCIS denied the Form I-130, but the alien's appeal from that decision is pending before the Board of Immigration Appeals (BIA) or the period for appeal of the adverse USCIS decision to the BIA had not yet expired; or
- The USCIS or BIA decision denying the Form I-130 is the subject of pending litigation before a federal court (including cases in which the district court issued a decision before October 28, 2009, but the appeals period established by law had not yet expired).

Under 8 C.F.R. § 204.2(i), a citizen's spousal Form I-130 is automatically converted to a widow(er)'s Form I-360 if, on the date of the citizen's death, the beneficiary qualifies as a widow(er) under the second sentence in section 201(b)(2)(A)(i). Under section 568(c) of the FY2010 DHS Appropriations Act, these aliens now qualify under the second sentence. Thus, any Form I-130 that is "pending" as described in the preceding paragraph will be deemed to be, and adjudicated as, a widow(er)'s Form I-360.

In any Form I-130 case in which a motion to reopen or for reconsideration was filed, but not acted on, USCIS will grant the motion and make a new decision in light of section 568(c) of the FY2010 DHS Appropriations Act.

Any Form I-130 that is the subject of litigation in any federal court on the issue of the effect of the petitioner's death is, as of the date of this memorandum, reopened for a new decision in light of section 568(c) of the FY2010 DHS Appropriations Act. The beneficiary need not file a separate motion. Nor does it matter, for purposes of reopening the Form I-130, whether the beneficiary is currently in the United States or abroad. If the decision denying or terminating action on the Form I-130 was pending in any court on October 28, 2009, the decision is now

reopened. USCIS will therefore make a new decision in light of section 568(c) of the FY2010 DHS Appropriations Act.

Cases challenging the denial of a spousal immediate relative Form I-130 based on the petitioner's death have been filed in district courts throughout the United States. USCIS officers must consult with the appropriate regional or service center counsel to identify those cases that are the subject of litigation that was pending on October 28, 2009. Once a case is identified as subject to reopening under this memorandum, the USCIS officer will notify the alien in writing that the Form I-130 is reopened in light of section 568(c) of the FY2010 DHS Appropriations Act, and will be readjudicated as a Form I-360.

If it is determined that a Form I-130 had been filed but was not "pending" on October 28, 2009, because a USCIS decision denying the Form I-130 had become final before October 28, 2009 (and no administrative appeal or civil action challenging the denial was pending on October 28, 2009), please refer to part III(B) of this memorandum.

## *2. Reopening of pending Form I-485 cases*

Section 568(c)(2)(A) of the FY2010 DHS Appropriations Act also makes the amendment applicable to any Form I-485 that was pending on the date of enactment. A Form I-485 is deemed "pending" on the date of enactment if it was filed before the deceased citizen's death but:

- USCIS has not adjudicated the Form I-485
- USCIS denied the Form I-485, but USCIS granted a motion to reopen or reconsider, so that the Form I-485 is, again, pending
- USCIS denied the Form I-485, but has not yet ruled on a motion to reopen or reconsider;
- The Form I-485 is the subject of litigation before a federal court (including cases in which the district court issued a decision before October 28, 2009, but the appeals period established by law had not yet expired).

With this guidance memo, USCIS also reopens, without the need for a formal motion, any Form I-485 that is the subject of litigation on this issue in any federal court, if USCIS still has jurisdiction to act on the Form I-485. As with the reopening of the related Form I-130, the USCIS officer will notify the applicant in writing that the Form I-485 is reopened in light of section 568(c) of the FY2010 DHS Appropriations Act.

In the case of a widow(er) who entered the United States as a K-1 nonimmigrant, and filed a Form I-485 after marrying the deceased citizen who had filed the Form I-129F, ordinarily there will not be a Form I-130. If the Form I-485 is still "pending" as described in this memo, and USCIS still has jurisdiction to act on it, the Form I-485 will also be reopened for a new decision in light of section 568(c) of the FY2010 DHS Appropriations Act, without the need for a formal

motion. Since no Form I-130 is required for a K-1 nonimmigrant to seek adjustment after marrying the K petitioner within the period specified by statute, the K-1 nonimmigrant will also be deemed the beneficiary of a Form I-360 if the K-1 nonimmigrant now qualifies as a widow(er). The K-1 nonimmigrant still may not adjust on any basis other than the K-1 nonimmigrant's having married the citizen petitioner who filed the Form I-129F.

Some aliens may have been placed into removal proceeding after USCIS denied their Forms I-485. Except for "arriving aliens," this factor would mean that USCIS no longer has jurisdiction to adjudicate the Form I-485. 8 C.F.R. § 245.2(a)(1) and 1245.2(a)(1). USCIS would have jurisdiction to adjudicate the Form I-485 only if the Executive Office for Immigration Review (EOIR) terminated the removal proceeding. Whether to support or oppose terminating a removal proceeding is a matter for U.S. Immigration and Customs Enforcement to decide, not USCIS. If a USCIS office reopens a Form I-130 involving an alien in removal proceedings, the USCIS office must, through the appropriate USCIS counsel, advise the local counsel for U.S. Immigration and Customs Enforcement.

Some aliens whose citizen spouses had died may have left the United States voluntarily, without obtaining a grant of advance parole. Others may have left after obtaining advance parole, but may have remained abroad after expiration of the Form I-512. Under 8 C.F.R. § 245.2(a)(ii)(4)(B), these aliens have abandoned their adjustment applications. Also abandoned is the adjustment application of an alien who left as the result of removal proceedings. 8 C.F.R. § 245.2(a)(4)(ii)(A). In these situations, a Form I-485 will not be deemed "pending" for purposes of section 568(c)(2)(A). However, where section 568(c) applies to the approved Form I-130, and the Form I-130 has been approved as a Form I-360, the alien approved on that I-360 who has left the United States may apply for an immigrant visa abroad.

### 3. *Petition already approved before death*

If a widow(er) is the beneficiary of a Form I-130 that was approved before the citizen petitioner's death, it is not necessary for the widow(er) to request humanitarian reinstatement of the approval. Under 8 C.F.R. § 204.2(i)(1)(iv), the approved Form I-130 is automatically converted to an approved Form I-360. Any children of the widow(er) will also be eligible to seek an immigrant visa or adjustment of status based on the converted petition.

There may be some cases in which a spousal immediate relative Form I-130 was approved, but the approval was revoked automatically under 8 C.F.R. 205.1(a)(3)(i)(C) upon the citizen petitioner's death. If the alien is now eligible for classification as the widow(er) of a citizen under section 568(c)(2)(A) of the FY2010 DHS Appropriations Act, the approval will be deemed to have been reinstated, effective October 28, 2009. No separate request for reinstatement is necessary. Under 8 C.F.R. § 204.2(i)(1)(iv), the Form I-130 will be deemed to be an approved Form I-360.

#### 4. *Admissibility issues*

Whether an alien is actually admissible is not germane in adjudicating a Form I-130. *Matter of O-*, 8 I&N Dec. 295 (BIA 1959). The only issue resolved by enactment of section 568(c) of the FY2010 DHS Appropriations Act is that the death of the citizen spouse, by itself, does not make the widow(er) ineligible for immediate relative classification. Thus, the alien must still be admissible as an immigrant to obtain adjustment of status or an immigrant visa.

For those aliens, however, who had pending Form I-130 cases, and who now can benefit from section 568(c) of the FY2010 DHS Appropriations Act, two inadmissibility grounds warrant special consideration. The first is section 212(a)(9)(B)(i) of the Act, under which an alien is inadmissible if the alien seeks admission within a specified period after the alien leaves the United States, if the alien has accrued a lengthy period of unlawful presence. The second is section 212(a)(9)(A), under which an alien who has been removed (or who left the United States while under a final administrative order of removal) must obtain consent to reapply, if the alien seeks admission within the period set in section 212(a)(9)(A).

It is important to note that the special provisions in this memorandum relating to INA section 212(a)(9)(A) and (B) apply only to an alien who was the beneficiary of a Form I-130 that was filed by a now-deceased spouse petitioner, and that can now be approved as a Form I-360 under section 568(c) of the FY2010 DHS Appropriations Act. The purpose of these special provisions is simply to minimize the adverse effect on these aliens of the disputed, and now resolved, issue of the impact of the death of the petitioning spouse on the alien's eligibility.

##### a. Unlawful presence

By specifying, in section 568(c)(2)(A) of the FY2010 DHS Appropriations Act, that the amendment should apply to pending cases, Congress indicated its desire to resolve these cases fully. For this reason, for purposes of INA section 212(a)(9)(B)(i), if an alien remained in the United States while awaiting the outcome of Form I-130 that can now be approved as a Form I-360 under section 568(c) of the FY2010 DHS Appropriations Act, the alien will be deemed *not* to have accrued any unlawful presence. This protection applies even if the alien was not actually in a lawful status while the now-converted Form I-360 was pending.

An alien who had a Form I-130 pending on October 28, 2009, but who is present in the United States without a lawful admission or parole generally cannot obtain adjustment under INA section 245(a). Rather, the alien must generally seek adjustment under INA section 245(i). But this relief is not available to an alien who did not have a petition or labor certification filed before April 30, 2001. Thus, even if the Form I-130 can now be approved as a Form I-360, the alien may need to leave the United States to obtain an immigrant visa. But since, under this guidance memorandum, the alien will be deemed *not* to have accrued any unlawful presence, he or she will not be inadmissible under INA section 212(a)(9)(B)(i).

Again, these special provisions relating to the accrual of unlawful presence apply only to an alien who is the beneficiary of a spousal immediate relative Form I-130 that was pending on October



28, 2009, and that is now approved under section 568(c)(2)(A) of the FY2010 DHS Appropriations Act and 8 C.F.R. § 204.2(i)(1)(iv) as a widow(er)'s Form I-360: the widow(er) and his or her accompanying child(ren). Ordinarily, the pendency of a visa petition, itself, does not prevent accrual of unlawful presence. A pending adjustment application, by contrast, does prevent accrual of unlawful presence. *Adjudicator's Field Manual* chapter 40.9(b)(3)(A). Most aliens who have been in litigation because the death of a spouse led to denial of the Form I-130 are probably already protected from unlawful presence under the ordinary provisions in the AFM. This broader protection against unlawful presence, for this narrow class of cases, is designed to maximize the ability of those aliens whose specific situations gave rise to the new legislation to fully benefit from it.

**b. Consent to reapply for admission after removal**

These protections against accrual of unlawful presence apply even if the alien was actually removed from the United States under a removal order. Still, because the alien was removed under a valid order, the alien is inadmissible under INA section 212(a)(9)(A)(i) or (ii). USCIS, however, has discretion under section 212(a)(9)(A)(iii) to consent to the alien's re-application for admission. USCIS should generally exercise discretion favorably and grant an application for consent to reapply under section 212(a)(9)(A)(iii), if:

- The Form I-130 that had been filed by the alien's spouse has now been approved as a Form I-360 under section 568(c) of the FY2010 DHS Appropriations Act;
- The alien is otherwise admissible, and
- The alien's case does not present significant adverse factors beyond the removal itself.

A USCIS adjudicator will not deny a Form I-212 filed by an alien whose case was in litigation on October 28, 2009, and whose Form I-130 has been approved as a Form I-360 under section 568(c)(2)(A) of the FY2010 DHS Appropriations Act without consulting USCIS Headquarters through appropriate channels.

***5. Remarriage***

Any immediate relative Form I-130 that was filed on behalf of the spouse of a U.S. citizen, and that was pending on October 28, 2009, is no longer a spousal immediate relative Form I-130. By operation of 8 C.F.R. § 204.2(i)(1)(iv), what was filed as a spousal immediate relative Form I-130 is now a widow(er)'s Form I-360. The converted Form I-360 may be approved only if the beneficiary, who is now also deemed to be the petitioner, qualifies as the widow(er) of a citizen, as described in INA section 201(b)(2)(A)(i). Eligibility for classification as an immediate relative continues "only until the date the spouse remarries."

#### 6. Ninth Circuit cases

In acting on the guidance in this memorandum, USCIS adjudicators must keep in mind that the *Hootkins* case was certified as a class action. Thus, an individual need not be a *named* Plaintiff in *Hootkins* in order for his or her Form I-130 and Form I-485 to be reopened under this memorandum. If an individual has not already been identified as a member of the *Hootkins* class, that individual may make a written request to have his or her Form I-130 and Form I-485 reopened and readjudicated. The purpose of the written request is simply to *identify* the case as a *Hootkins* case. The individual is not required to pay the filing fee for a motion to reopen. The case will be considered a *Hootkins* class member case if the case was denied on or after August 30, 2001,<sup>1</sup> and:

- either the citizen spouse petitioner or the alien spouse beneficiary lived in the Ninth Circuit when the citizen spouse died; or
- a USCIS office in the Ninth Circuit made the prior decision on the Form I-130 or Form I-485.

#### B. Widow(er)s without pending cases

The alien widow(er) of a citizen who died before October 28, 2009, but who did not have a Form I-130 pending on that date, may now file a Form I-360, provided that he or she does so no later than October 28, 2011, and has not remarried. FY2010 DHS Appropriations Act § 568(c)(2)(B). Section 568(c)(2)(B) applies if the citizen spouse did not file a Form I-130 on the alien spouse's behalf before dying. But it also applies if there was a Form I-130 filed, but the decision denying the Form I-130 had become administratively final before October 28, 2009, because the decision was not the subject of any type of administrative or judicial review that was pending on October 28, 2009. Note that section 568(c)(2)(B)(i) says the Form I-360 must be filed "not later than the date that is 2 years after the date of the enactment." Thus, a Form I-360 that is filed *on* October 28, 2011, will still be timely. A Form I-360 filed on or after October 29, 2011, will be untimely.

For any case in which a citizen dies on or after October 28, 2009, the alien widow(er) must file the Form I-360 within 2 years of the citizen's death.

#### C. Children of widow(er)s

The child of a widow(er) whose Form I-360 is approved may, as specified in the second sentence of INA section 201(b)(2)(A)(i) and in INA section 204(a)(1)(A)(ii), be included in the widow(er)'s petition. Whether an individual qualifies as the widow(er)'s "child" is determined according to INA sections 101(b)(1) and 201(f).

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<sup>1</sup> Any case denied before August 30, 2001, is time-barred under 28 U.S.C. § 2401(a). But even if a Ninth Circuit case is not considered "pending" because of *Hootkins*, the alien may still be eligible to immigrate as the widow(er) of a citizen, if the alien has not remarried and files the Form I-360 no later than October 28, 2011.

In a case in which the deceased citizen had filed a Form I-130 for his or her spouse, and the Form I-130 can now be adjudicated as a Form I-360 widow(er)'s petition, the child(ren) of the widow(er) will be deemed to be included in the converted Form I-360. Thus, it will not be necessary to act on any separate Form(s) I-130 that the deceased citizen may have filed for the widow(er)'s children. And the child(ren) of the widow(er) will be deemed included in the converted Form I-360 even if the deceased citizen had not filed any Form(s) I-130 for the child(ren).

Note that, in light of INA section 201(f), whether an individual qualifies as the "child" of a widow(er) depends on the individual's age when the visa petition was filed. For those cases that were pending on October 28, 2009, the Form I-360 filing date is deemed to be the date on which the deceased citizen filed the prior Form I-130. If a widow(er) has an unmarried son or daughter who was under 21 when the deceased citizen filed the Form I-130, that individual will still be deemed to be under 21 for purposes of the widow(er)'s now-converted Form I-360.

#### **D. Affidavits of support**

Under section 212(a)(4)(C)(i)(I) of the INA, a Form I-864 (Affidavit of Support under Section 213A of the Act) is *not* required in the case of the widow(er) of a citizen and the widow(er)'s accompanying children.<sup>2</sup>

#### **E. Conversion of deferred action applications filed under prior guidance**

While remedial legislation was pending in Congress, the Secretary of Homeland Security directed the use of deferred action relief to allow widow(er)s of citizen whose cases may have been affected by the legislation to remain in the United States. In the September 4, 2009 Memorandum, "Guidance Regarding Surviving Spouses of Deceased U.S. Citizens and their Children," USCIS designated the Form I-360 as the form an individual would use to request deferred action under the Secretary's policy.

Now that Congress has enacted the legislation, any Form I-360 that had been filed to obtain deferred action relief, and that has not yet been adjudicated as a deferred action request, will now be considered to be, and adjudicated as, a widow(er)'s visa petition under 8 C.F.R. § 204.2(b). If the Form I-360 has already been approved as a deferred action request, it will be reopened and adjudicated as a visa petition under 8 C.F.R. § 204.2(b). It is not necessary for the alien to file a formal motion, nor to pay a new Form I-360 filing fee. Additionally, any prior grant of deferred action relief need not be rescinded and should remain undisturbed.

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<sup>2</sup> There may be an individual case in which, regardless of the Form I-864 issue, the factors specified in INA section 212(a)(4)(B) and the standard public charge guidance, as published at 64 Fed. Reg. 28689 (1999), will support a finding that a widow(er) is inadmissible as an alien likely to become a public charge. Even in this case, a Form I-864 is not required. Rather, since the statute does not specifically require the Form I-864, the Form I-134 can be used instead. 8 C.F.R. § 213a.5. It is important to note that, on a Form I-134, the sponsor does not have to meet the requirements in INA section 213A(f), and so does *not* need to be someone who could have been a "substitute sponsor" in a case in which a Form I-864 actually is required.

Under the deferred action guidance, an alien could file a Form I-765, application for employment authorization, only if the deferred action request had been granted. Now that a Form I-360 that was filed to request deferred action is deemed to be a widow(er)'s visa petition, the alien can, if otherwise eligible, file a Form I-485 even before the approval of the Form I-360. 8 C.F.R. § 245.2(a)(2)(i)(B). Filing the Form I-485 permits the alien to file a Form I-765. 8 C.F.R. § 274a.12(c)(9).

#### F. Implementation

Section 568(c) of the FY2010 DHS Appropriations Act became effective on October 28, 2009, the date of enactment. USCIS offices and centers, therefore, are to begin implementing the instructions established in this memorandum immediately. USCIS adjudicators should note that Congress clearly intended to benefit the aliens affected by these provisions.

**AFM Transmittal Memorandum Revisions. The AFM Transmittal Memorandum button is revised by adding a new entry, in numerical order, to read:**

AD 10-09 [Date of Signature]	Chapter 21.2	This memorandum removes chapter 21.2(a)(4) and the Note at the end of chapter 21.2(h)(1)(C) to reflect enactment of section 568(c) of Public Law 111-83.
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#### H. Contact Information

Questions regarding this memorandum should be directed to the Office of Domestic Operations through appropriate channels. For cases adjudicated overseas, questions should be directed to the International Operations Division, Programs Branch.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies or entities, its officers, employees, or agents, or any other person.

#### **Distribution:**

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U.S. Citizenship  
and Immigration  
Services

HQOPRD 70/21.1.13

## Interoffice Memorandum

To: REGIONAL DIRECTORS  
SERVICE CENTER DIRECTORS  
DISTRICT DIRECTORS  
NATIONAL BENEFITS CENTER DIRECTOR

From: Michael Aytes /s/  
Acting Director for Domestic Operations

Date: November 23, 2005

RE: USCIS policy regarding Form I-864, Affidavit of Support

### 1. Purpose

This memorandum notifies adjudicators that USCIS has determined, as permitted by section 213A(f)(6)(B) of the Immigration and Nationality Act (Act), that a person completing an Affidavit of Support (Form I-864) on behalf of an adjustment of status applicant is only required to file one Federal income tax return, for the tax year that is most recent as of the date the Form I-864 was signed, rather than having to submit a Federal income tax return for each of the three most recent tax years. This memorandum also clarifies how USCIS officers are to determine the sufficiency of a Form I-864.

Effective immediately, this policy memorandum supersedes all conflicting provisions in previous memoranda and will be incorporated into 8 CFR 213a, in a separate rulemaking, and section 20.5 of the Adjudicator's Field Manual at a later date.

### 2. Field Guidance

#### A. Submission of Federal income tax returns

Section 213A(f)(6)(A)(i) of the Act provides that a sponsor must submit certified copies of the sponsor's three most recent Federal income tax returns. However, section 213A(f)(6)(B) of the Act provides the Secretary of Homeland Security with discretion in adjustment of status

cases to allow a sponsor to file only his or her most recent Federal income tax return. USCIS has adopted this alternative.

Therefore, for any Form I-485 filed on or after the date of this memorandum, the sponsor shall not be required to file any Federal income tax return for any year other than the tax year immediately preceding the sponsor's signing of the Form I-864. For example, if the sponsor signed the Form I-864 after April 15, 2005, only the sponsor's 2004 Federal income tax return would be required. However, the sponsor may file the three most recent returns if the sponsor believes that the additional returns will make it more likely that the Form I-864 will be found to be sufficient. This rule shall apply to petitioning sponsors, as well as substitute or joint sponsors signing a Form I-864 for an adjustment case.

For any Form I-485 filed before the date of this memorandum, the sponsor should have filed the three most recent income tax returns. An officer may encounter a case in which the sponsor has included the most recent income tax return but not one or both of the two earlier returns. Given the change of policy made by this memorandum, adjudicators are no longer required to issue a request for evidence (RFE) for the missing earlier return(s).

Note also that IRS will, without charge, issue a taxpayer a transcript of the taxpayer's income tax return if the taxpayer files IRS Form 4506T. For purposes of the affidavit of support requirements, officers shall accept an IRS-generated transcript as a true and correct "copy" of the sponsor's return. Since the IRS itself issues the transcript, it will not be necessary for USCIS to request any missing Forms W-2 or 1099 if the sponsor submits a transcript, rather than a photocopy, of the tax return.

A USCIS officer may also decide that a request for evidence is not necessary in a case in which the sponsor filed a photocopy of the tax return, instead of a transcript, but did not submit the Forms W-2 or 1099. A decision not to RFE for the W-2 or 1099 will be proper if the officer concludes that the evidence of record, taken as a whole, establishes that the information on the tax return is true and correct.

#### **B. Sufficiency of the Form I-864**

USCIS officers shall, as a general rule, determine the sufficiency of a Form I-864 based upon whether evidence in the file establishes that the sponsor has the means to maintain an annual income at the applicable threshold set forth in the Form I-864P, Poverty Guidelines, from the calendar year in which the Form I-864 was filed. Accordingly, adjudicators shall determine whether the current income listed on Form I-864 is at least 125% (or 100% as applicable) of the governing threshold set forth in the Poverty Guidelines. Adjudicators shall also determine whether the sponsor's total income (line 22 on the 2004 IRS Form 1040, line 15 on the 2004 IRS Form 1040A), or adjusted gross income for those who filed IRS Form 1040EZ (line 4 of the 2004 IRS Form 1040EZ), meets the Poverty Guidelines threshold. Note, when reviewing the prior year's tax return submitted with the Form I-485, USCIS officers should judge the income information against the poverty guidelines applicable at the time of submission.

If the information on the tax return establishes that the sponsor's current income meets the threshold set forth in the Form I-864P, Poverty Guidelines, the adjudicator shall determine that the Form I-864 is sufficient without requesting any further evidence. The adjudicator should request additional evidence (i.e., employment letter(s), pay stub(s), or other financial data) only if the tax return reflects income below the Form I-864P, Poverty Guidelines and the record does not already contain additional evidence that would establish the sponsor meets the current income requirements. The adjudicator should also request additional evidence (i.e., employment letter(s), pay stub(s), or other financial data) if there is a specific reason (other than the passage of time) to question the veracity of the income stated on Form I-864 or the accompanying document(s).

If the officer determines that the tax return and/or the evidence in the file do not establish that the sponsor meets the governing Form I-864P, Poverty Guidelines threshold, the adjudicator shall request *current year* income information, not additional information from the year the sponsor signed Form I-864. In this situation, the sufficiency of the Form I-864 is determined based upon the additional evidence as it relates to the applicable threshold set forth in the Form I-864P from current year rather than the Form I-864P, Poverty Guidelines from the calendar year in which the Form I-864 was signed.

#### C. No Local Policy Regarding When Form I-864 Shall be Filed

Previously USCIS has permitted each local office to establish its own policy on whether to require submission of Form I-864 at the time of filing for adjustment or at the time of the adjustment interview. Effective with the publication of this memorandum, all applicants are now required to submit Form I-864 with their adjustment application. If the case was filed prior to this policy change at an office that required submission at the time of the adjustment interview, the adjudicator should allow the applicant to submit Form I-864 and the required supporting documentation at the interview.

### **3. Contact Information**

Questions regarding this memorandum and USCIS policy regarding Form I-864, Affidavit of Support, may be directed by email through appropriate supervisory channels to Jonathan Mills, USCIS Office of Program and Regulations Development.



# U.S. Citizenship and Immigration Services

## *BASIC*

### **EMPLOYMENT-BASED PETITIONS**

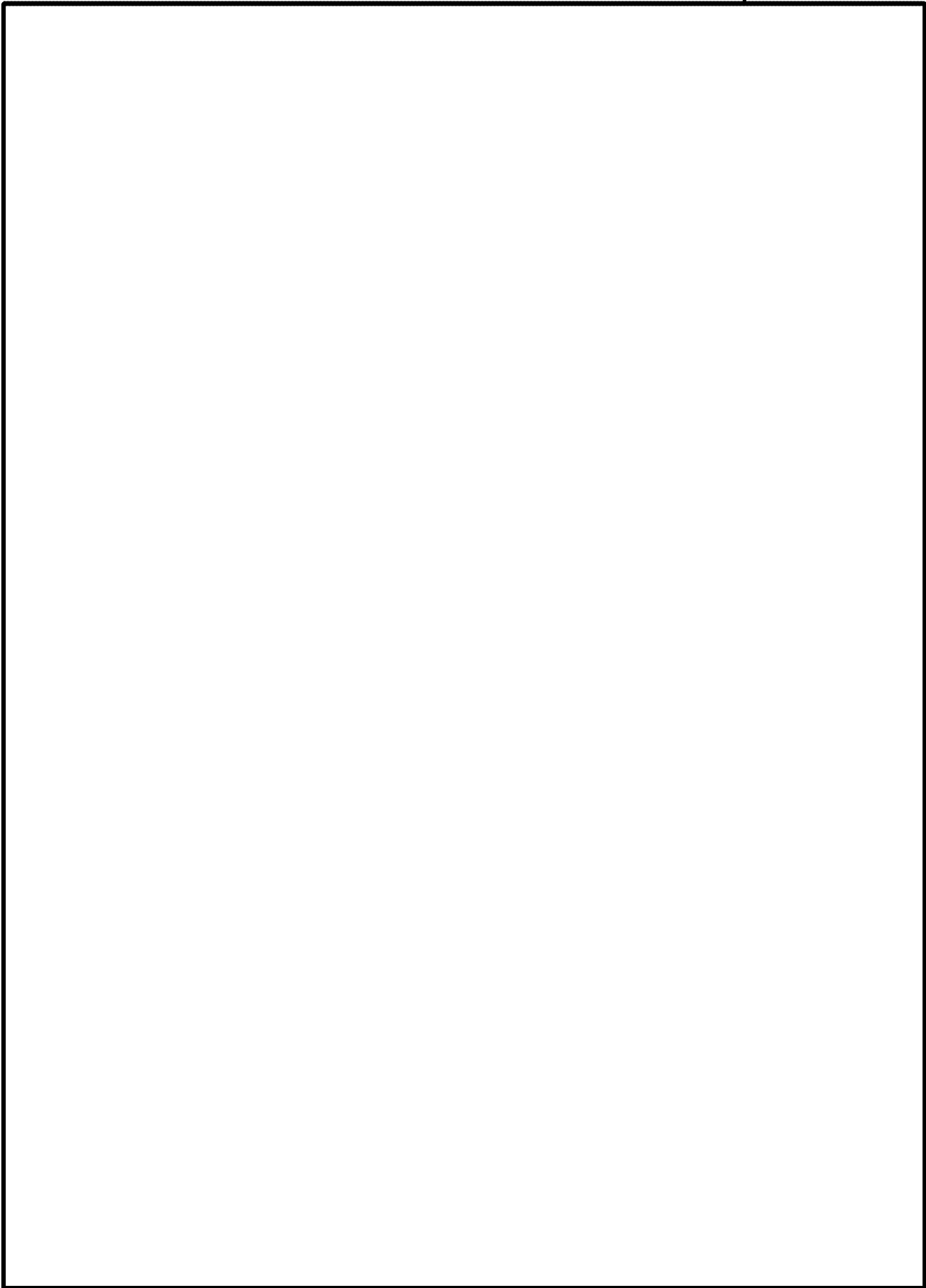
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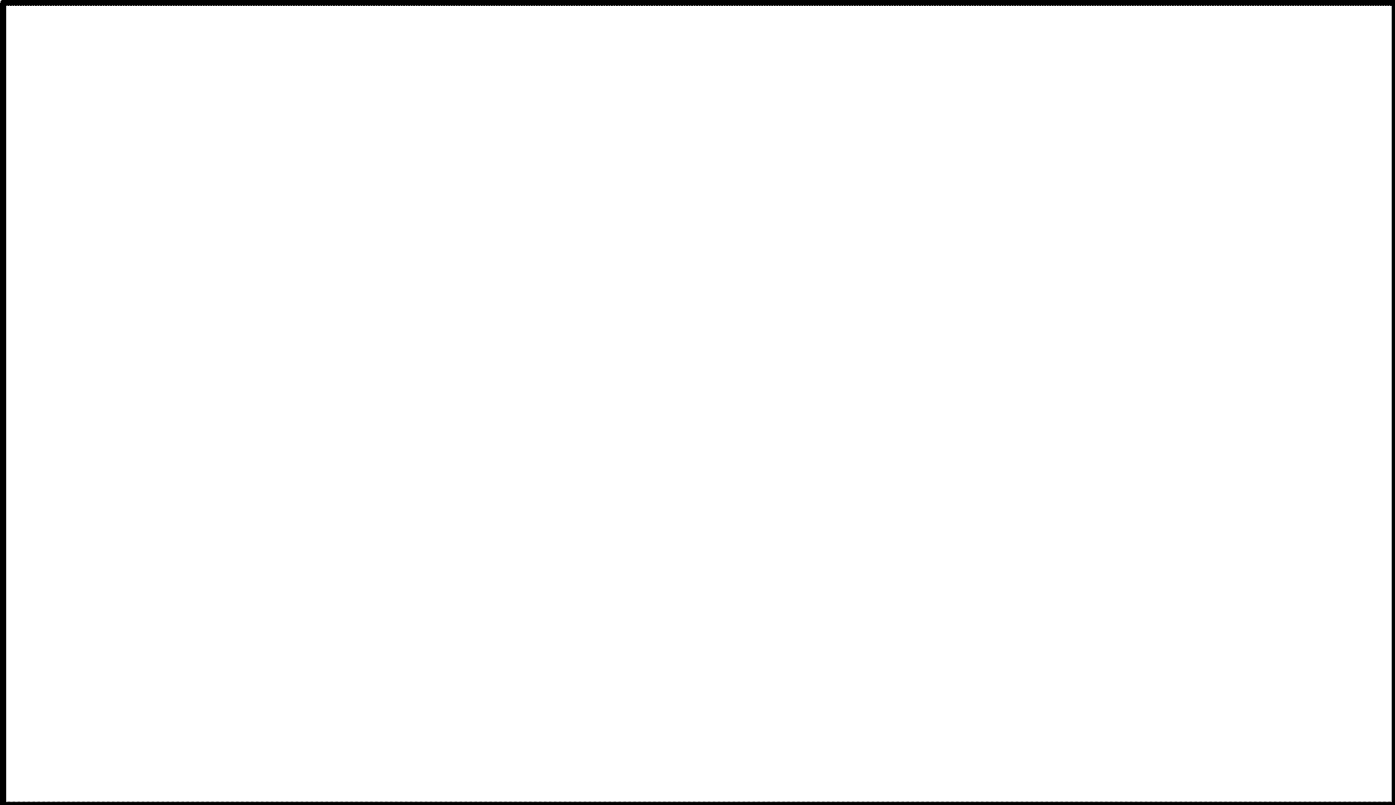
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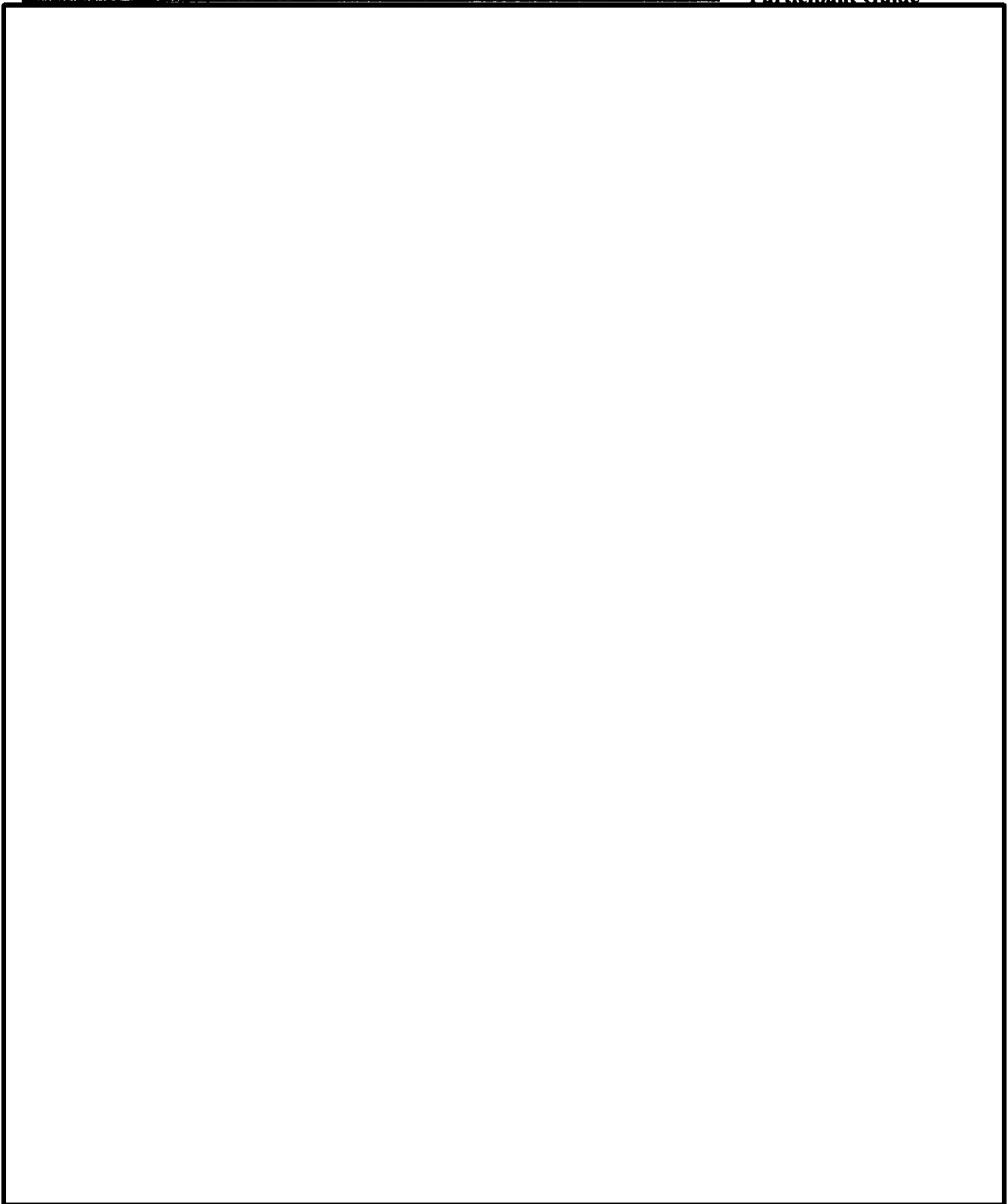
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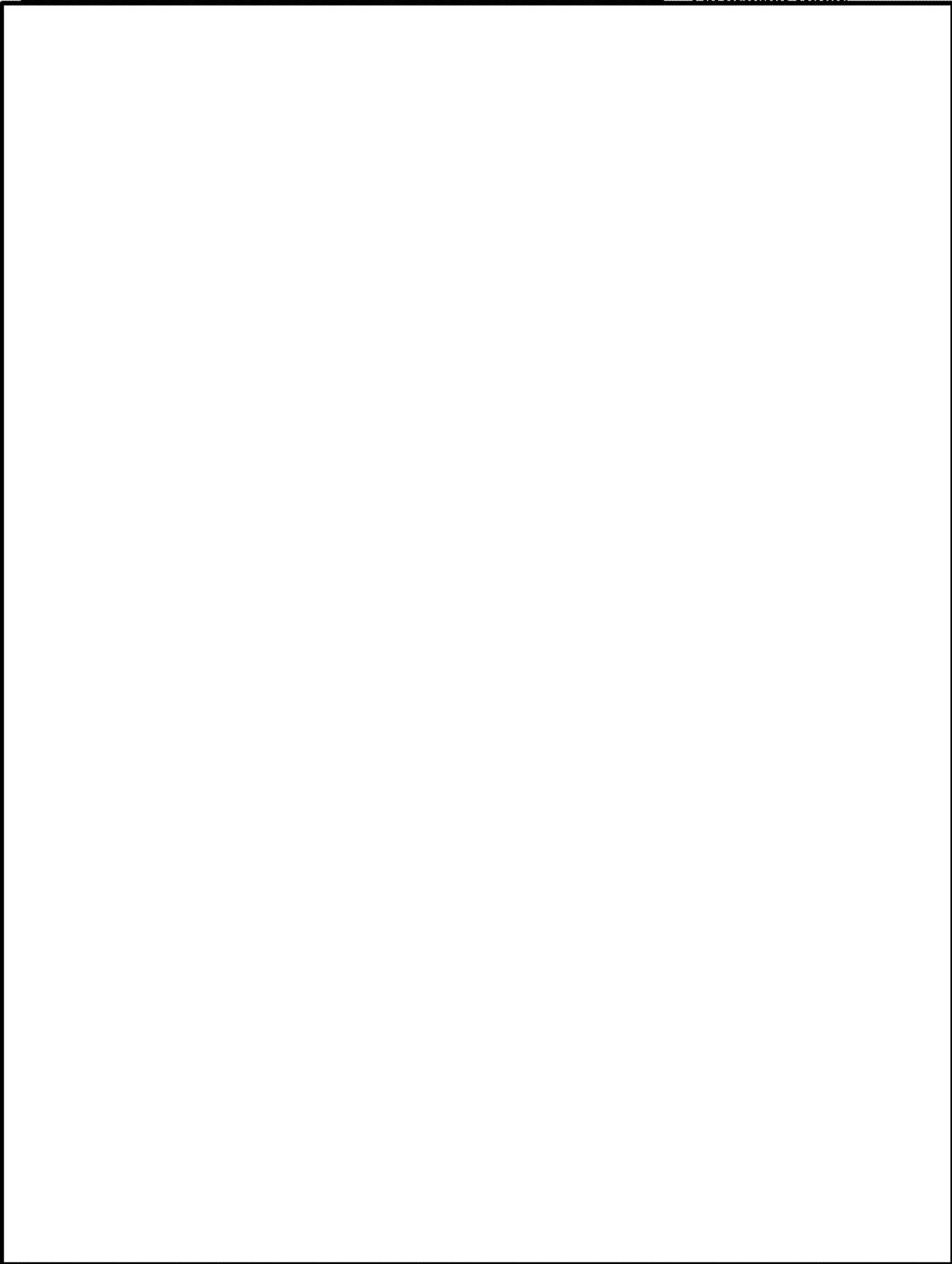
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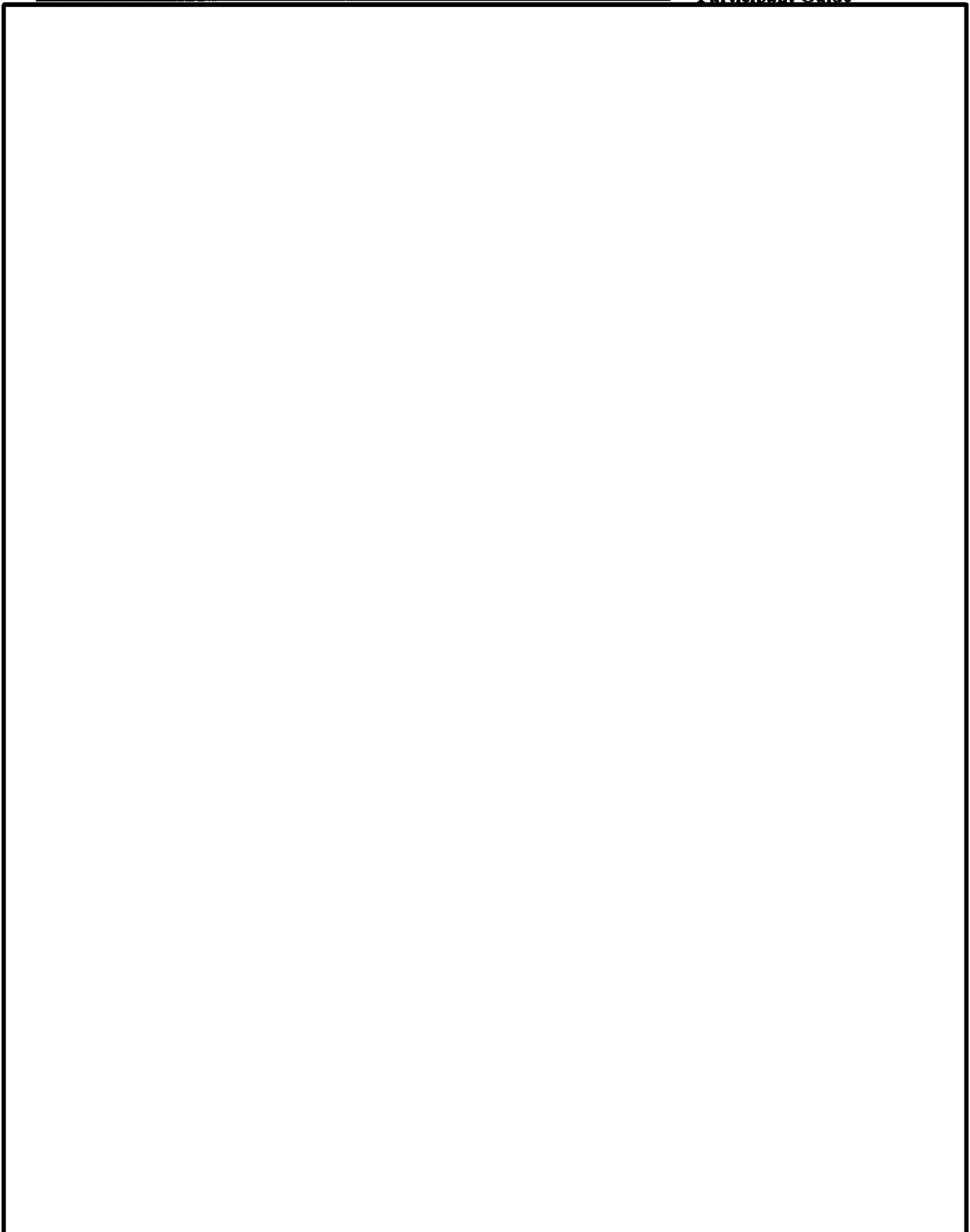


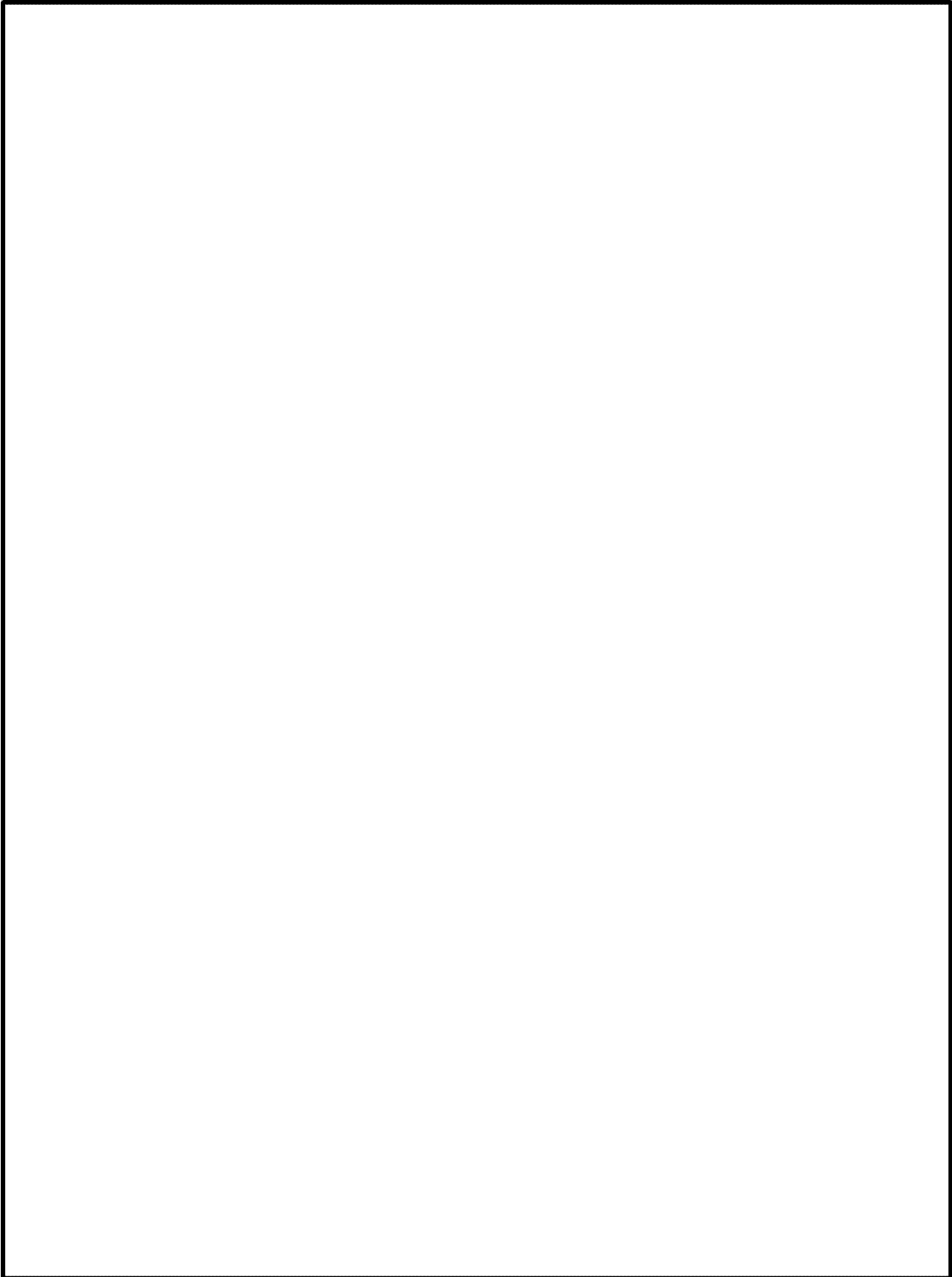


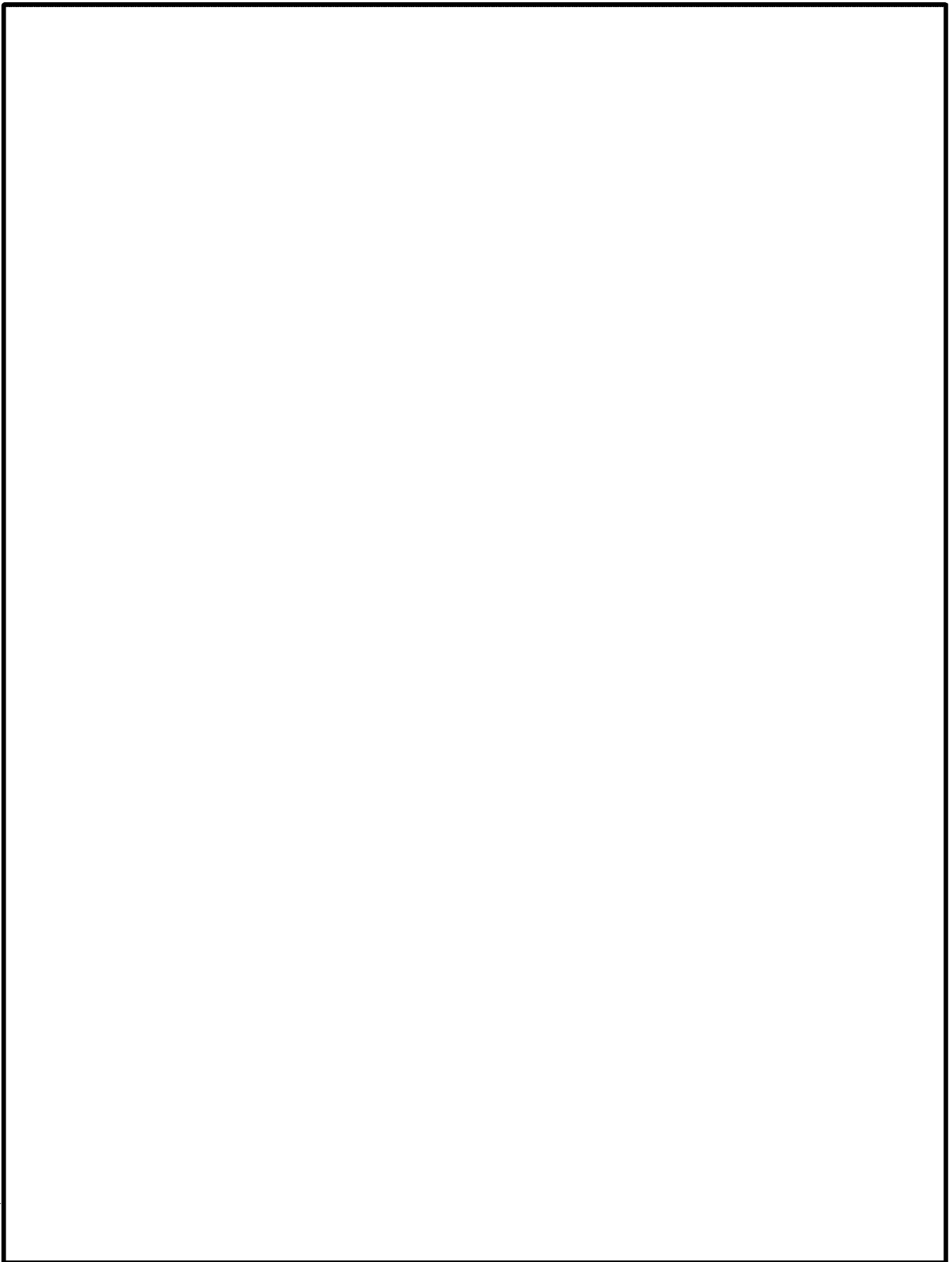


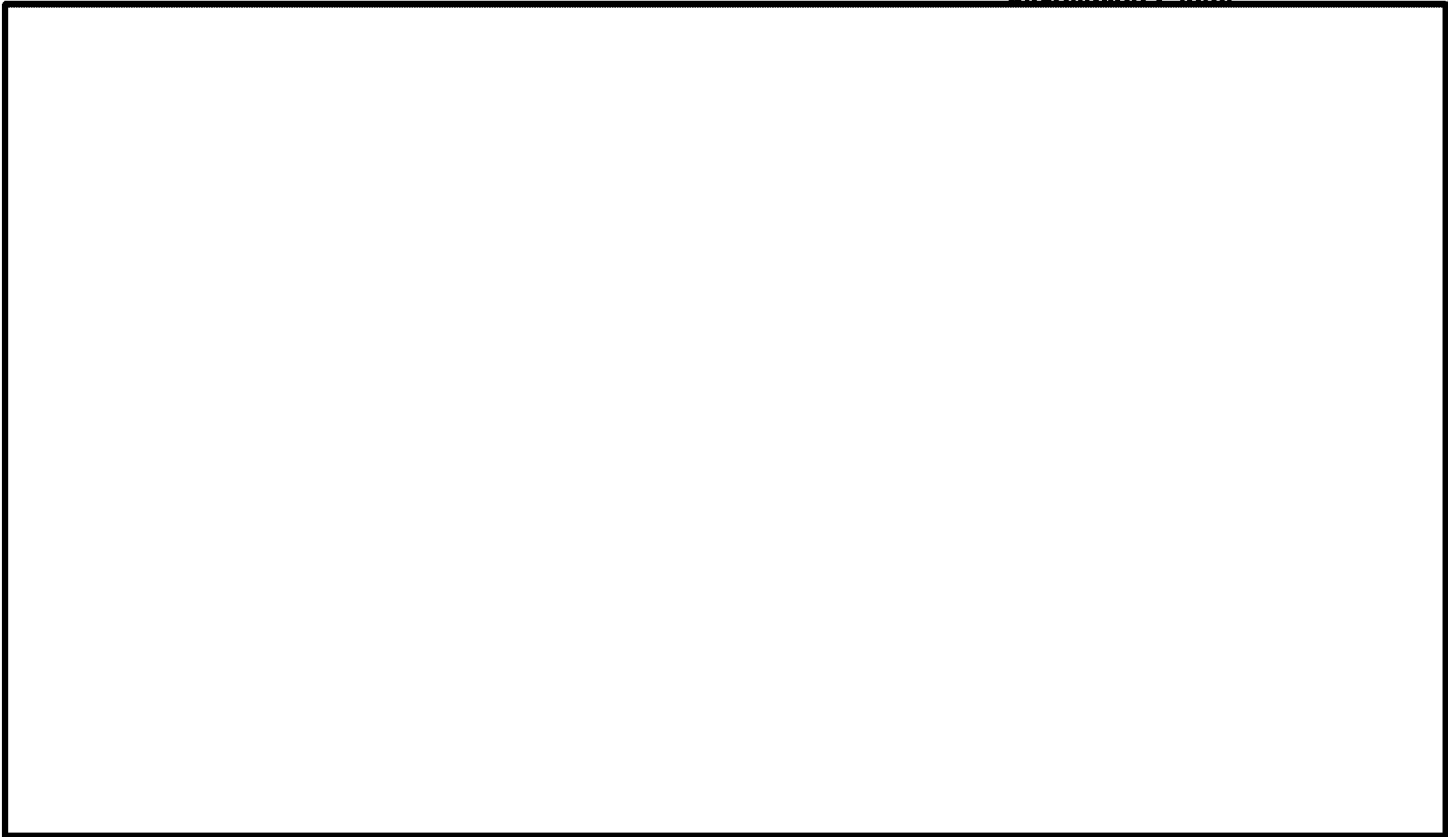












**8. Documentary Requirements for Employment Based Immigrants.**

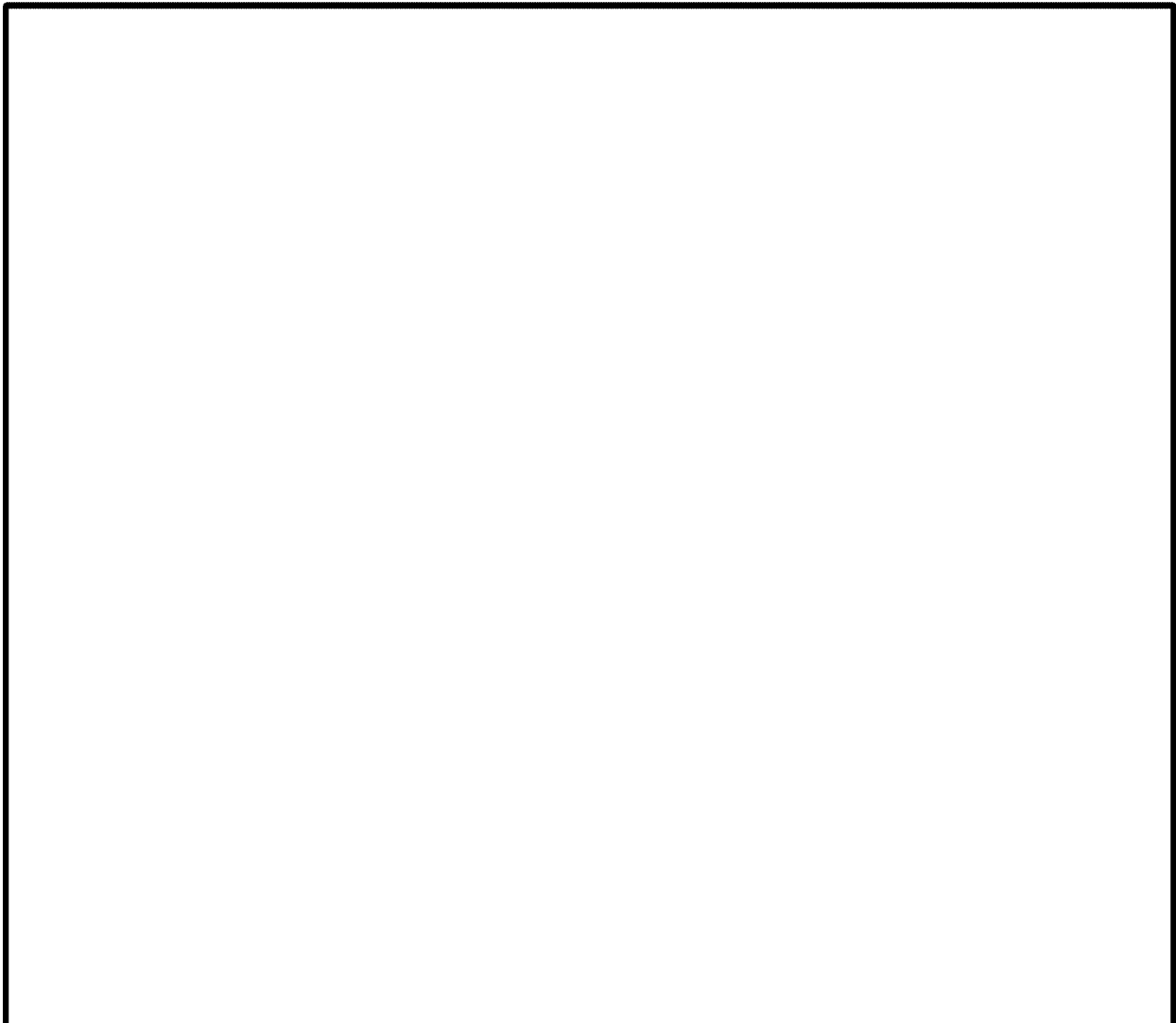
- a. Certain employment-based immigrants are required to have Affidavits of Support (Form I-864) when they immigrate to the United States.
  - A Form I-864 is required if the petitioning employer is a relative of the alien.
  - A Form I-864 is also required if a relative of the alien owns a significant ownership interest in the petitioning company (significant ownership is currently defined as 5% or more).
- b. The sponsor who files the Form I-864 Affidavit of Support must be an individual. The Form I-864 cannot be filed by a corporation, organization, or other entity.

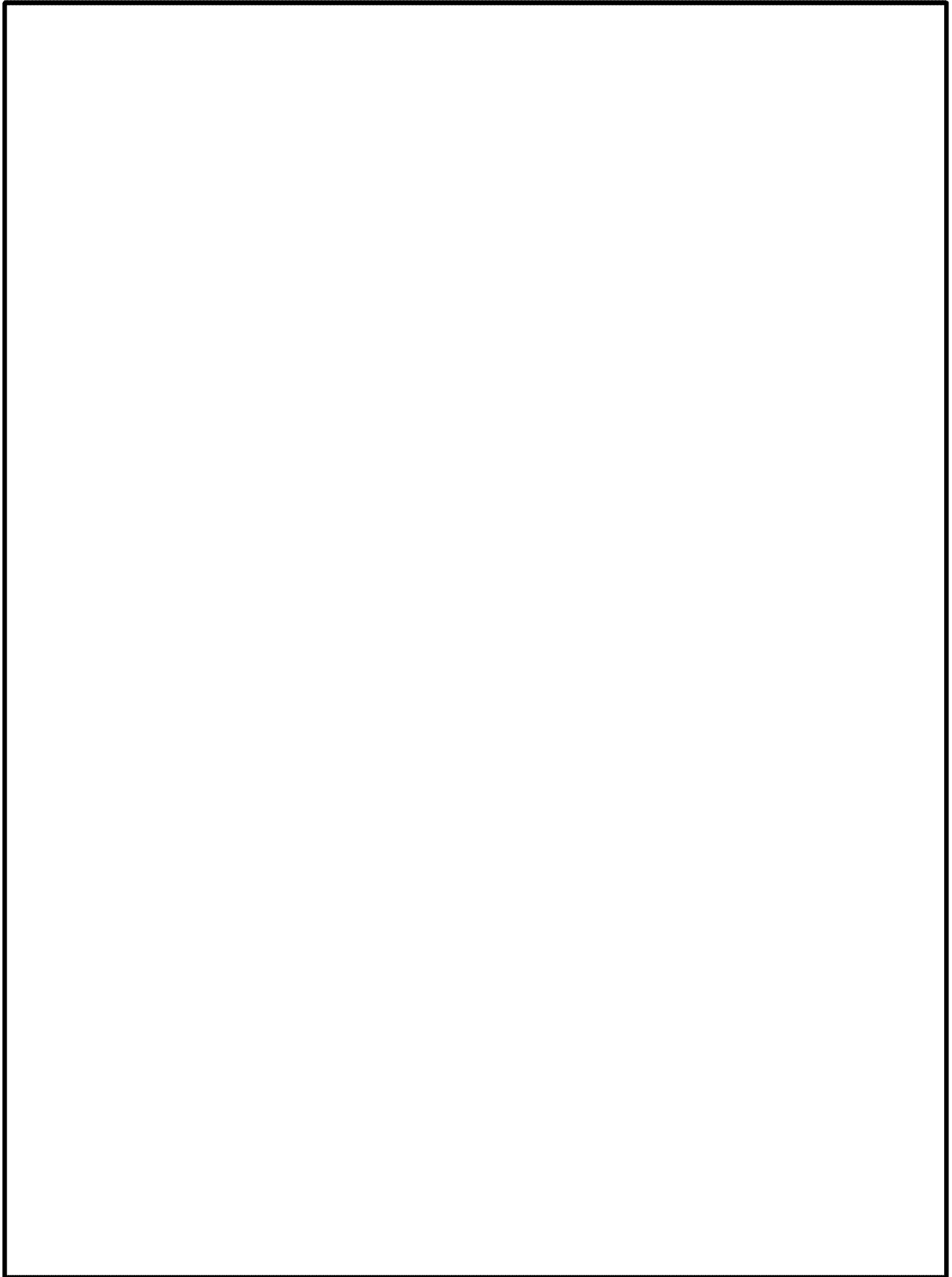
**6. Assessing the Petitioner's Ability to Pay the Required Wage.**

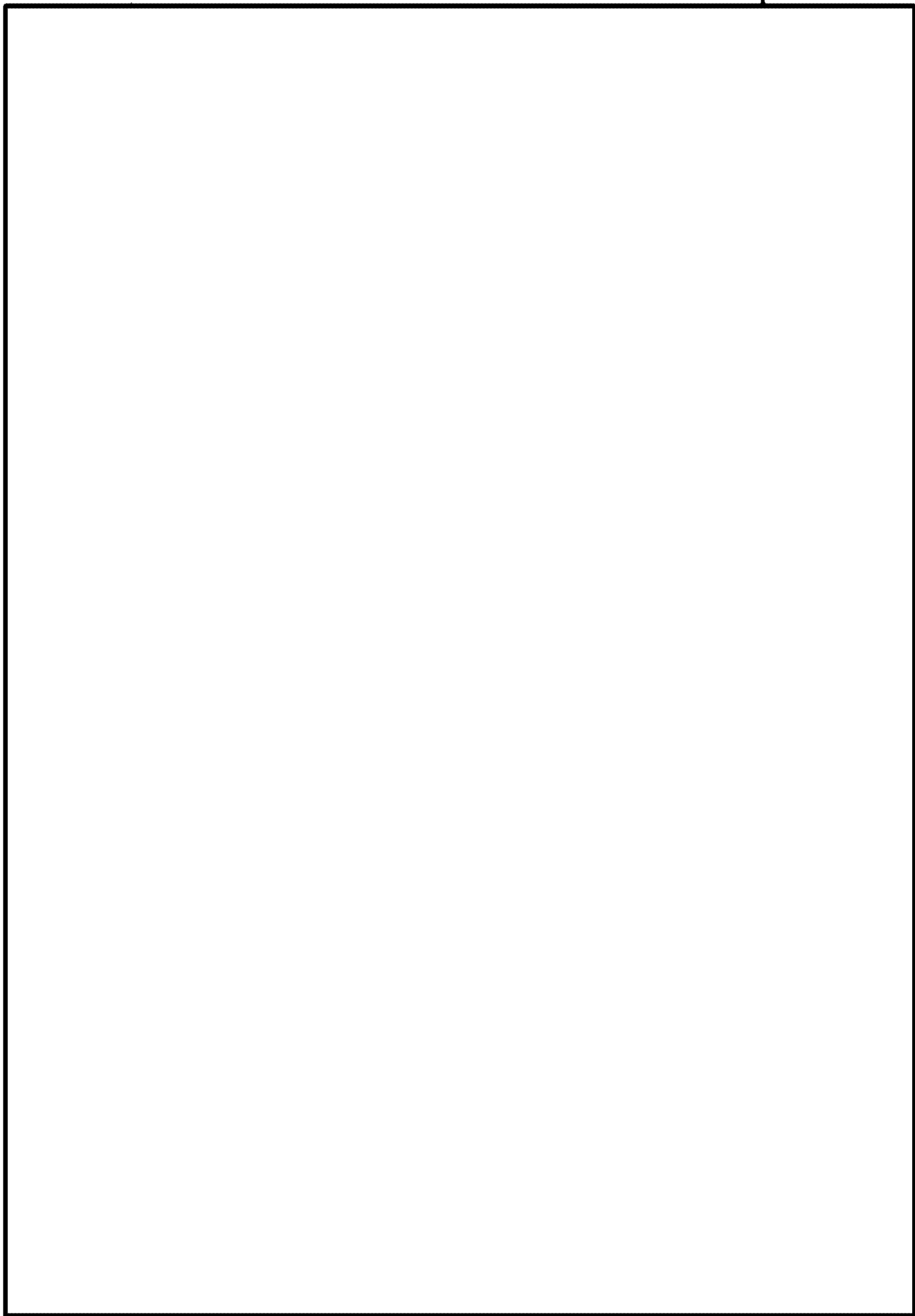
- a. Any petition which requires a job offer must be accompanied by evidence that the U.S. employer had the ability to pay the proffered wage at the time the permanent employment certification application was filed, and continues to have the ability to pay the proffered wage until the beneficiary obtains permanent residence.

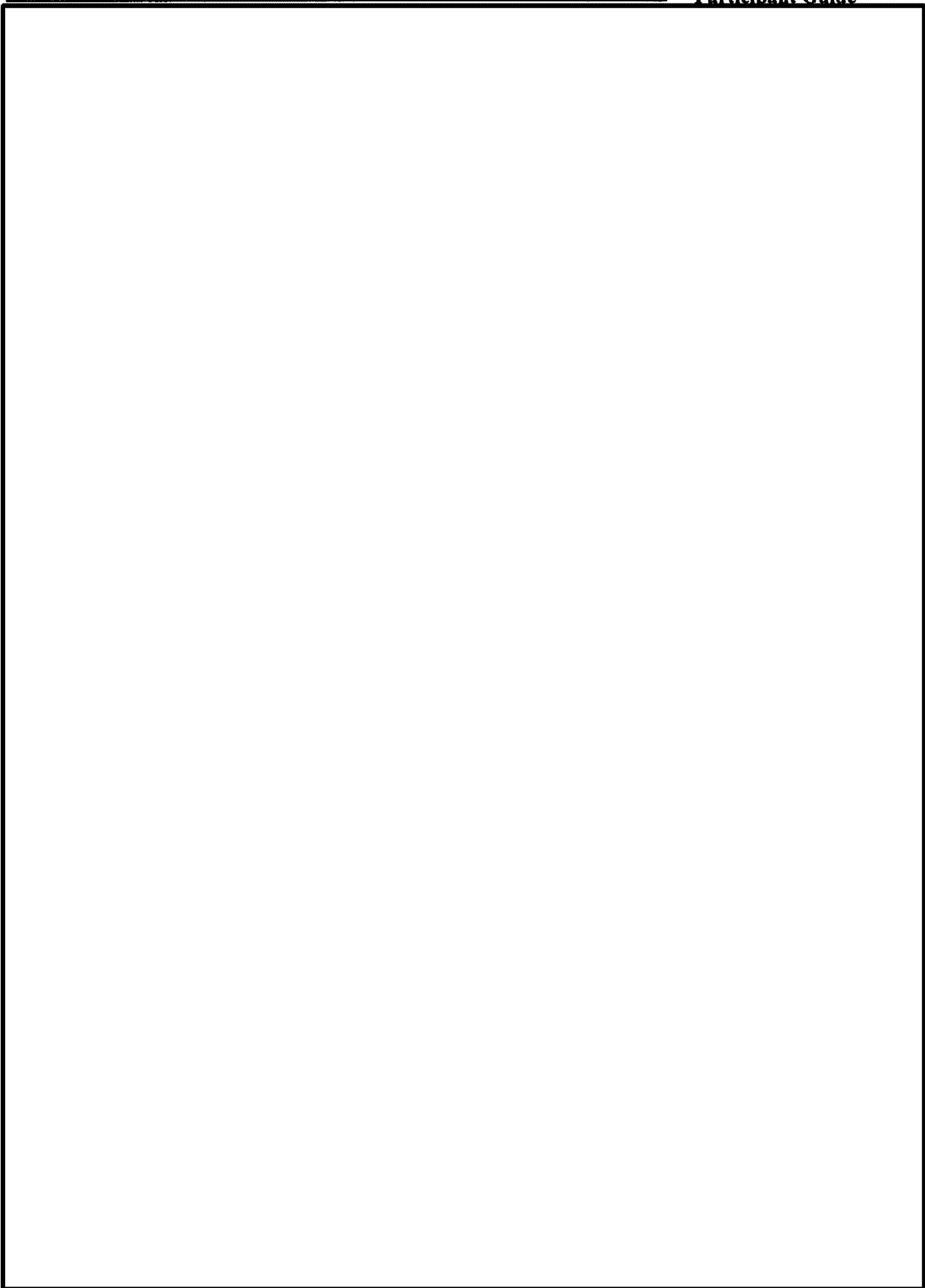


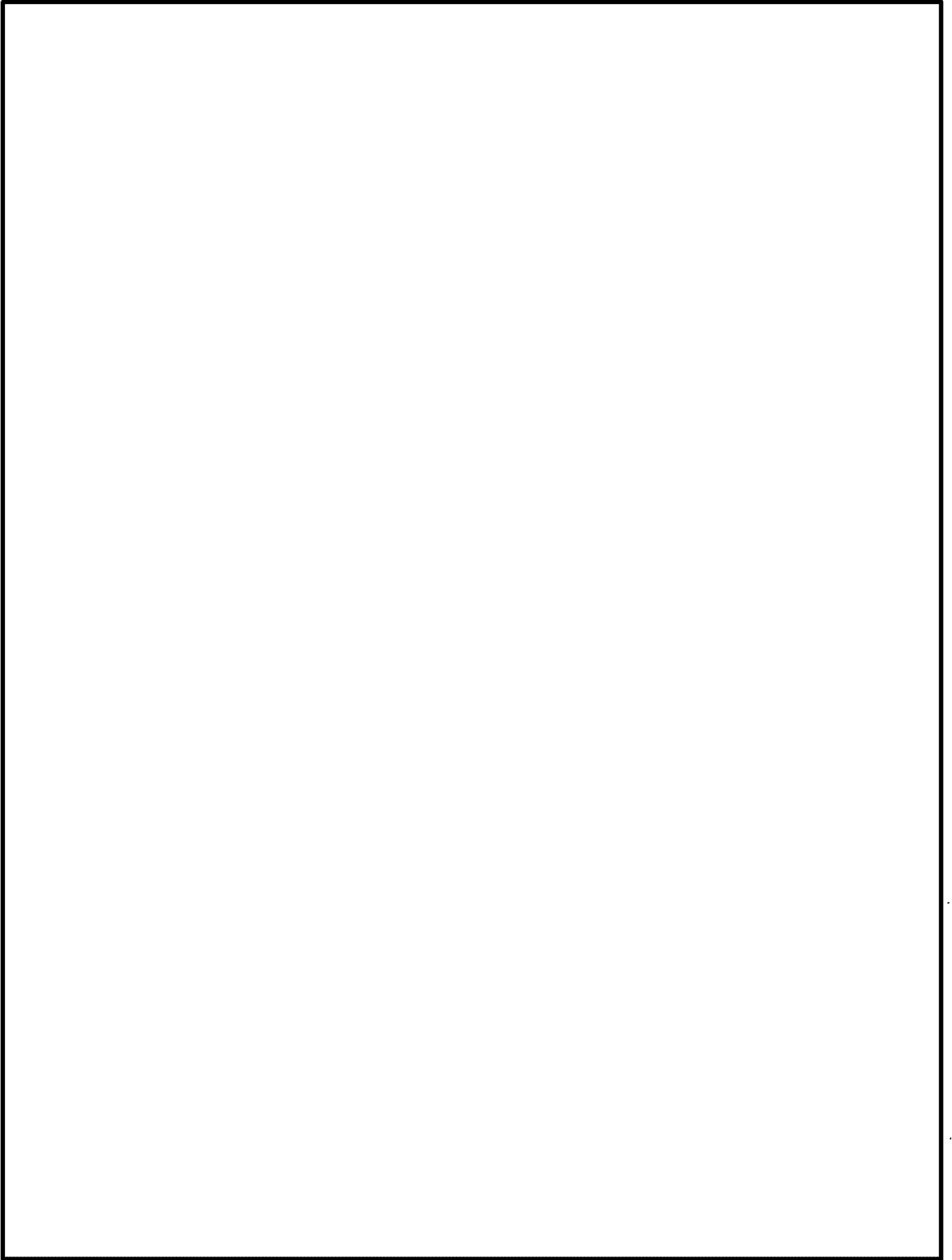
- Establishing that the employer has the ability to pay the proffered wage is different from establishing that the employer is already paying the proffered wage.
- b. 8 CFR § 204.5(g)(2) requires that the evidence be in the form of annual reports, federal tax returns, or audited financial statements. In a case where the prospective employer employs 100 or more workers, adjudicators may accept a statement from a financial officer of the organization regarding its ability to pay the proffered wage.
  - In appropriate cases the petitioner may submit, or USCIS may request, additional evidence such as profit/loss statements, bank account records, or personnel records. The burden remains on the petitioner to establish its ability to pay the wage.
- c. USCIS Operational guidance, “Determination of Ability to Pay under 8 CFR 204.5(g)(2)” dated May 4, 2004 is provided as further background reading in the Memo Folder.

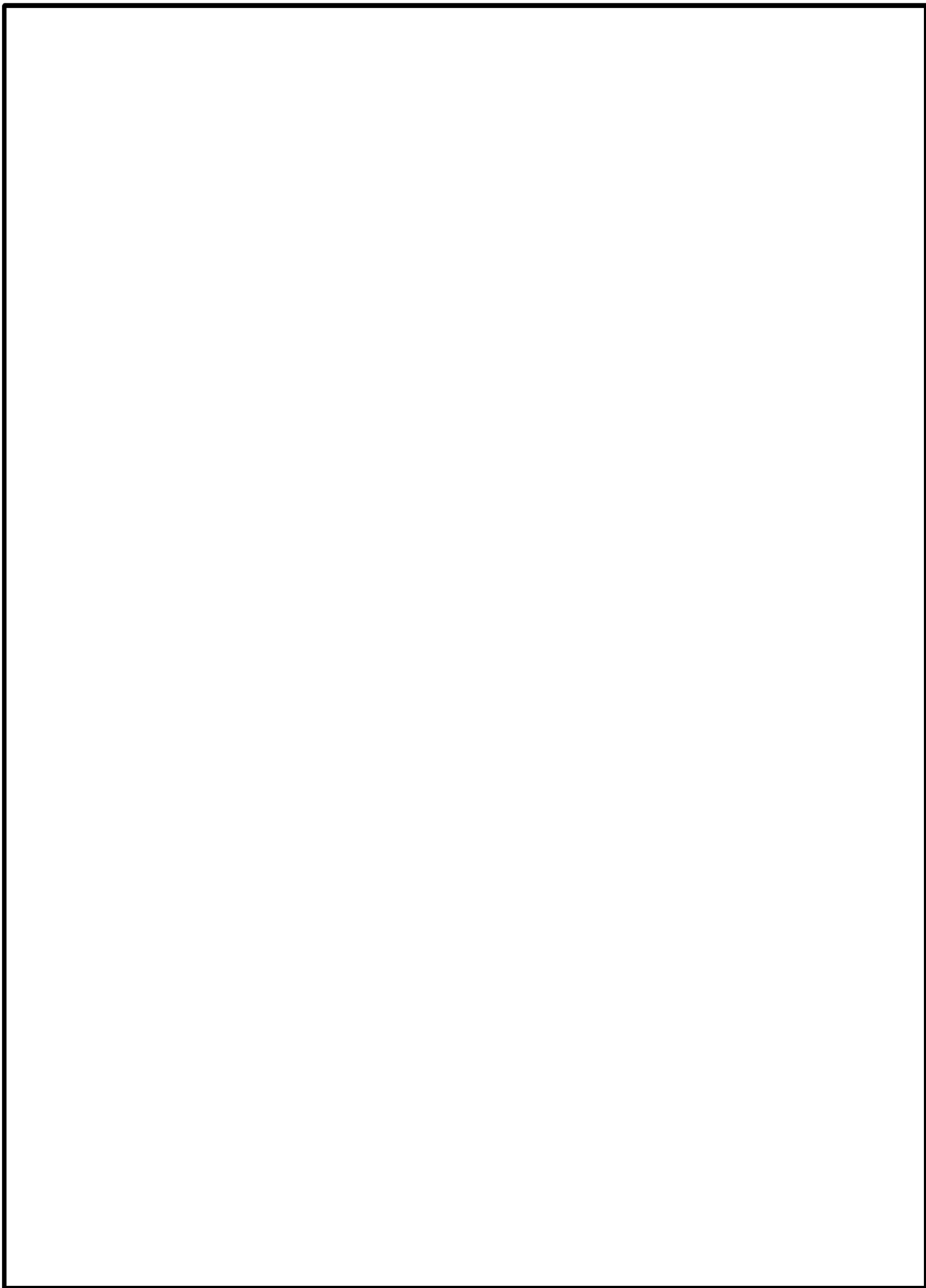


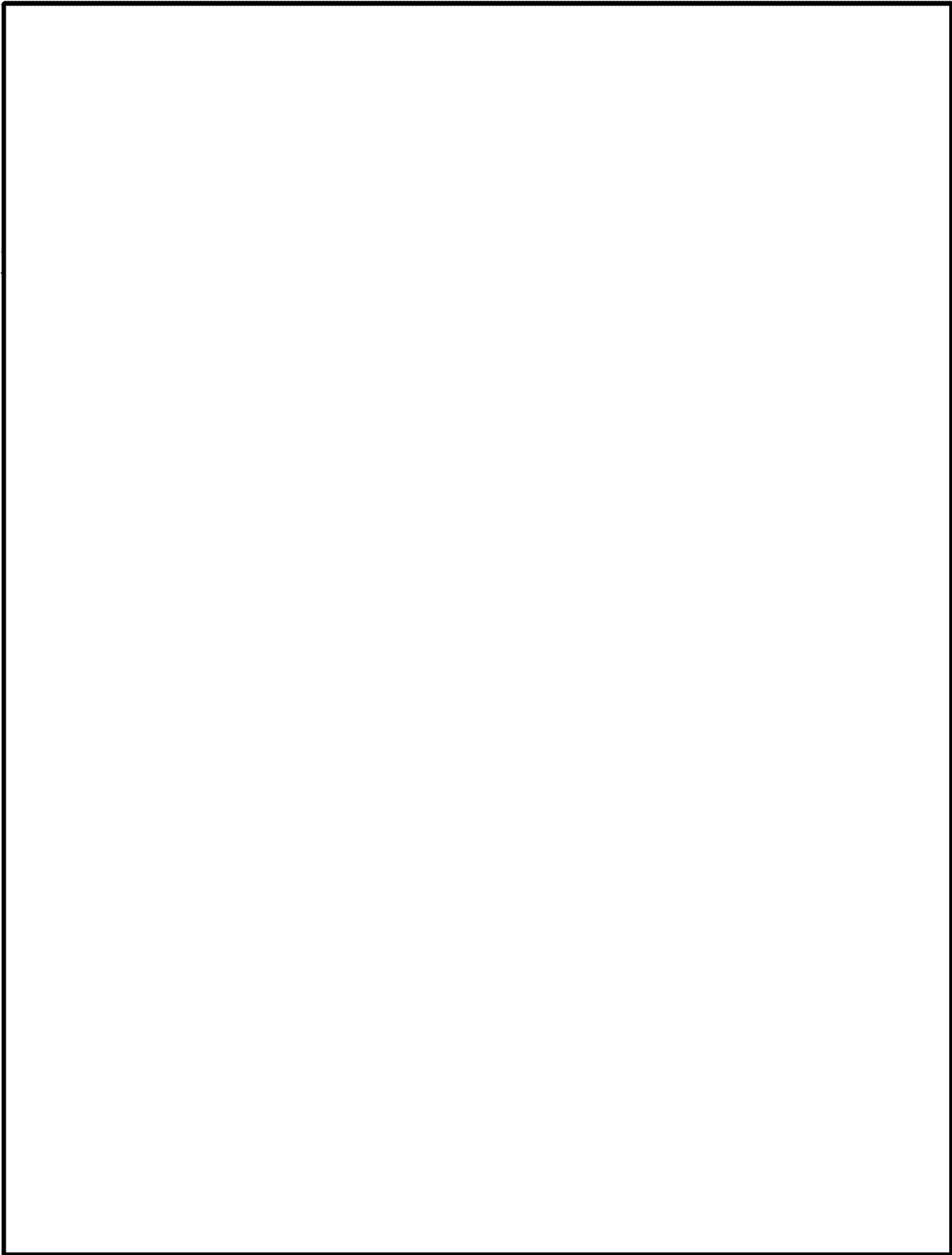


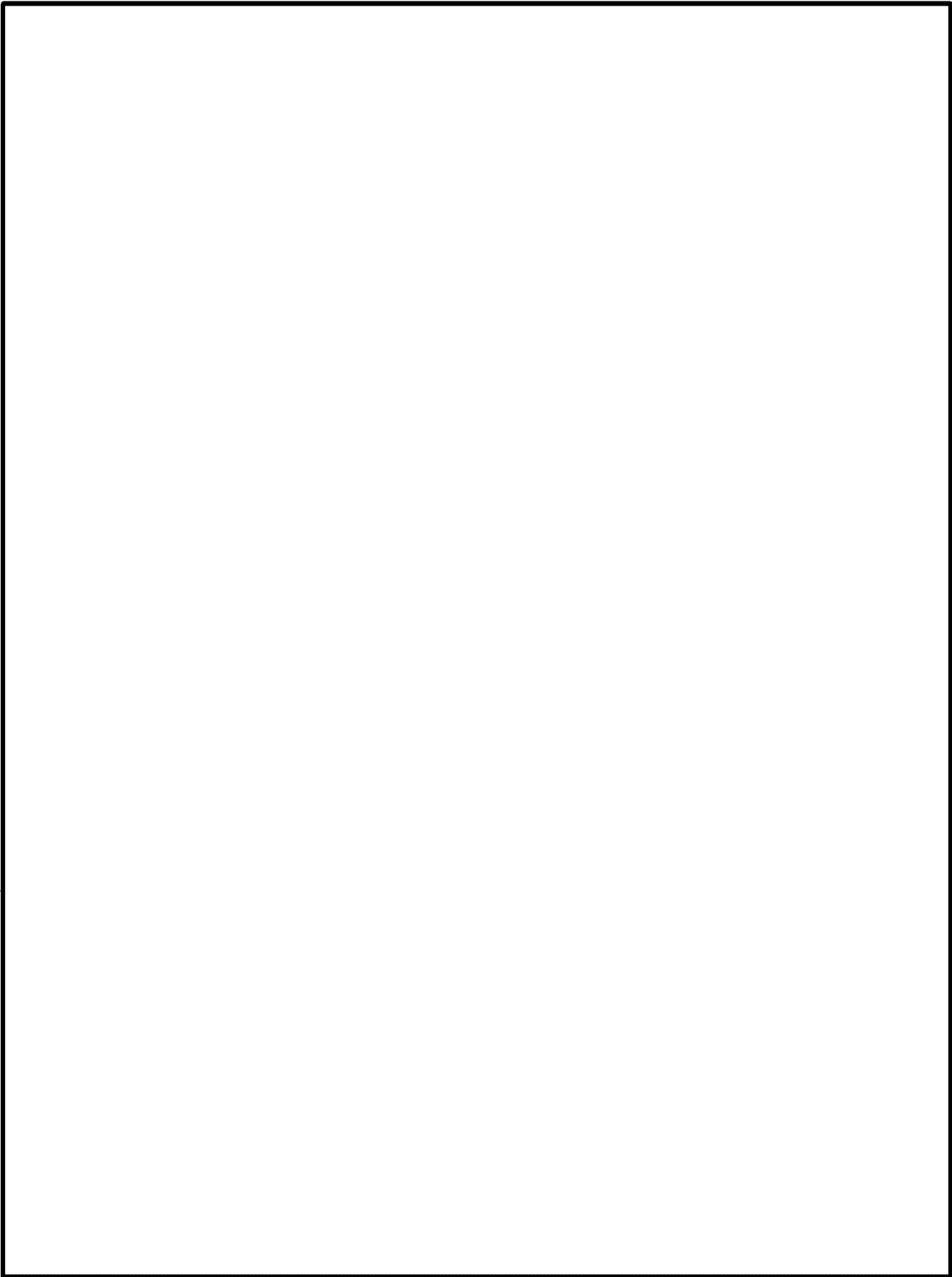








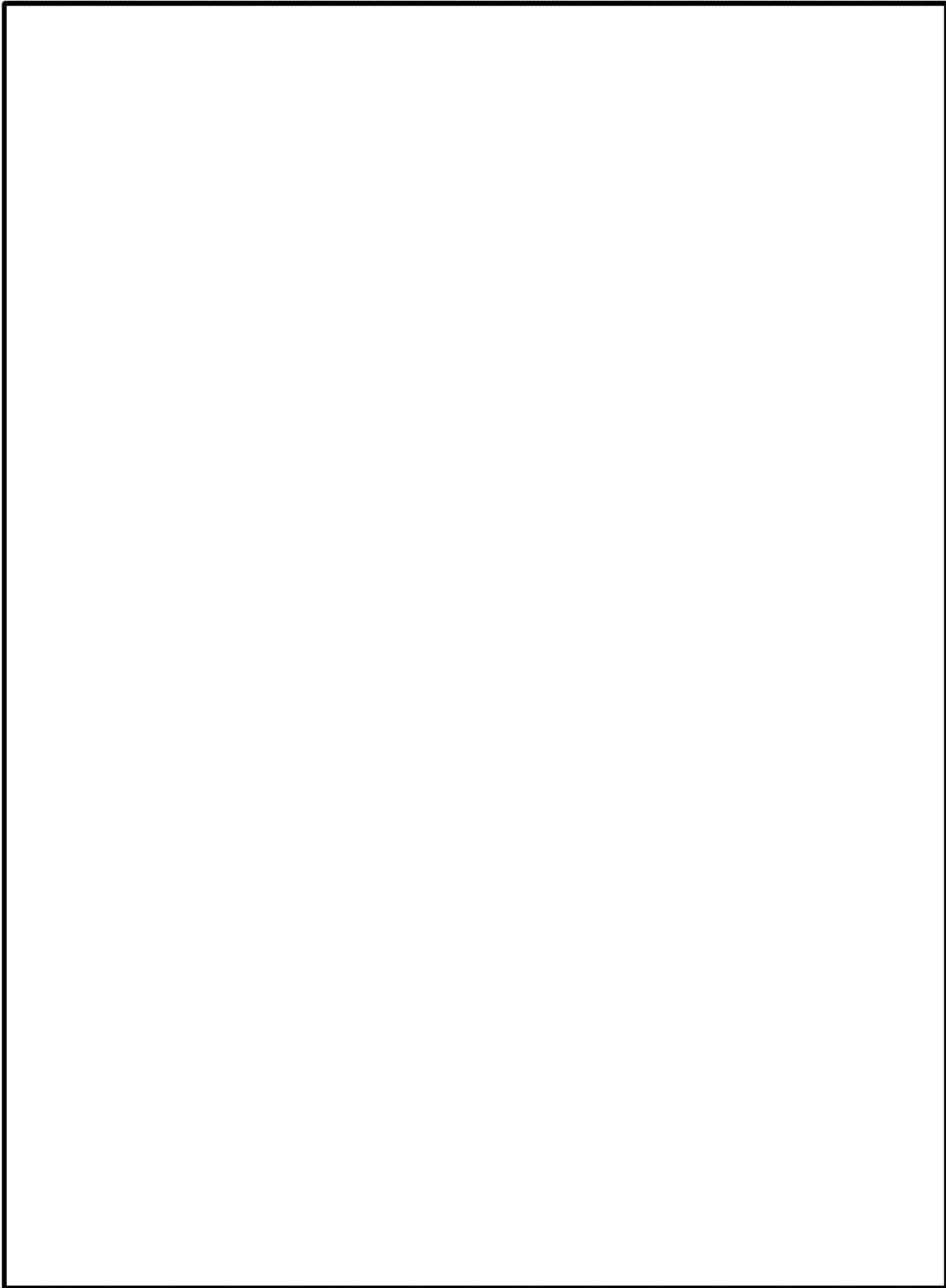


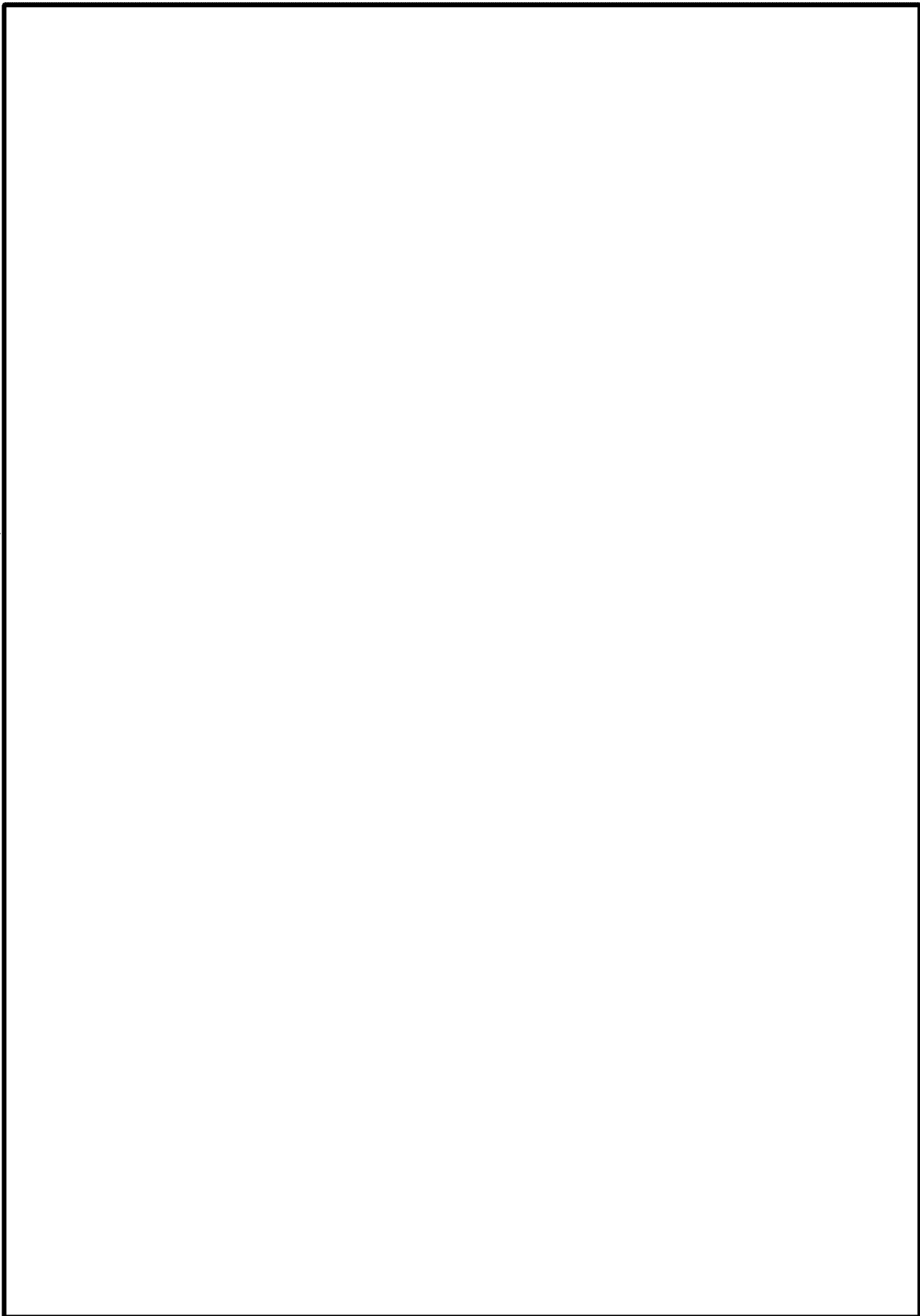


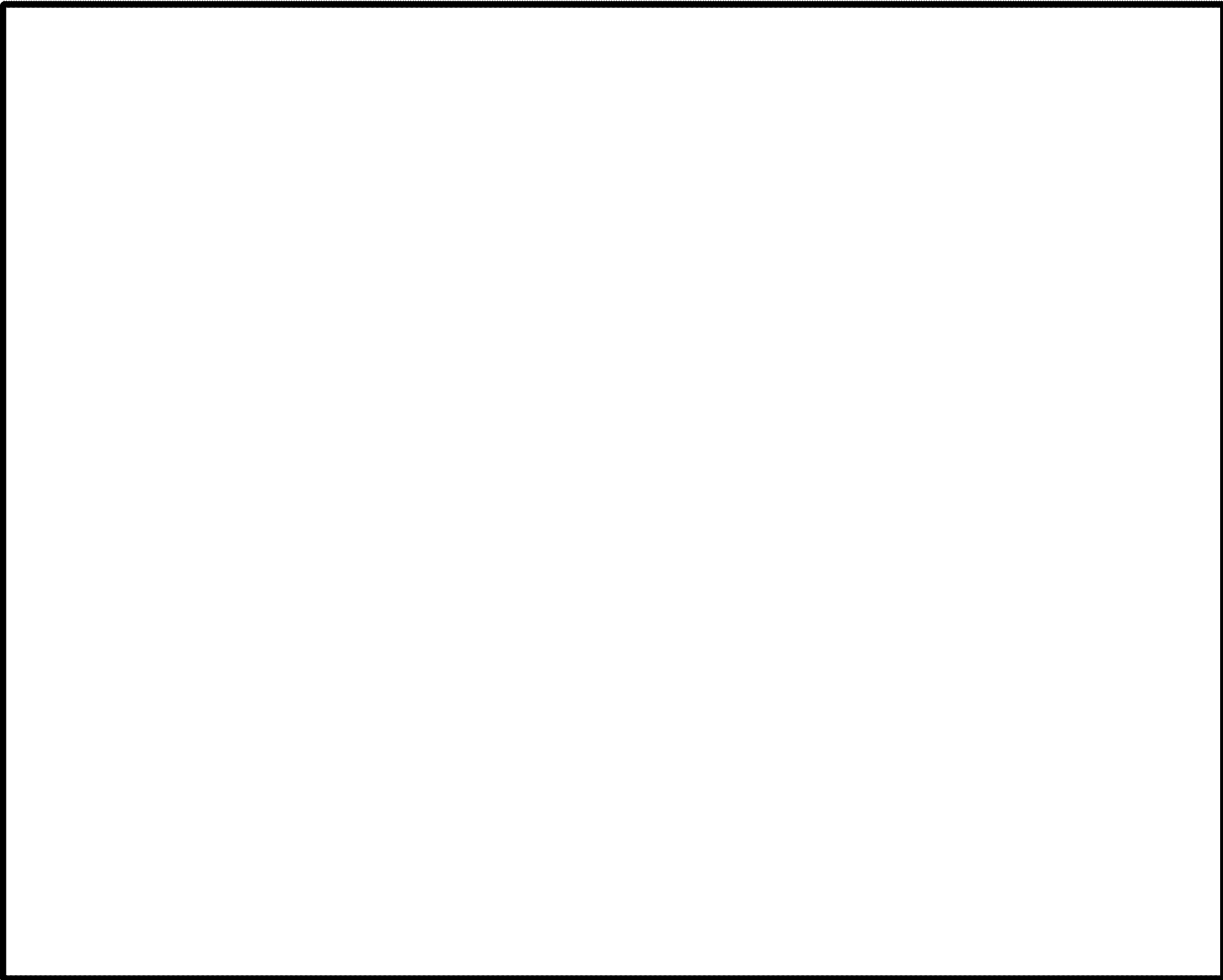














# U.S. Citizenship and Immigration Services

## *BASIC*

### **EMPLOYMENT-BASED PETITIONS**

**COURSE 213**

**PARTICIPANT GUIDE**

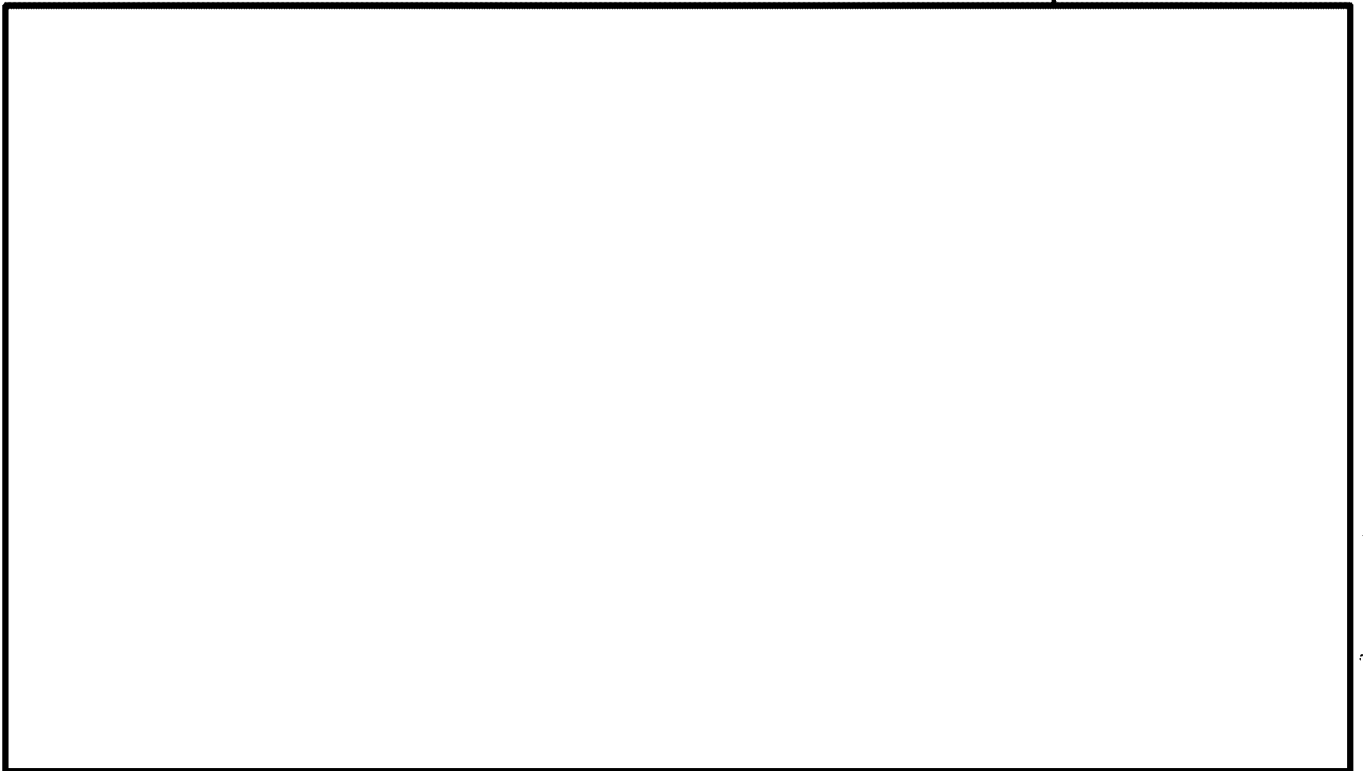
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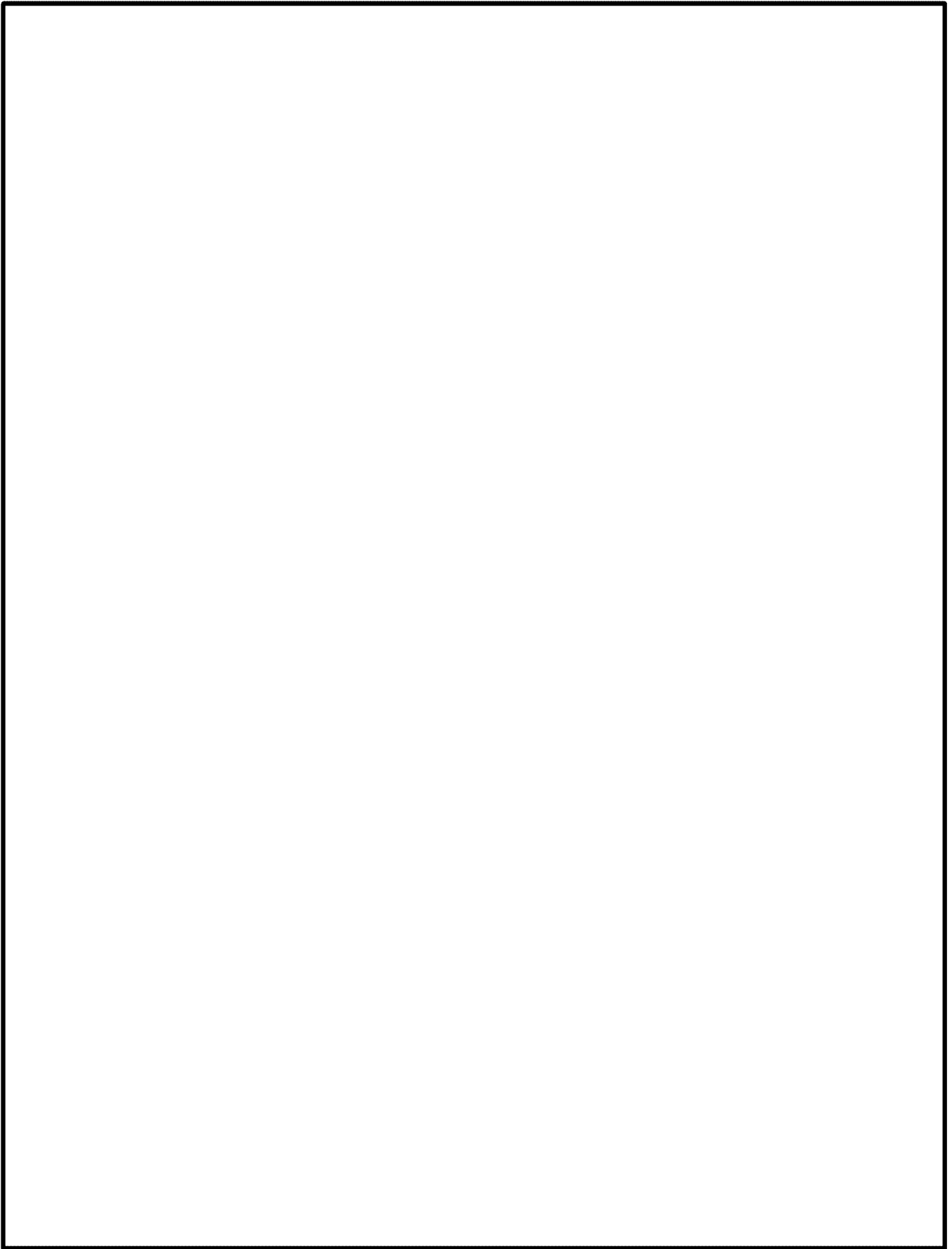
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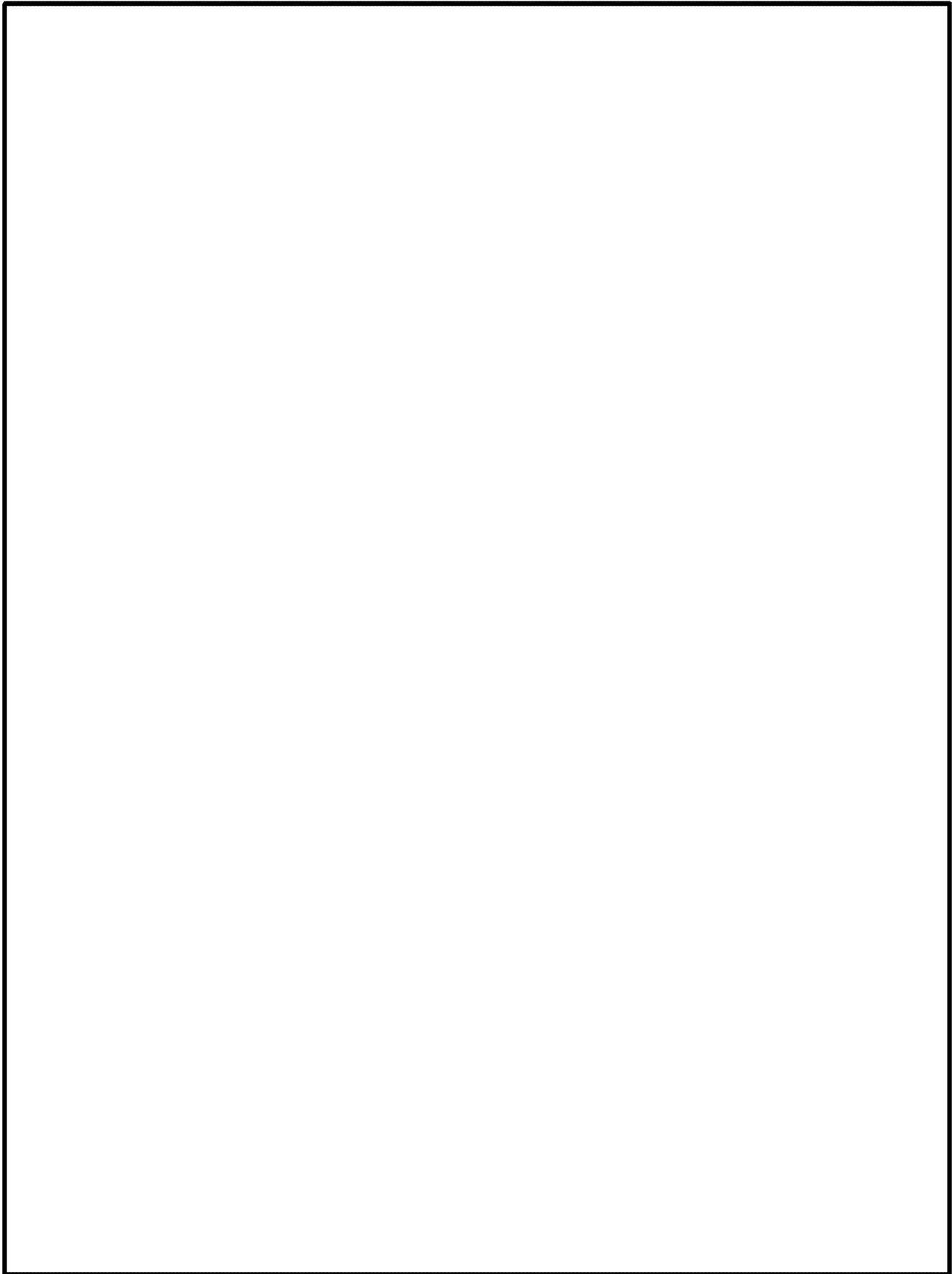


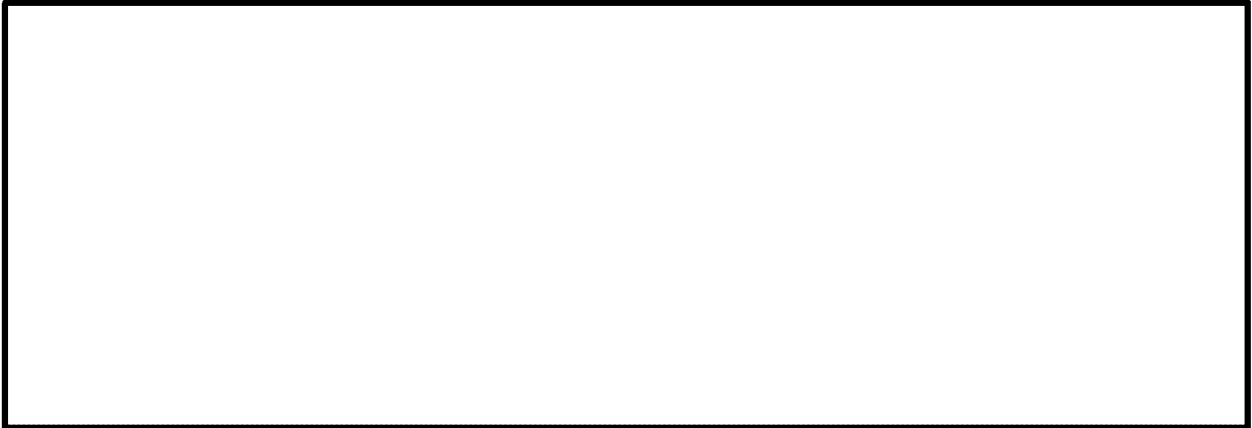






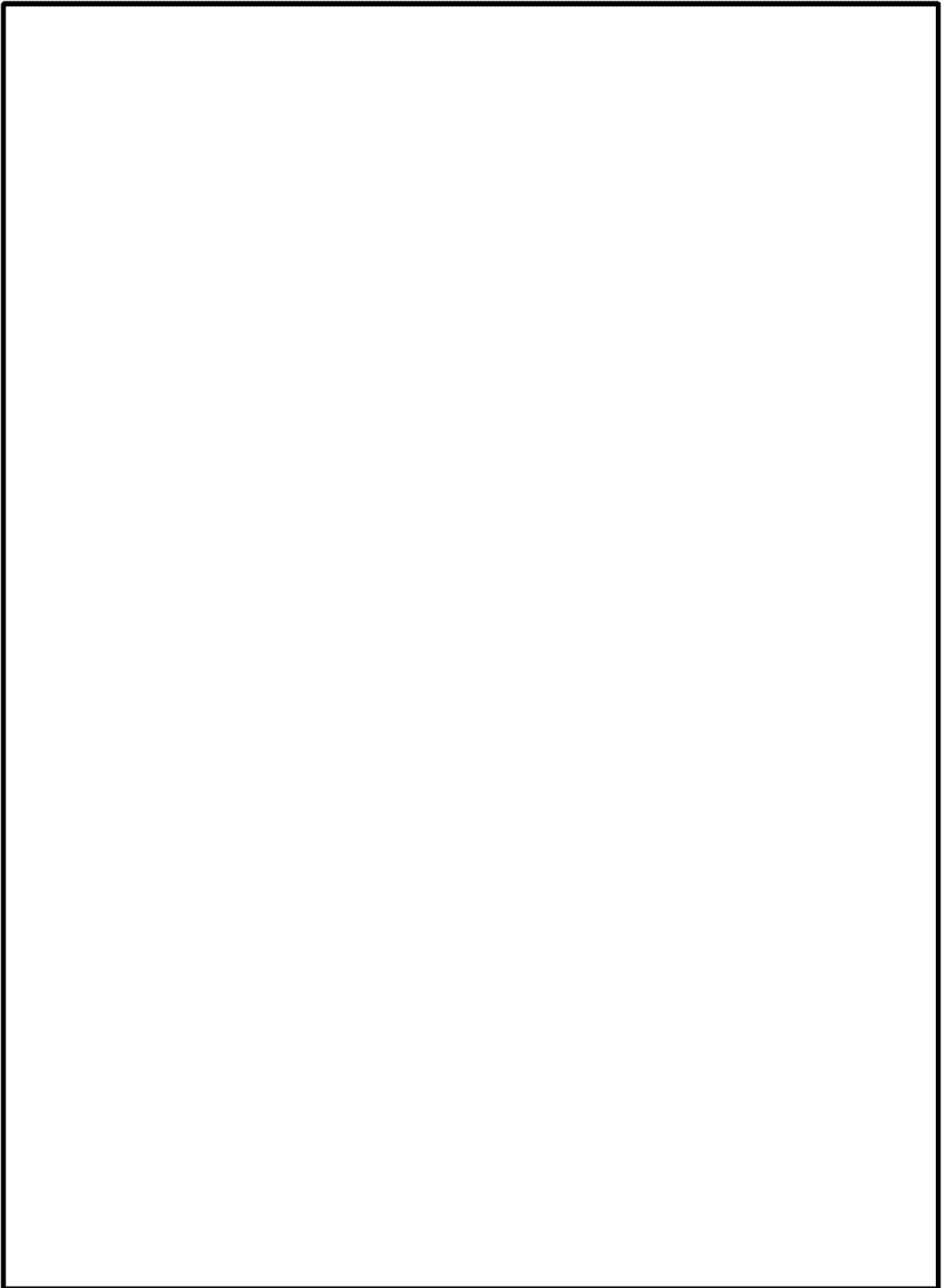


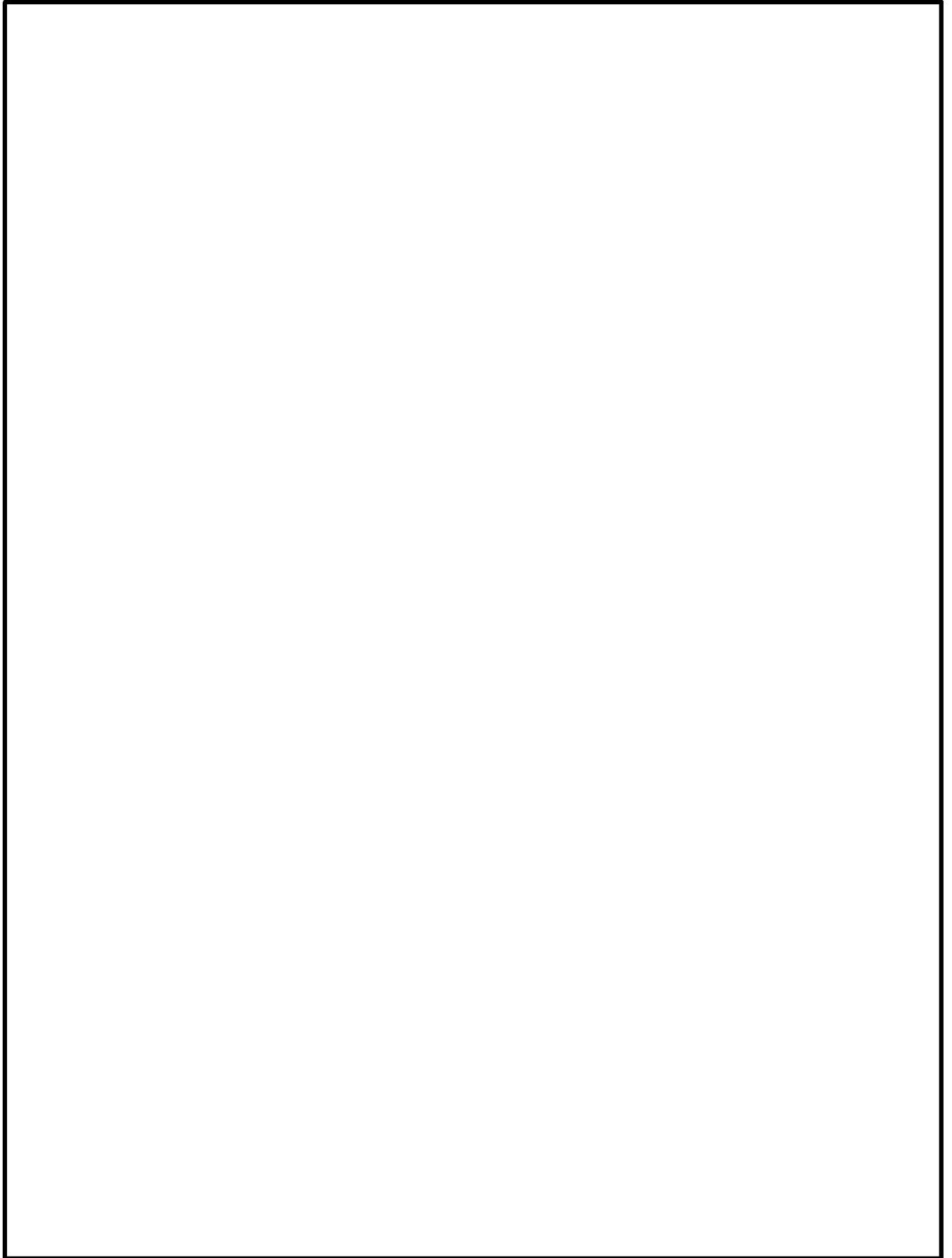


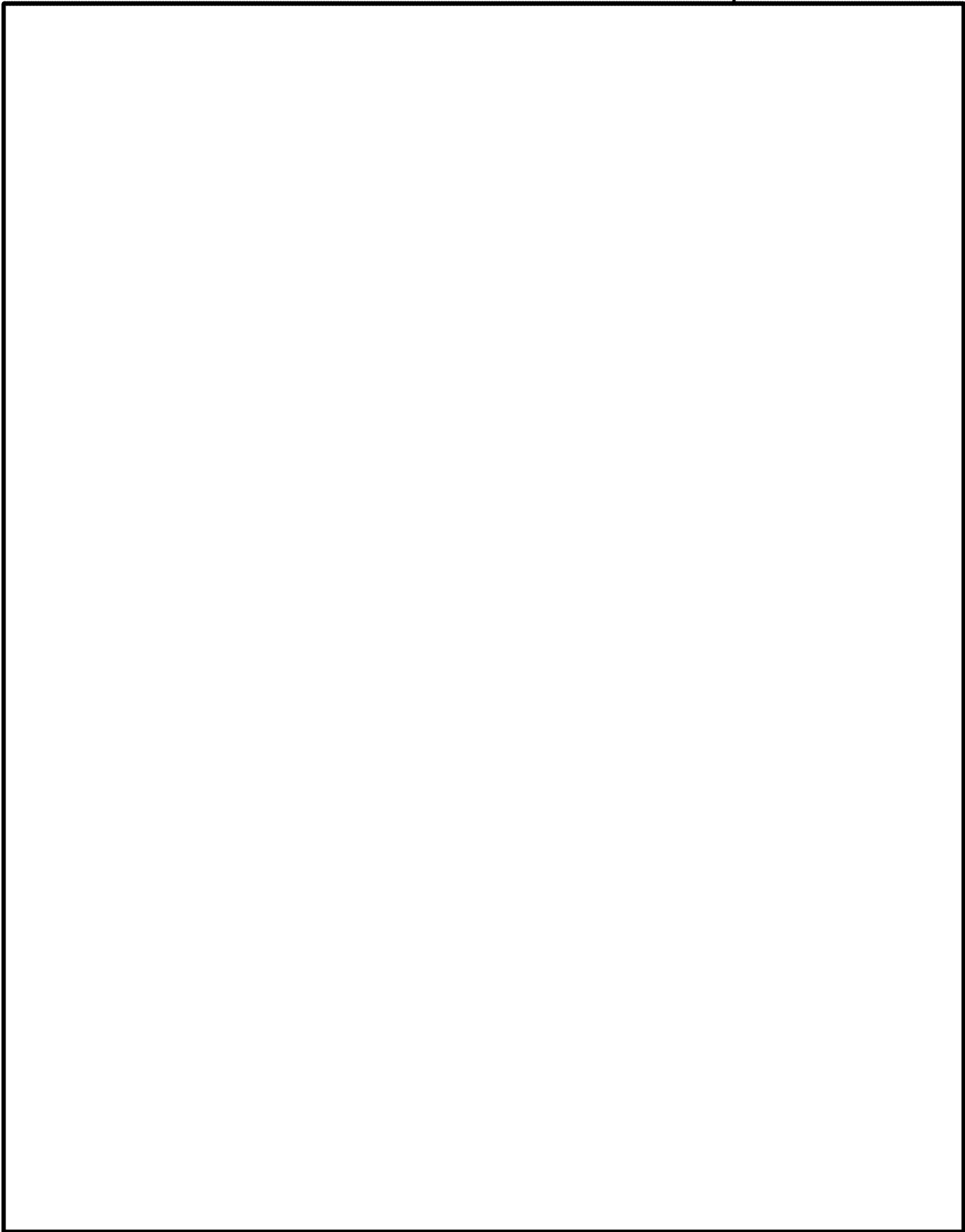


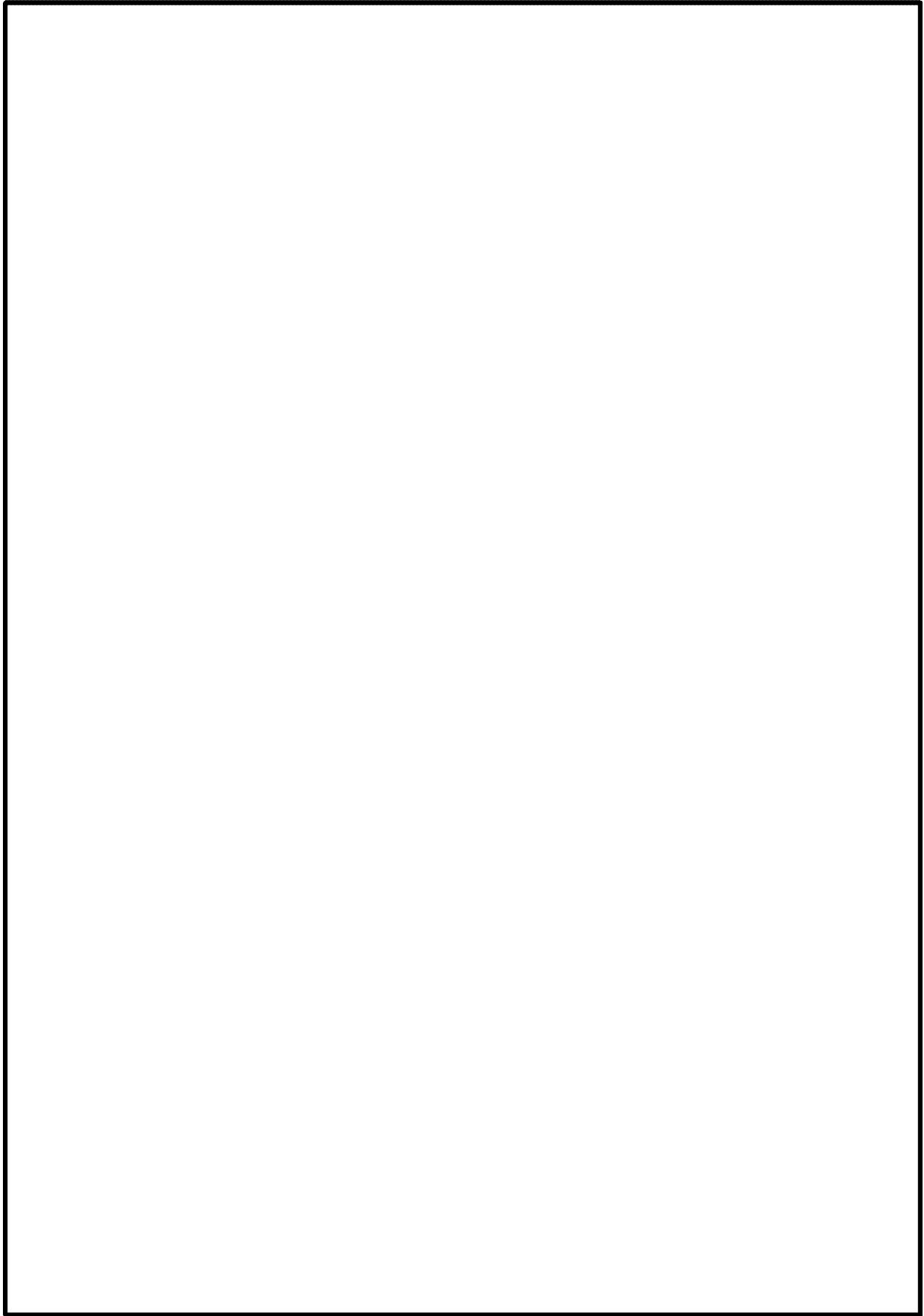
6. Documentory Requirements for Employment Based Immigrants.
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- c. USCIS Operational guidance is provided as further background reading in Appendix.



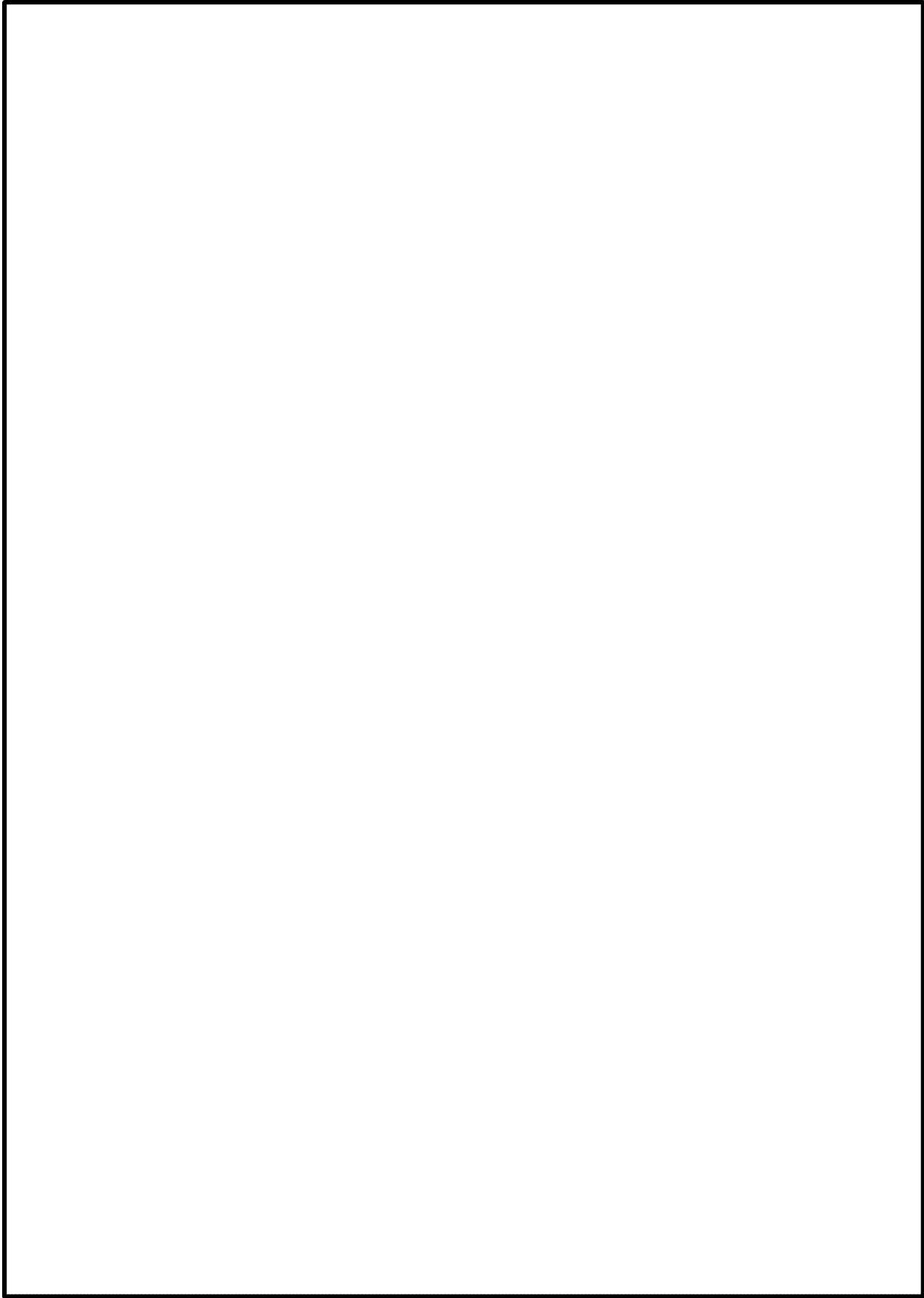


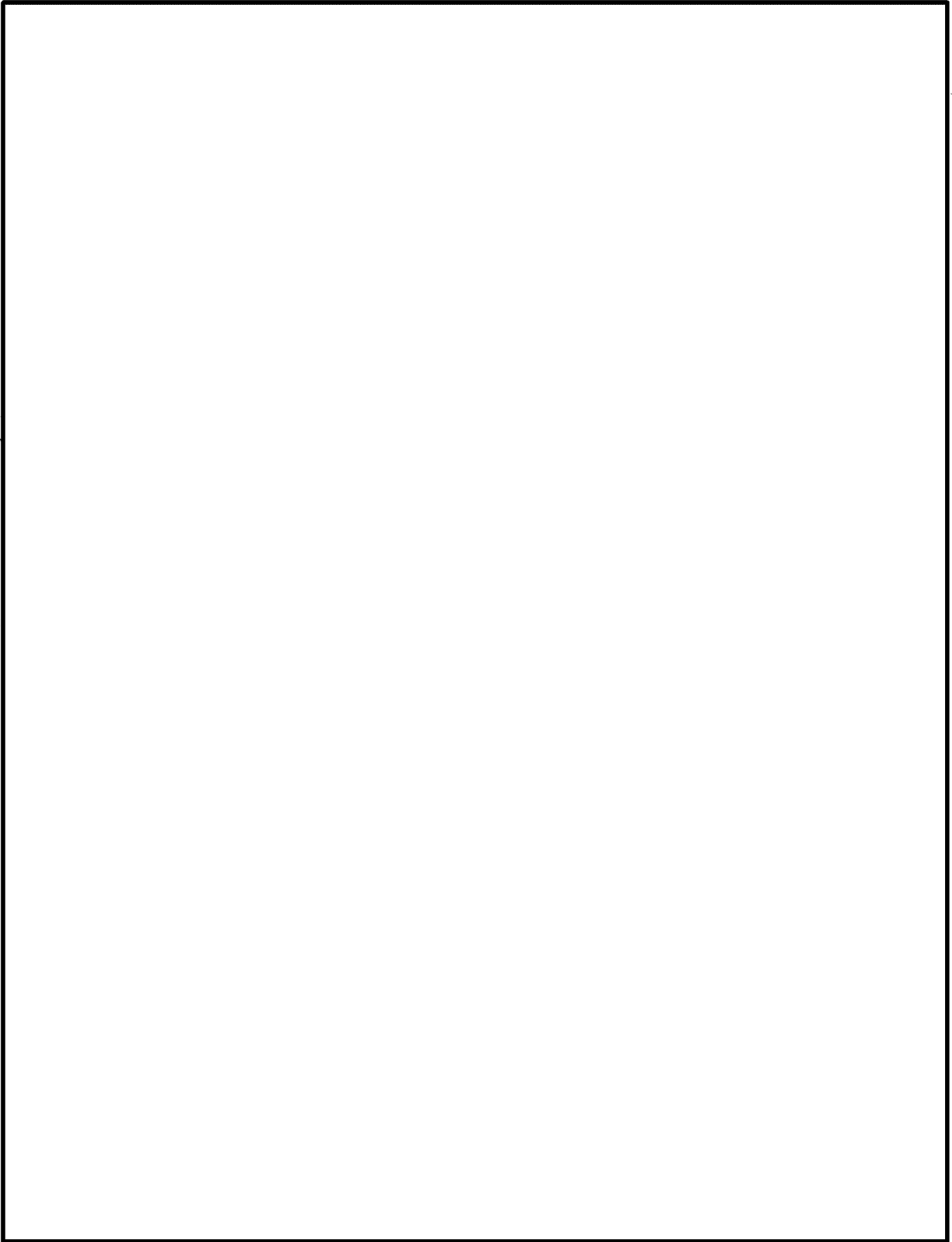


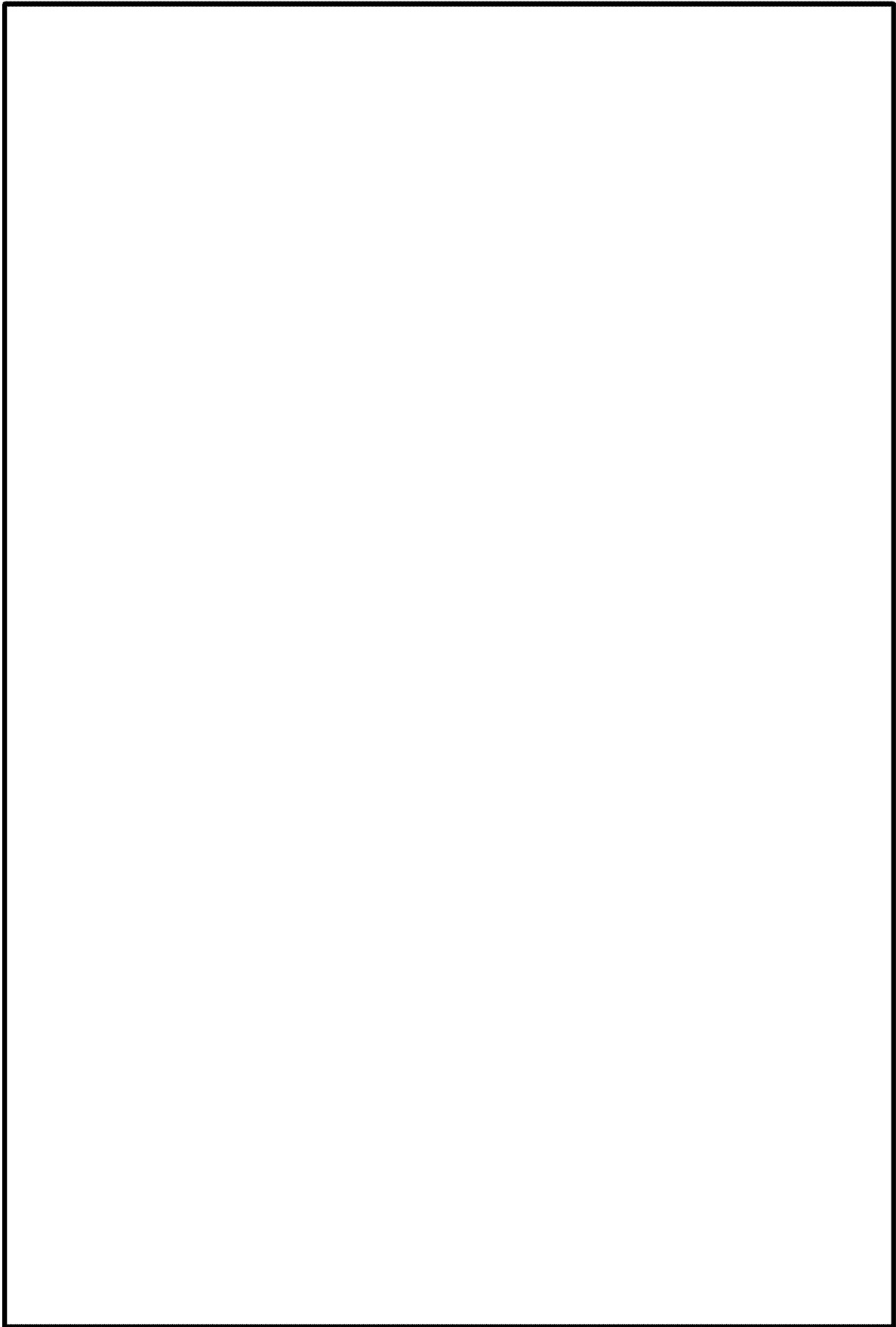


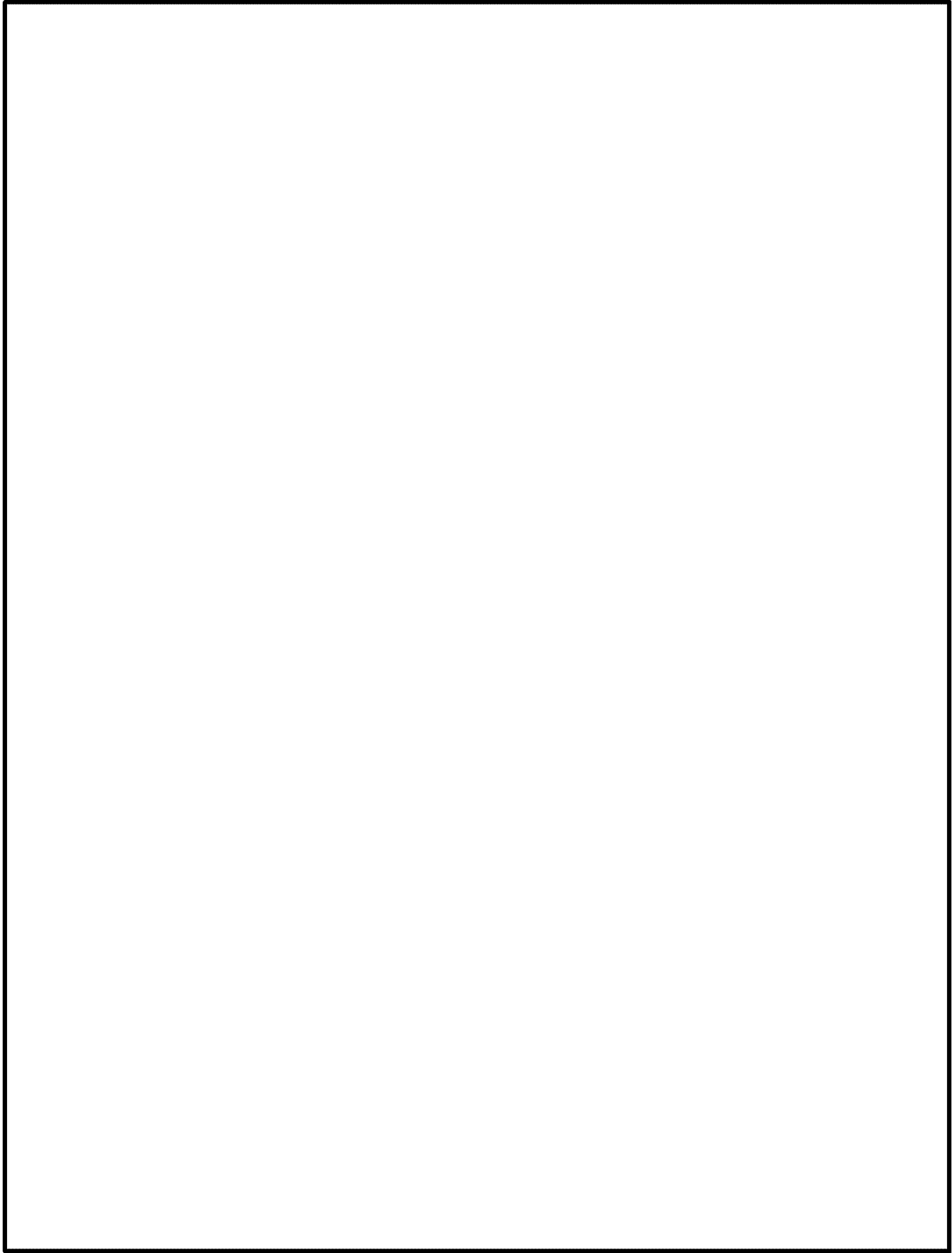




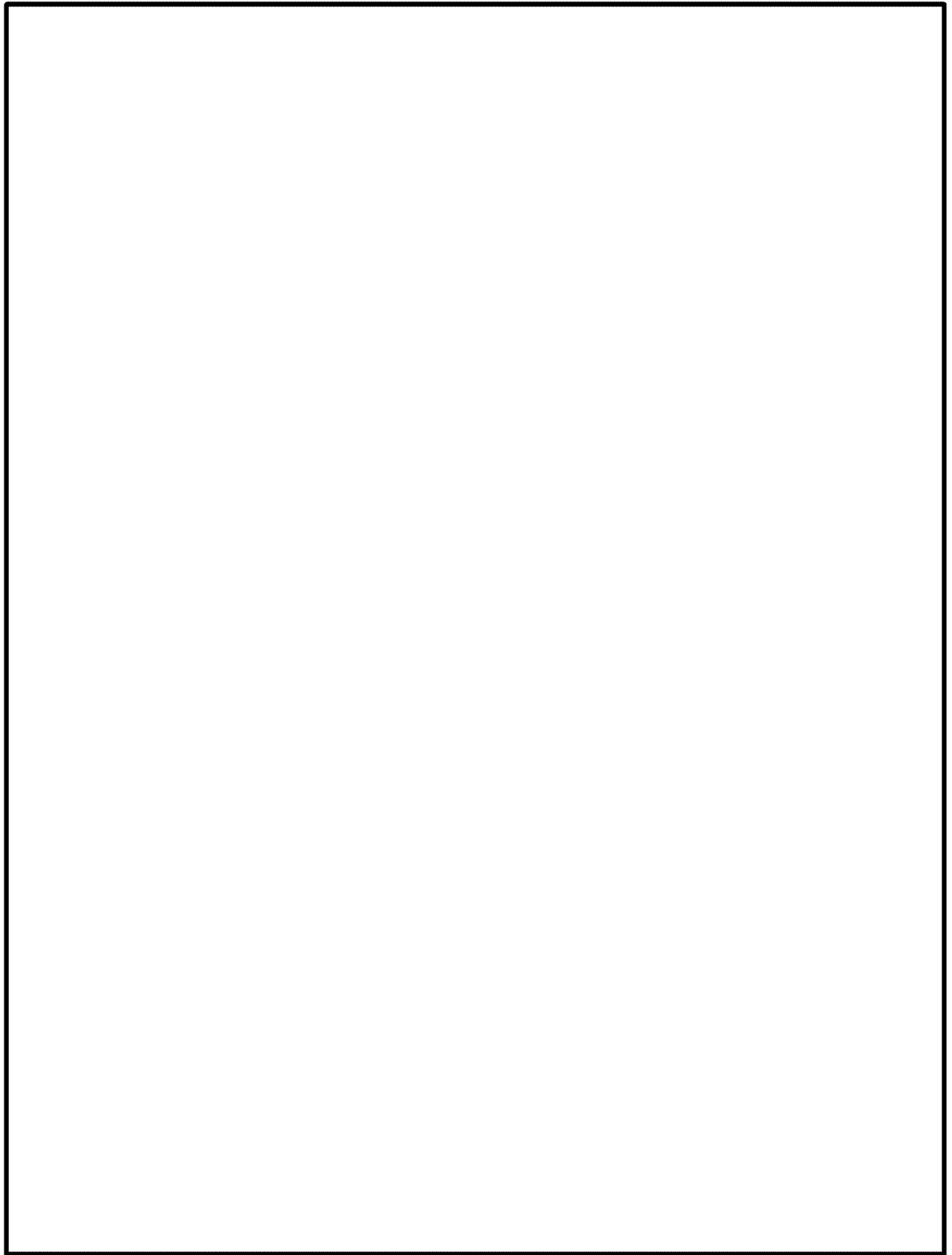


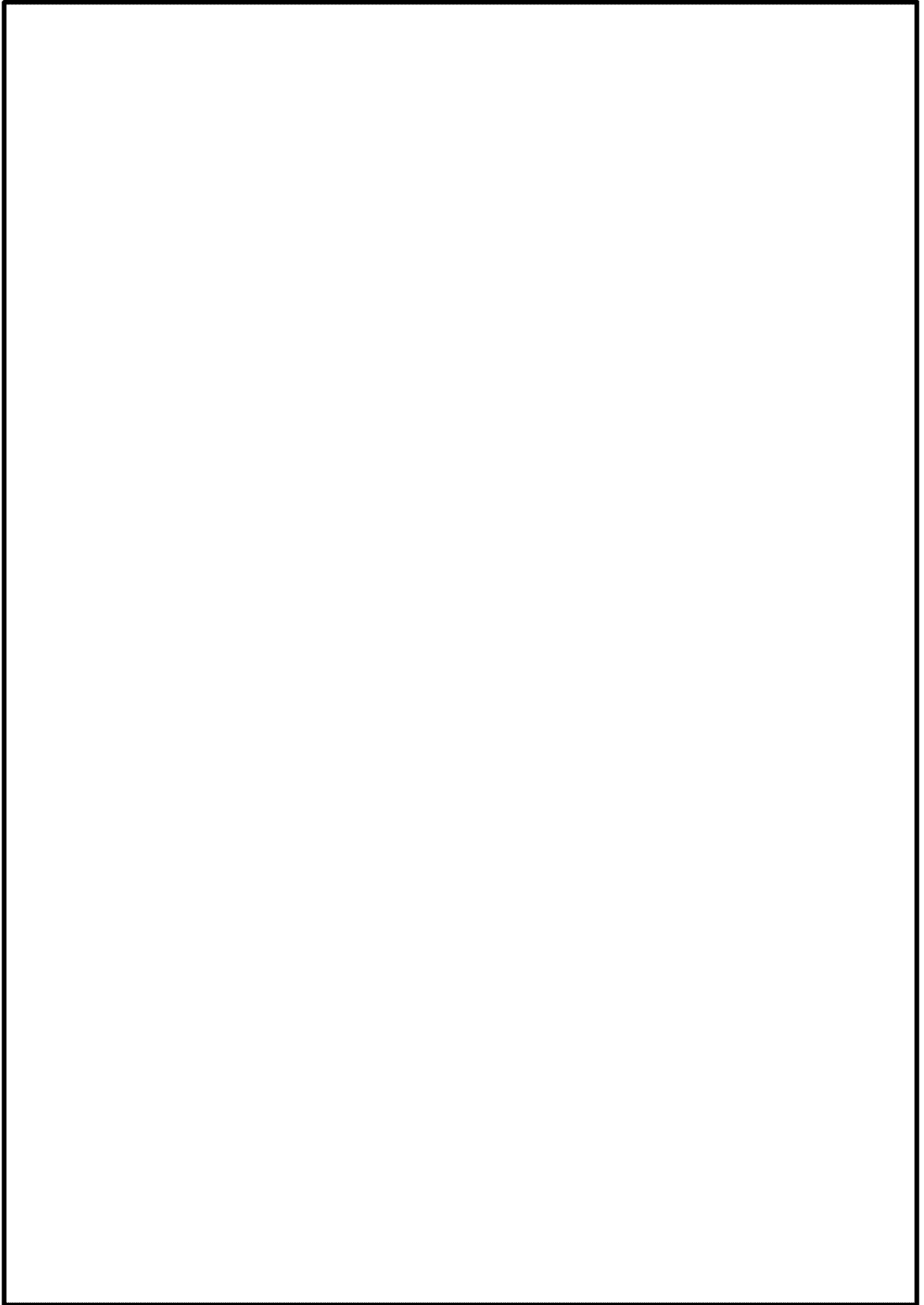


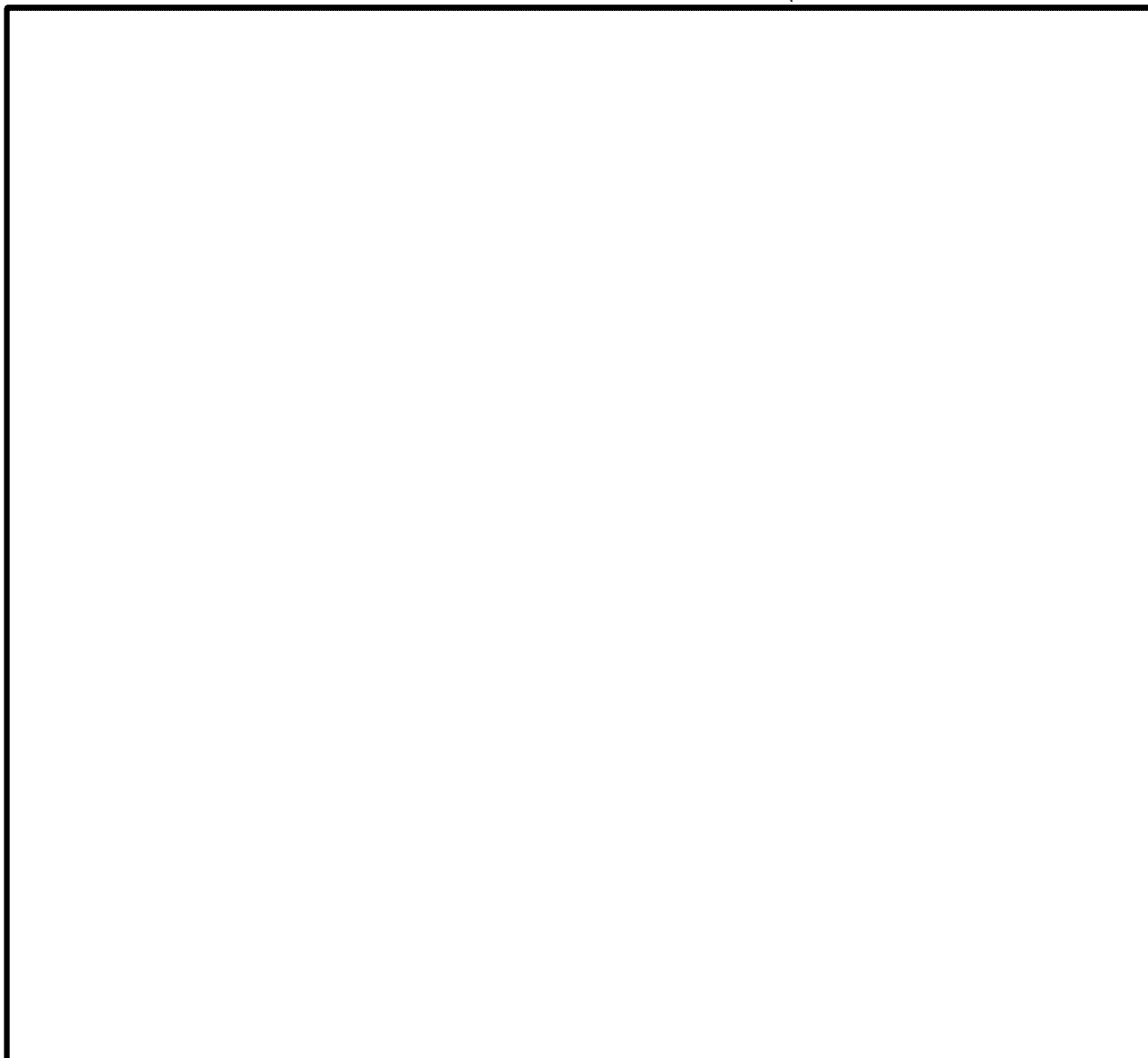




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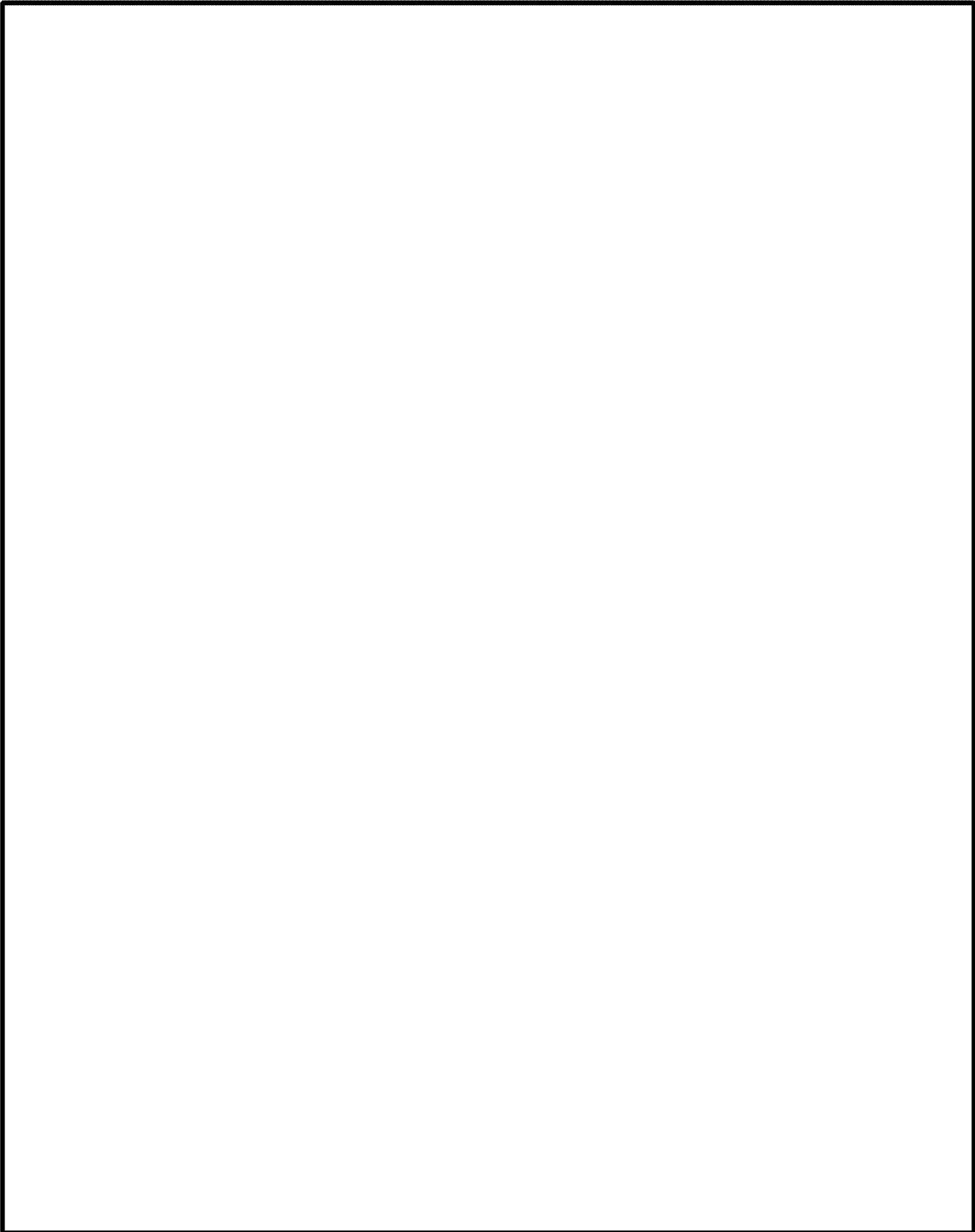
# U.S. Citizenship and Immigration Services

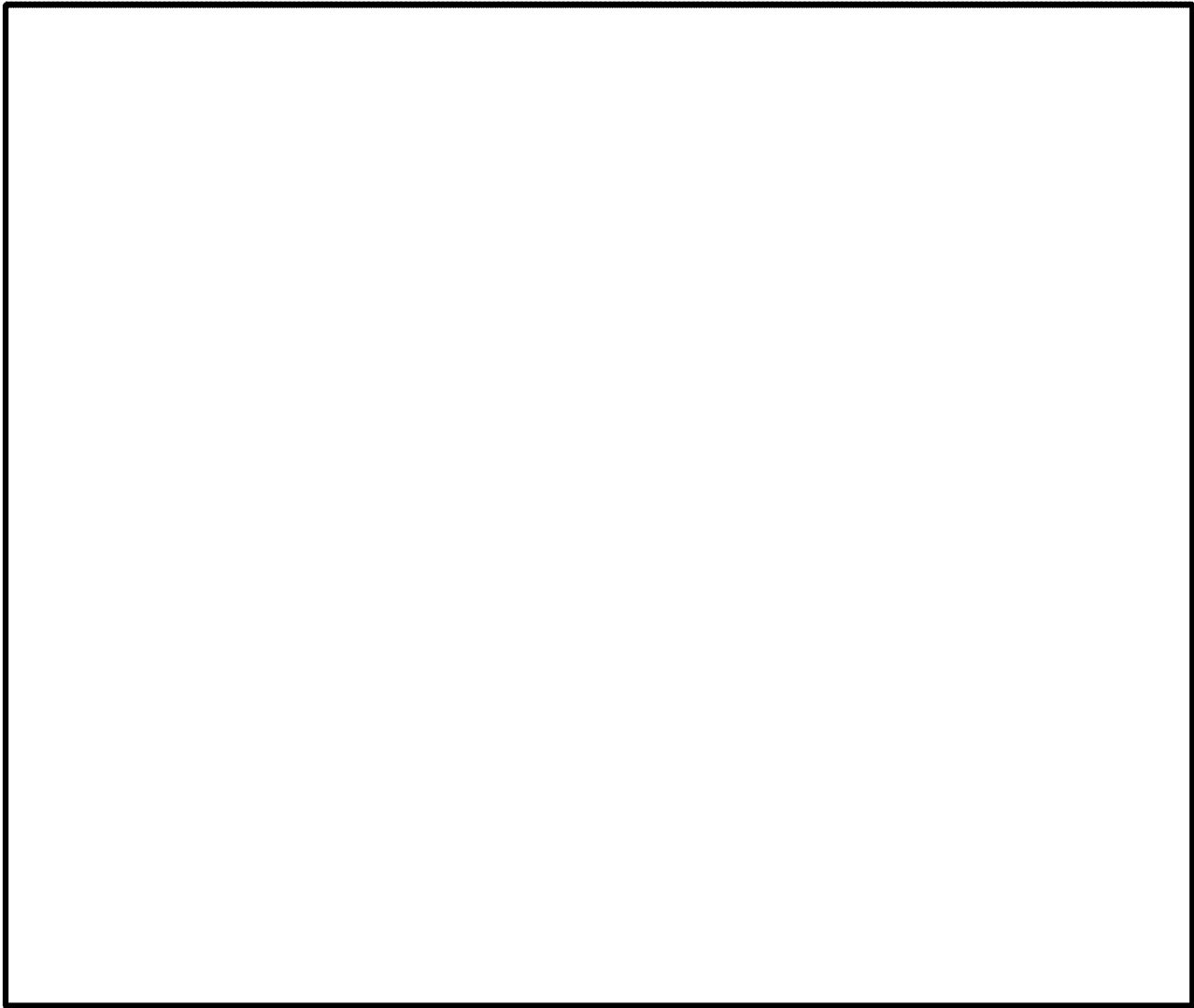
## *BASIC*

### ADJUSTMENT OF STATUS

### COURSE 220

### PARTICIPANT GUIDE

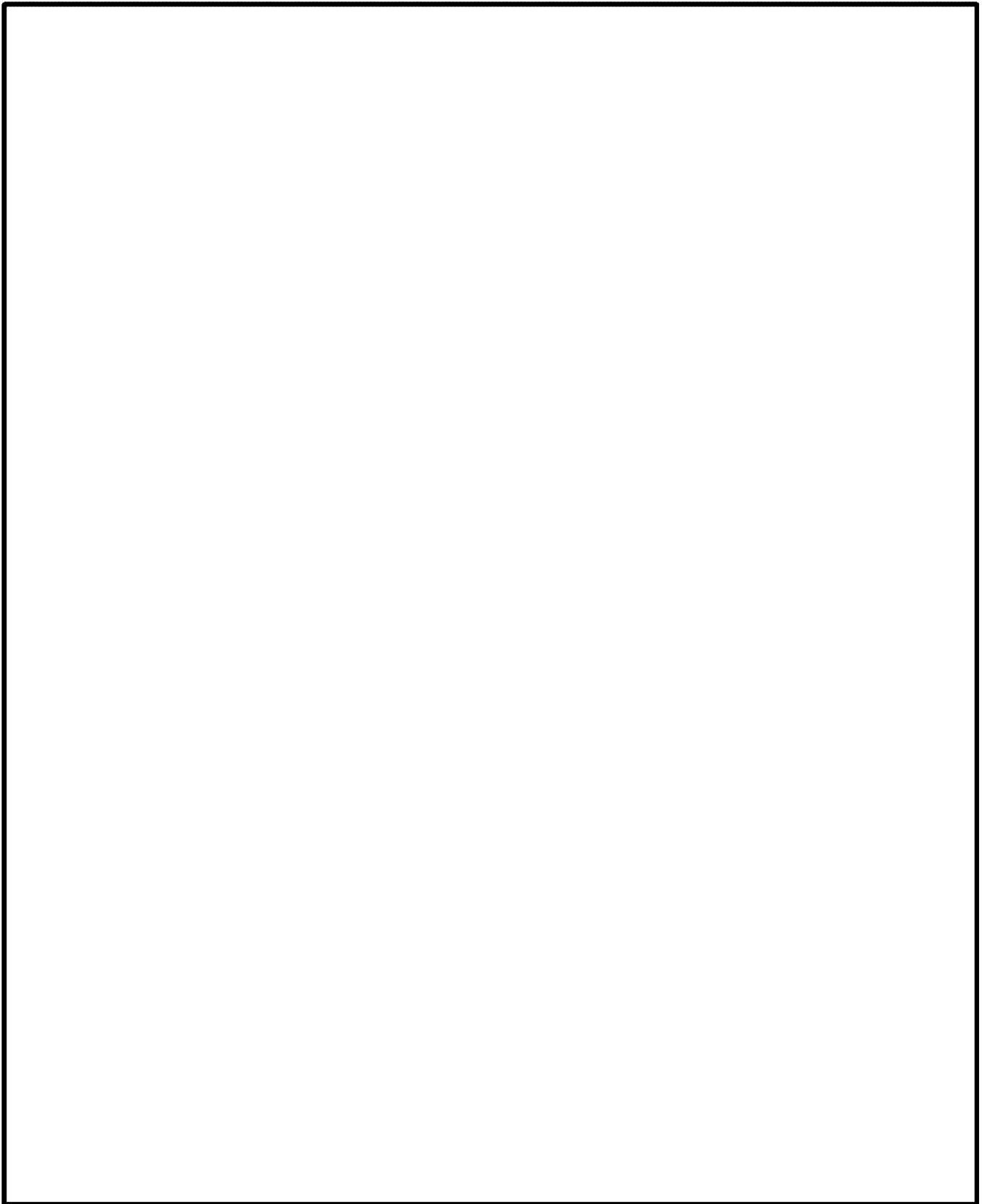


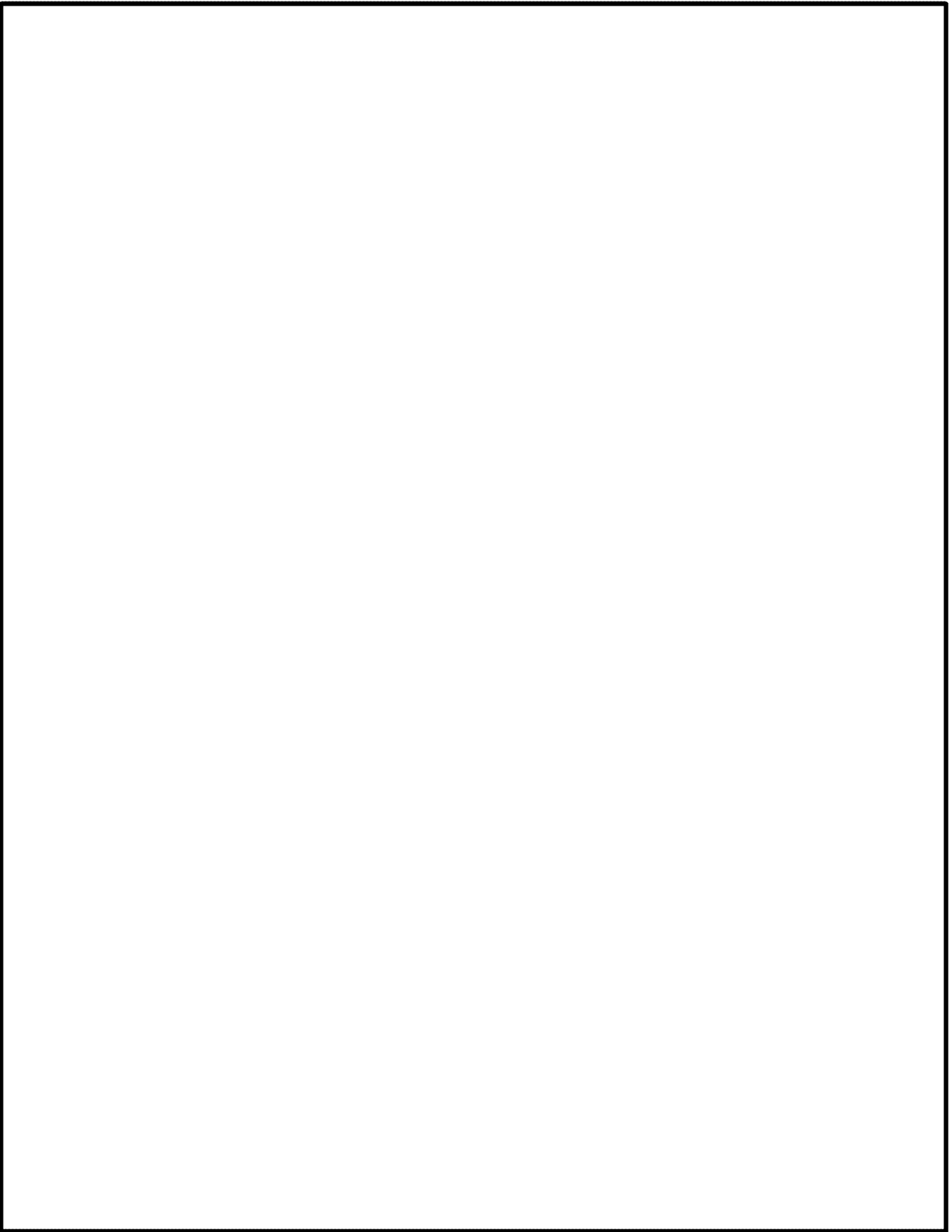


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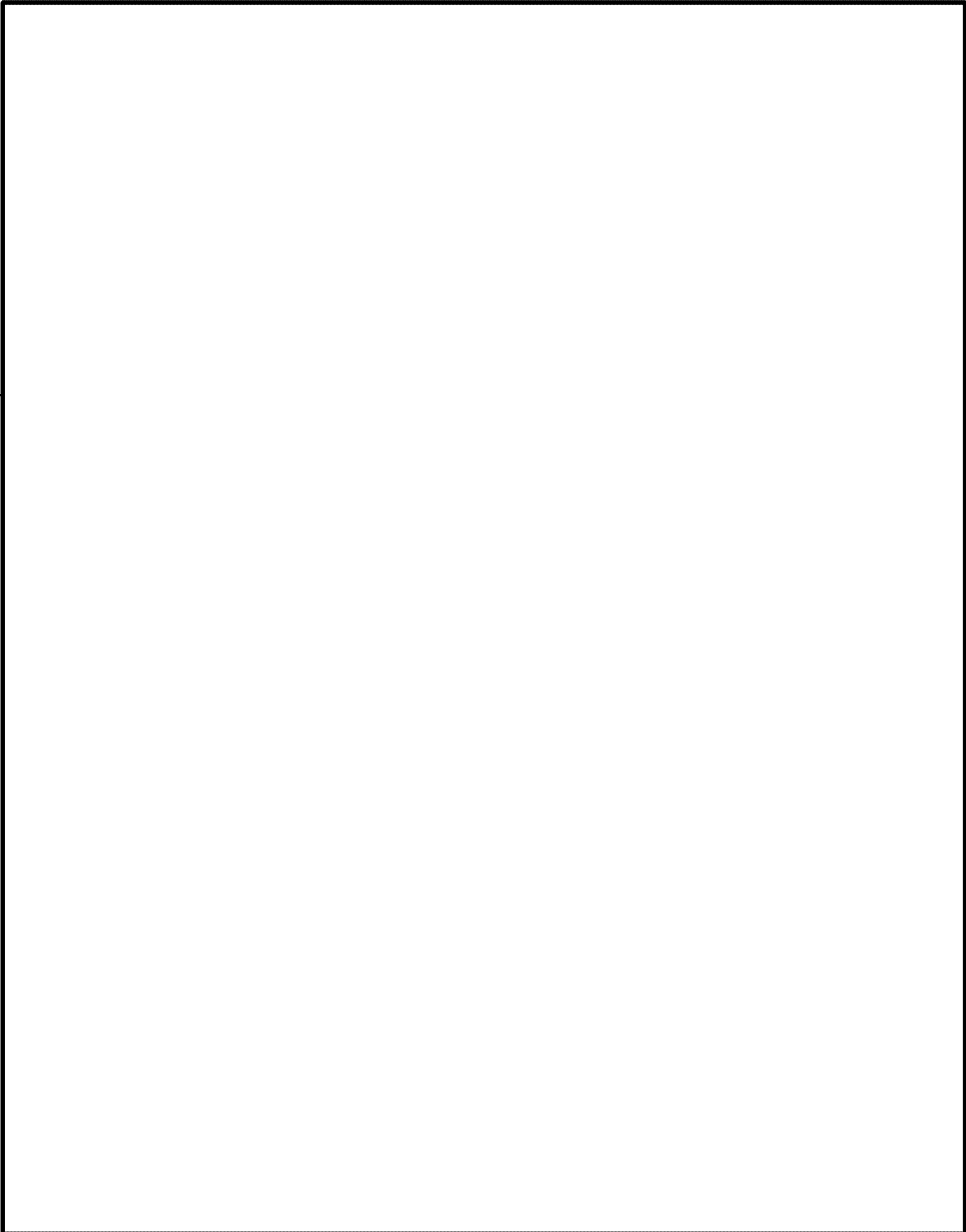
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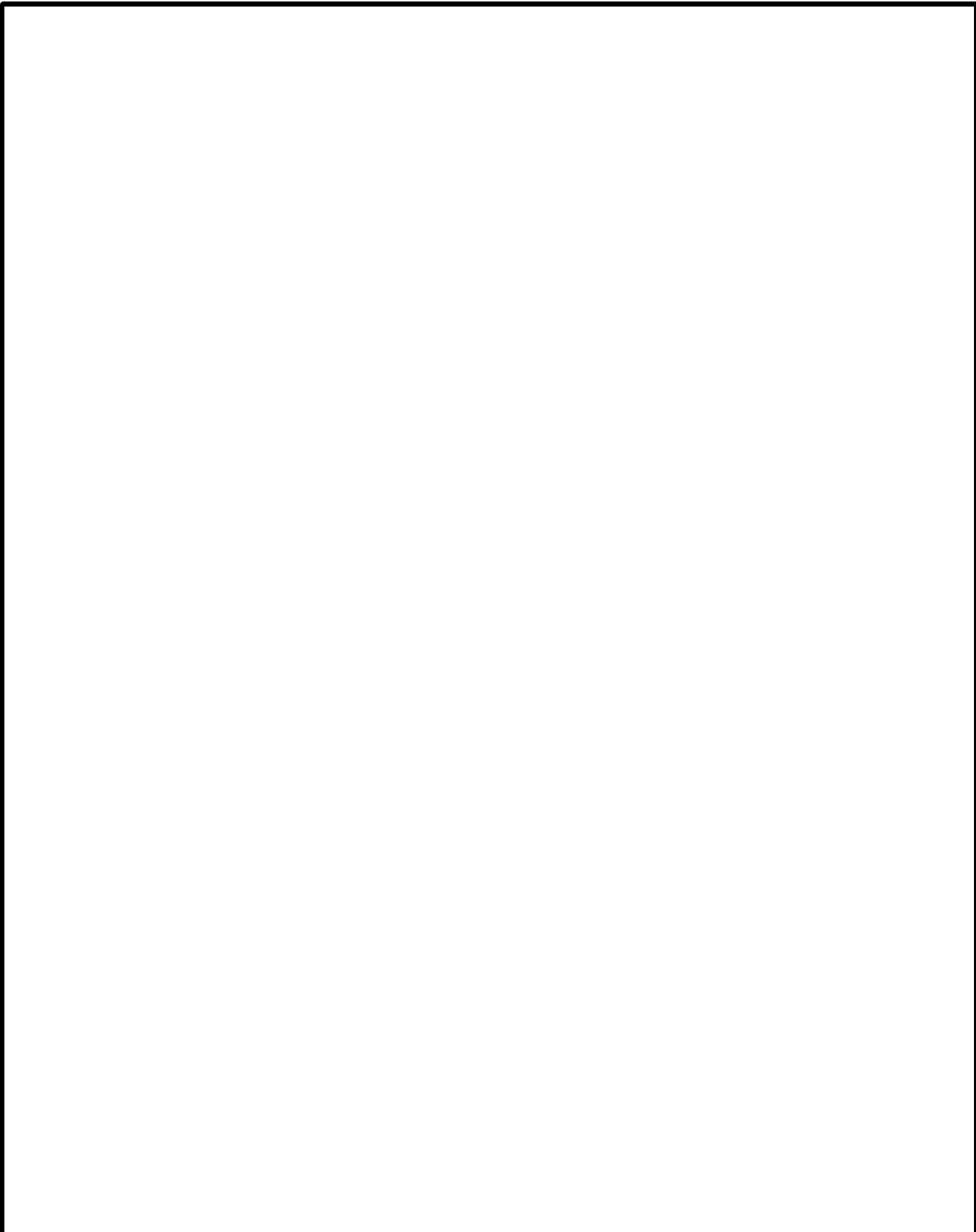


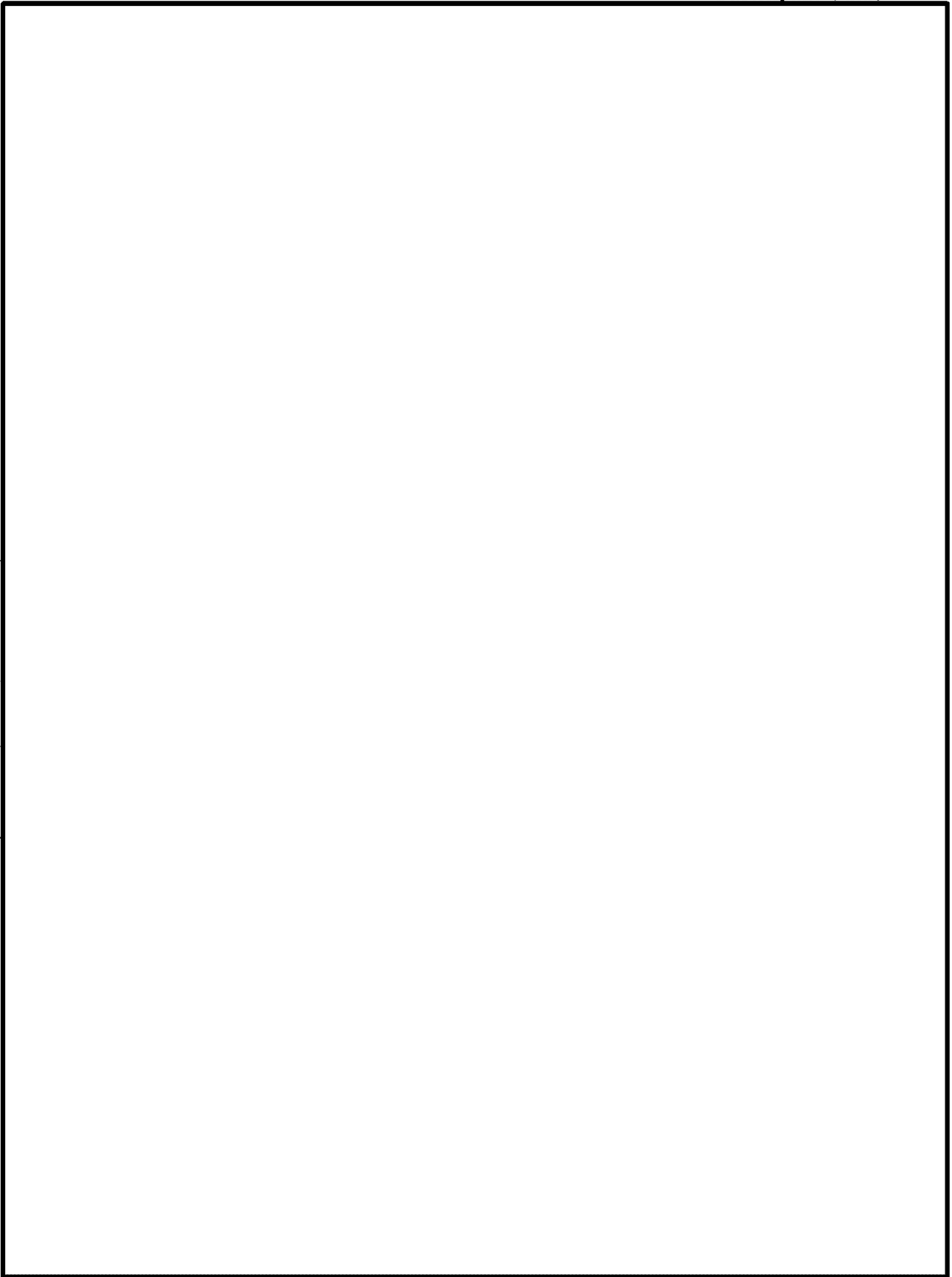


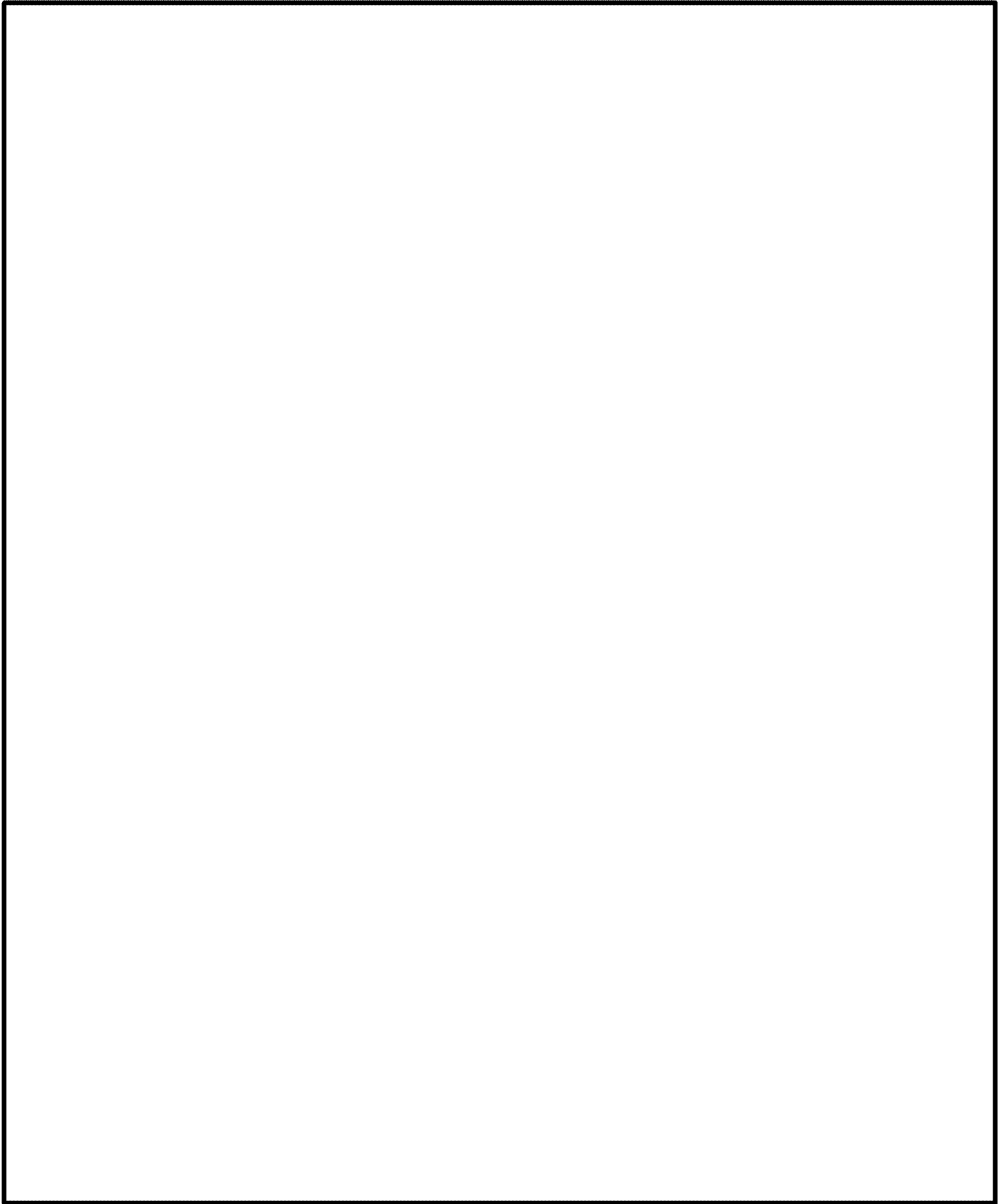


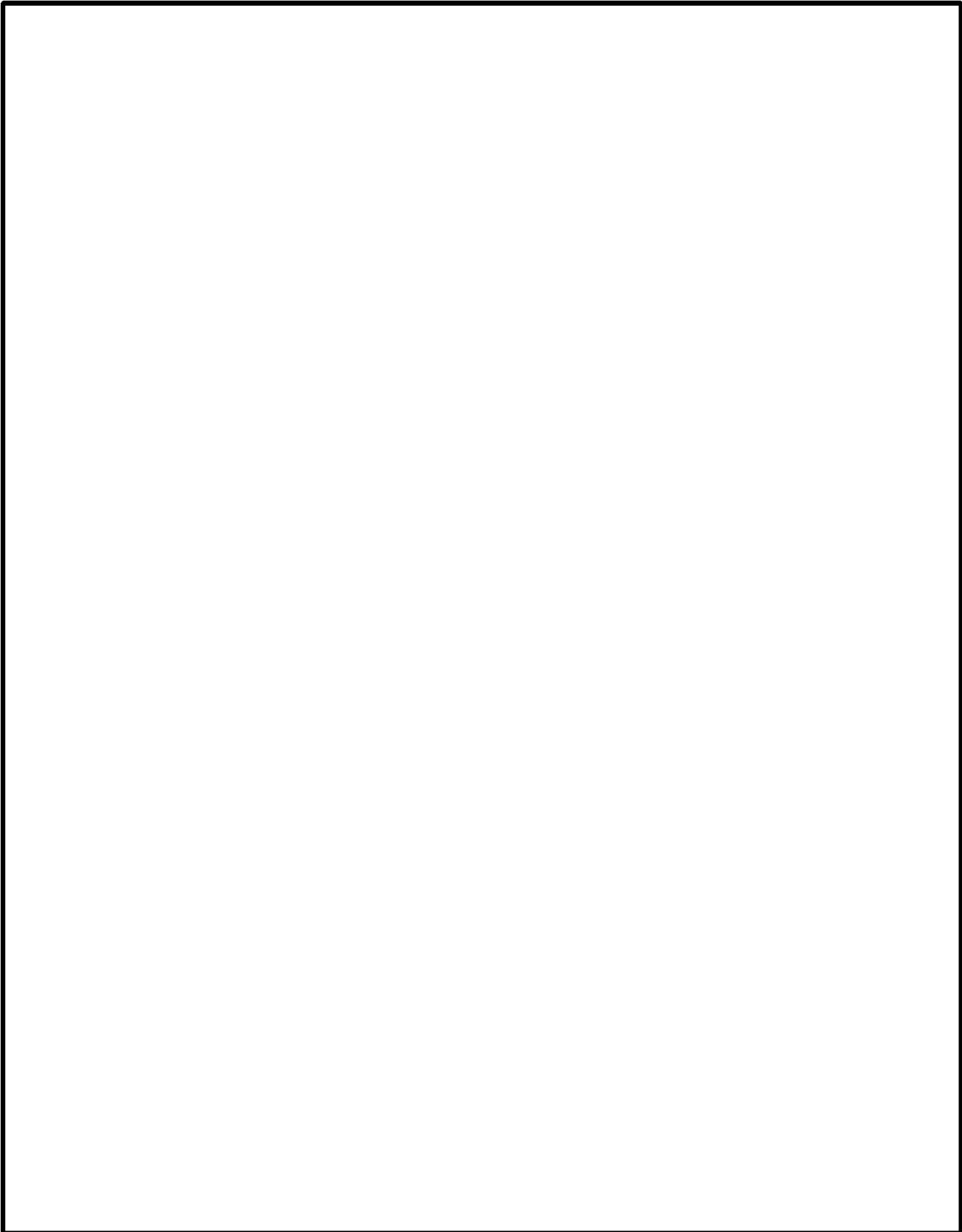


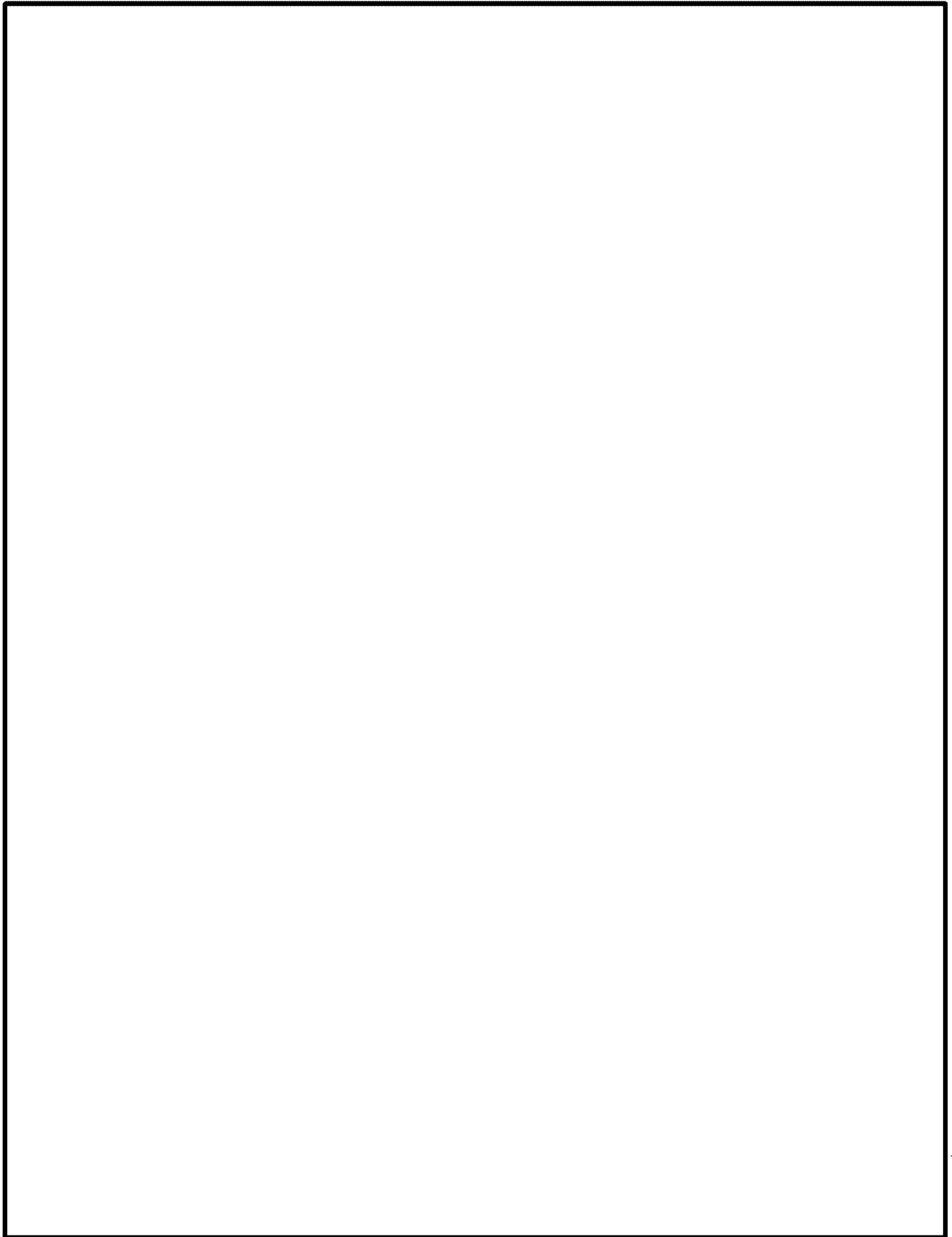


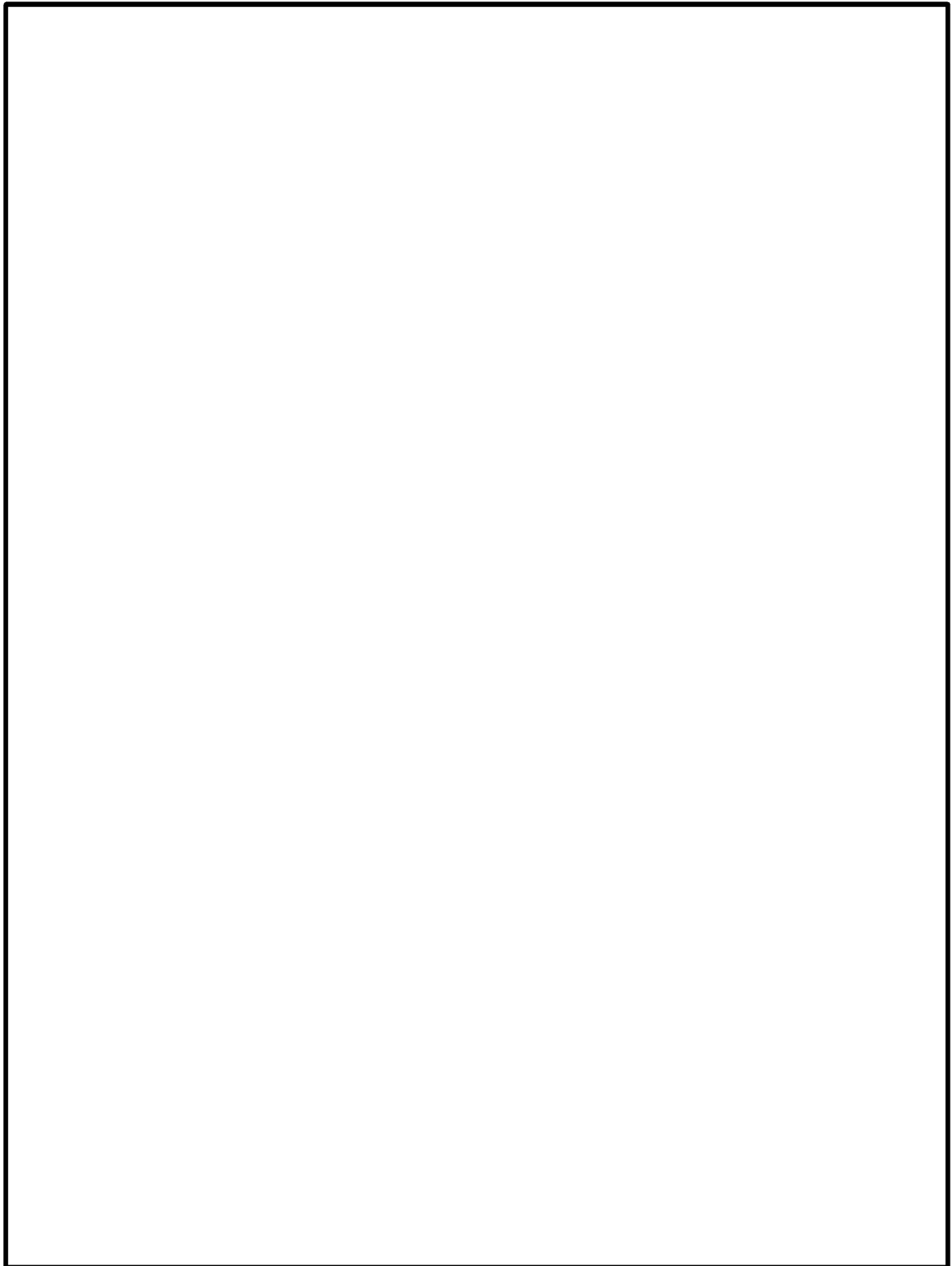


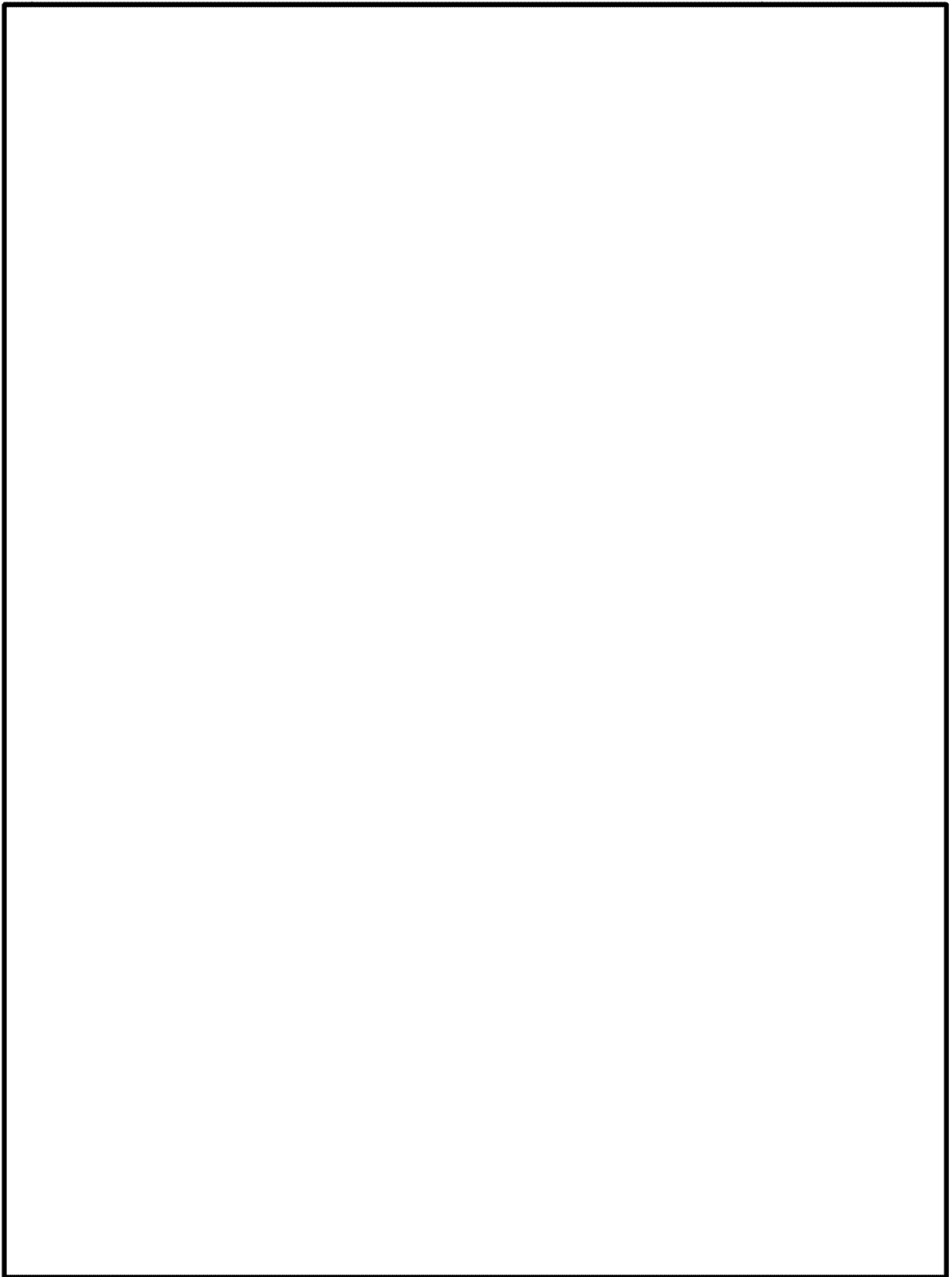




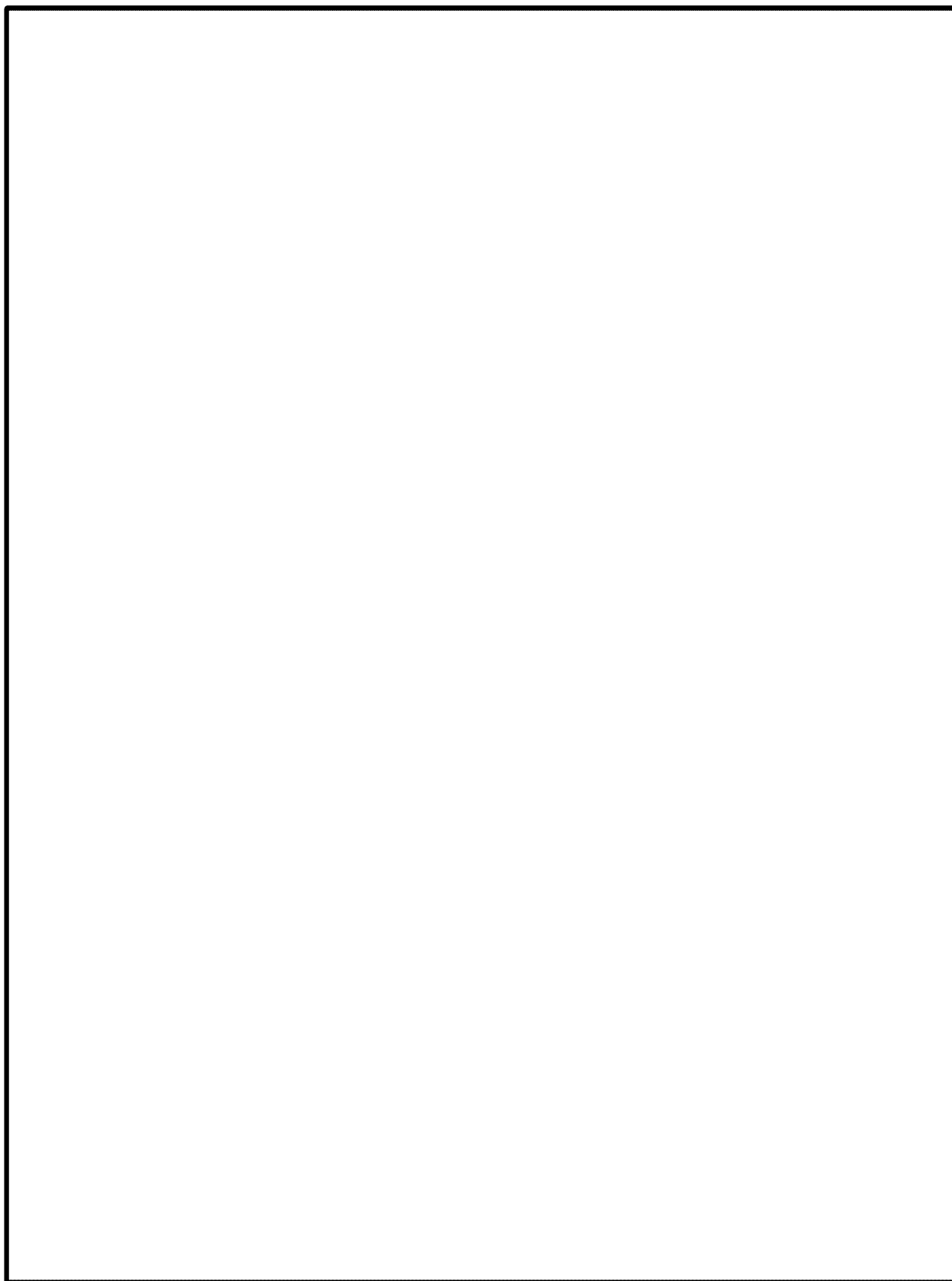












**A) Affidavit of Support (Public Charge under INA §212(a)(4))**

Unless the alien qualifies for an exception, an Affidavit of Support (Form I-864 or Form I-864EZ) must be filed on behalf of any alien who seeks adjustment of status on the basis of:

- an immediate relative or family-based visa petition (Form I-130, I-129F, or I-600) or
- an employment-based visa petition (Form I-140) if a qualifying relative either filed the Form I-140 as the employer or owns at least 5% of the equity of the for-profit firm that filed the I-140.

Specific details concerning when a Form I-864 is required, when it is not required, and what evidence must be submitted with a Form I-864 is found in 8 CFR part 213a and chapter 20.5 of the Adjudicators Field Manual.

If an Affidavit of Support is required, but no Form I-864 is filed (or the Form I-864 that is filed does not satisfy the requirements of section 213A), then the alien is inadmissible under Section 212(a)(4)(C) or Section 212(a)(4)(D) of the INA, family-based or employment-based immigration, respectively.

Accompanying spouses and children also need to submit Form I-864s. Each spouse or child must submit a photocopy of the principal's I-864, but they do not need to submit a photocopy of the supporting documentation. A spouse or child is considered to be "accompanying" a principal immigrant if they apply for an immigrant visa or adjustment of status either at the same time as the principal immigrant or within 6 months after the date the principal immigrant acquires LPR status.

Following-to-join spouses and children (those who apply for an immigrant visa or adjustment of status 6 months or more after the principal immigrant) require a new Form I-864 at the time they immigrate or adjust status.

The Affidavit of Support is not a separate application. It is supporting documentation for an adjustment of status application. Correspondence regarding insufficient Affidavits of Support should be sent to the adjustment applicant and his/her legal representative, but not to the sponsor.

1. Purpose of the Affidavit of Support.
  - a. To show that the applicant for adjustment of status have adequate means of financial support and that they will not likely to become a public charge

- b. This Affidavit of Support (I-864) is a contract between a sponsor and the U.S. government
  - c. Sponsor must show that he/she have enough income and/or assets to maintain the intending immigrant and the rest of sponsor's household at 125 percent of the Federal Poverty Guidelines
  - d. By signing the Affidavit of Support, the sponsor is agreeing to use his/her resources to support the intending immigrant named in this form, if it becomes necessary
  - e. Submission of the I-864 may make the sponsored immigrant ineligible for certain Federal, State, or local means-tested public benefits because an agency that provides means-tested public benefits will consider the sponsor's resources and assets as available to the sponsored immigrant in determining his or her eligibility for the program
  - f. If the immigrant sponsored in the affidavit of support does receive one of the designated Federal, State or local means-tested public benefits, the agency providing the benefit may request the sponsor to repay the cost of those benefits
  - g. That agency can sue the sponsor if the cost of the benefits provided is not Repaid
2. Exceptions to Who Needs an Affidavit of Support
- a. Any intending immigrant who has earned or can be credited with 40 qualifying quarters (credits) of work in the United States
  - b. Any intending immigrant who will, upon admission, acquire U.S. citizenship under section 320 of the INA, as amended by the Child Citizenship Act of 2000 (CCA)
  - c. Self-petitioning widow/ers who have an approved Petition for Amerasian, Widow(er), or Special Immigrant, Form I-360; and
  - d. Self-petitioning battered spouses and children who have an approved Petition for Amerasian, Widow(er), or Special Immigrant, Form I-360
  - e. NOTE: If applicant qualifies for one of the exemptions listed above, an I-864W, Intending Immigrant's I-864 Exemption is required instead of Form I-864

3. Who Completes and Signs the I-864?
  - a. A sponsor completes and signs Form I-864
  - b. A sponsor is required to be at least 18 years old and domiciled in the United States, or its territories or possessions
  - c. The petitioning sponsor must sign and complete Form I-864, even if a joint sponsor also submits an I-864 to meet the income requirement
  
4. What Are the Income Requirements?
  - a. To qualify as a sponsor, the sponsor must demonstrate that his or her income is at least 125 percent of the current Federal poverty guideline for his or her household size.
  - b. The Federal poverty line, for purposes of this form, is updated annually and can be found on Form I-864P, Poverty Guidelines (copy in Forms Folder)
  - c. If sponsor is on active duty in the U.S. Armed Forces, including the Army, Navy, Air Force, Marines or Coast Guard, and is sponsoring spouse or minor child, sponsor only need to have an income of 100 percent of the Federal poverty line for sponsor's household size. This provision does not apply to joint or substitute sponsors
  
5. How Does A Sponsor Count Household Size?
  - a. Sponsor's household size includes sponsor and the following individuals, no matter where they live: any spouse, any dependent children under the age of 21, any other dependents listed on sponsor's most recent Federal income tax return, all persons being sponsored in the affidavit of support, and any immigrants previously sponsored with a Form I-864 or Form I-864EZ affidavit of support whom sponsor are still obligated to support
  - b. If necessary to meet the income requirements to be a sponsor, a sponsor may include additional relatives (adult children, parents, or siblings) as part of your household size as long as they have the same principle residence as sponsor and promise to use their income and resources in support of the intending immigrant(s)

6. What If A Sponsor Cannot Meet the Income Requirements?

If a sponsor's income alone is not sufficient to meet the requirement for sponsor's household size, the intending immigrant will be ineligible for an immigrant visa or adjustment of status, unless the requirement can be met using any combination of the following:

- a. Income from any relatives or dependents living in sponsor's household or dependents listed on sponsor's most recent Federal tax return who signed a Form I-864A;
- b. Income from the intending immigrant, if that income will continue from the same source after immigration, and if the intending immigrant is currently living in sponsor's residence. If the intending immigrant is sponsor's spouse, his or her income can be counted regardless of current residence, but it must continue from the same source after he or she becomes a lawful permanent resident.
- c. The value of sponsor's assets, the assets of any household member who has signed a Form I-864A, or the assets of the intending immigrant;
- d. A joint sponsor whose income and/or assets equal at least 125 percent of the Poverty Guidelines.

7. How Can Relatives and Dependents Help A Sponsor Meet the Income Requirements?

- a. A sponsor may use the income of his or her spouse and/or any other relatives living in sponsor's residence if they are willing to be jointly responsible with sponsor for the intending immigrant(s)
- b. If sponsor have any unrelated dependents listed on his or her income tax return sponsor may include their income regardless of where they reside
- c. The income of such household members and dependents can be used to help sponsor meet the income requirements if they complete and sign Form I-864A, Contract Between Sponsor and Household Member, and if they are at least 18 years of age when they sign the form

8. Does Receipt of Means-Tested Public Benefits Disqualify A Sponsor From Being A Sponsor?

- a. Receipt of means-tested public benefits does not disqualify anyone from being a sponsor
- b. Means-tested public benefits cannot be accepted as income for the purposes of meeting the income requirement

9. How Can A Sponsor Use Assets to Qualify?

Assets may supplement income if the consular or immigration officer is convinced that the monetary value of the asset could reasonably be made available to support the sponsored immigrant and converted to cash within one year without undue harm to the sponsor or his or her family members. Sponsor may not include an automobile unless sponsor shows that sponsor own at least one working automobile that sponsor have not included.

- a. Documentation of assets establishing location, ownership, date of acquisition and value
- b. Evidence of any liens or liabilities against these assets
- c. In order to qualify based on the value of sponsor's assets, the total value of assets must equal at least five times the difference between sponsor's total household income and the current poverty guidelines for sponsor's household size
- d. If the sponsor is a U.S. citizen and sponsoring his or her spouse or minor child, the total value of sponsor's assets must only be equal to at least three times the difference
- e. If the intending immigrant is an alien orphan who will be adopted in the United States after the alien orphan acquires permanent residence, and who will, as a result, acquire citizenship under section 320 of the Act, the total value of sponsor's assets need only equal the difference

10. What Is A Joint Sponsor?

- a. If the person who is seeking the immigration of one or more of his or her relatives cannot meet the income requirements, a "joint sponsor" who can meet the requirements may submit a Form I-864 to sponsor all or some of the family members
- b. A joint sponsor must be person, and may not be a corporation, organization, or other entity. A joint sponsor can be any U.S. citizen, U.S.

national, or lawful permanent resident who is at least 18 years old, domiciled in the U.S., or its territories or possessions

- c. Willing to be held jointly liable with the petitioner for the support of the intending immigrant
- d. A joint sponsor does not have to be related to the petitioning sponsor or the intending immigrant
- e. There may be no more than two joint sponsors
- f. Even if one or more I-864s are submitted for an intending immigrant, the petitioning sponsor remains legally accountable for the financial support of the sponsored alien along with the joint sponsor(s)

11. What Is a Substitute Sponsor?

- a. A substitute sponsor is a sponsor who is completing a Form I-864 on behalf of an intending immigrant whose original I-130 petitioner has died after the Form I-130 was approved, but before the intending immigrant obtained permanent residence
- b. The substitute sponsor must be related to the intending immigrant in one of the following ways:
  - i. spouse
  - ii. parent
  - iii. mother-in-law or father-in-law
  - iv. sibling
  - v. child (at least 18 years of age)
  - vi. son or daughter
  - vii. son-in-law or daughter-in-law
  - viii. brother-in-law or sister-in-law
  - ix. grandparent
  - x. grandchild

- xi. legal guardian
  - c. The substitute sponsor must also be a U.S. citizen or lawful permanent resident
  - d. A substitute sponsor must indicate that he or she is related to the intending immigrant in one of the ways listed above and include evidence proving that relationship
  - e. The beneficiary must file the I-864 along with a written statement explaining the reasons why the Form I-130 visa petition should be reinstated, having been revoked following the petitioner's death
  - f. The beneficiary must also include a copy of the Form I-130 approval notice
12. How Long Does A Sponsor's Obligation Continue?
- a. Sponsor's obligation to support the immigrant(s) sponsored in the affidavit of support will continue until the sponsored immigrant becomes a U.S. citizen, or can be credited with 40 qualifying quarters of work in the United States
  - b. Forty (40) qualifying quarters of work generally equate to ten years of work
  - c. The obligation ends if the sponsor or sponsored immigrant dies or if the sponsored immigrant ceases to be a lawful permanent resident and departs the United States
  - d. Divorce does not end the sponsorship obligation
13. Does A Sponsor Have to Submit a Separate Affidavit for Each Family Member?
- a. Sponsor must submit a Form I-864 affidavit of support for each intending immigrant he or she is sponsoring
  - b. Sponsor may submit photocopies if sponsor is sponsoring more than one intending immigrant listed on the same affidavit of support. Often a spouse or minor children obtain visas or adjust status as dependents of a relative based on the same visa petition. If sponsor is sponsoring such dependents, sponsor only need to provide a photocopy of the original Form I-864, as long as these dependents are immigrating at the same time as the principal immigrant or within six months of the time he or she



immigrates to the United States. Sponsor do not need to provide copies of the supporting documents for each of the photocopied Forms I-864.

- c. Separate affidavits of support are required for intending immigrants for whom different Form I-130 family-based petitions are filed. For instance, if you are sponsoring both parents, each will need an original affidavit of support and accompanying documentation since sponsor was required to submit separate Form I-130 visa petitions for each parent.
- d. To be valid, Form I-864 and all supporting documentation must be submitted within one year of when the sponsor signs the I-864

14. Does A Sponsor Have to Report A Change of Address?

- a. Federal law requires that every sponsor report every change of address to the USCIS within 30 days of the change
- b. Sponsor should complete and submit Form I-865, Sponsor's Change of Address, to the Service Center having jurisdiction over sponsor's new address only when the address sponsor indicated on the original I-864 has changed
- c. The above requirement does not relieve a sponsor who is a lawful permanent resident from submitting Form AR-11 within ten days of a change of address

15. Is There A Filing Fee?

- a. USCIS does not charge a fee for the I-864
- b. Department of State does charge a fee when the Affidavit of Support is reviewed domestically. This does not apply when the Affidavit of Support is filed abroad

16. What Must A Sponsor Submit Along With the I-864?

- a. Proof of U.S. citizen, national or lawful permanent resident status
- b. Proof of current employment or self employment
- c. A photocopy or an Internal Revenue Service (request made on IRS Form 4506-T) issued transcript of sponsor's complete Federal income tax return

for most recent tax year or a statement and/or evidence describing why not required to file

- d. W-2s and/or 1099 forms

17. Other types of Affidavits of Support

- a. I-864A, Contract Between Sponsor and Household Member

- i. Is an attachment to Form I-864
- ii. A household member is promising to make his or her income and/or assets available to sponsor to help support the sponsored immigrant(s). A "household member" is a relative who has the same principal residence as the sponsor and is related to the sponsor as a spouse, adult child, parent, or sibling. Can also be a relative or other person whom the sponsor has lawfully claimed as a dependent on the sponsor's most recent Federal income tax return even if that person does not live at the same residence as the sponsor. The intending immigrant, in certain circumstances can be a household member.
- iii. Must be submitted simultaneously with Form I-864
- iv. The combined signing of this form constitutes an agreement that the household member is responsible along with the sponsor for the support of the individual(s) named in the form
- v. Form I-864A may only be used when a sponsor's income and assets do not meet the income requirements of Form I-864 and the qualifying household member chooses to combine his or her resources with the income and/or assets of a sponsor to meet the poverty guidelines requirements
- vi. The obligations of the household member under this contract terminate when the obligations of the sponsor under the Affidavit of Support terminate

- b. I-864EZ, Affidavit of Support Under Section 213A of the Act

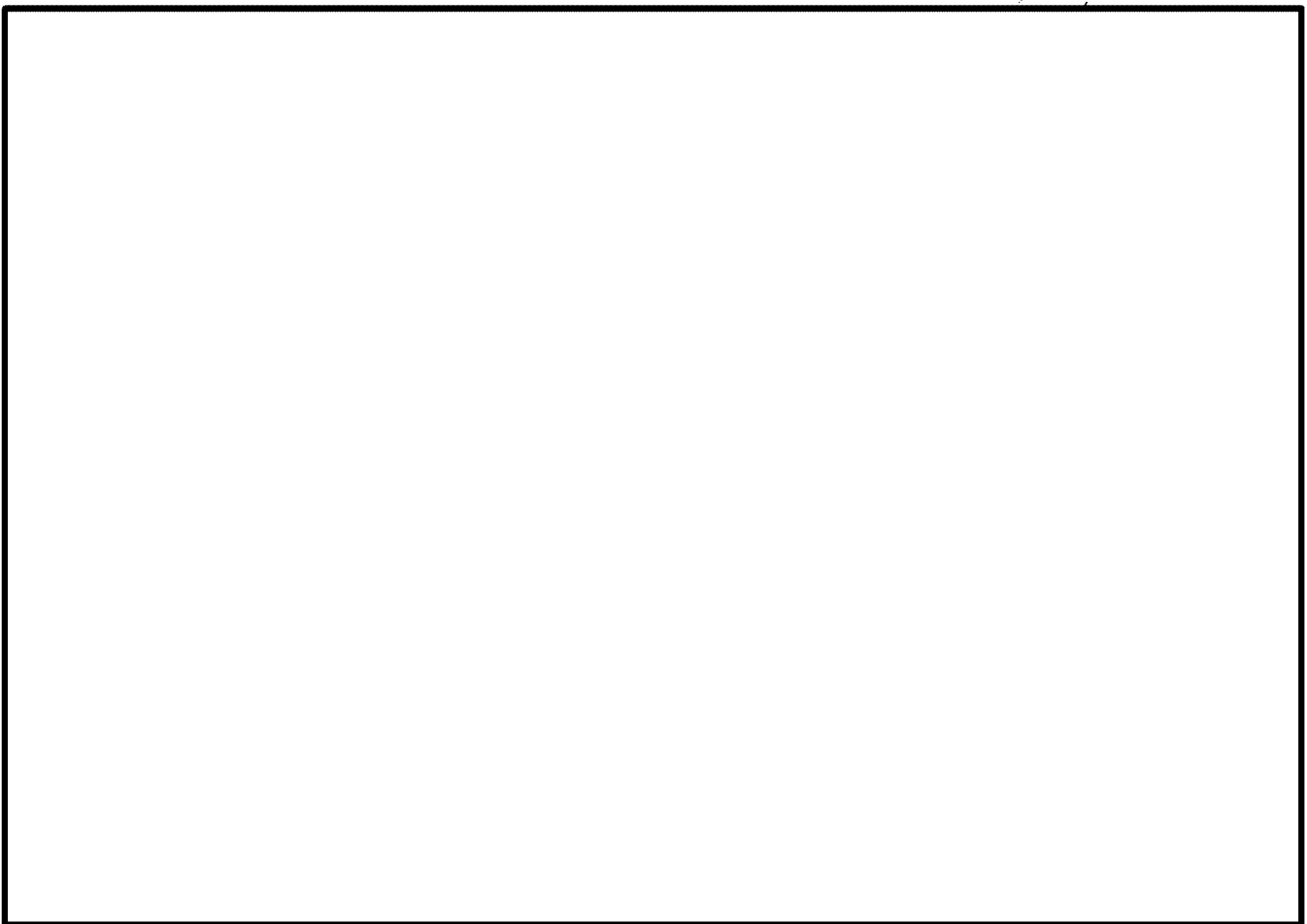
- i. Is a shorter version of Form I-864

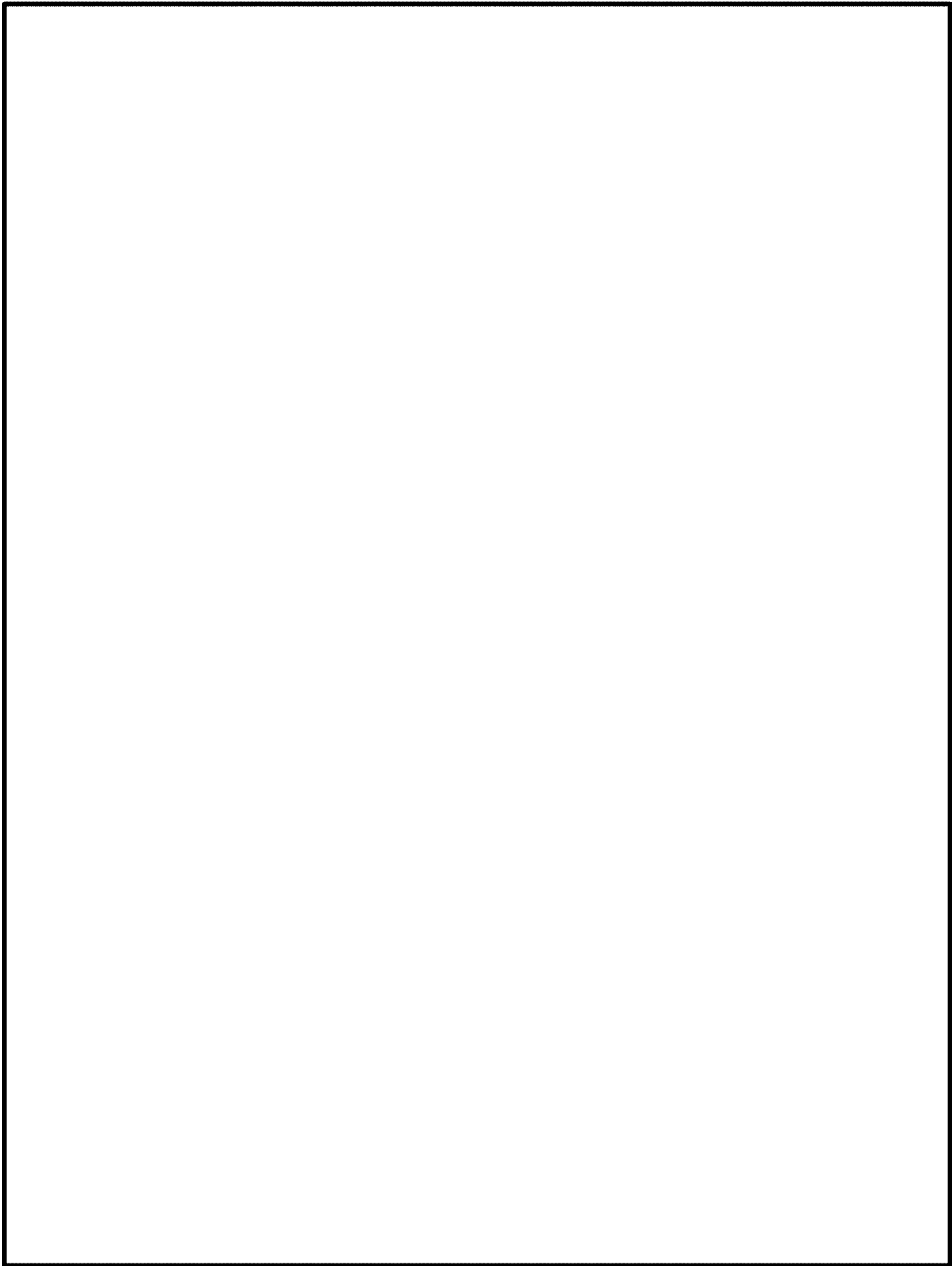
ii. Use this form if all the following conditions apply: sponsor is the person who filed or is filing the Form I-130, the relative being sponsored is the only person listed on the I-130, and the income sponsor is using to qualify is based entirely on sponsor salary or pension and is shown on one or more Forms W-2 provided by sponsor's employer(e) or former employer(s)

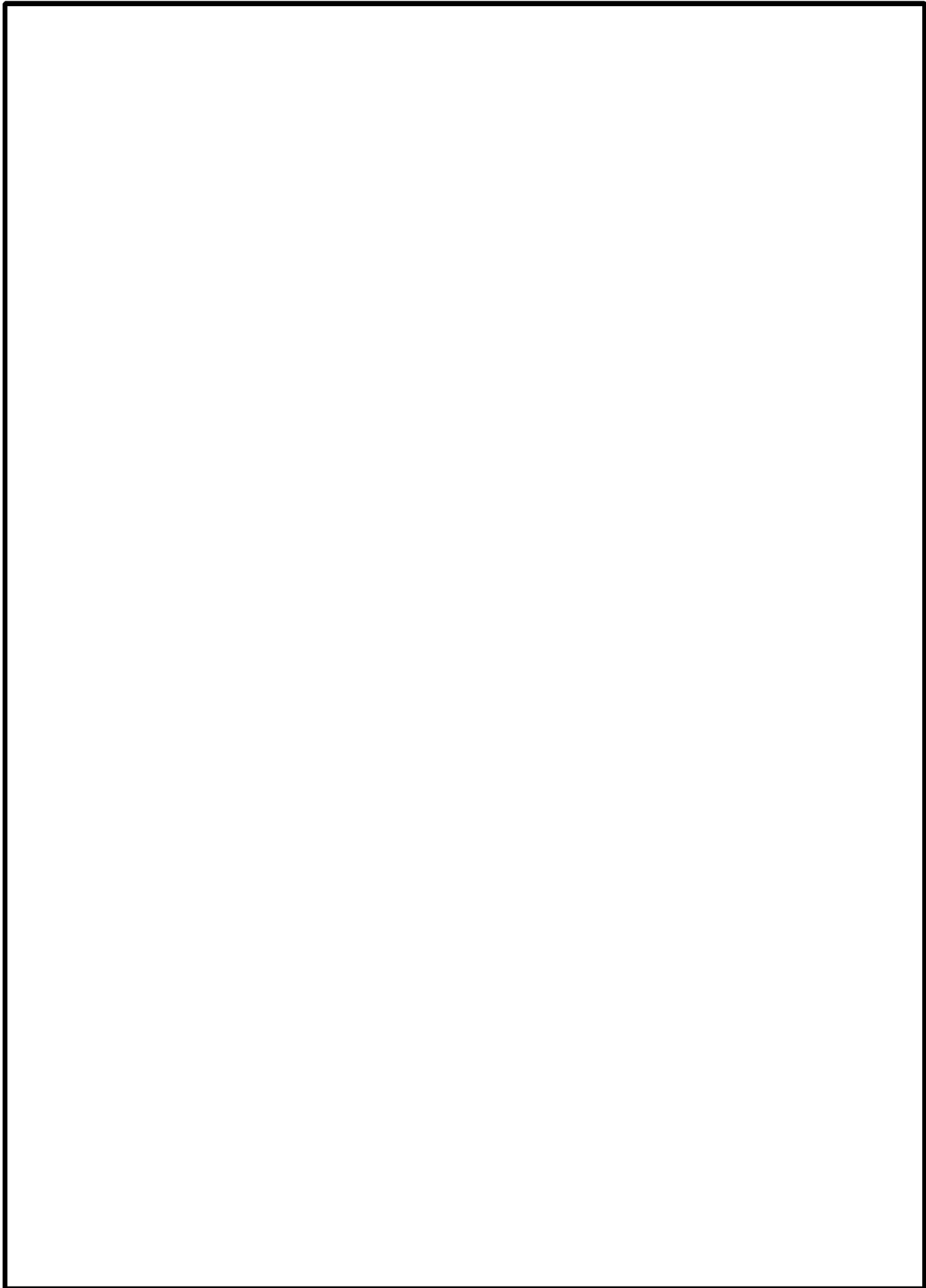
c. I-864W, Intending Immigrant's Affidavit of Support Exemption

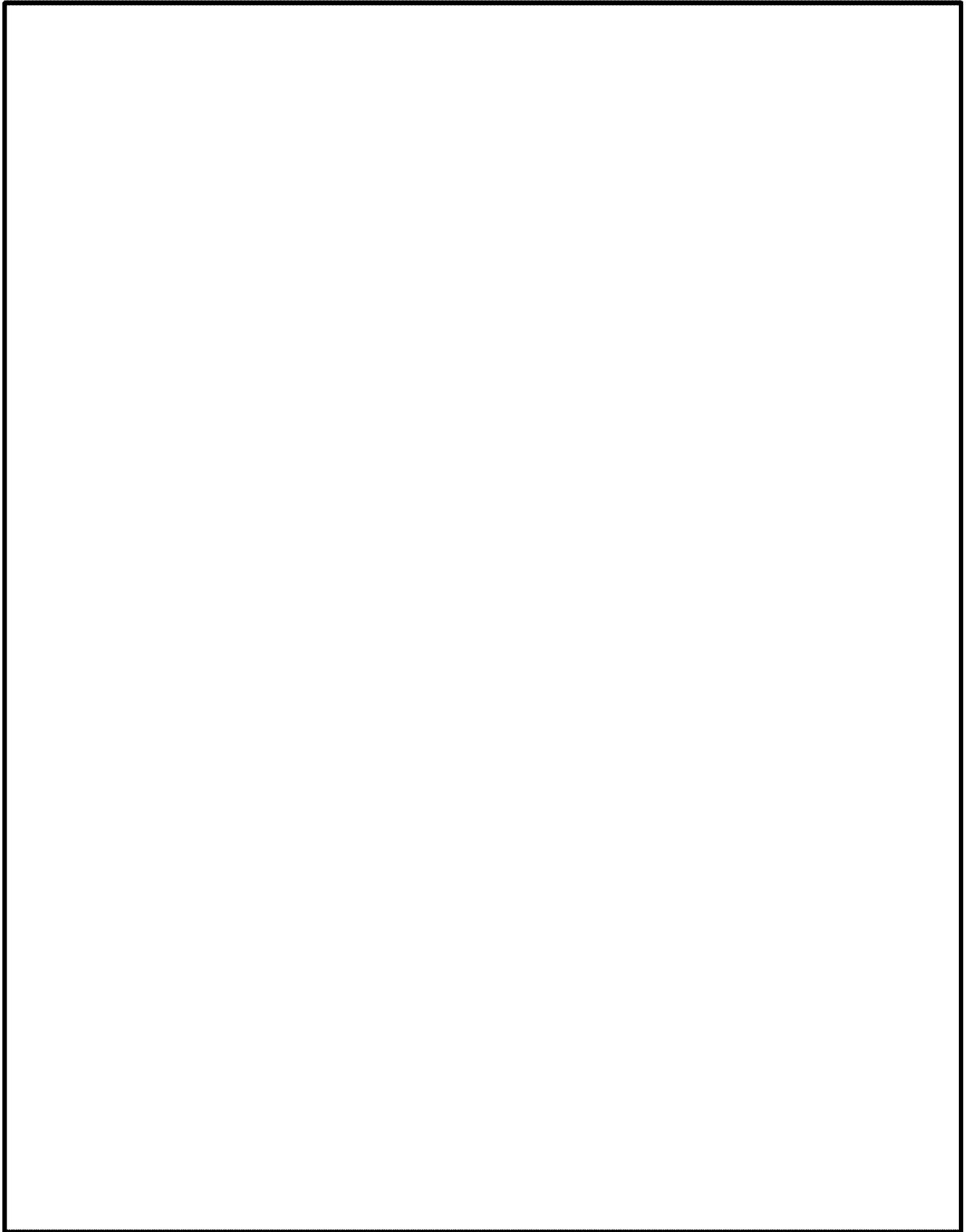
- a. An intending immigrant who has or can be credited with 40 quarters of work.
- b. An intending immigrant who will, upon admission, acquire U.S. citizenship under section 320 of the Act, as amended by the Child Citizenship Act of 2000 (CAA); and
- c. A self-petitioning widow(er) or qualifying battered spouse or child

Out-of-Scope

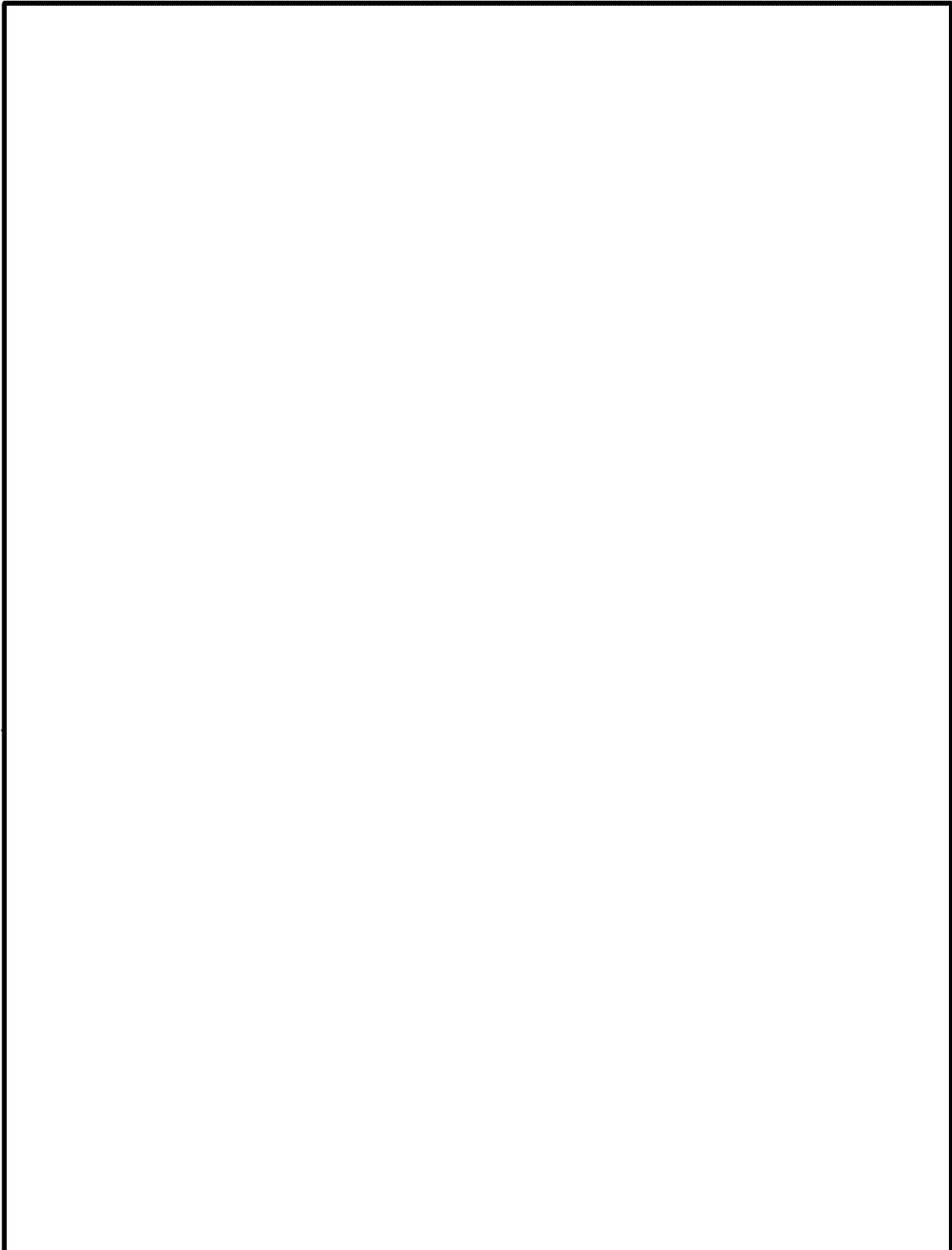




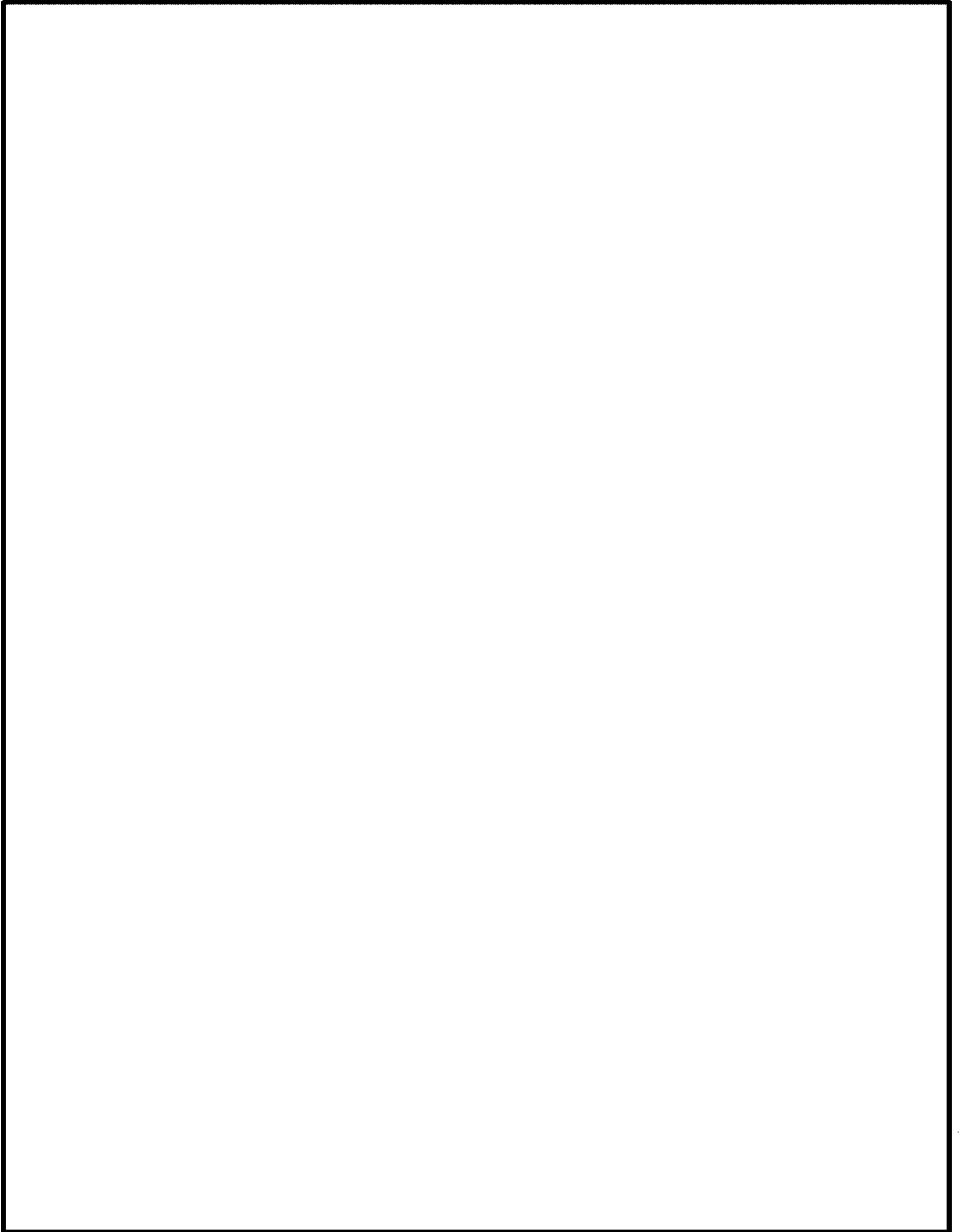


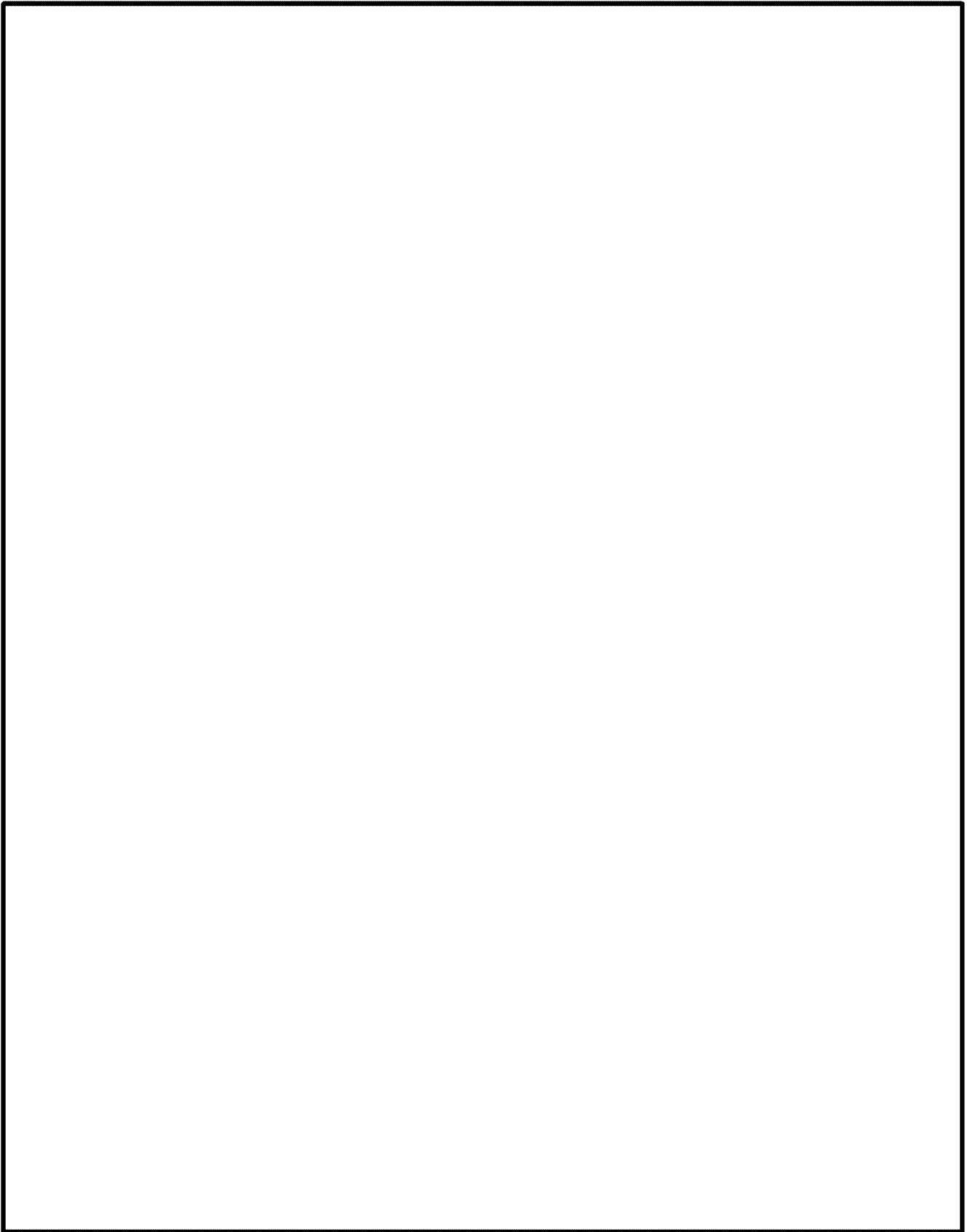


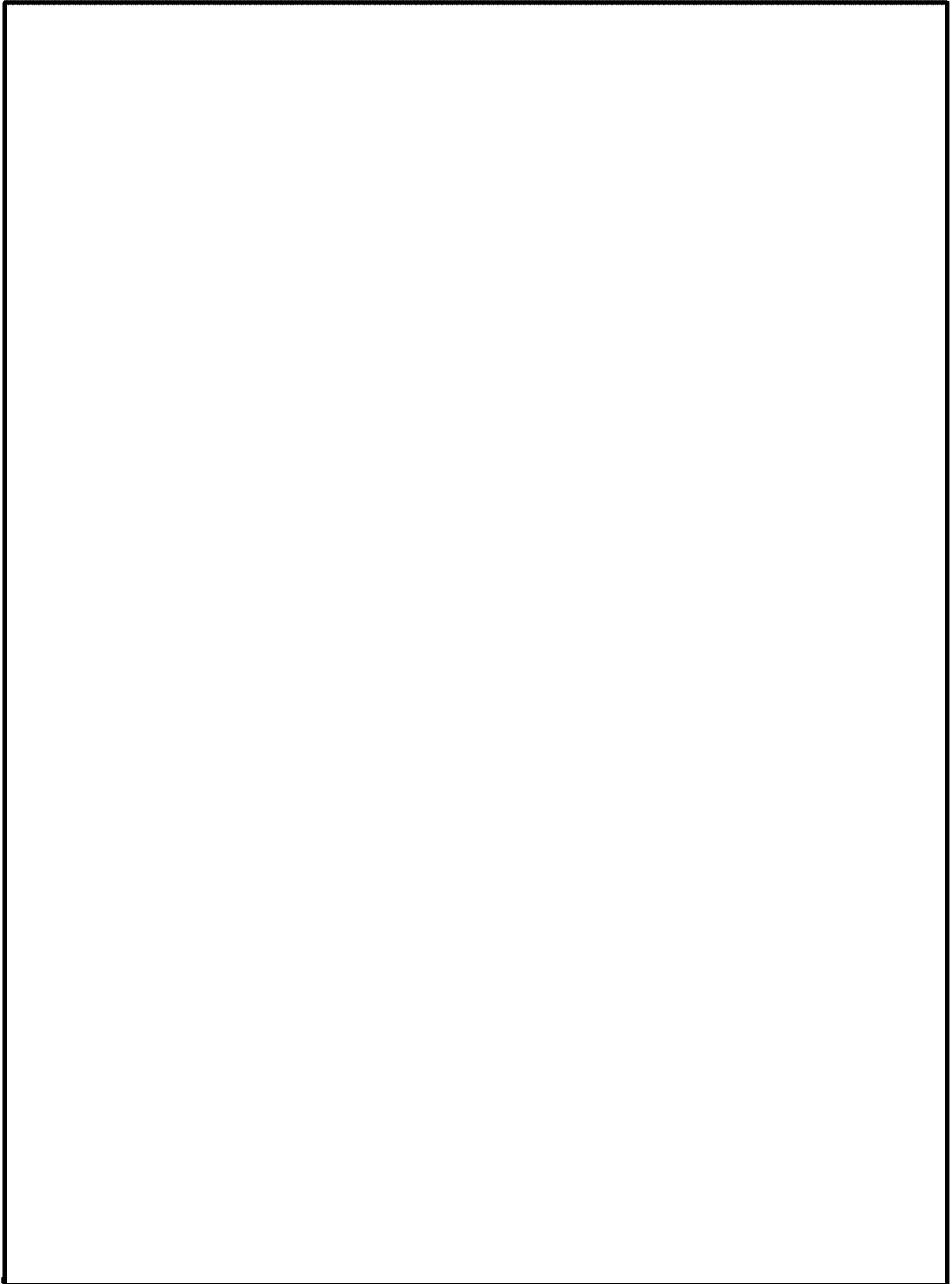


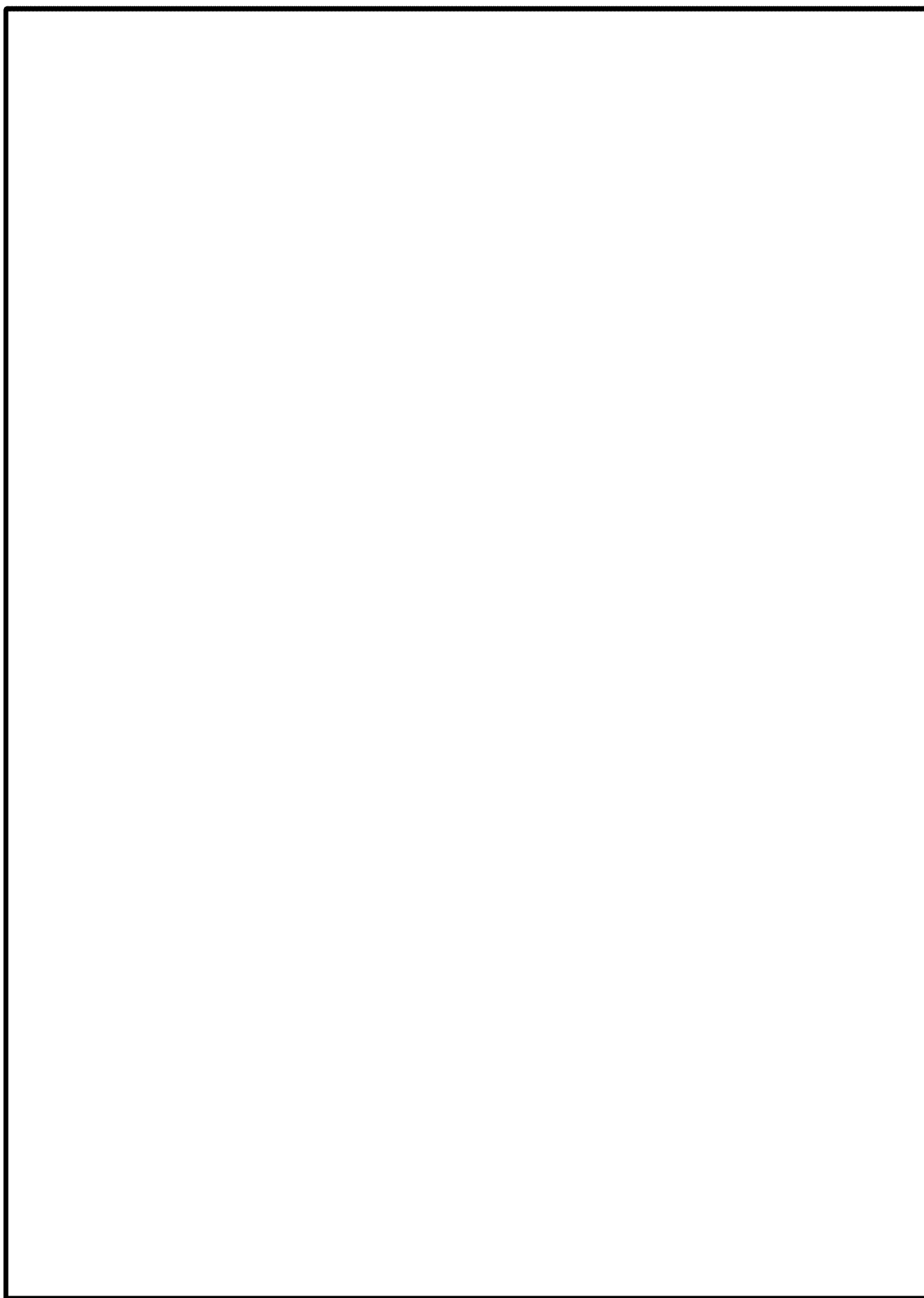


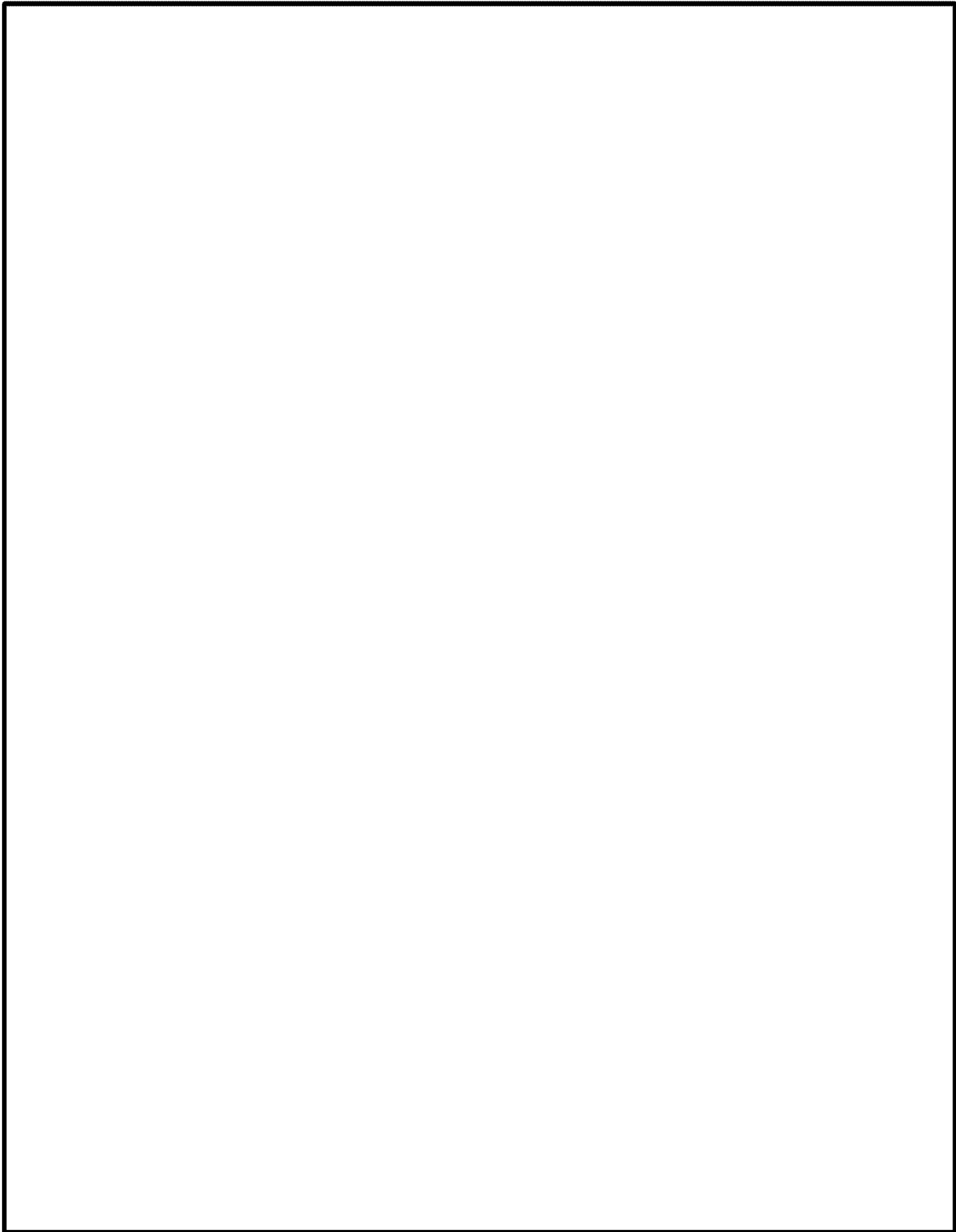


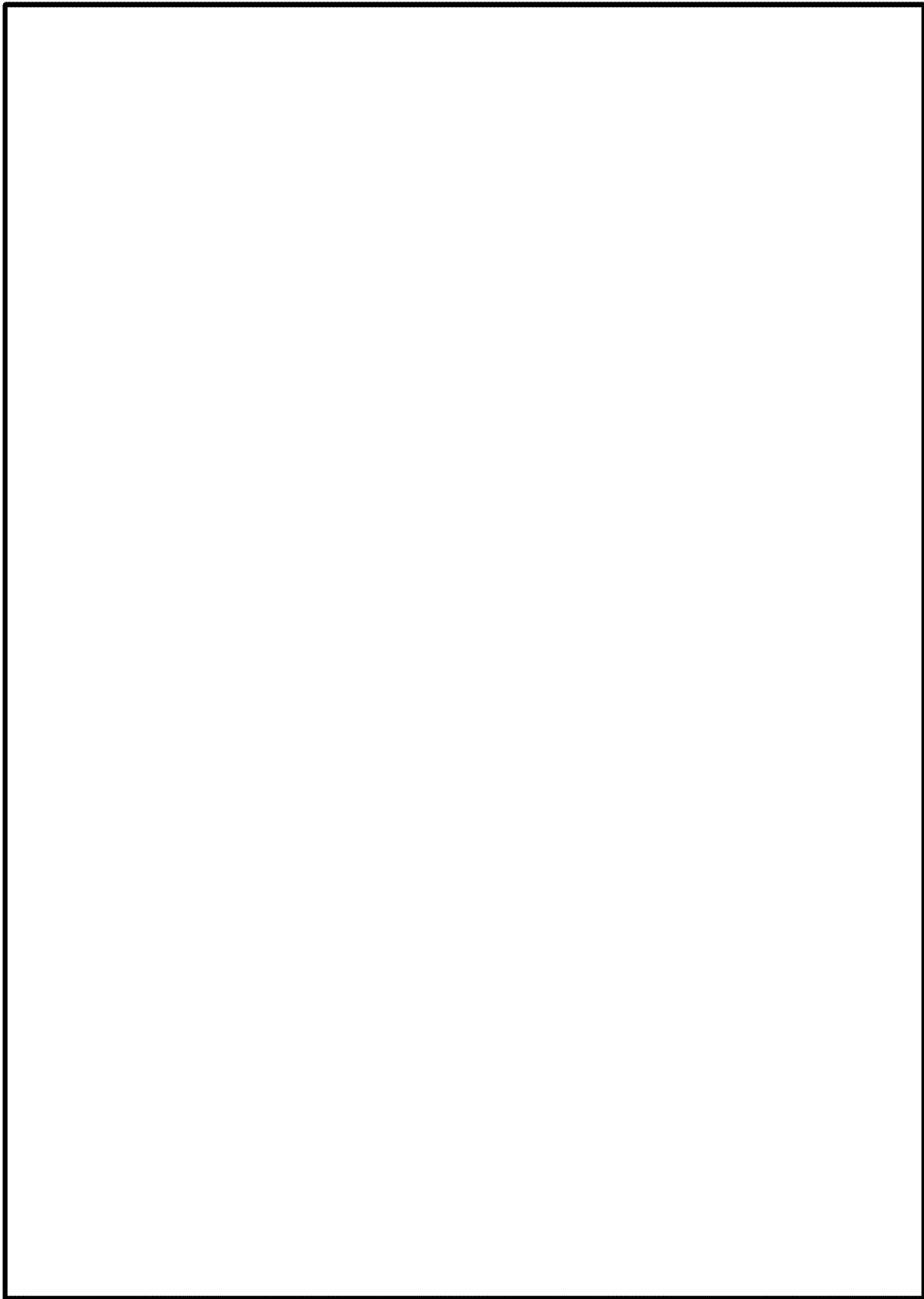




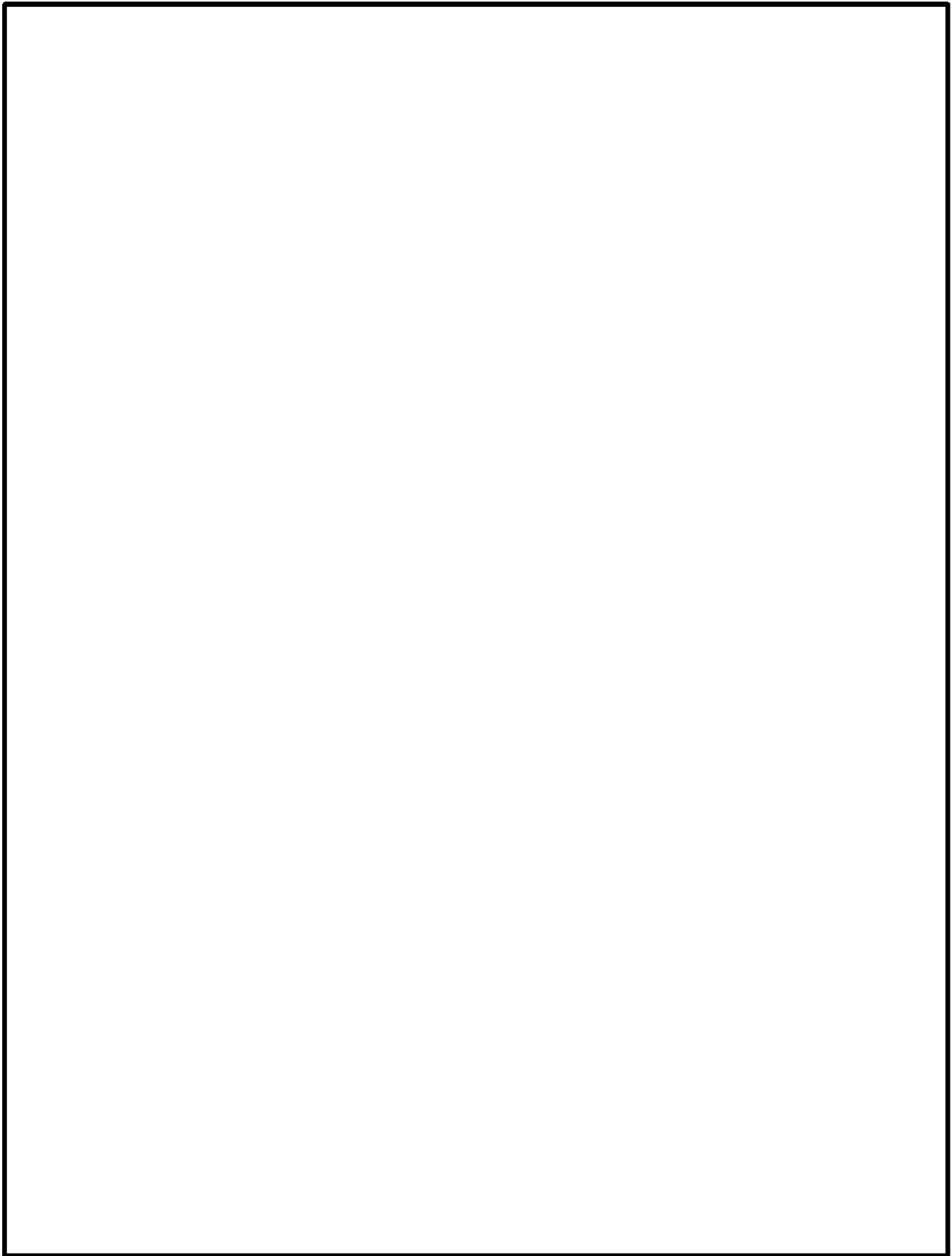


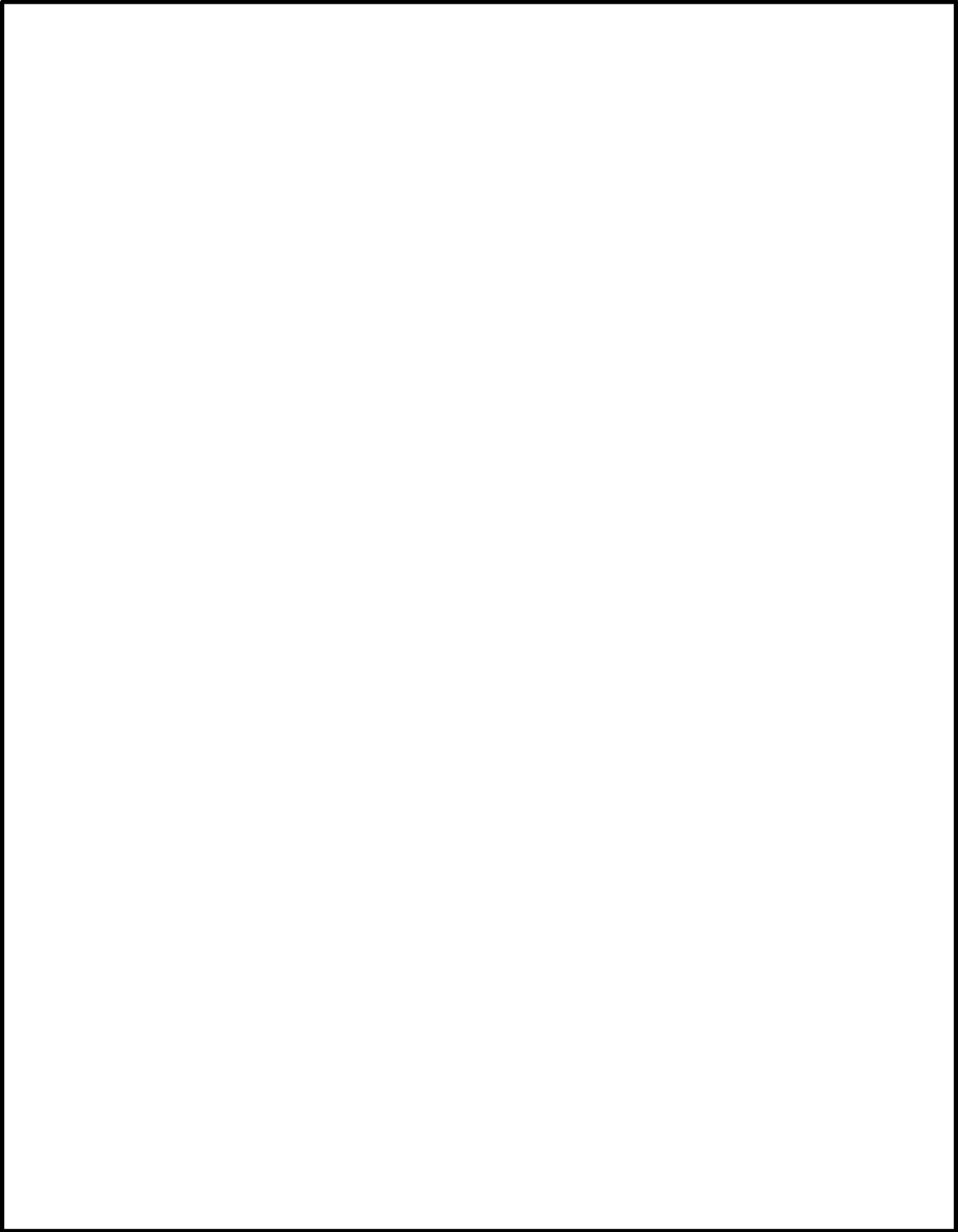




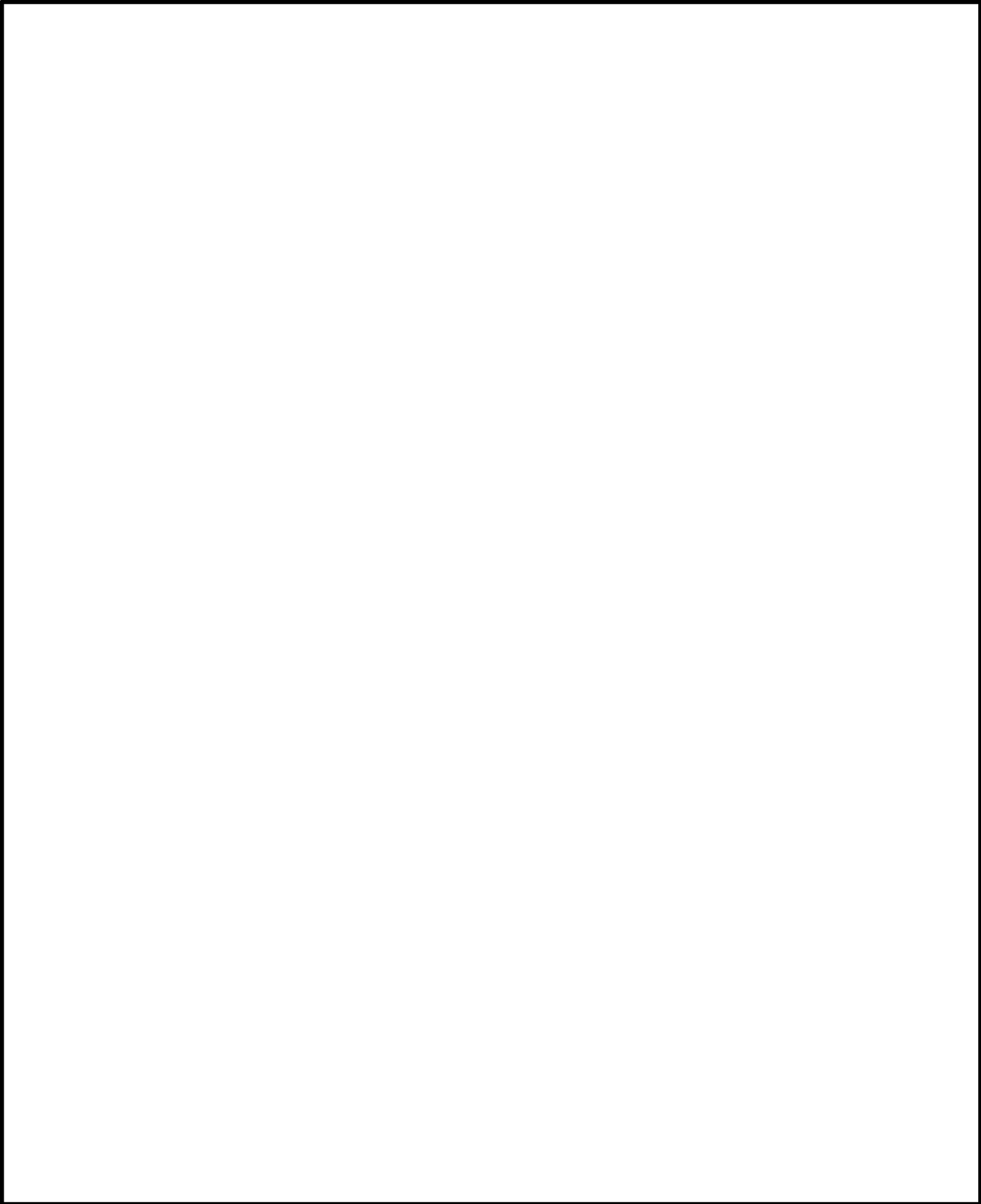


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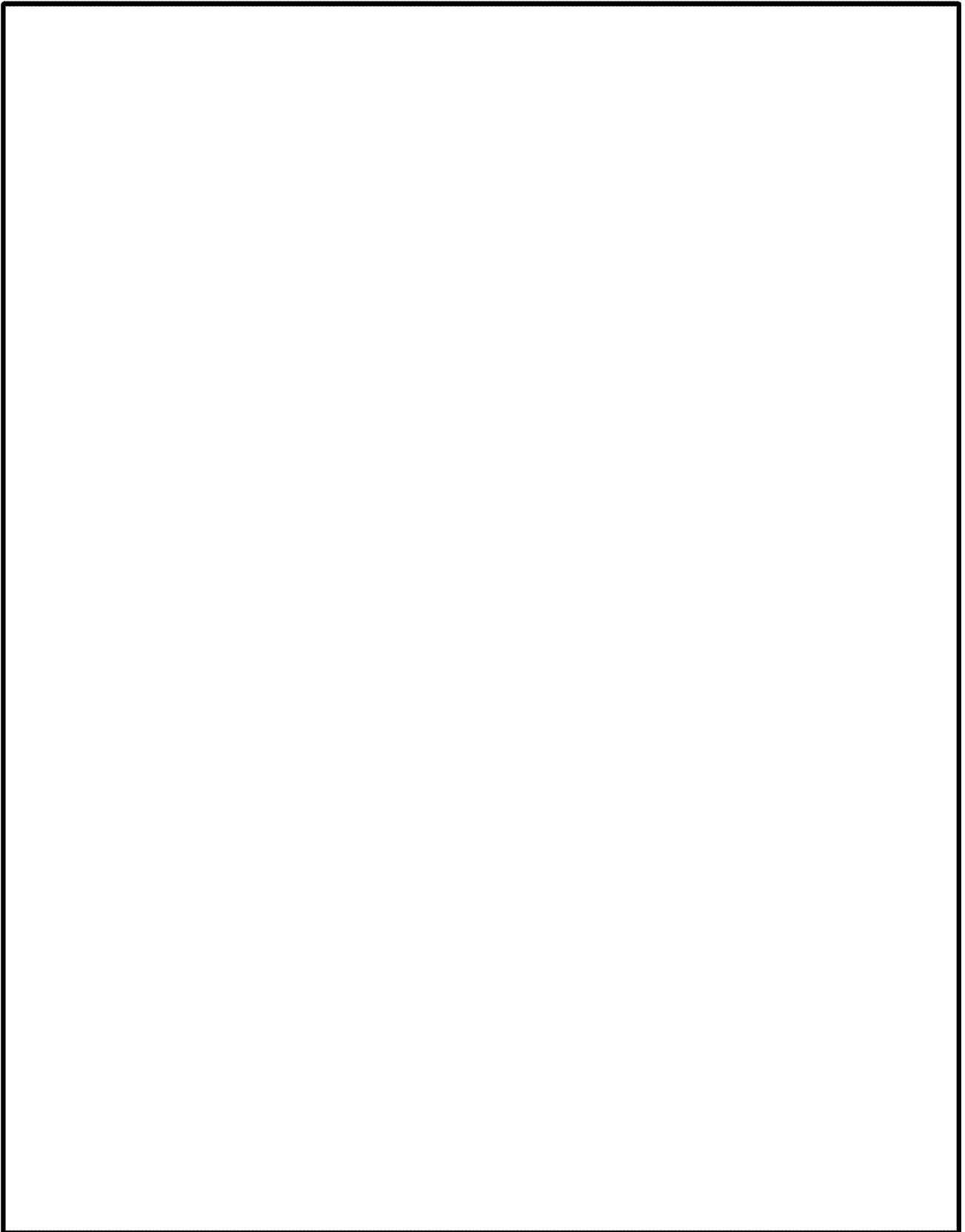


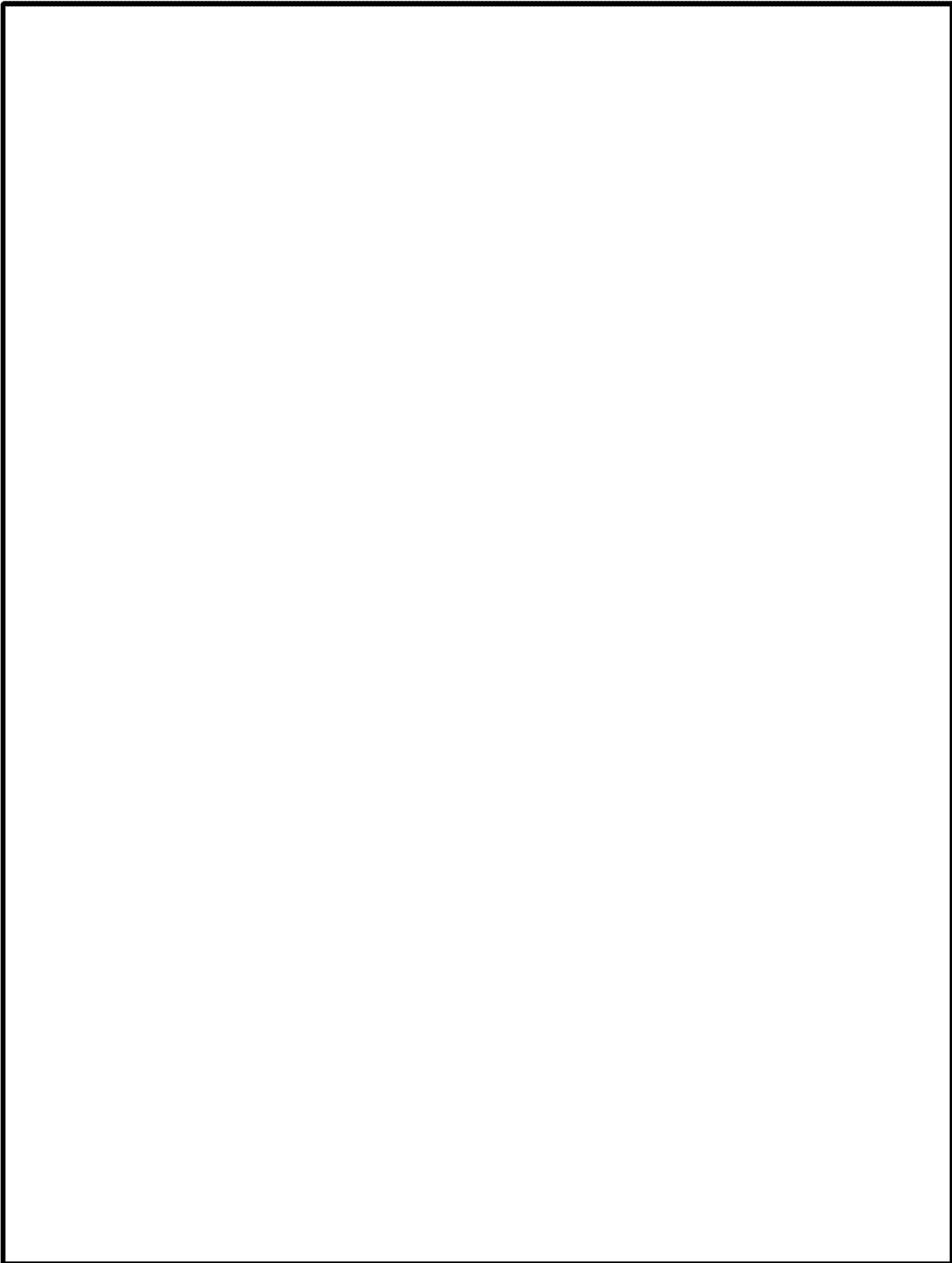




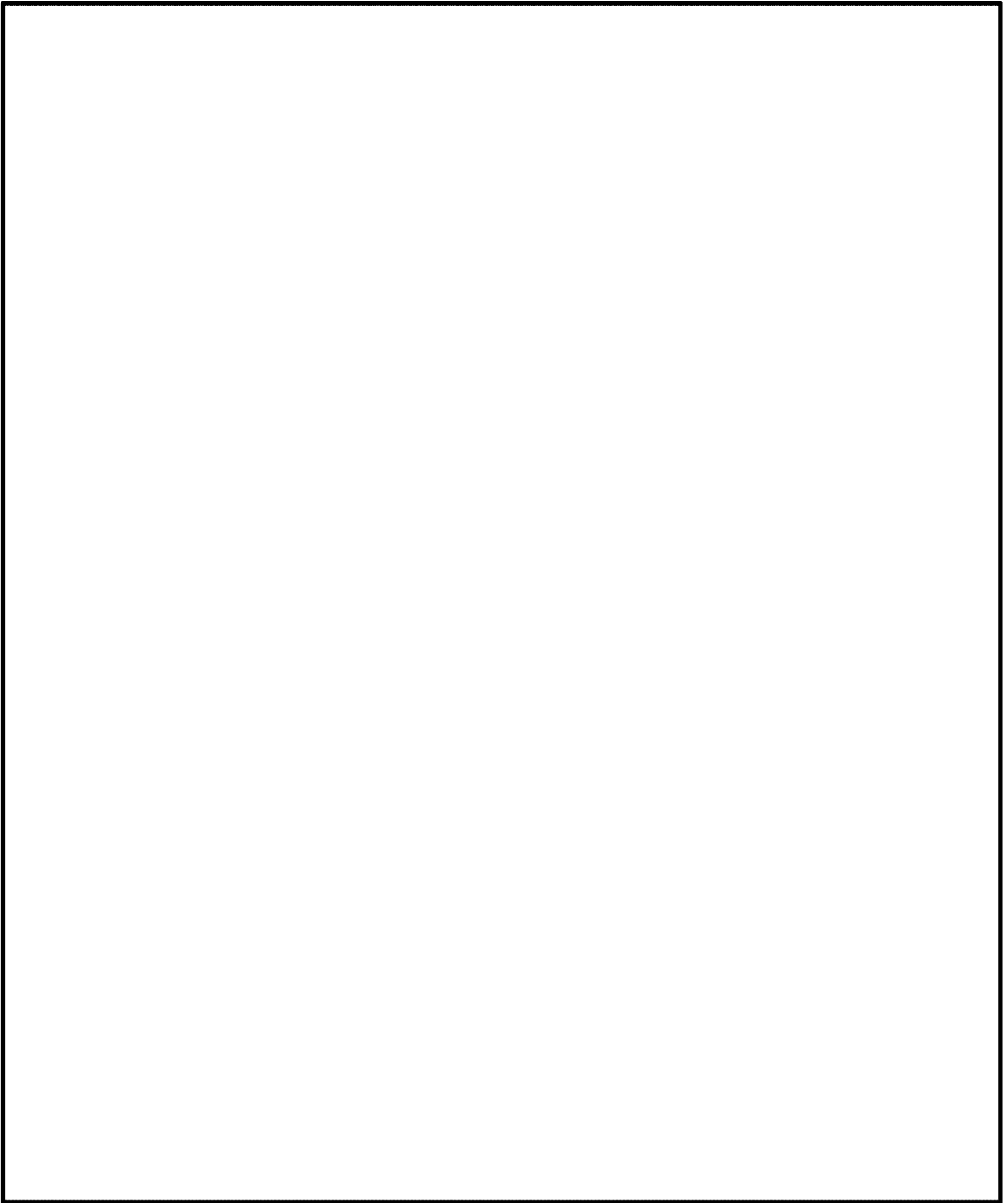


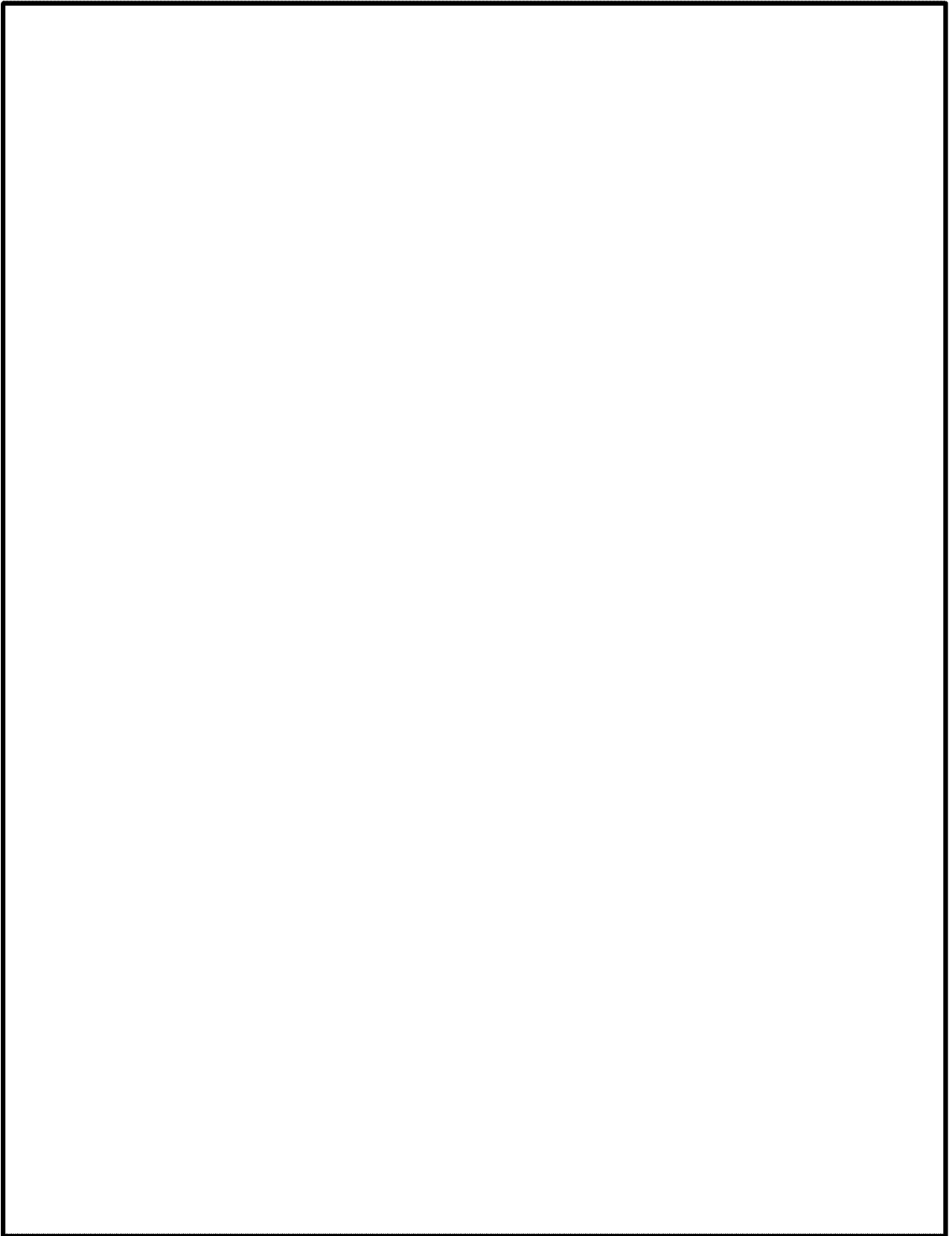
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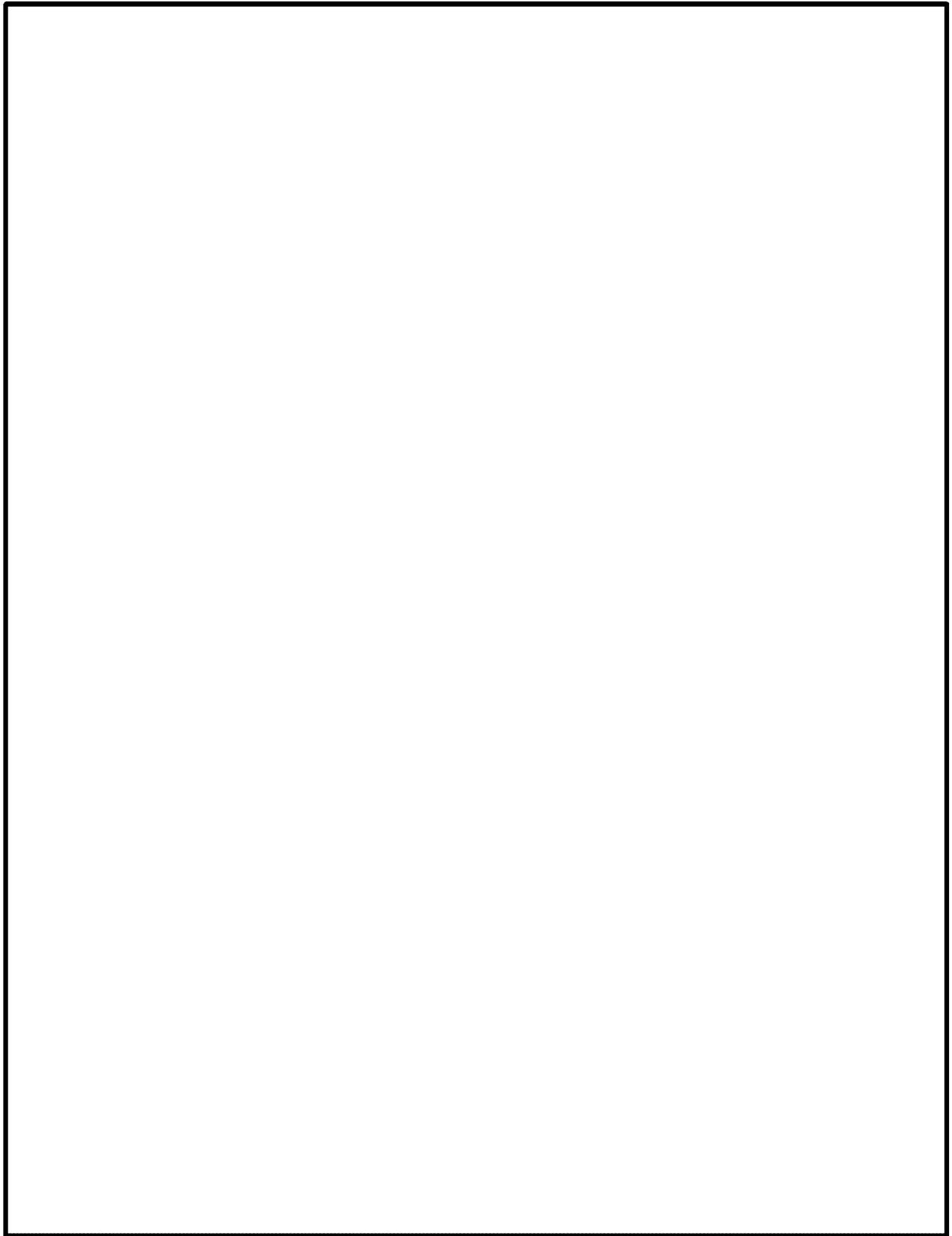


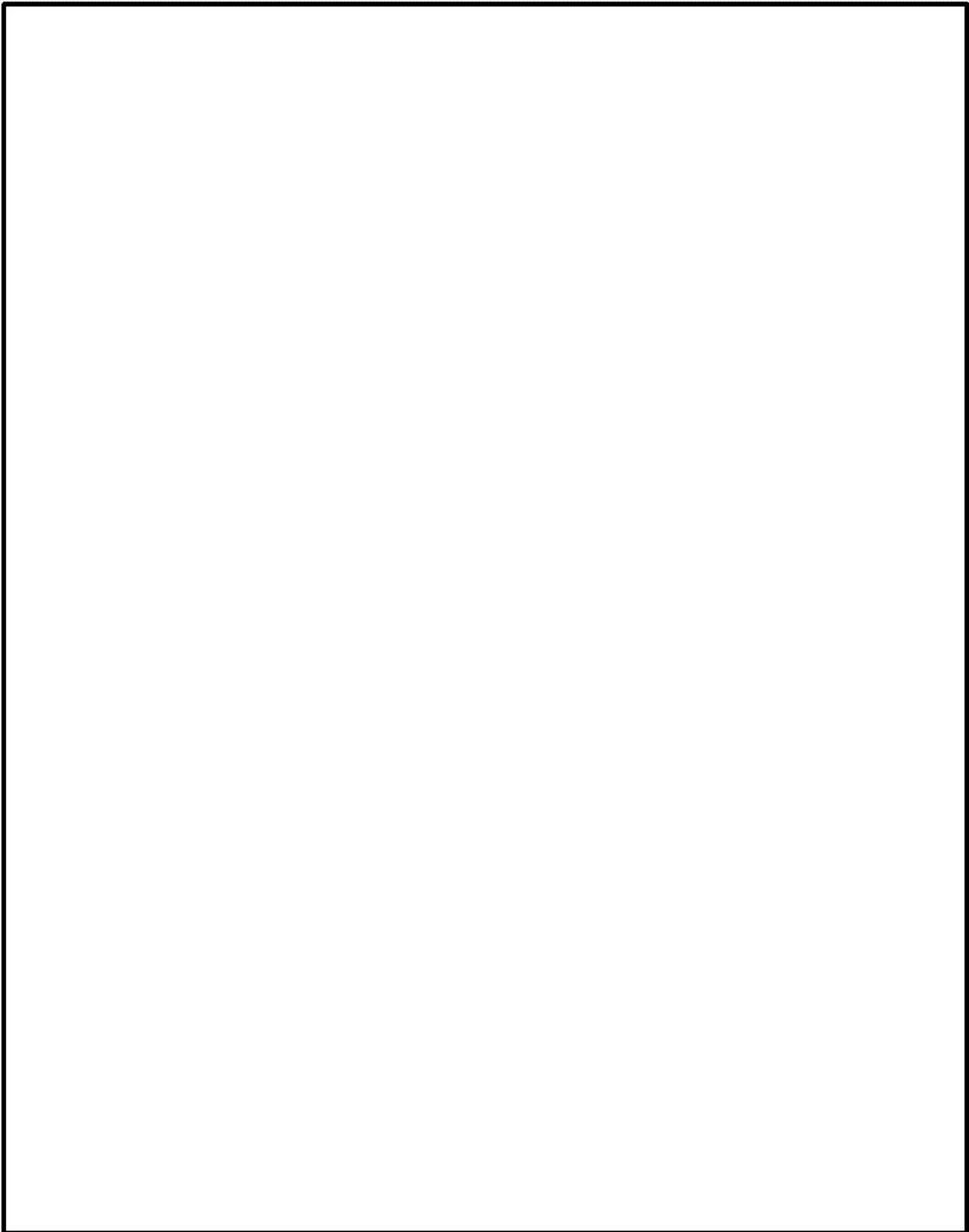


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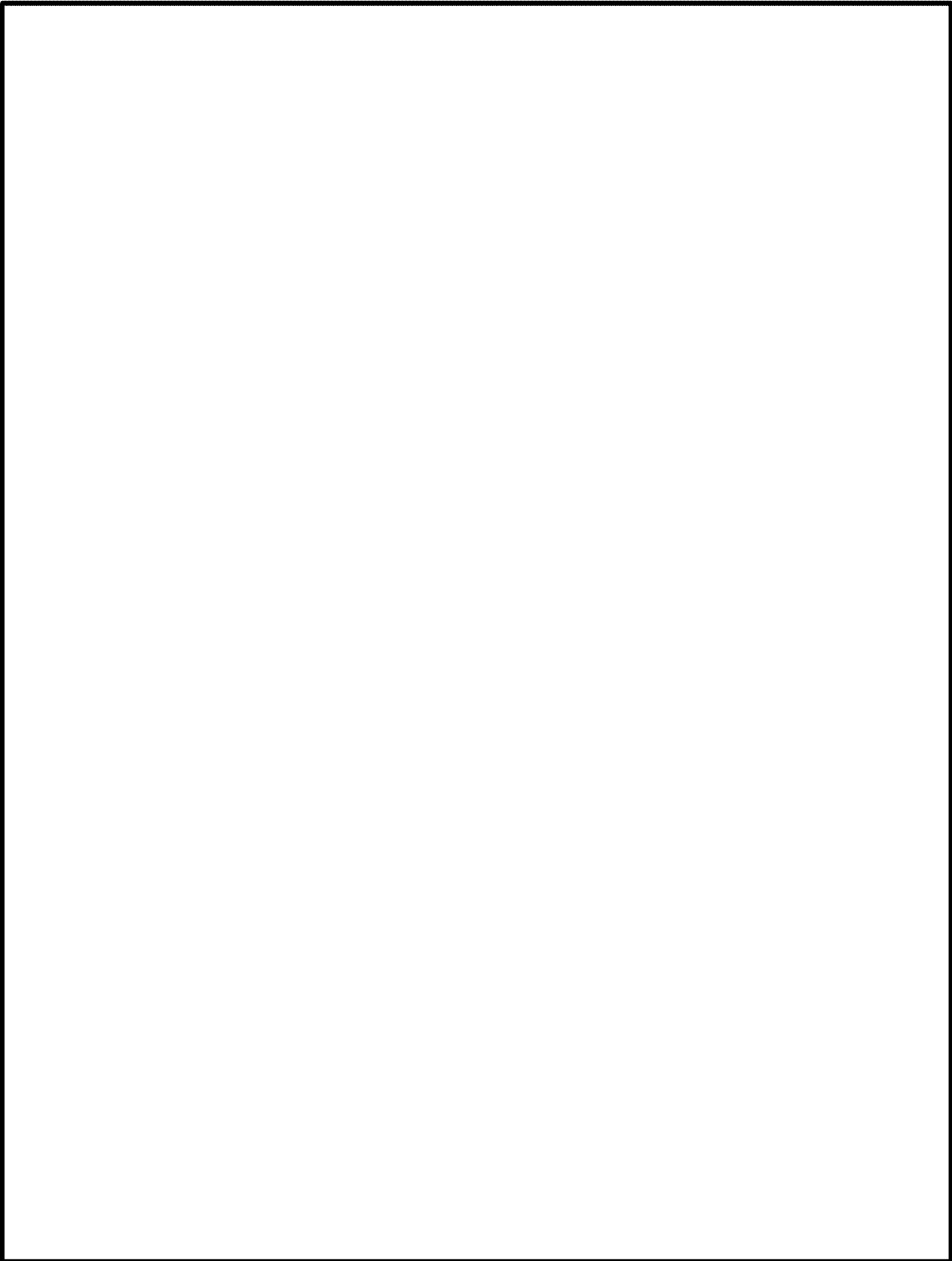




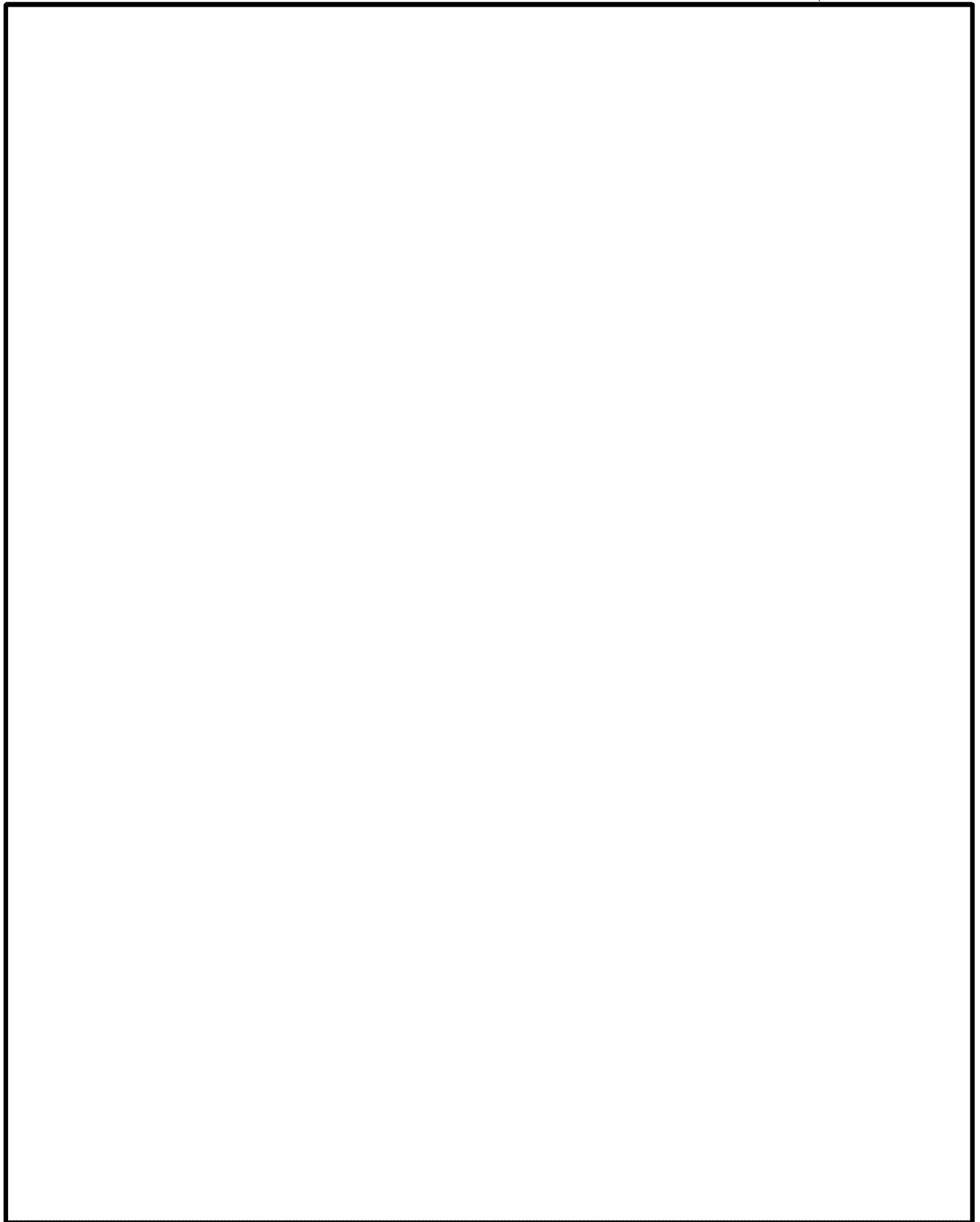


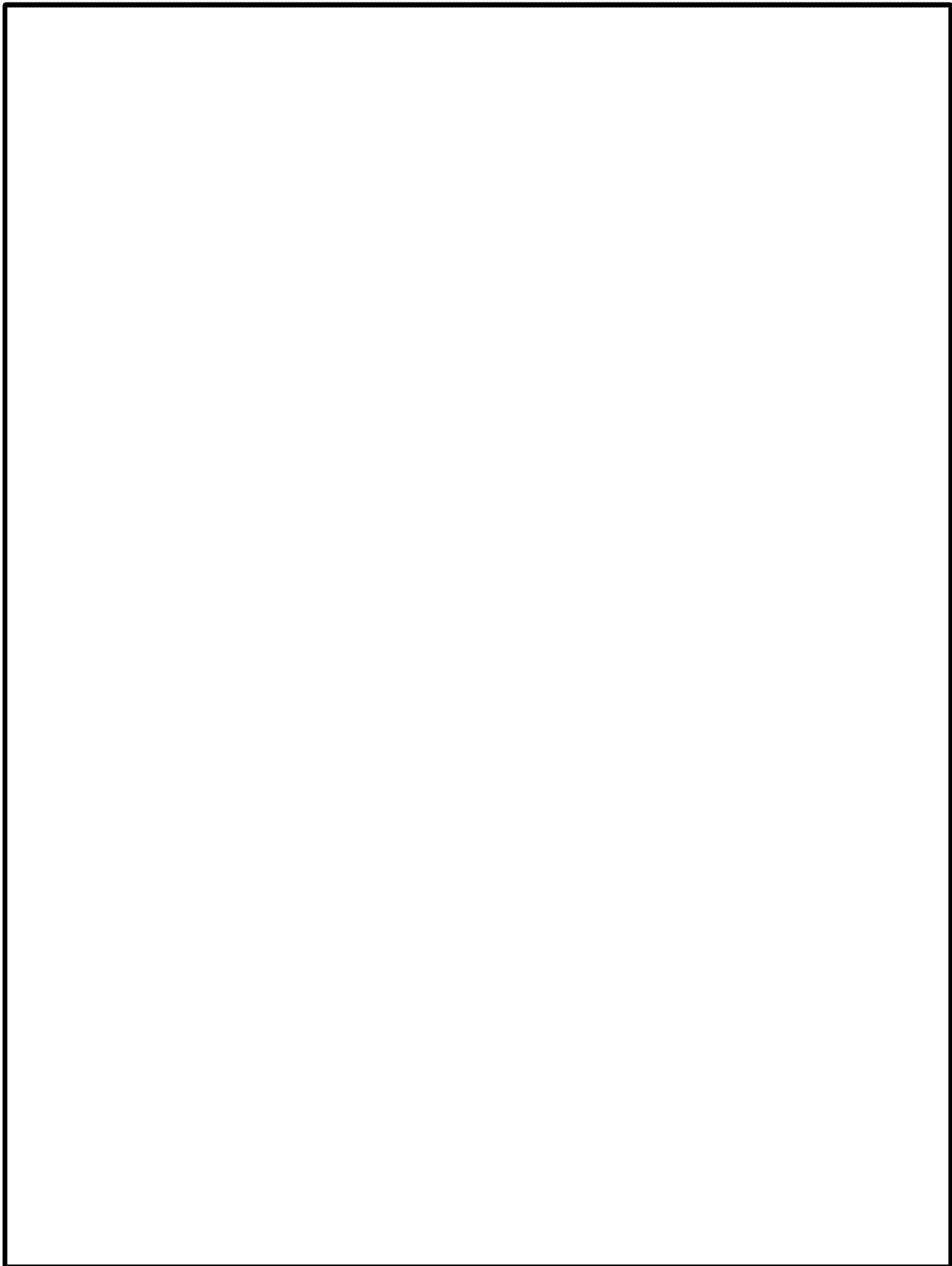


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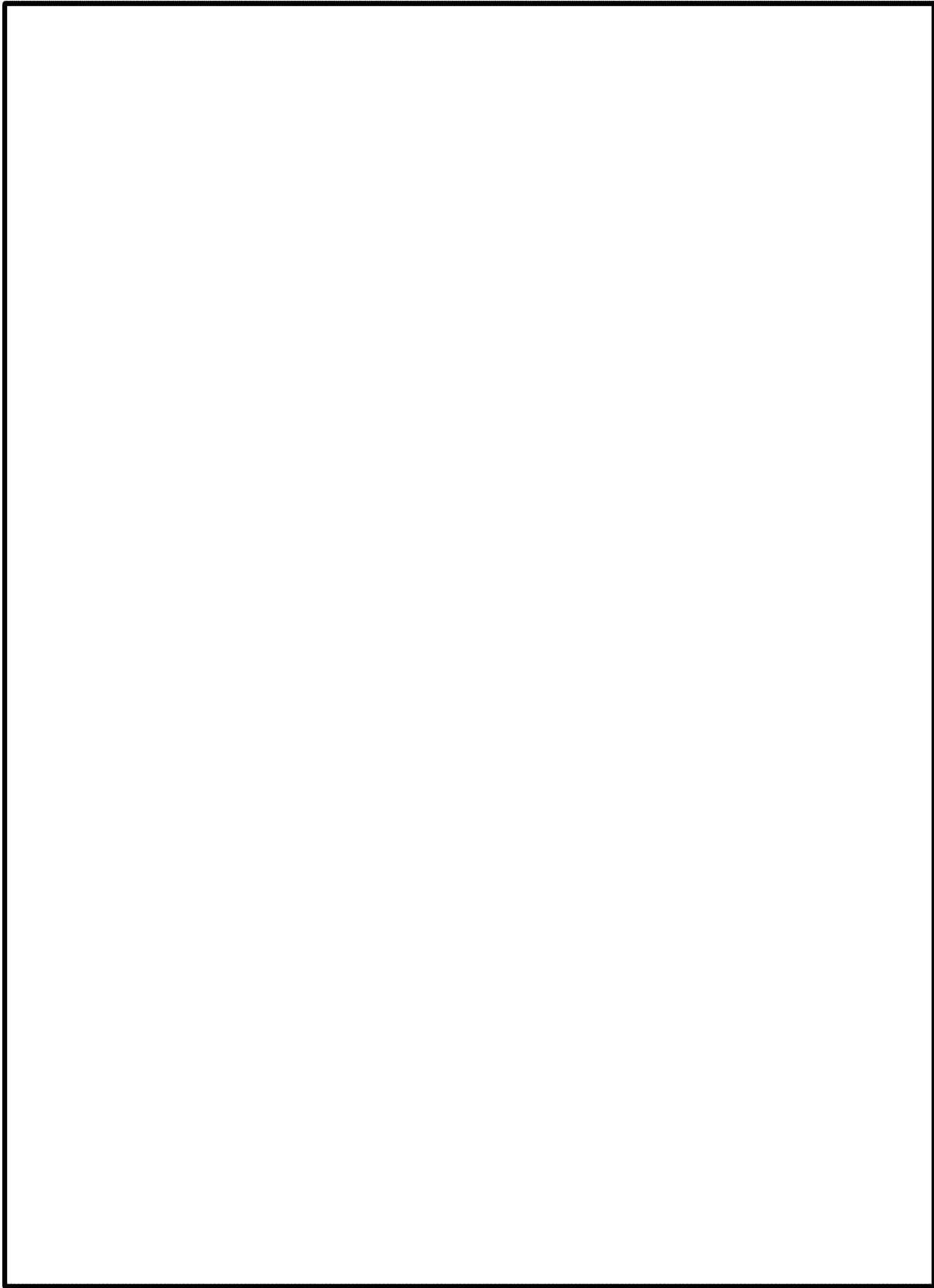


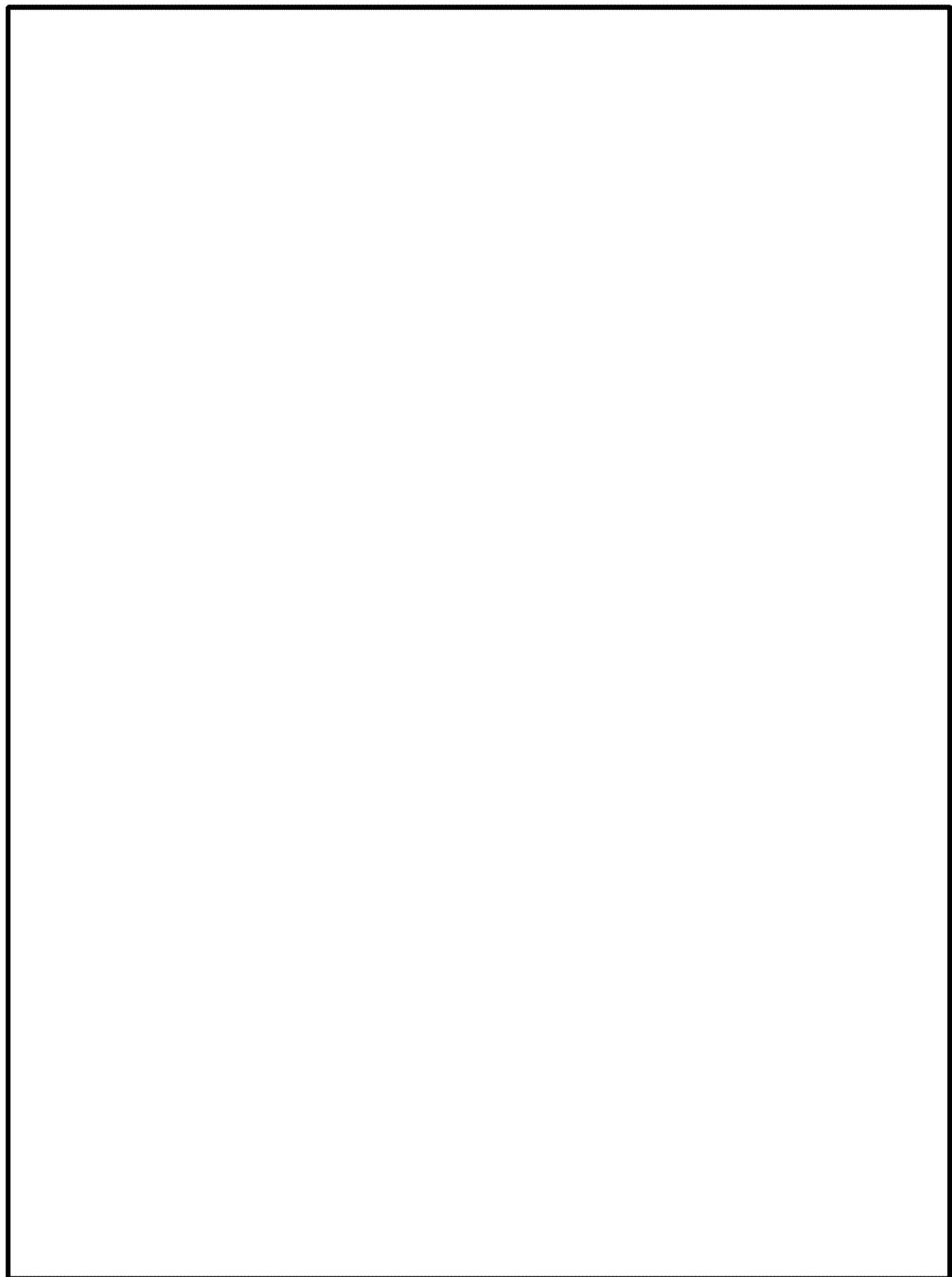


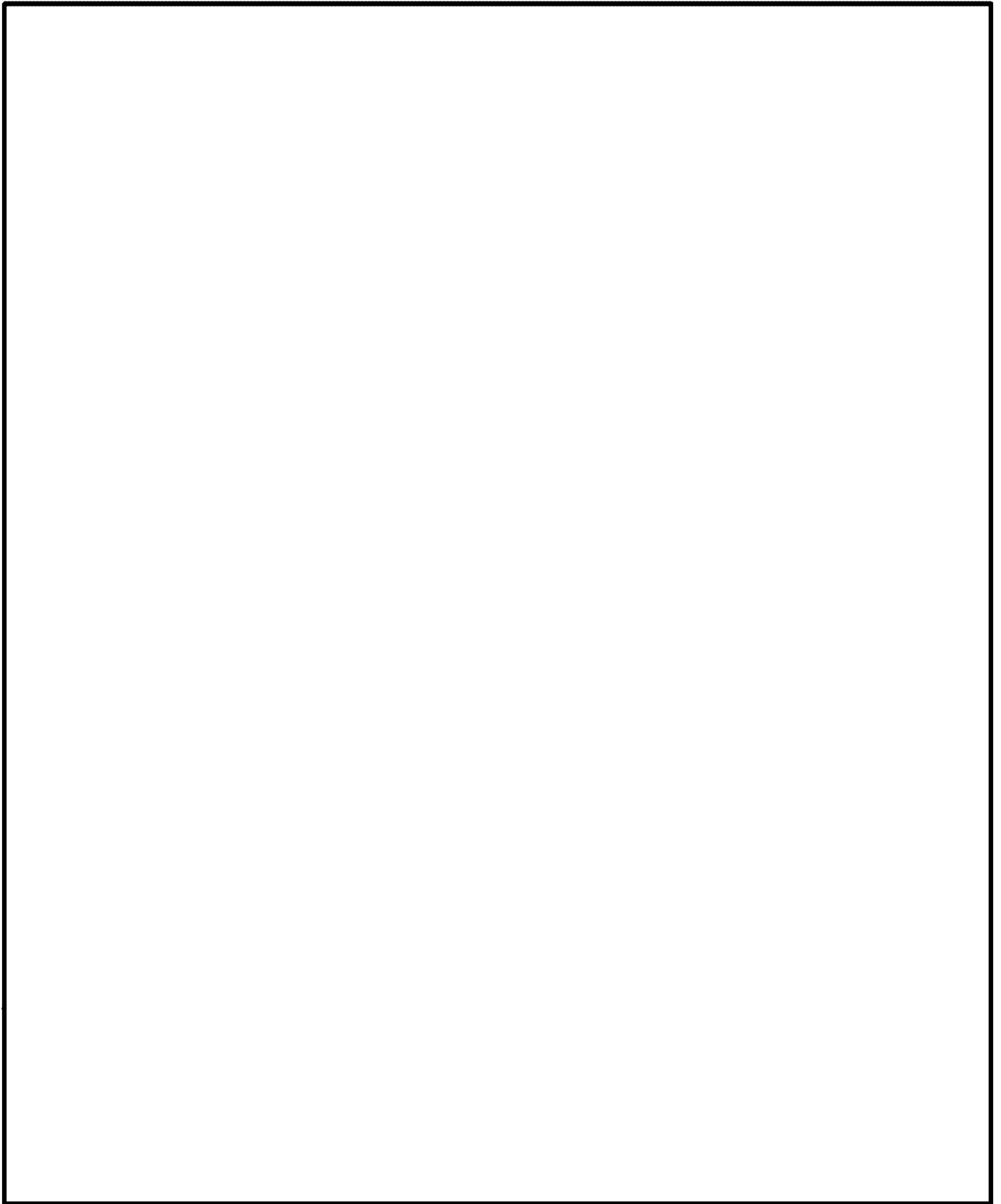


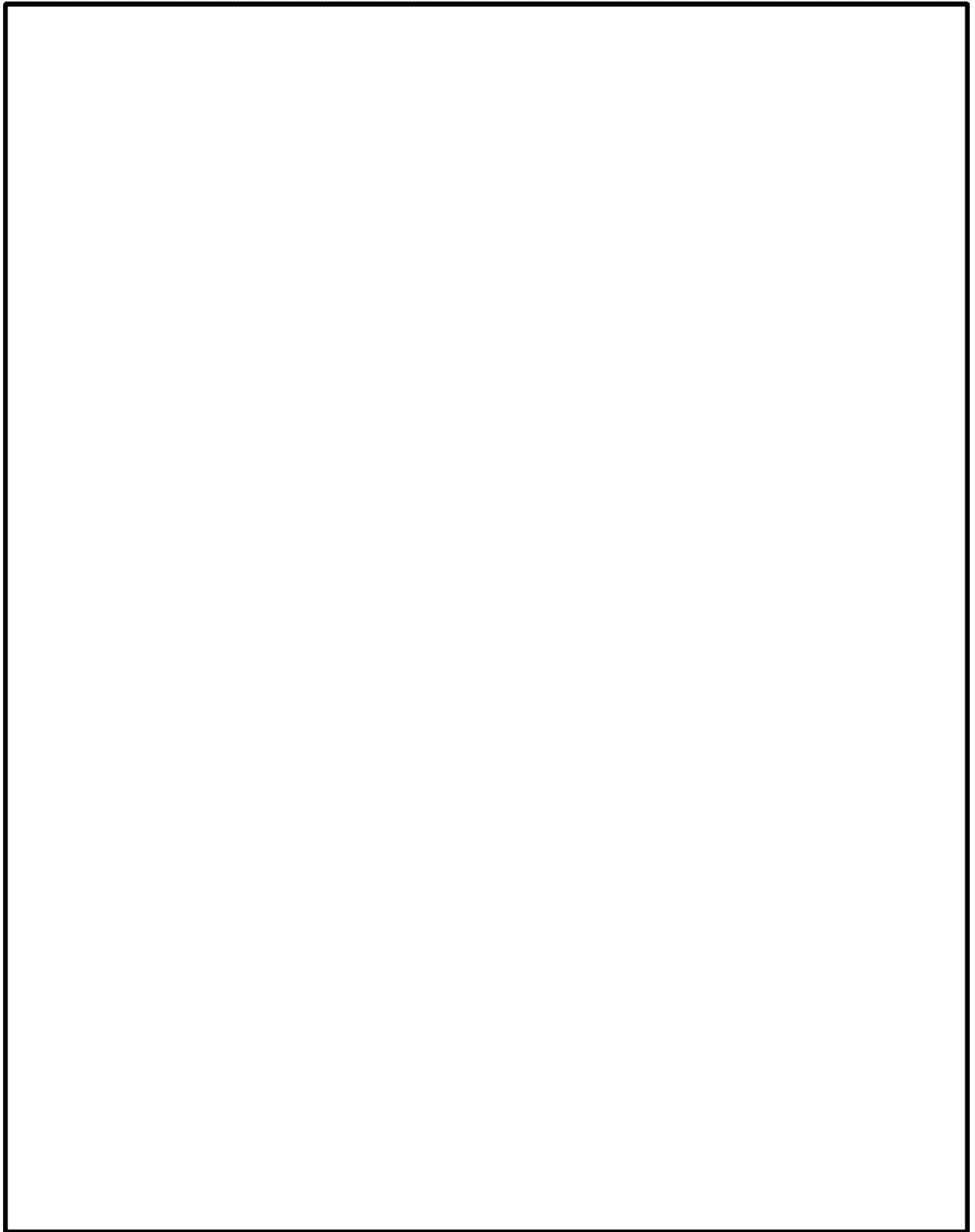


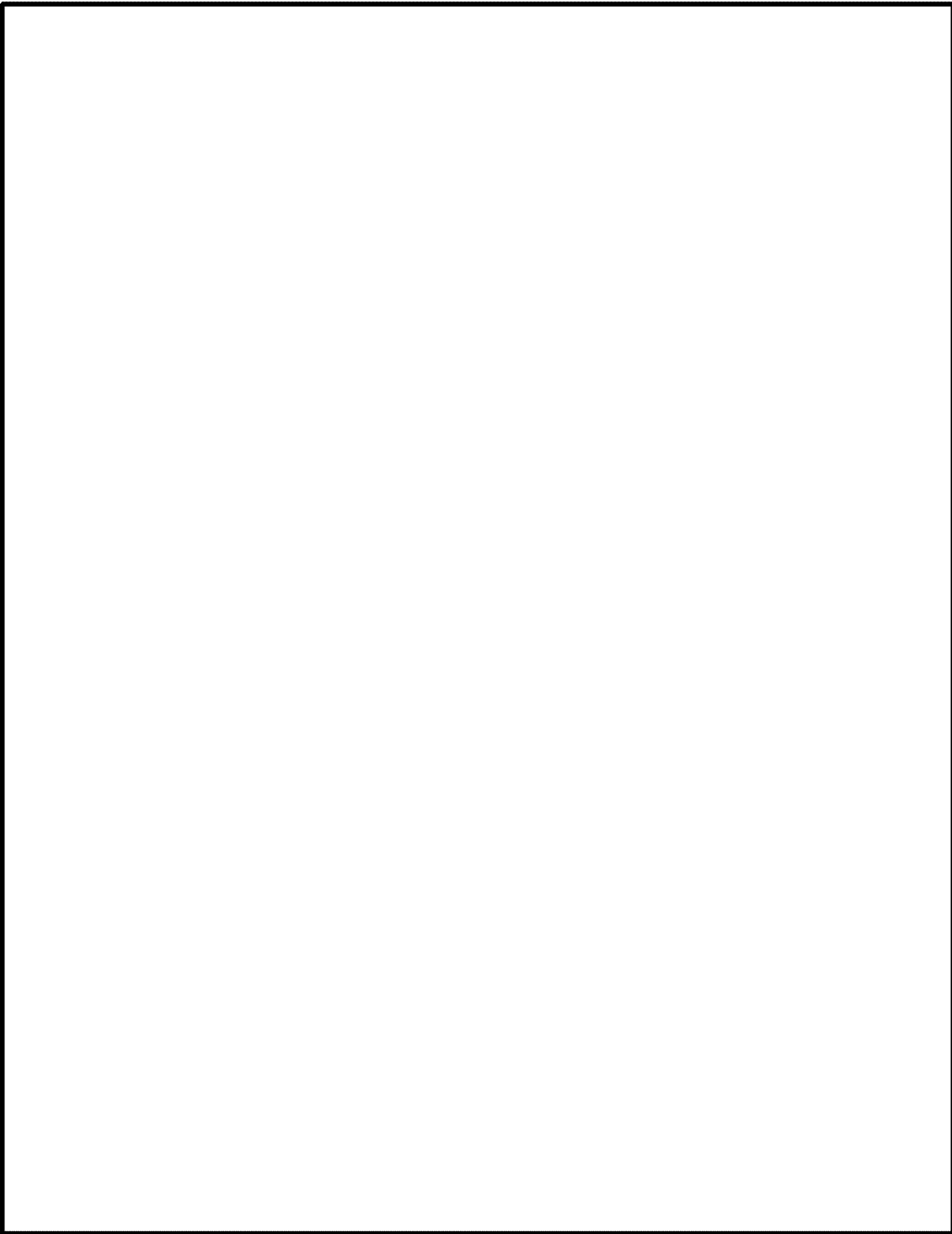




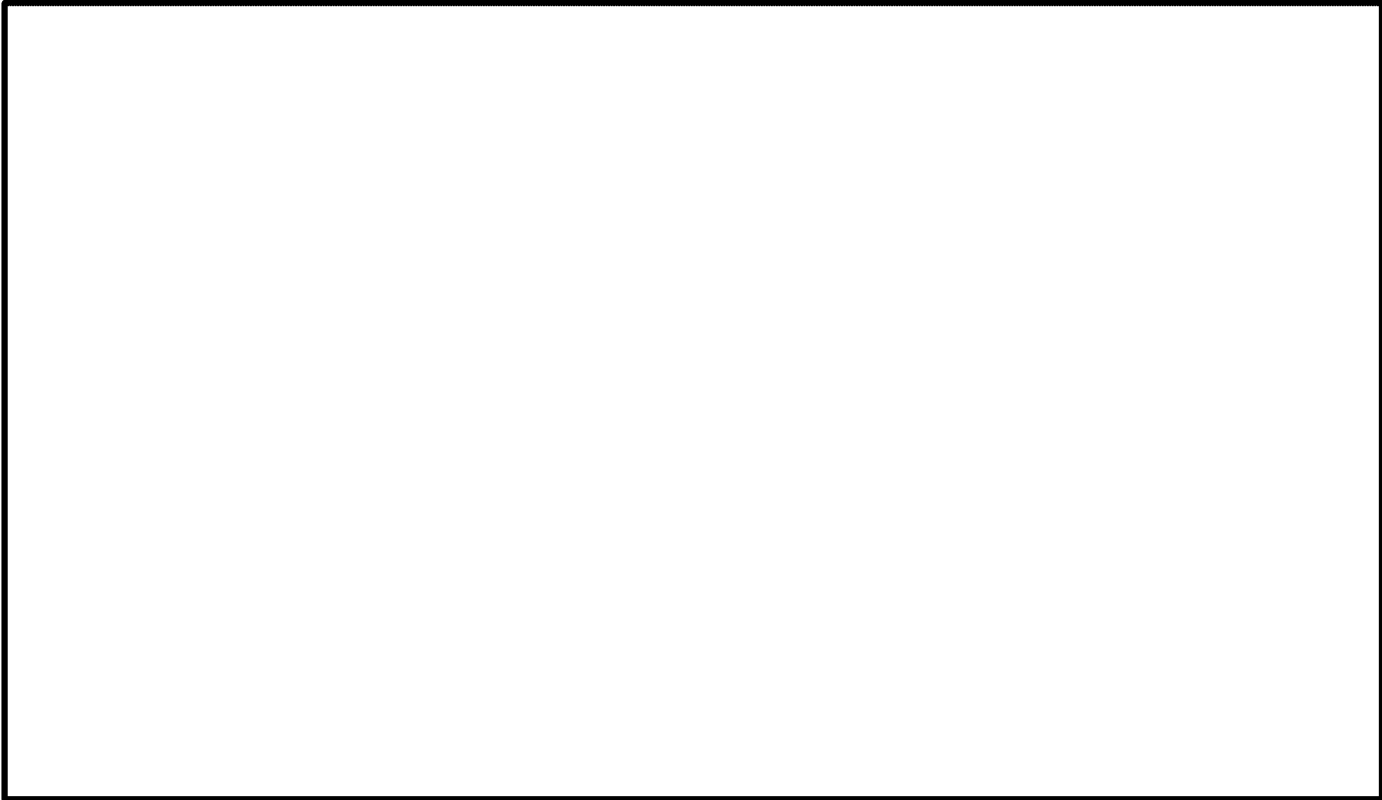


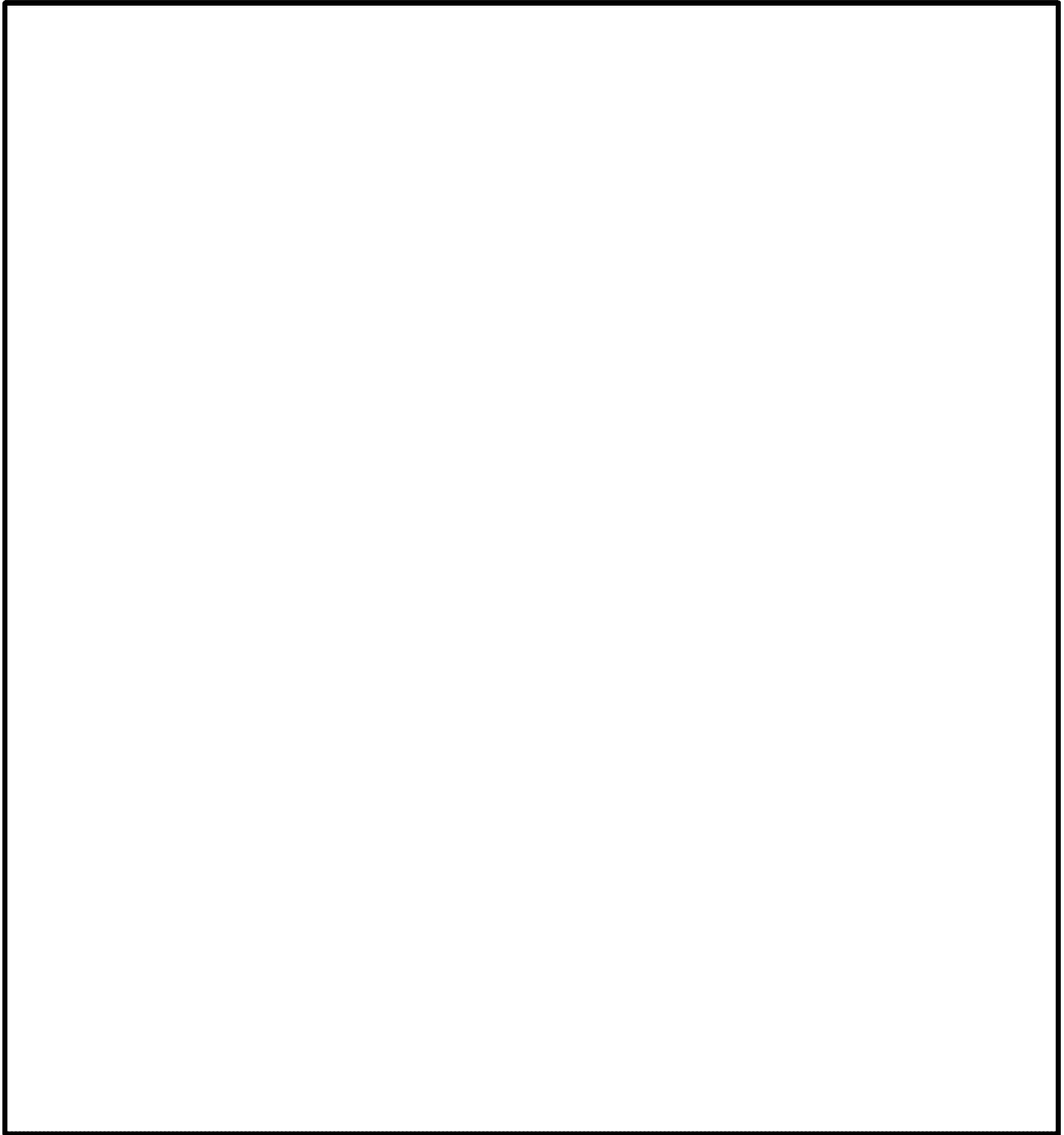


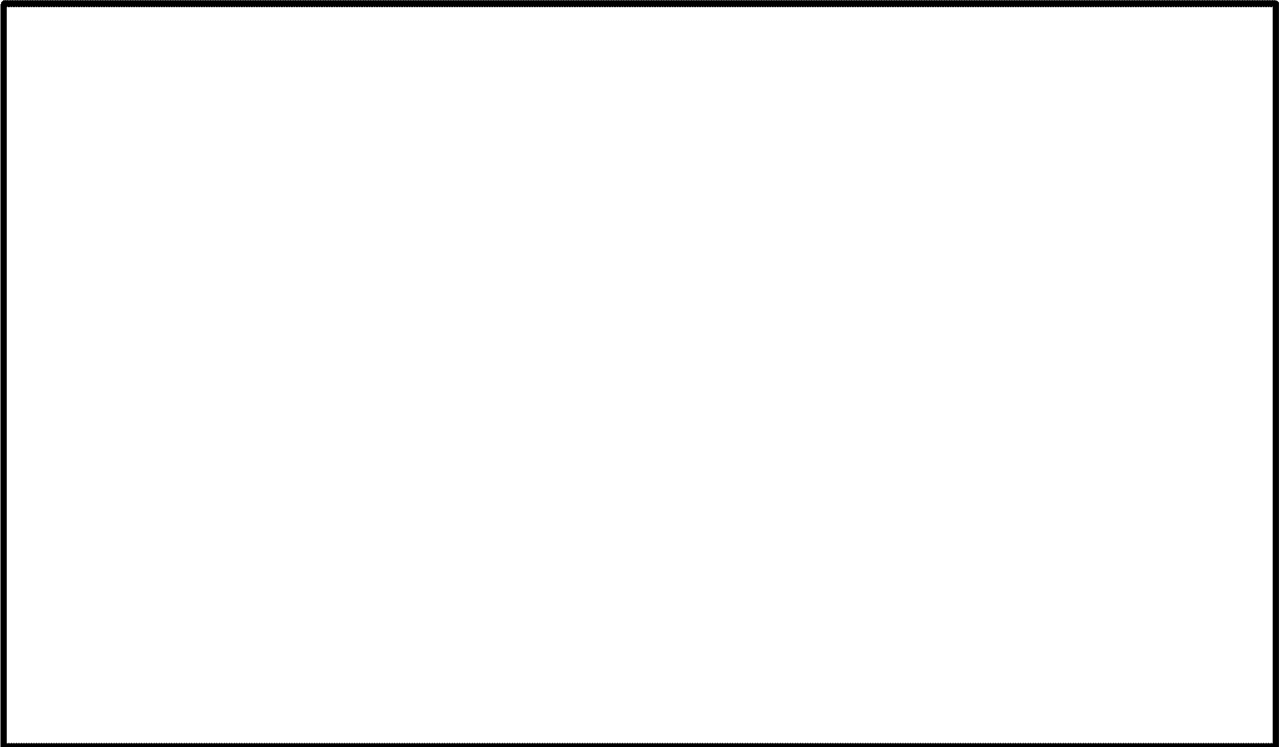














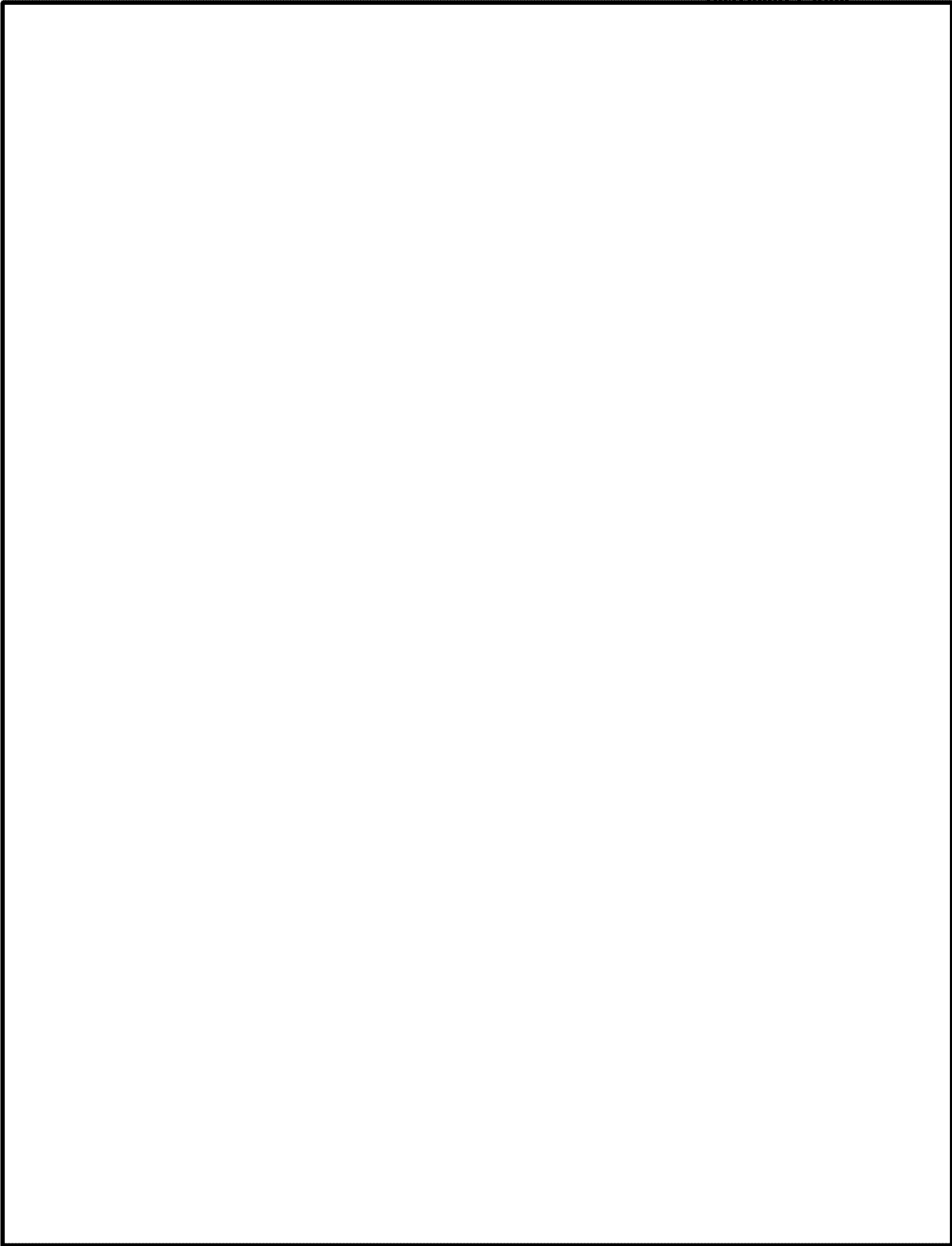
# U.S. Citizenship and Immigration Services

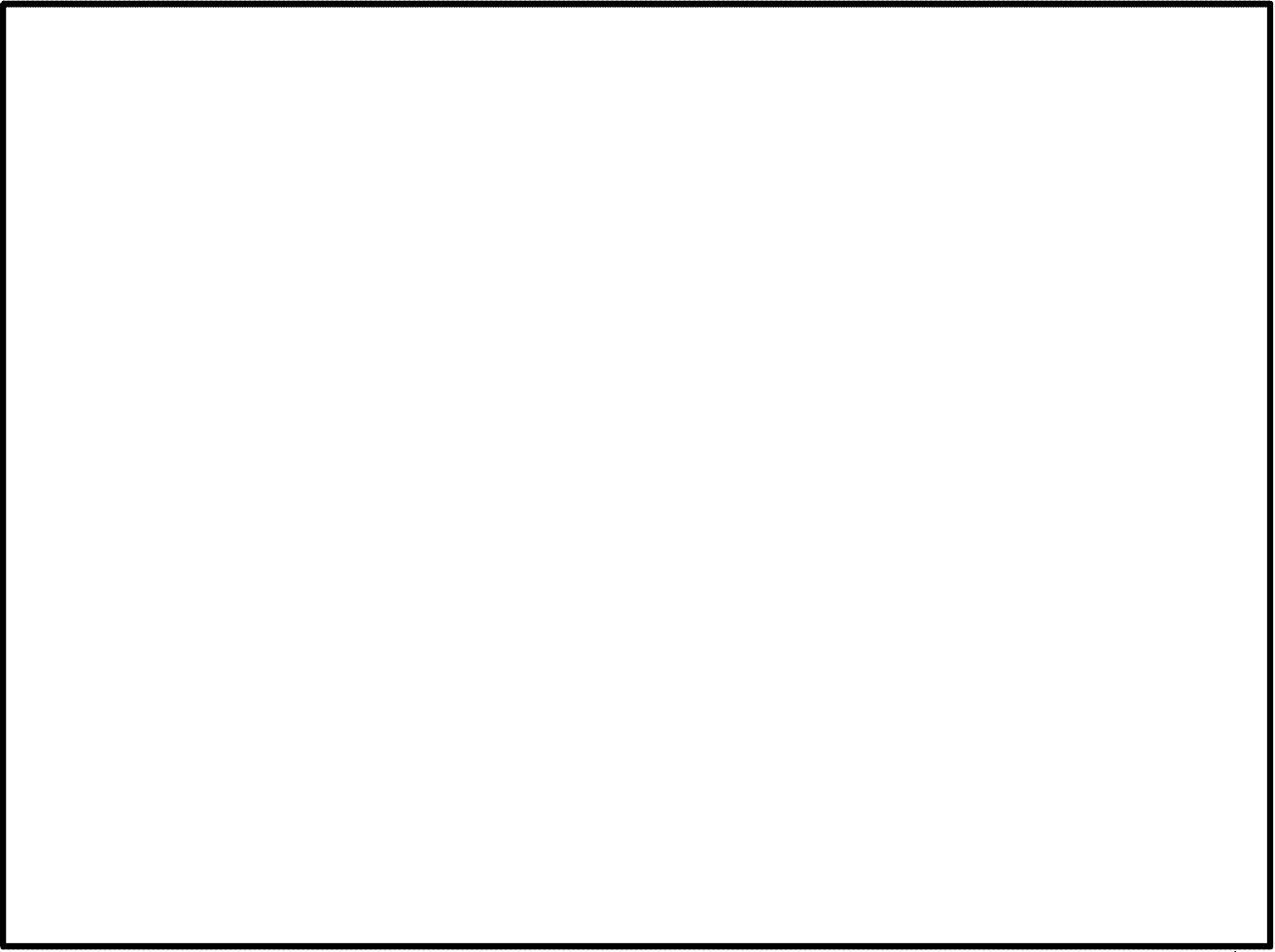
## *BASIC*

**ADJUSTMENT OF STATUS**

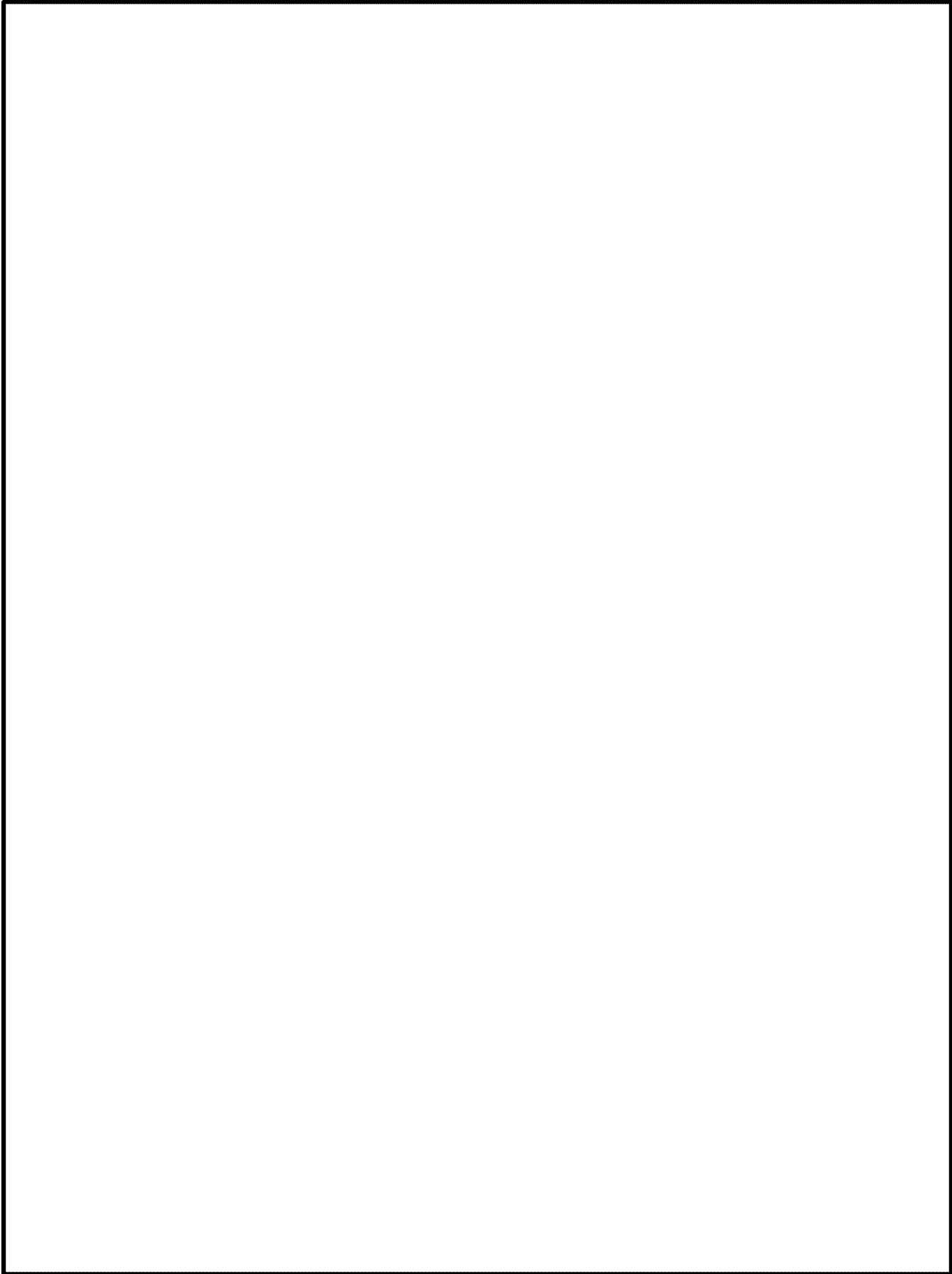
**COURSE 220**

**INSTRUCTOR GUIDE**

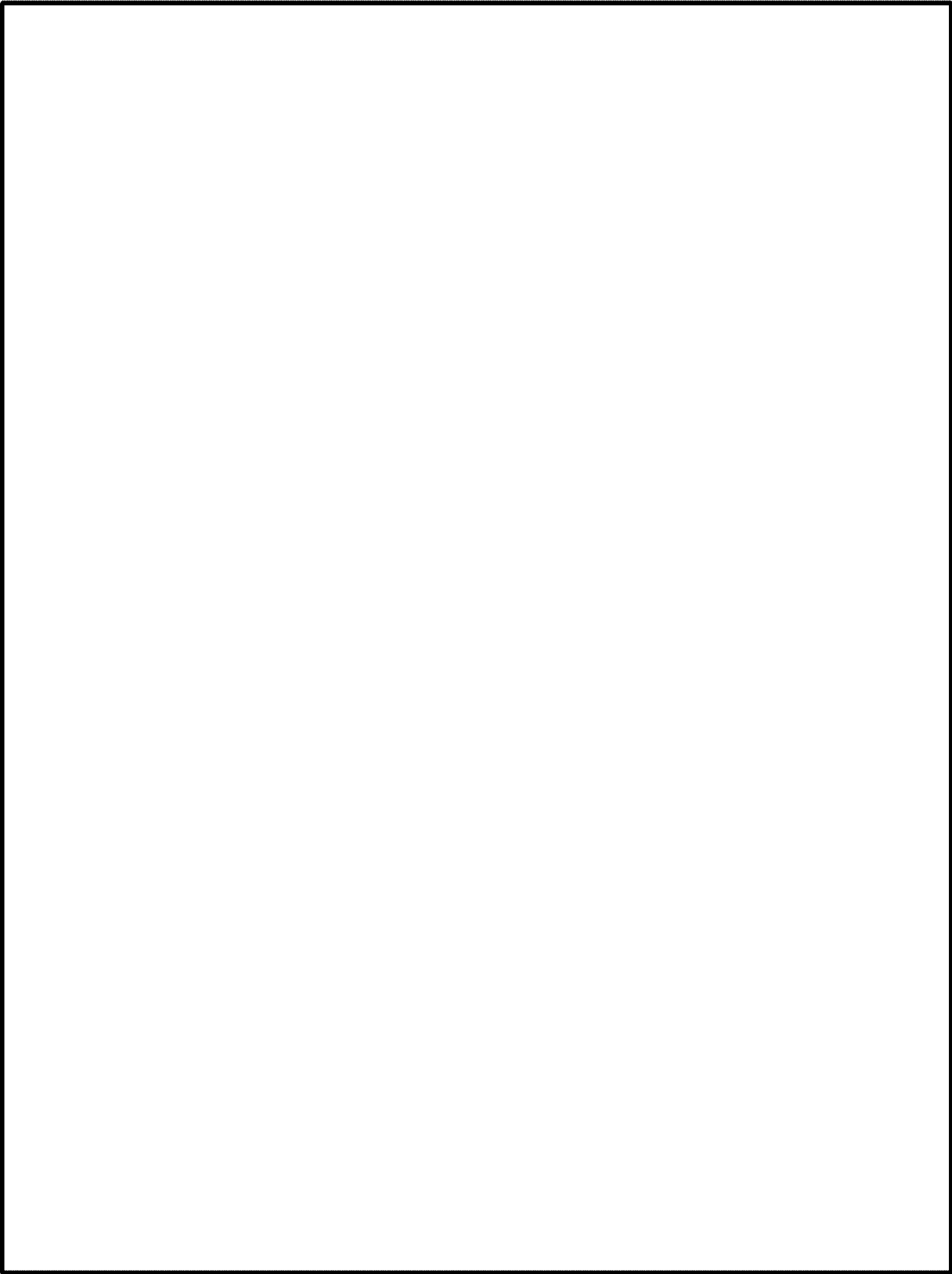


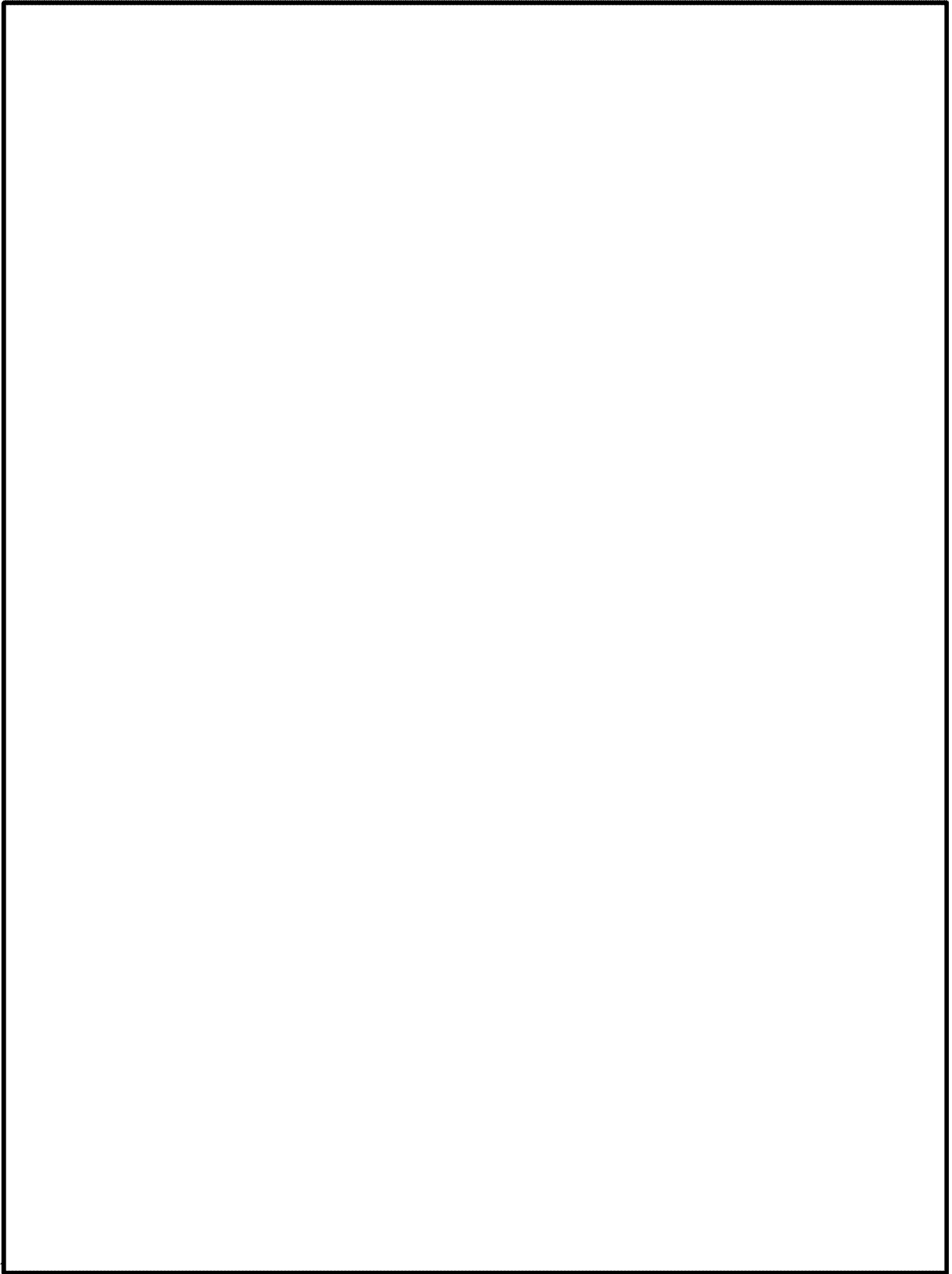


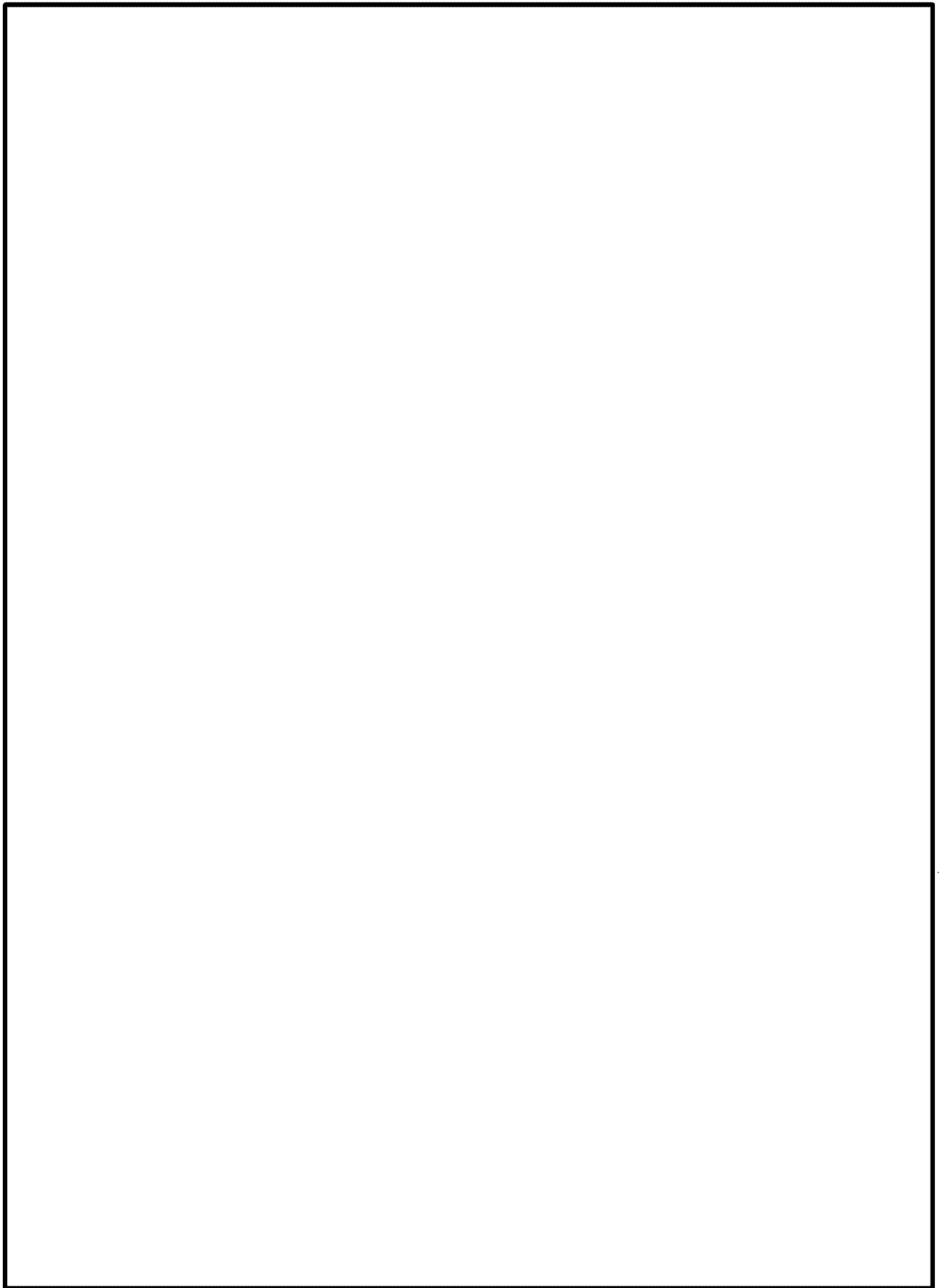


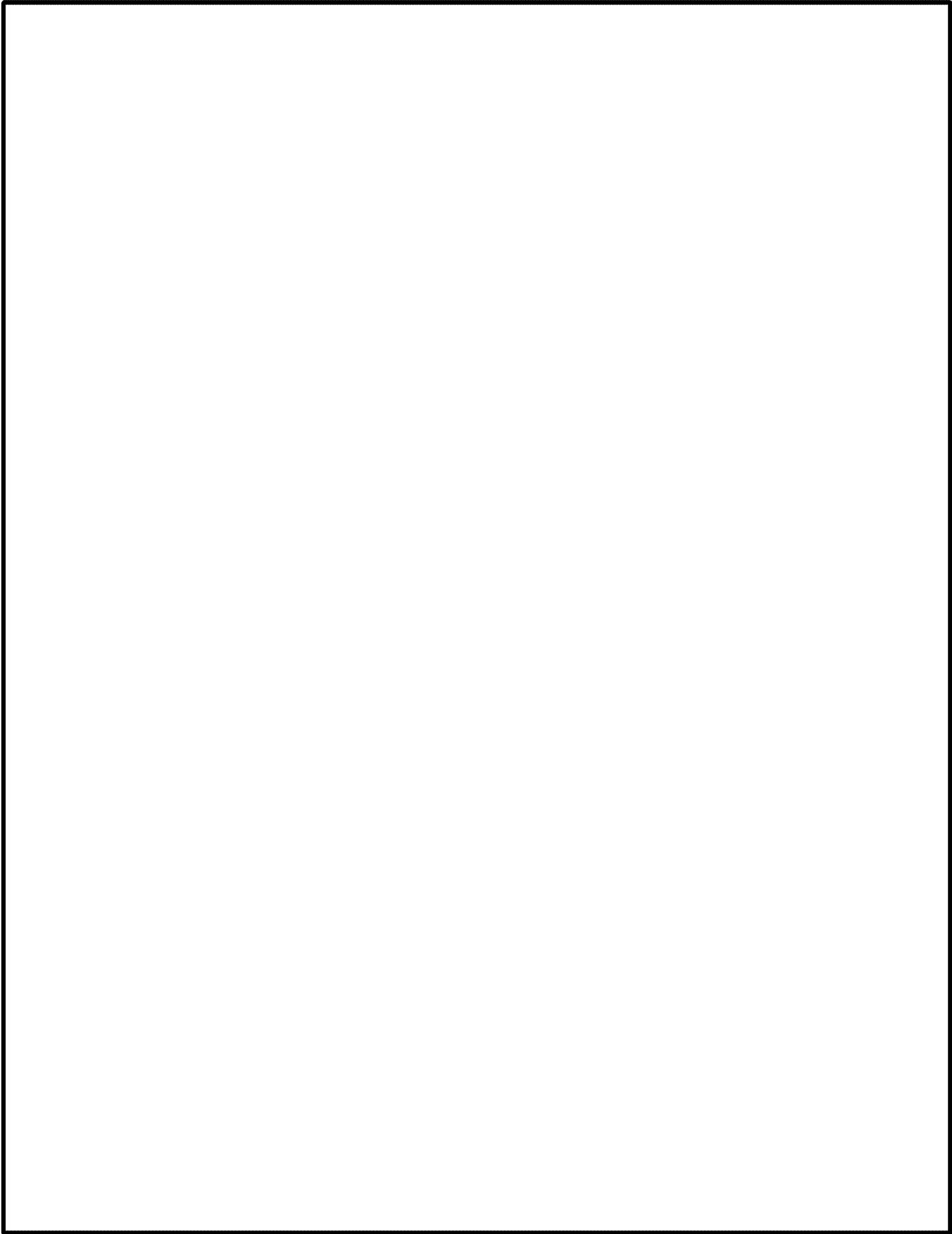


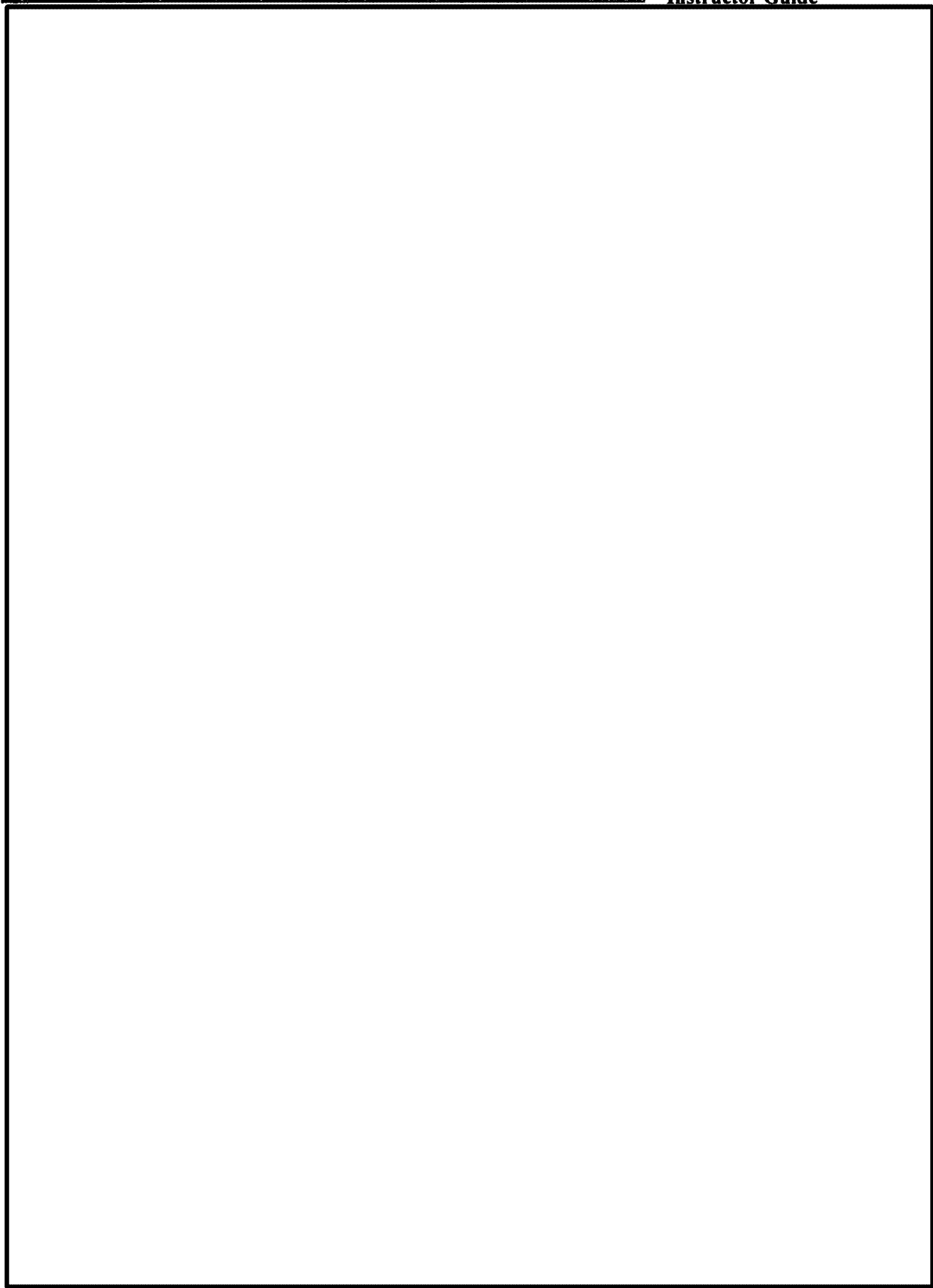


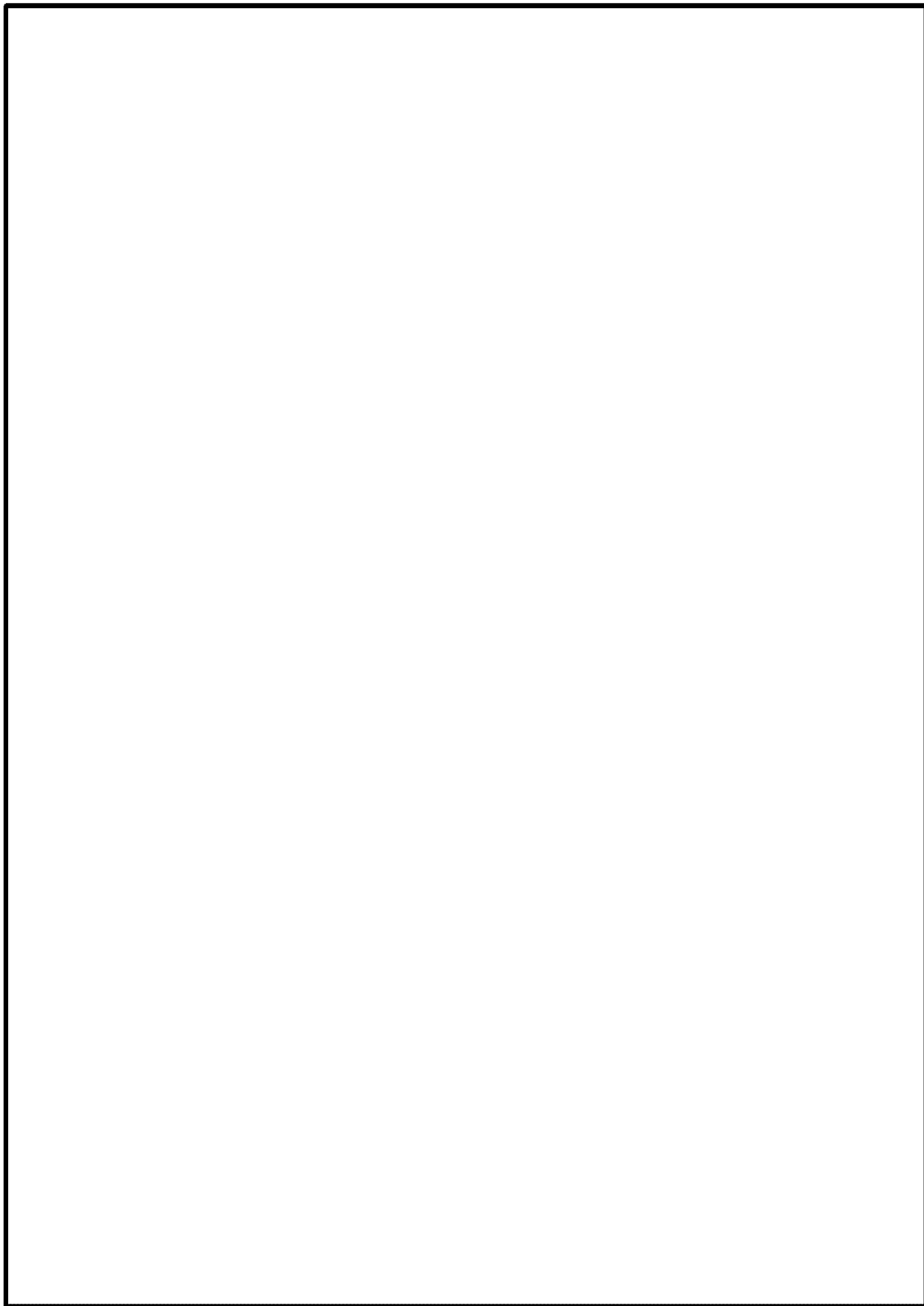


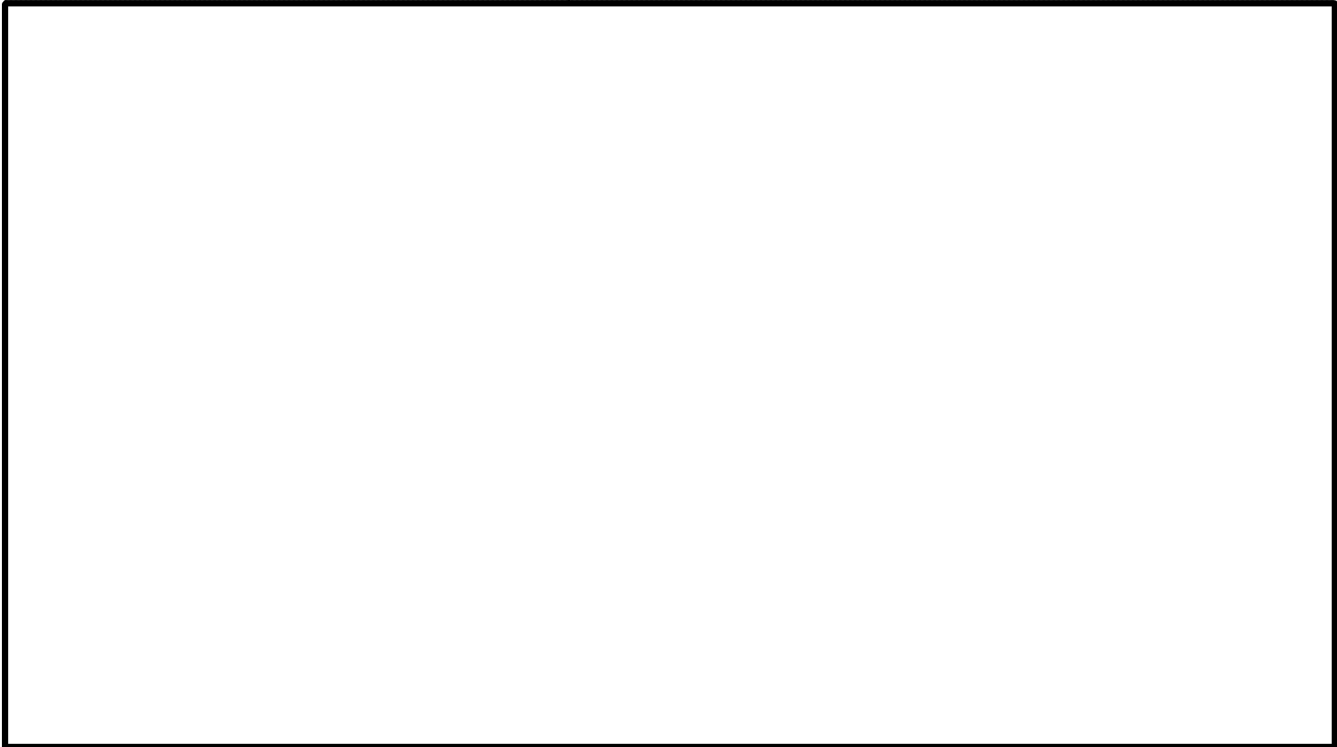










**Admissibility**

The alien must be admissible (Section 212).

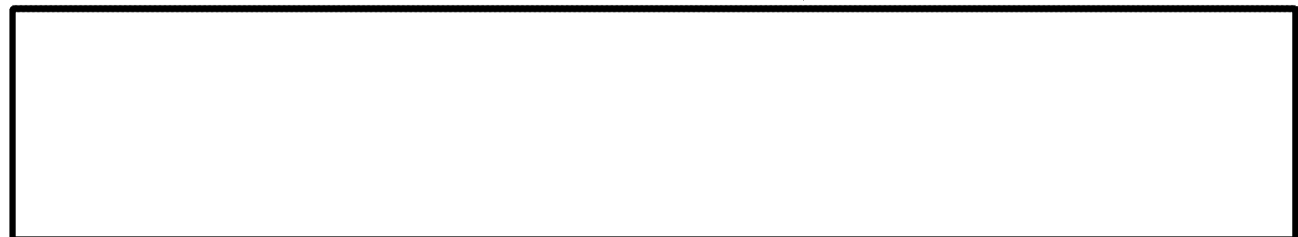
**Affidavit of Support**

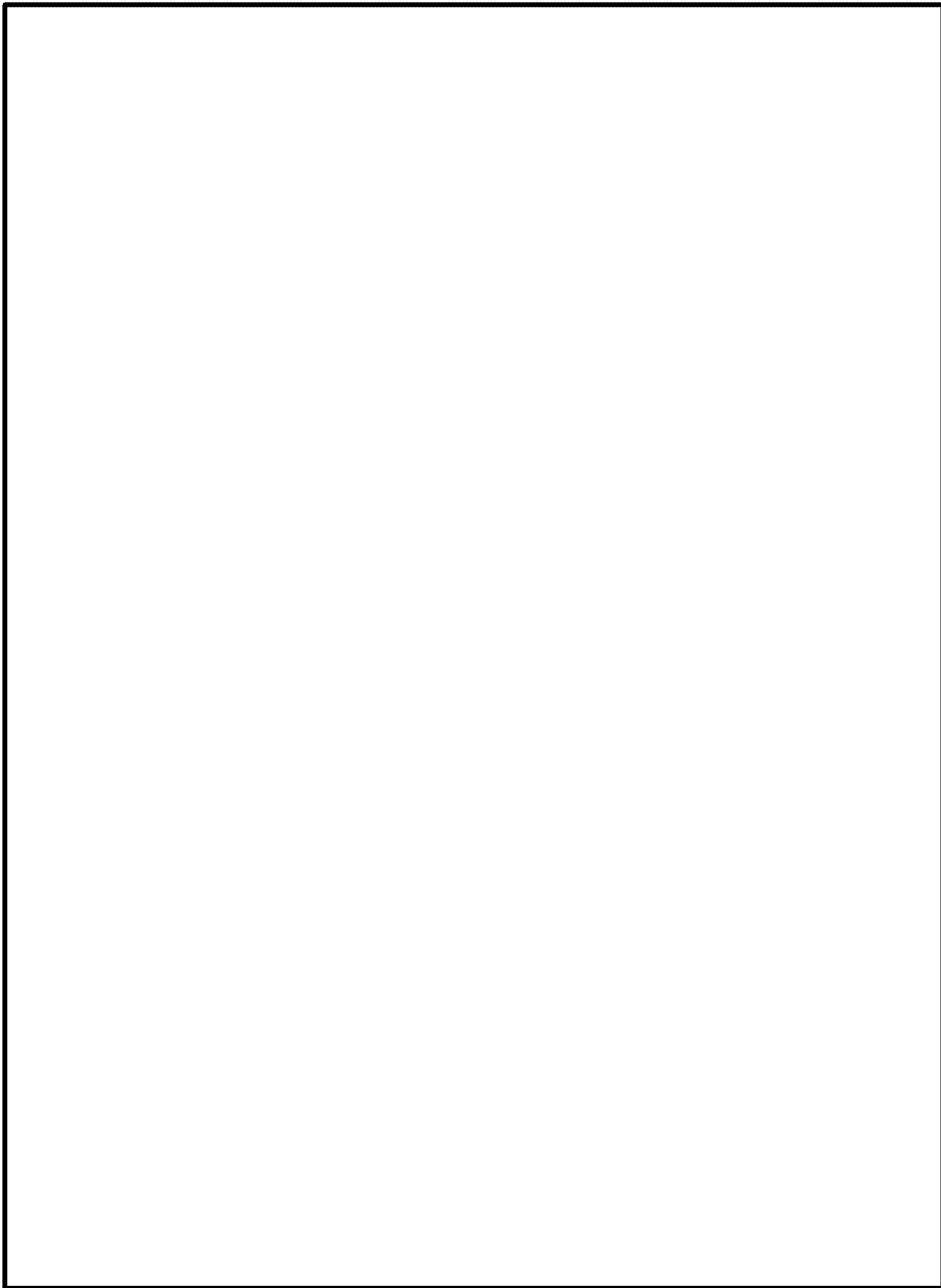
Unless the alien qualifies for an exception to the requirement, an affidavit of support (Form I-864 or Form I-864EZ) must be filed on behalf of any alien who seeks adjustment of status on the basis of:

- an immediate relative or family-based visa petition (Form I-130, I-129F, or I-600) or
- an employment-based visa petition (Form I-140) if a qualifying relative either filed the Form I-140 as the employer or owns at least 5% of the equity of the for-profit firm that filed the I-140.

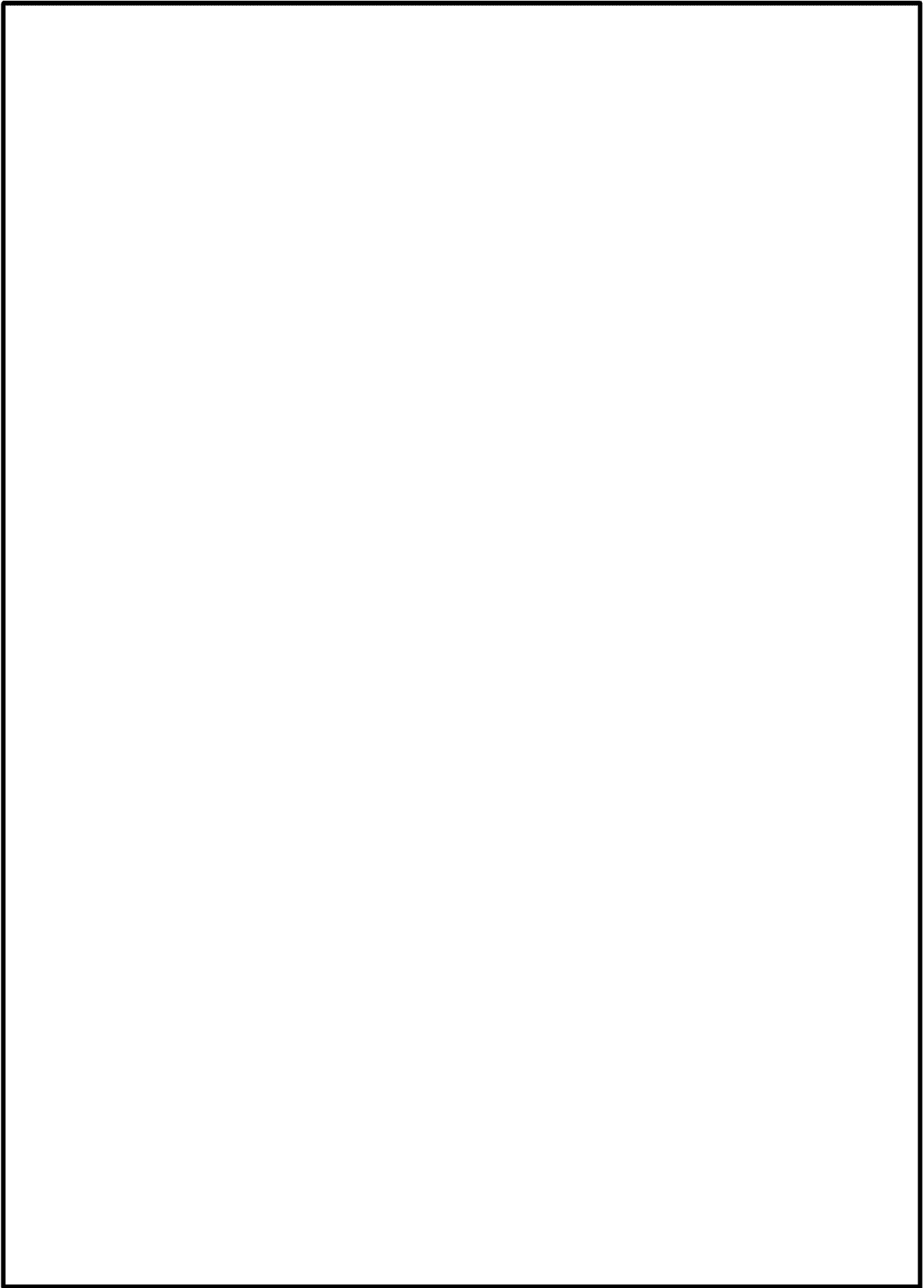
Specific details concerning when a Form I-864 is required, when it is not required, and what evidence must be submitted with a Form I-864 is found in 8 CFR part 213a and chapter 20.5 of the Adjudicators Field Manual.

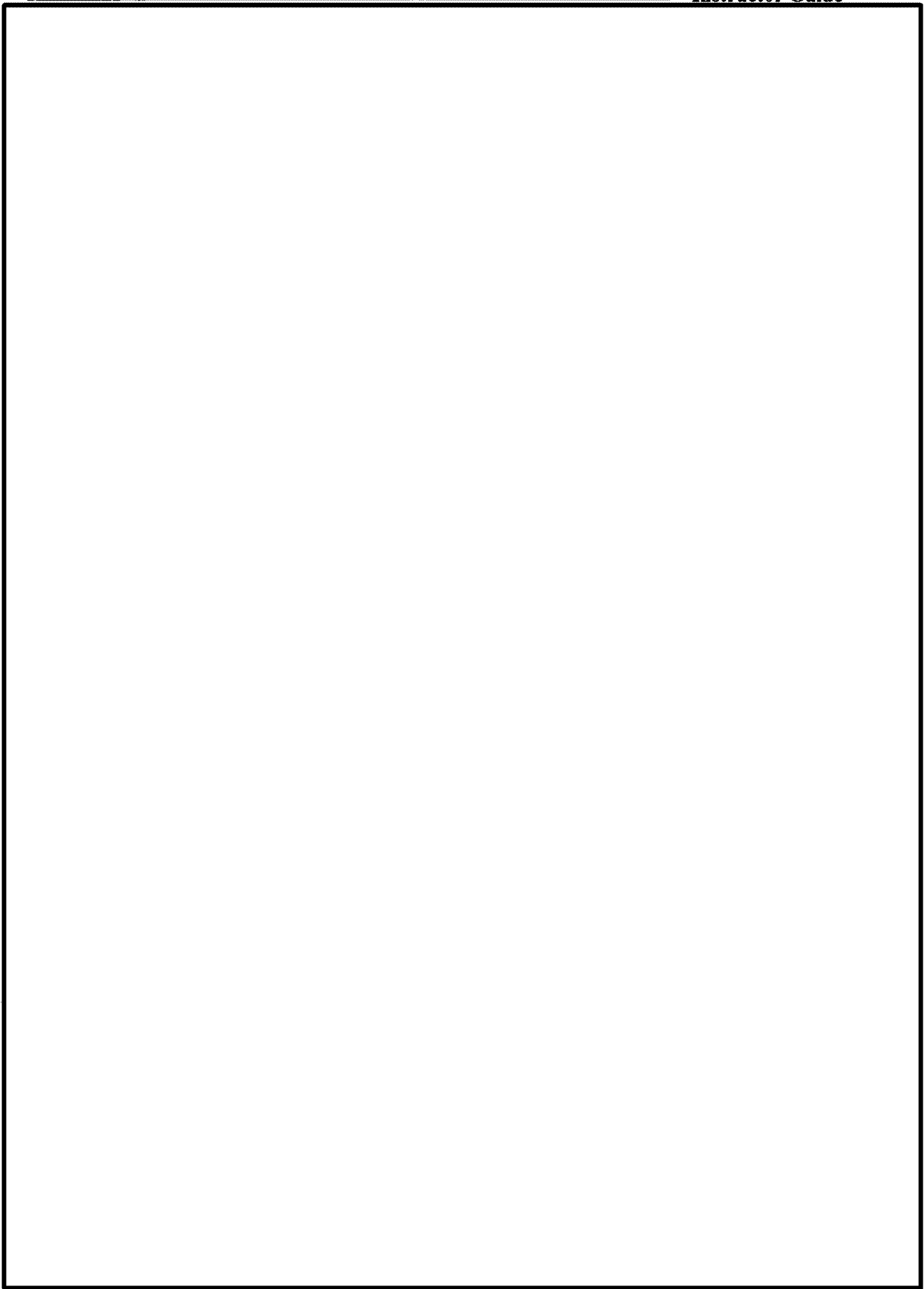
If an affidavit of support is required, but no Form I-864 is filed (or the Form I-864 that is filed does not satisfy the requirements of section 213A), then the alien is inadmissible under section 212(a)(4) of the INA. See section 212(a)(4)(C) of the INA.

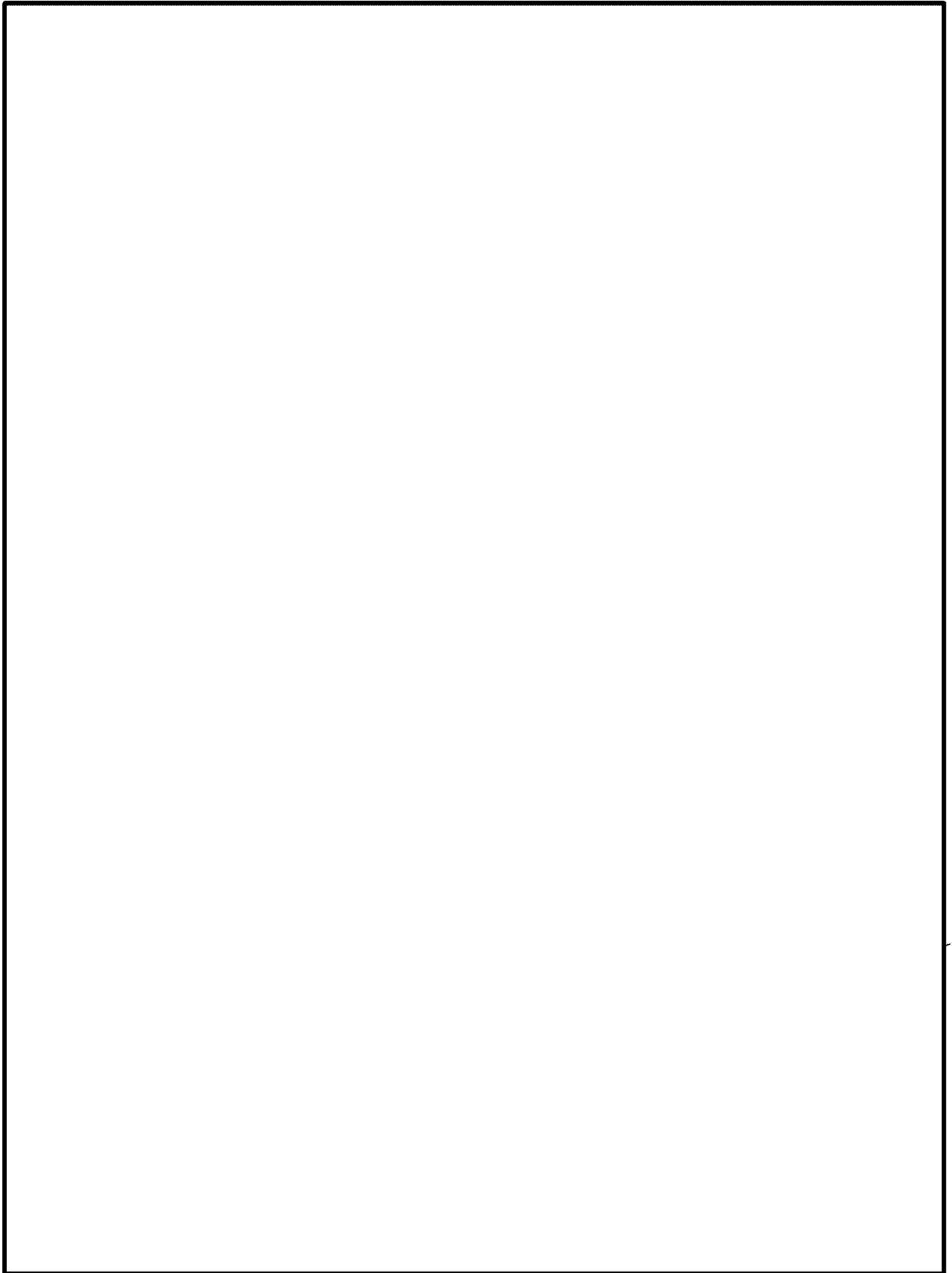


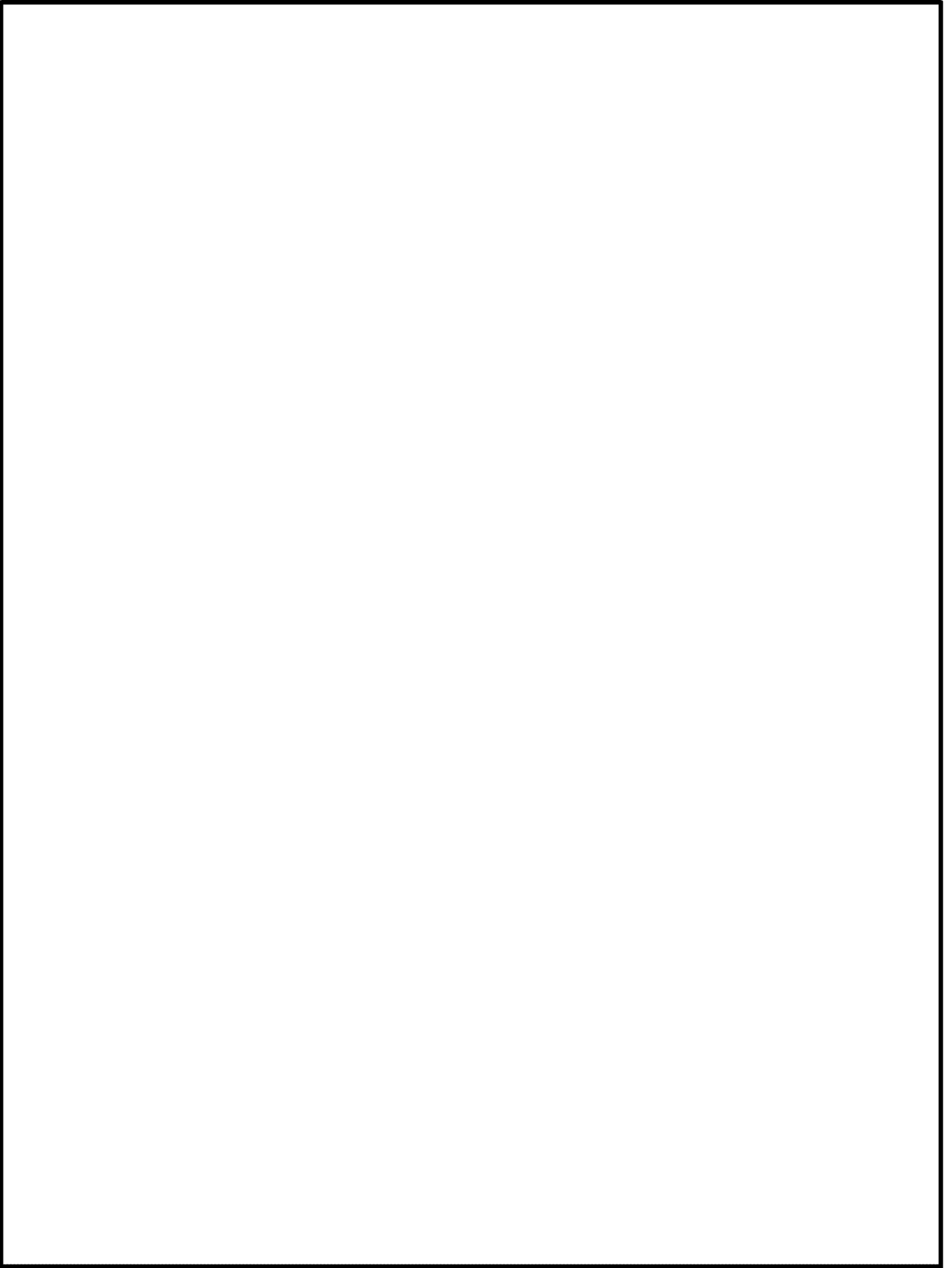


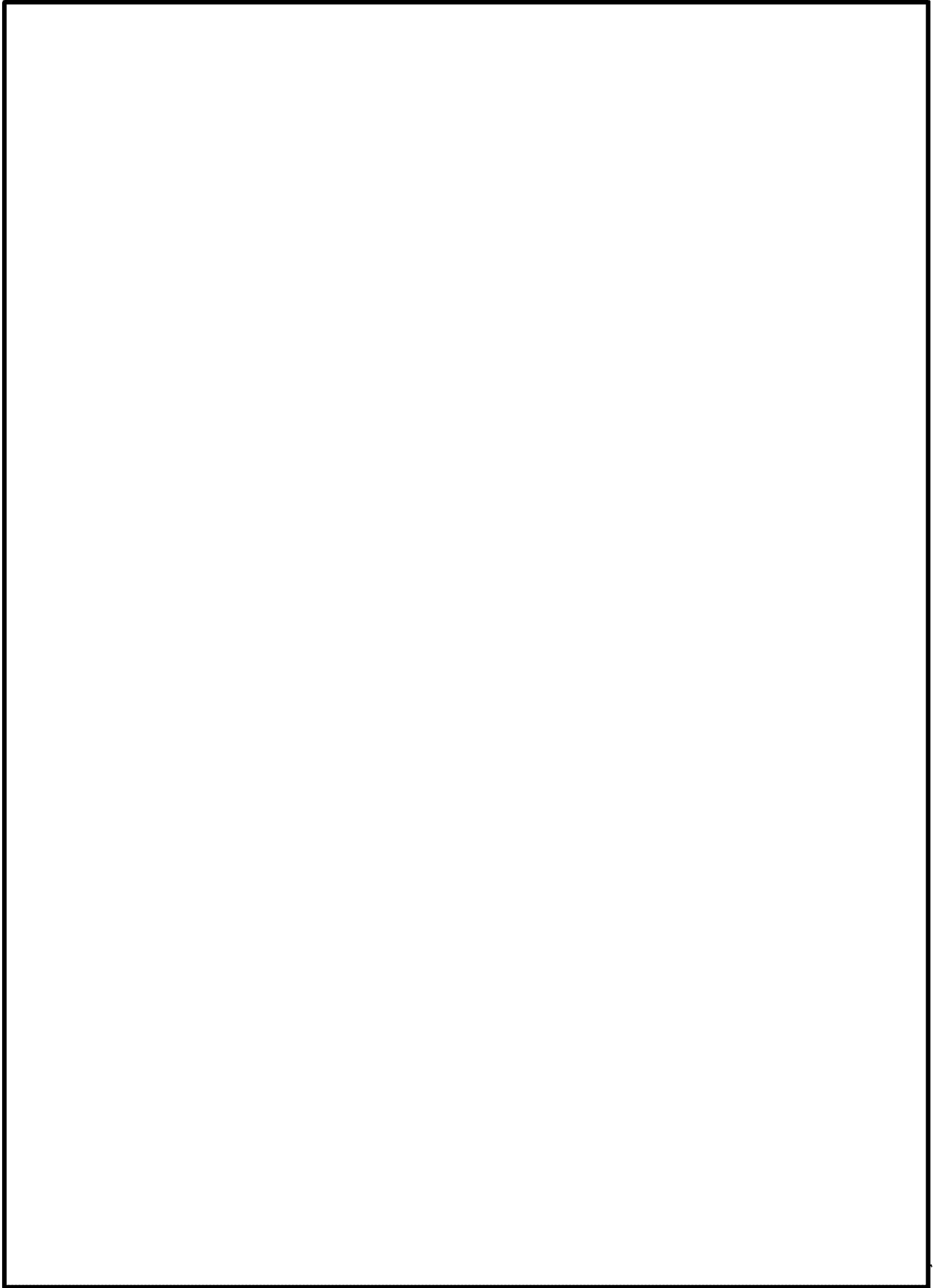


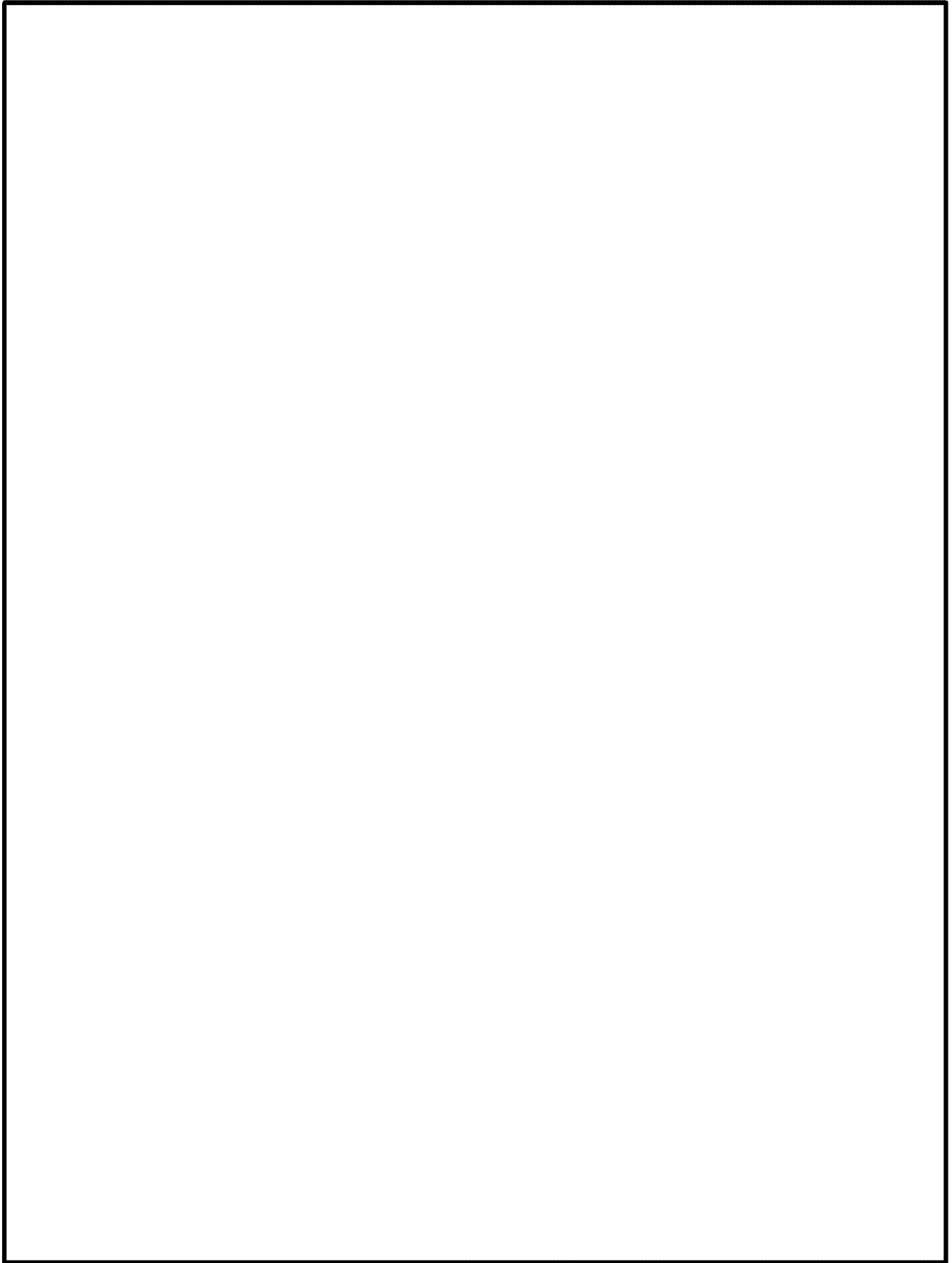


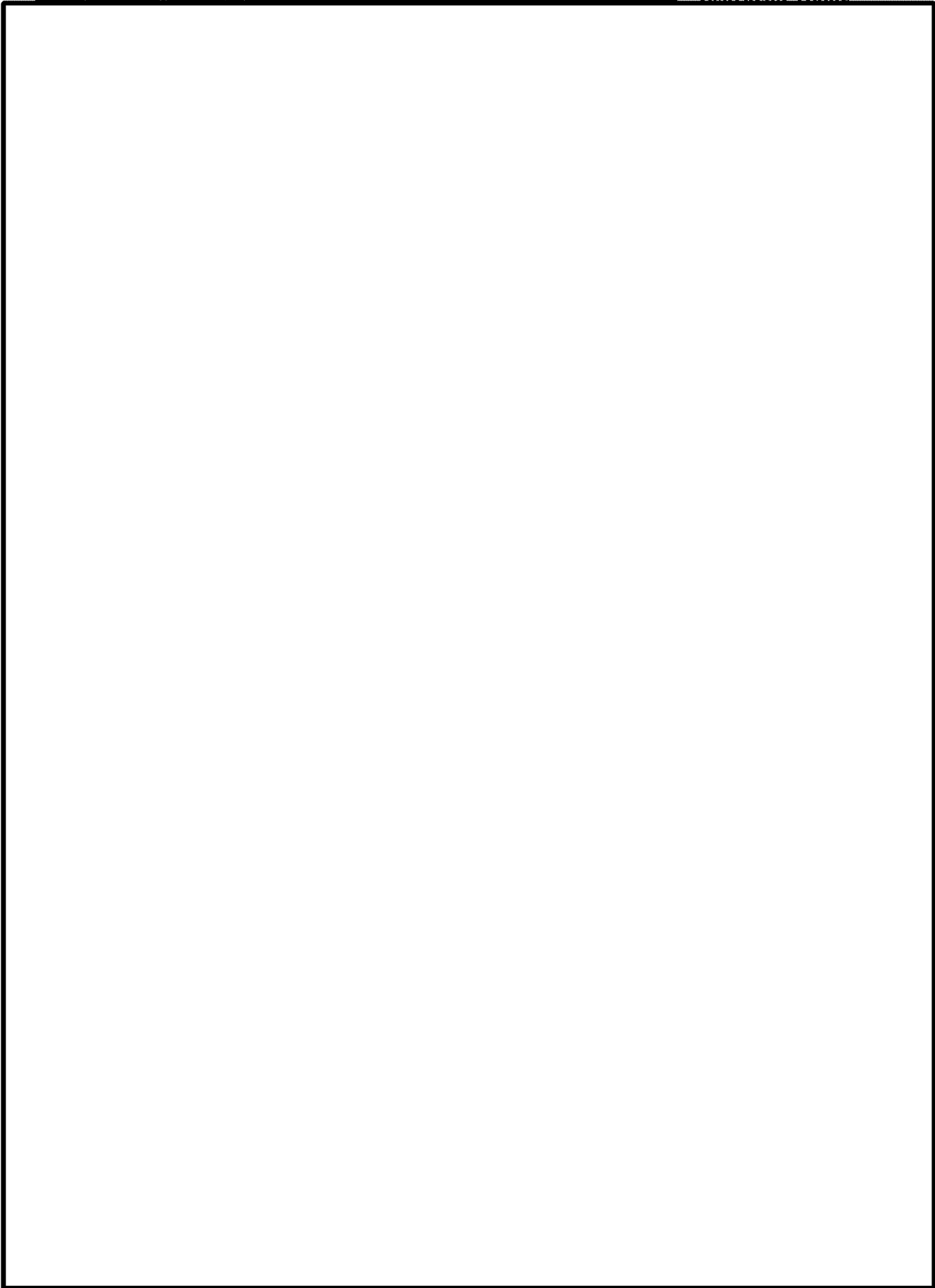


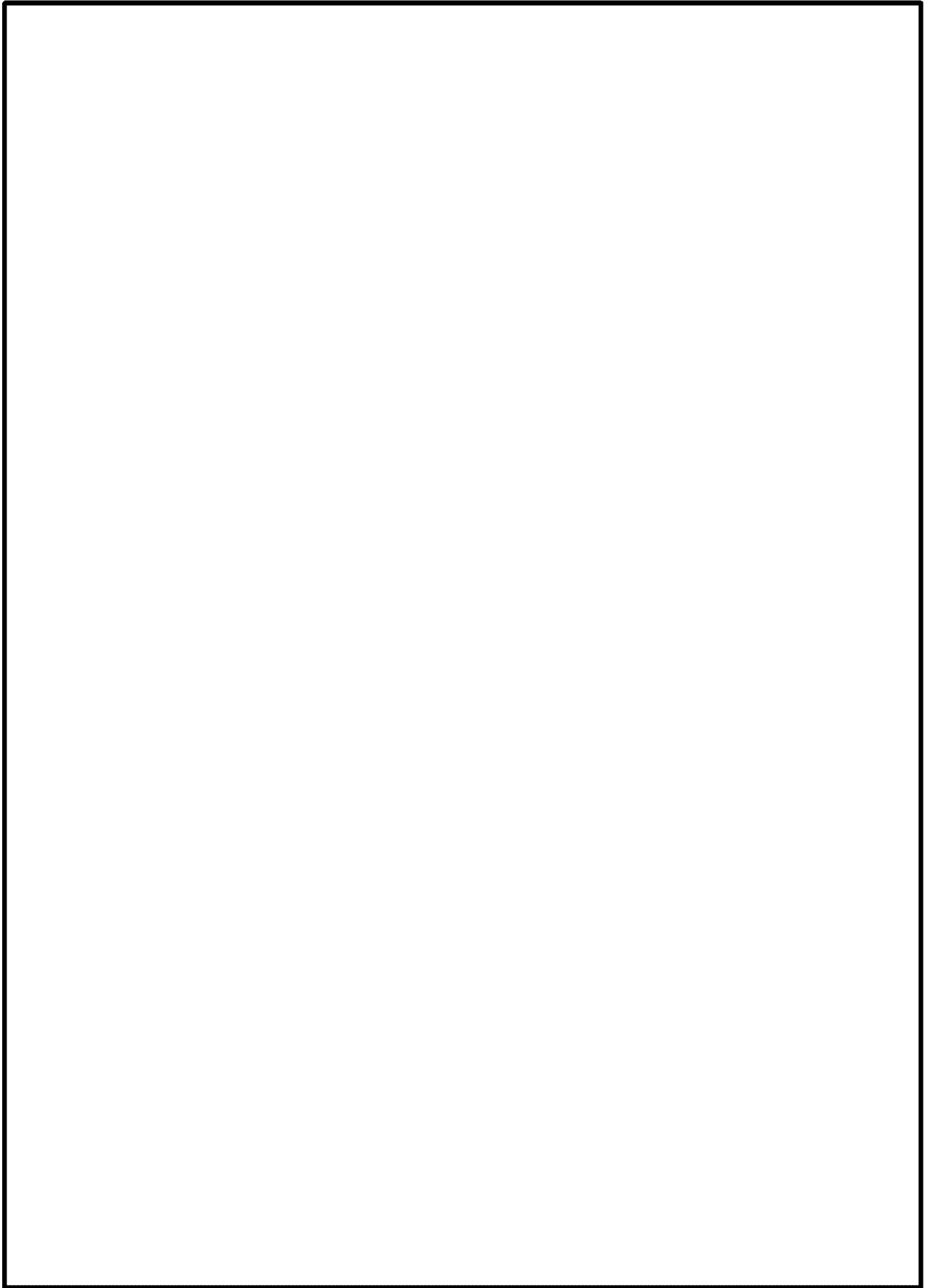




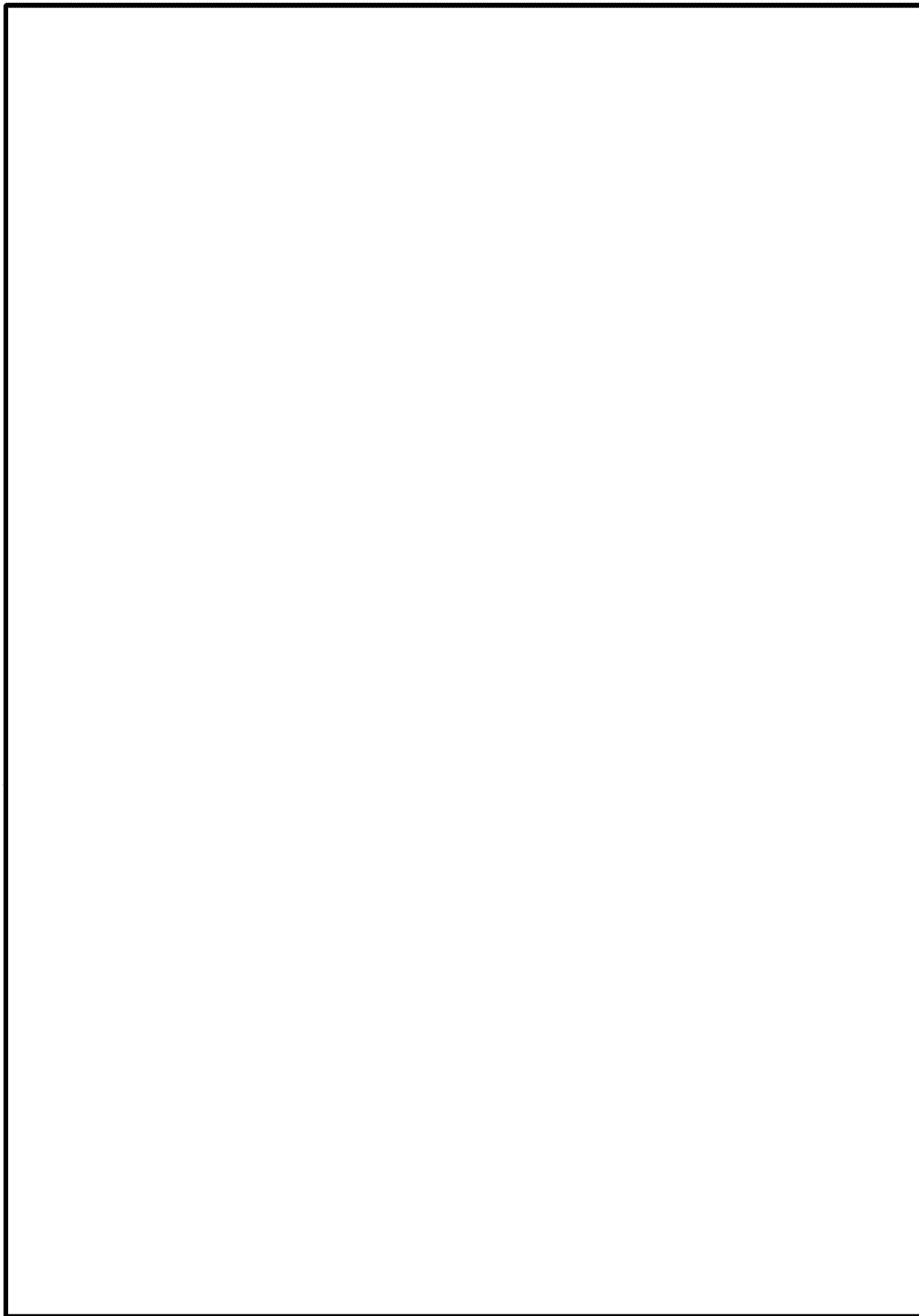


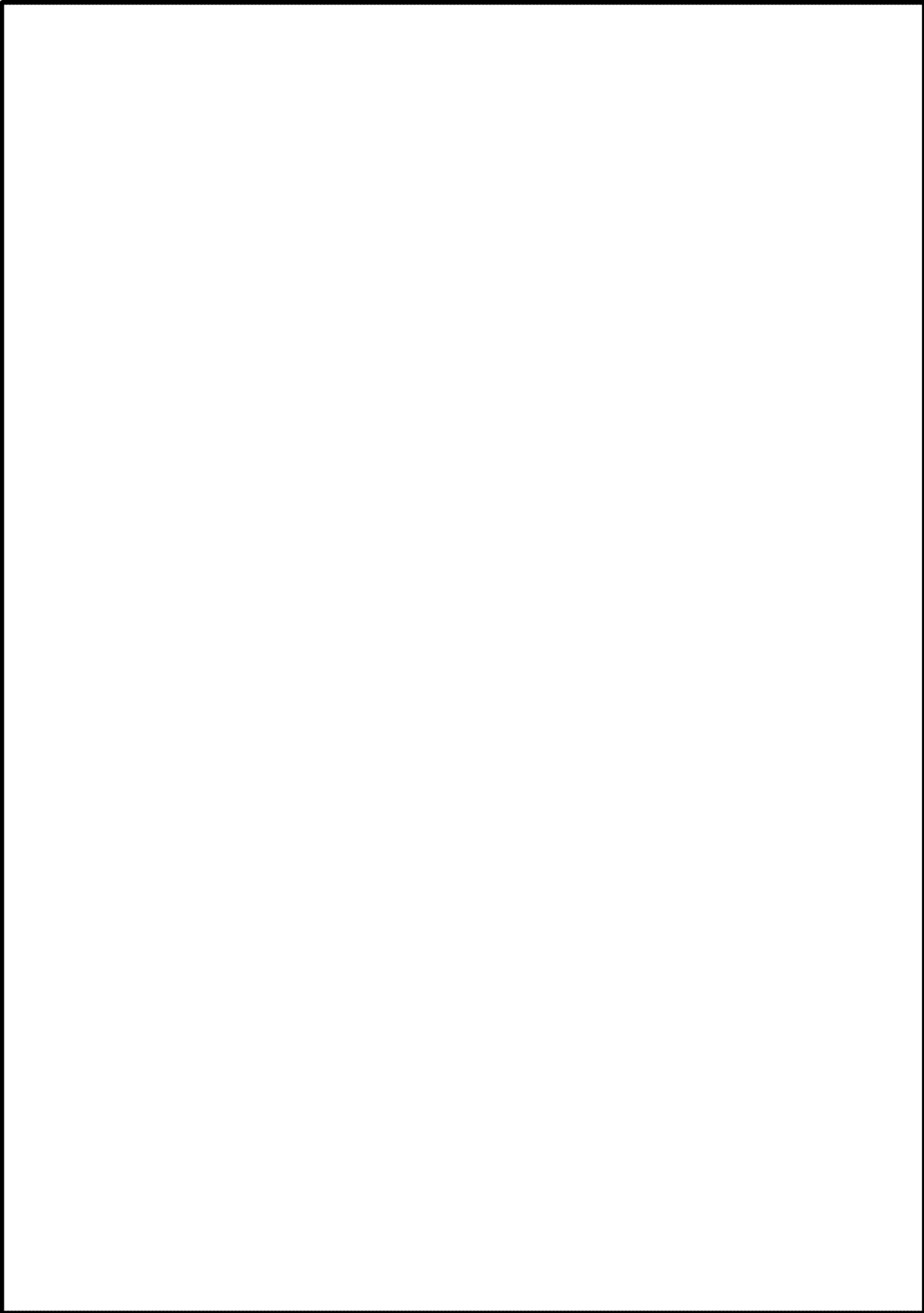


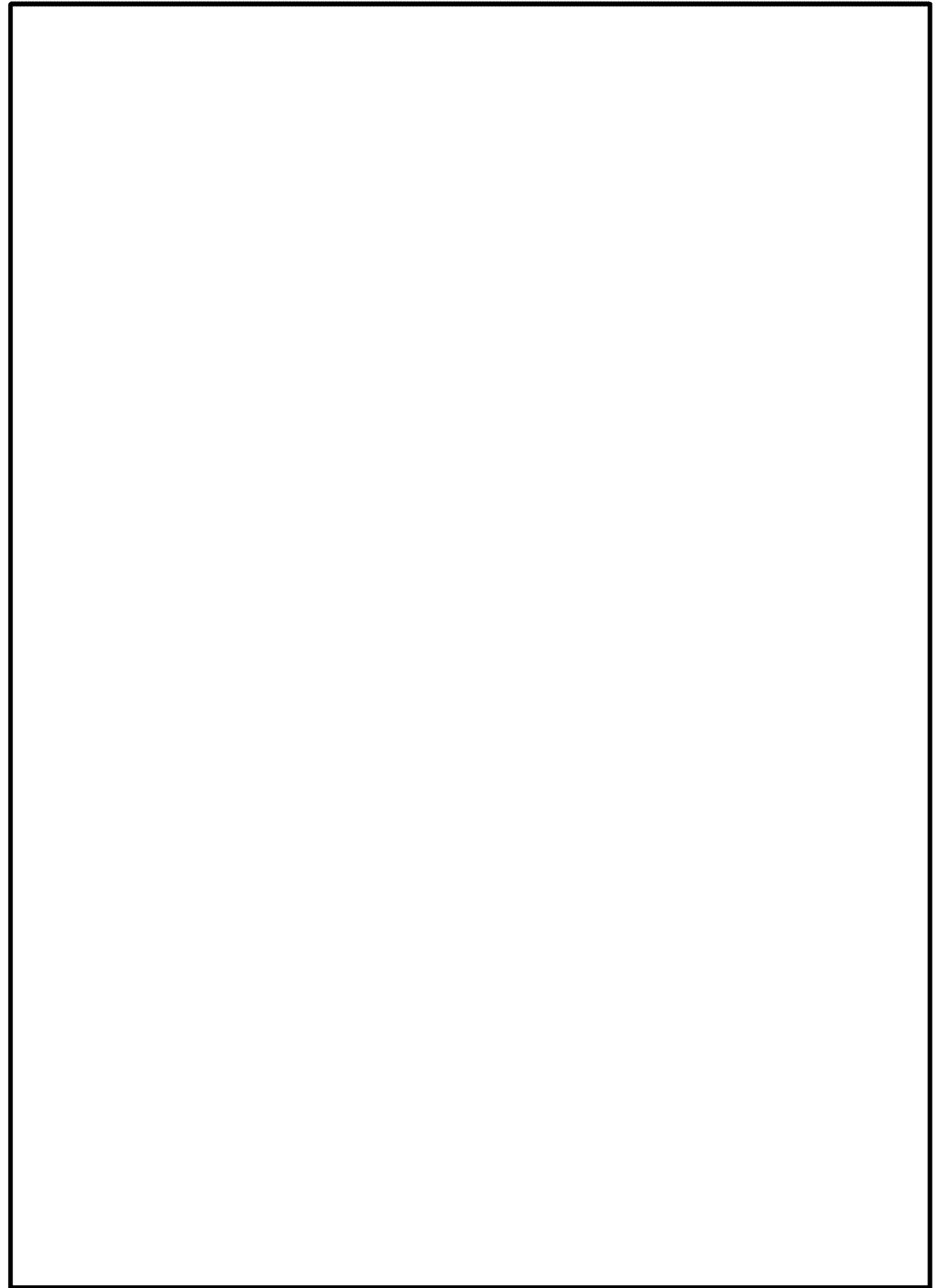


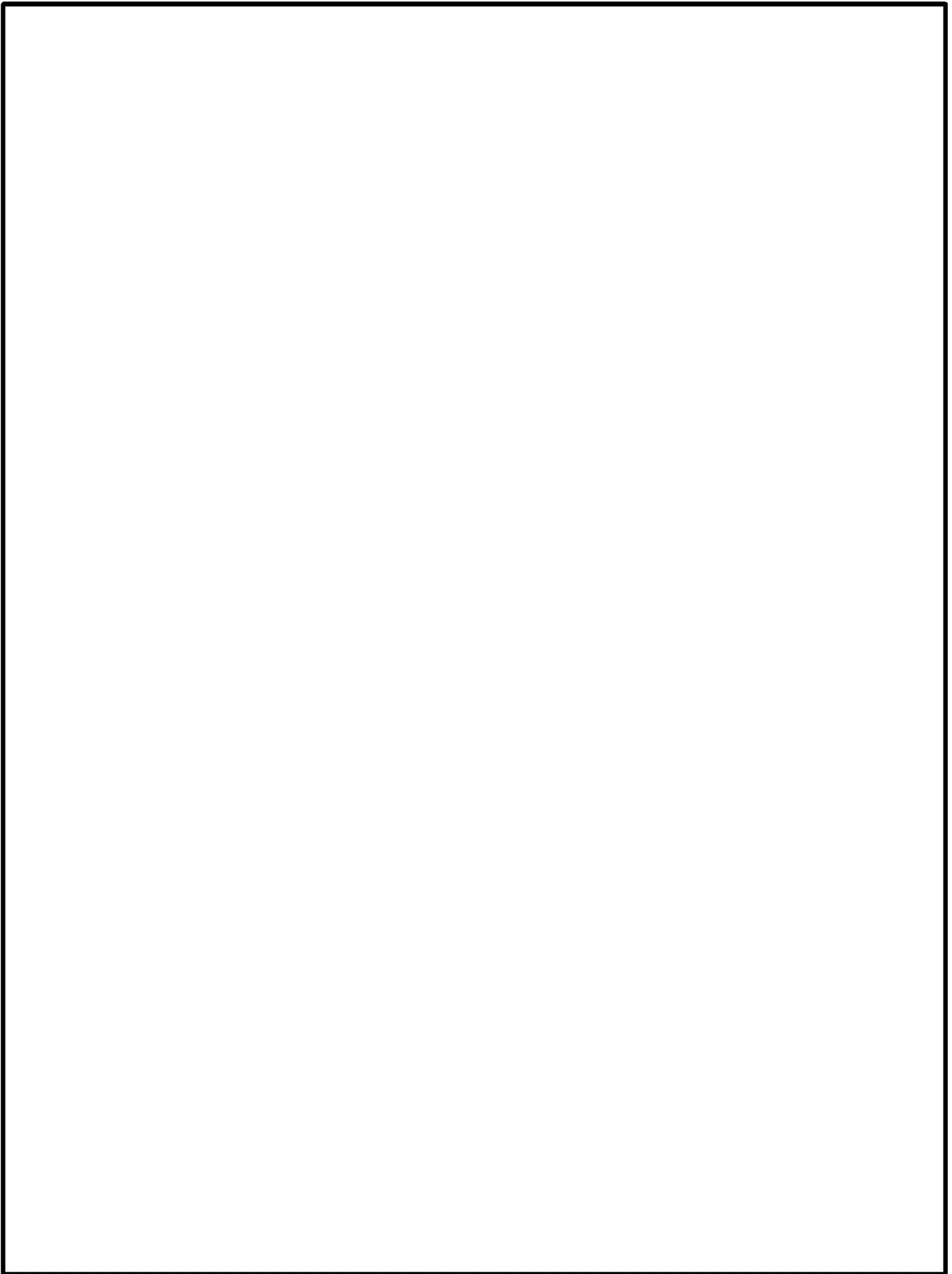


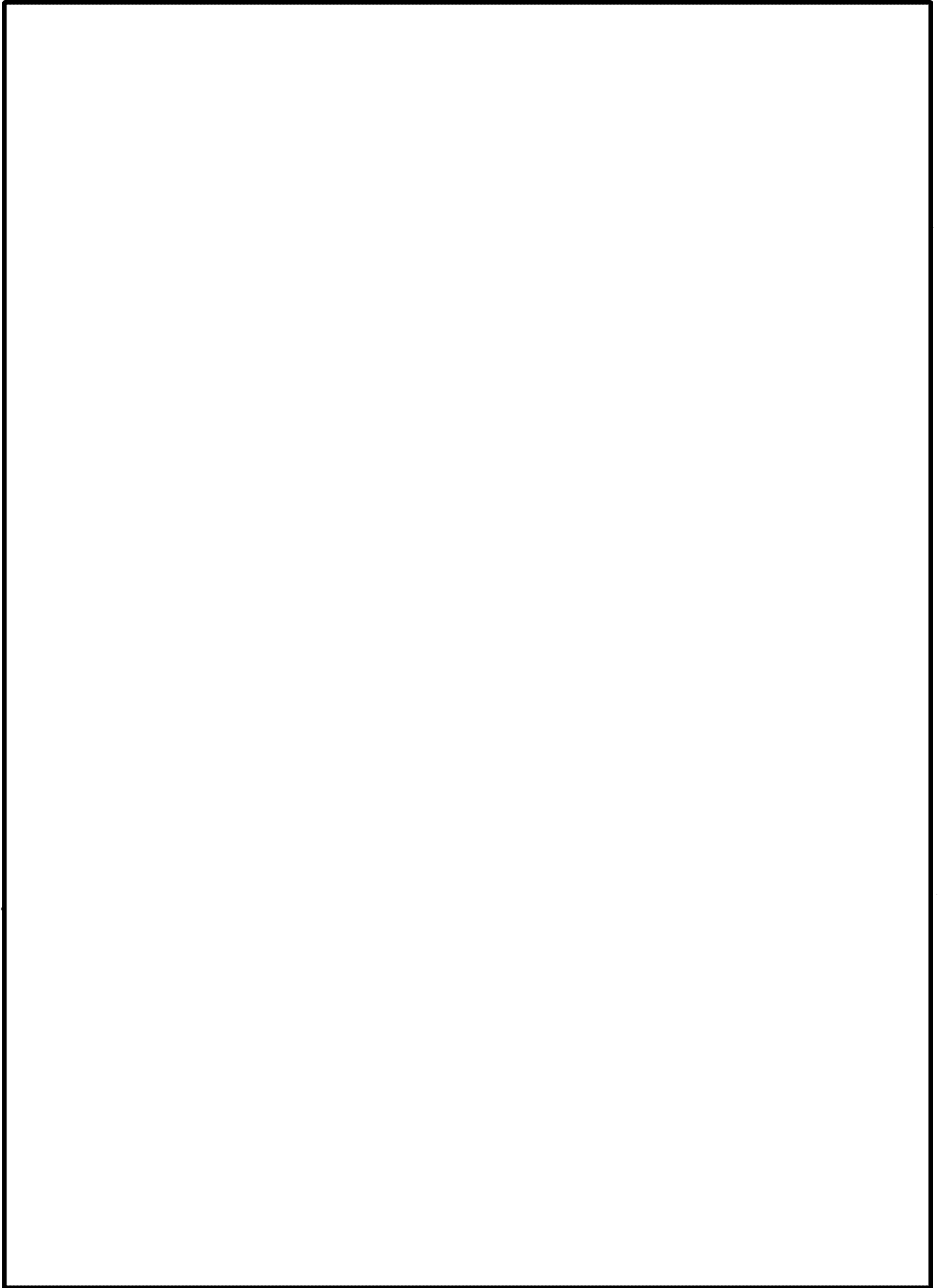


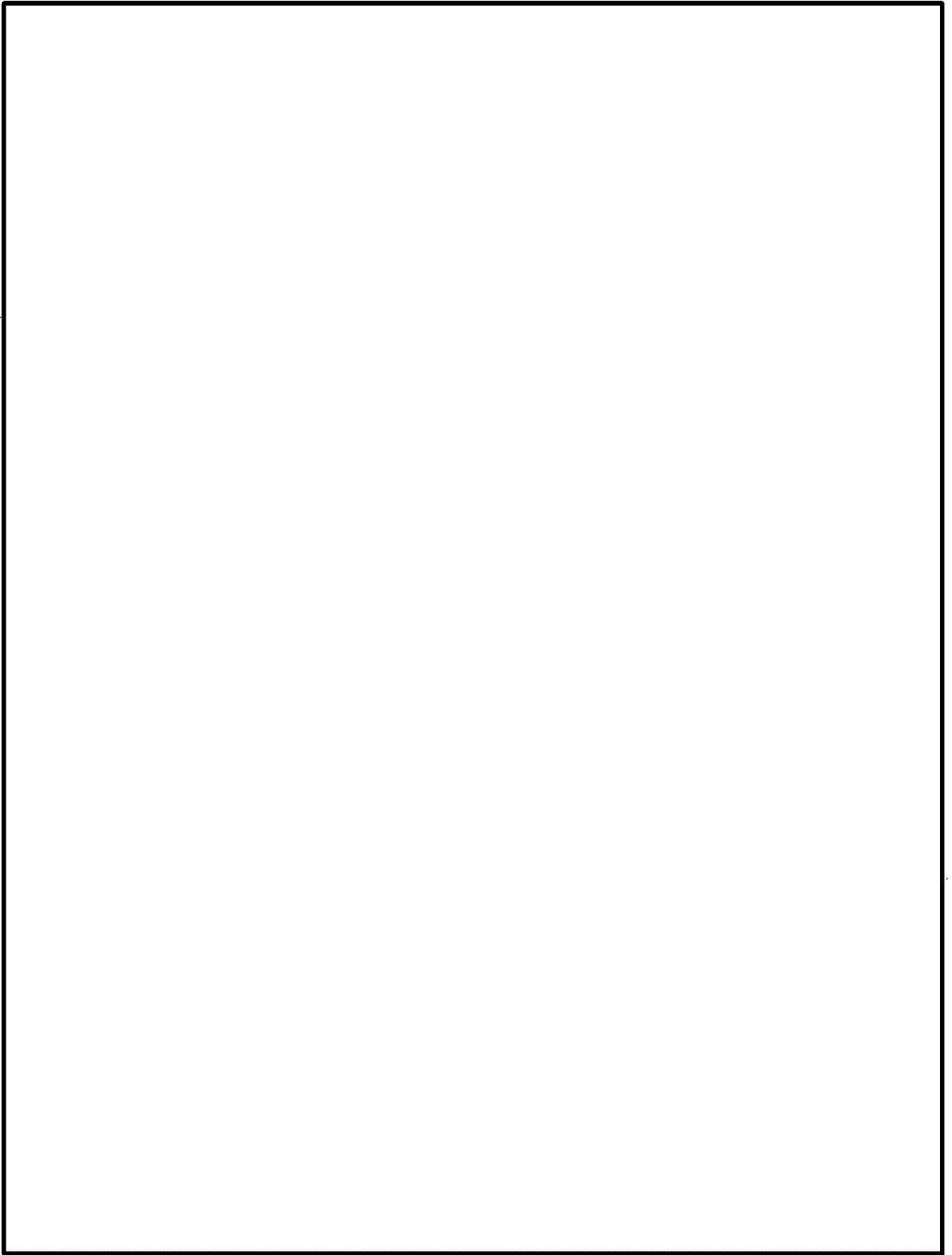


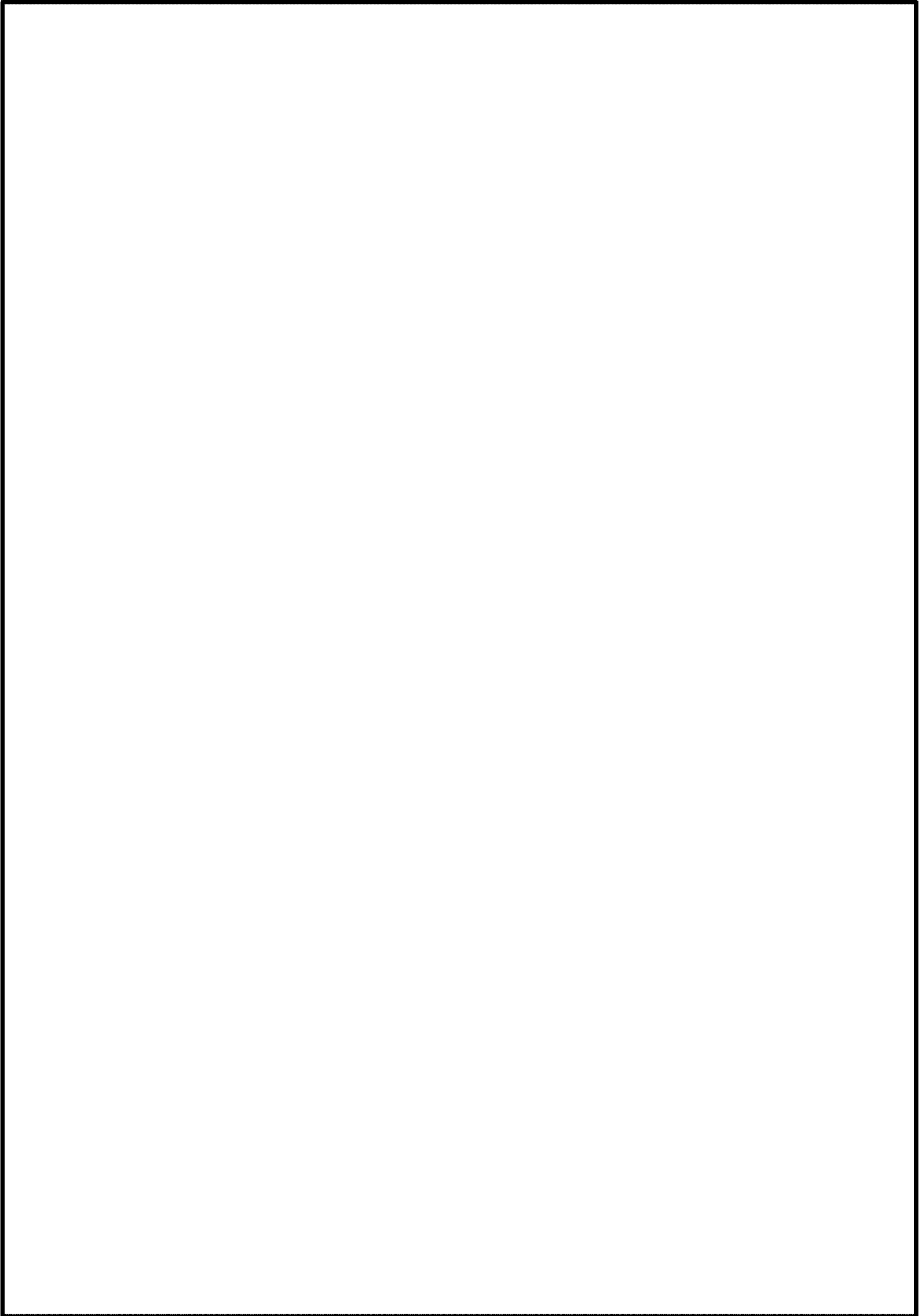


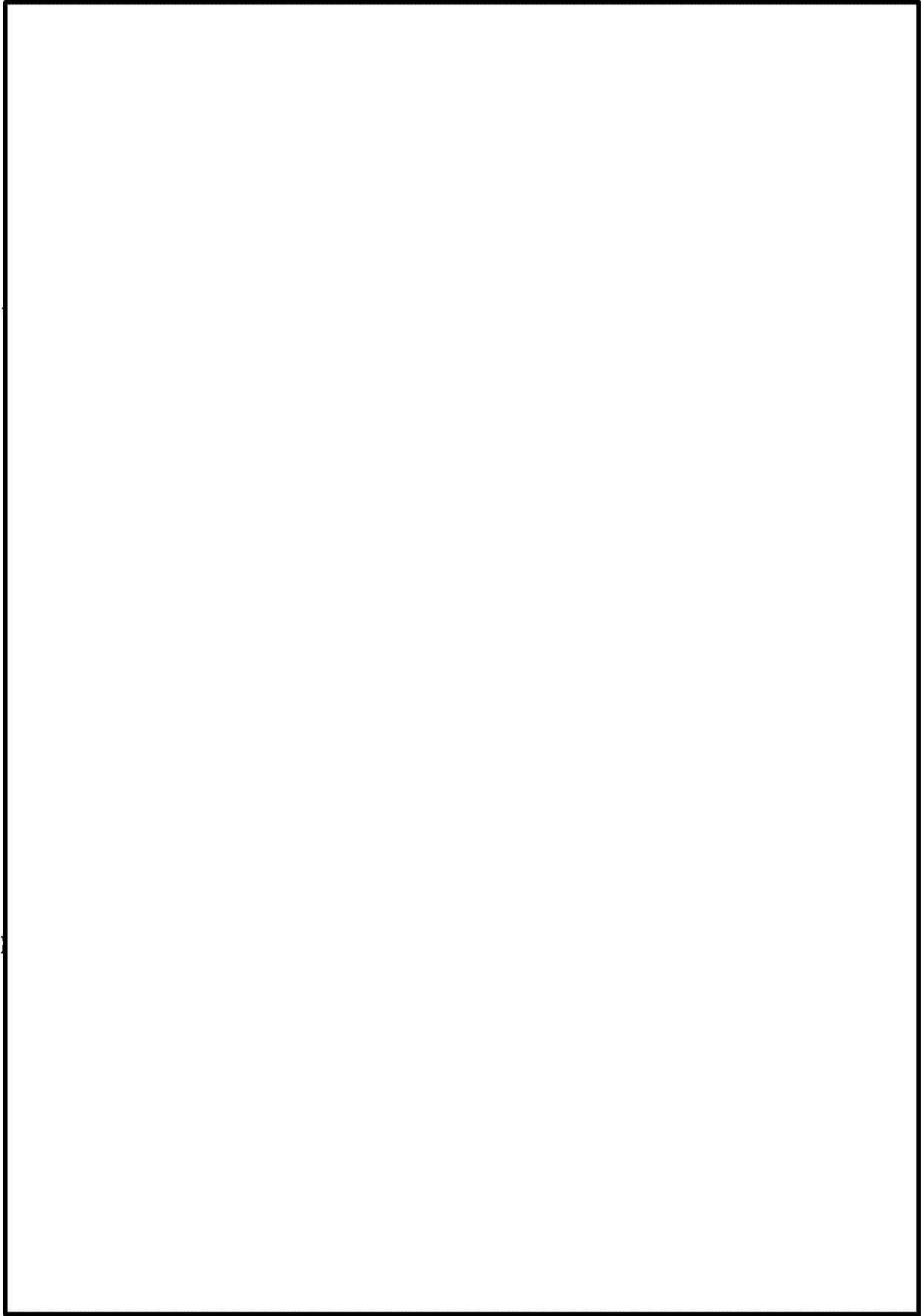




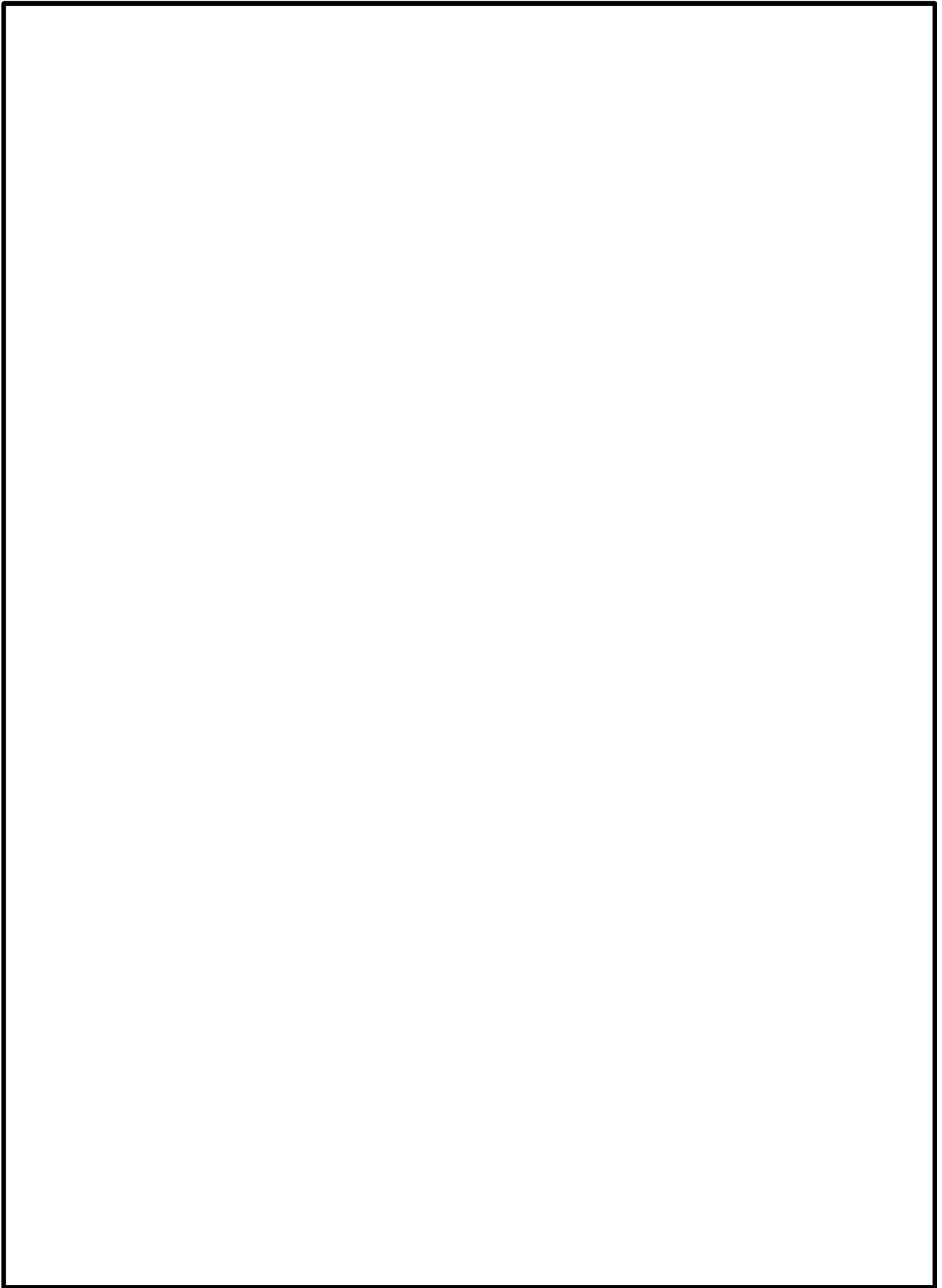


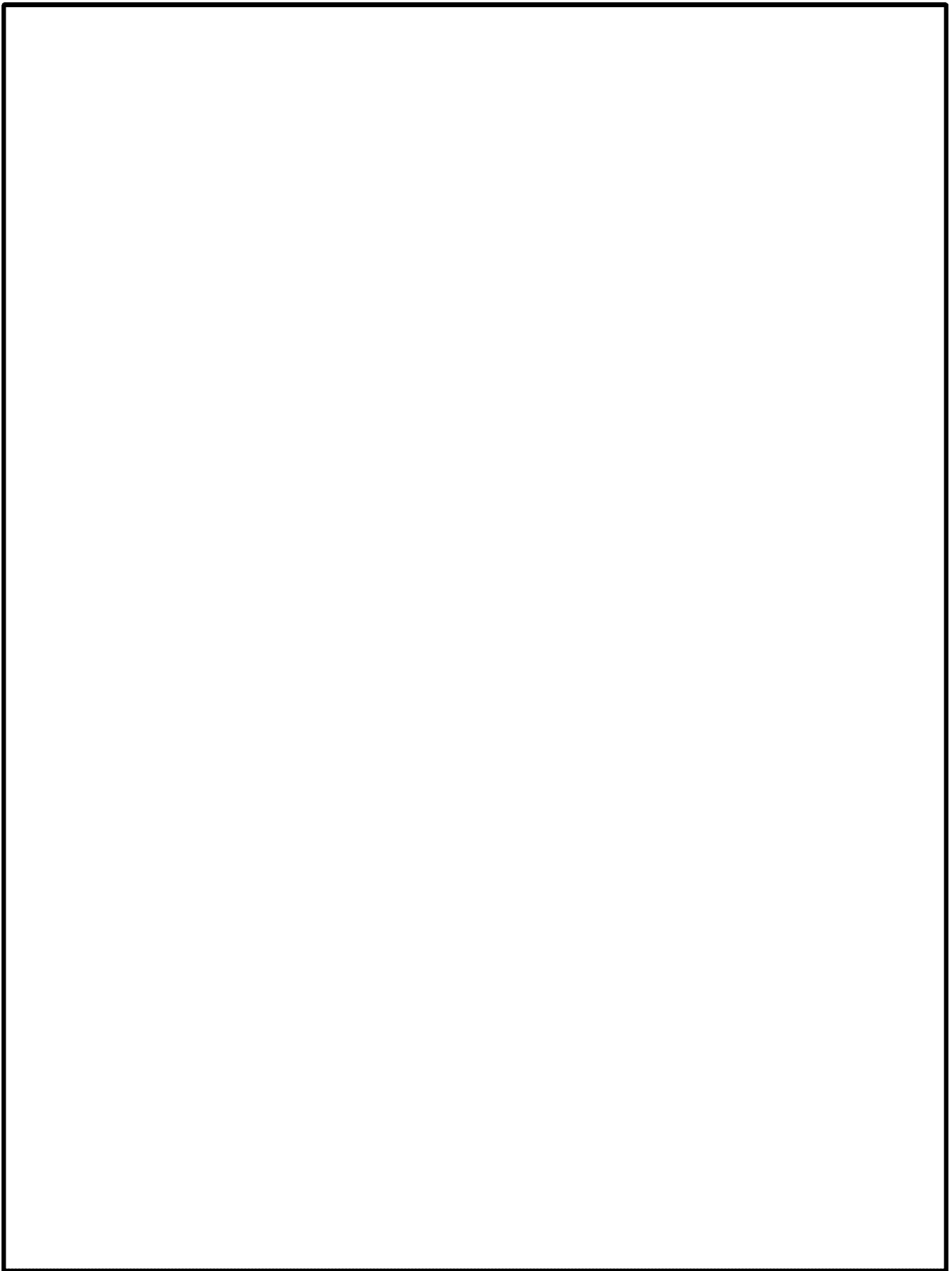


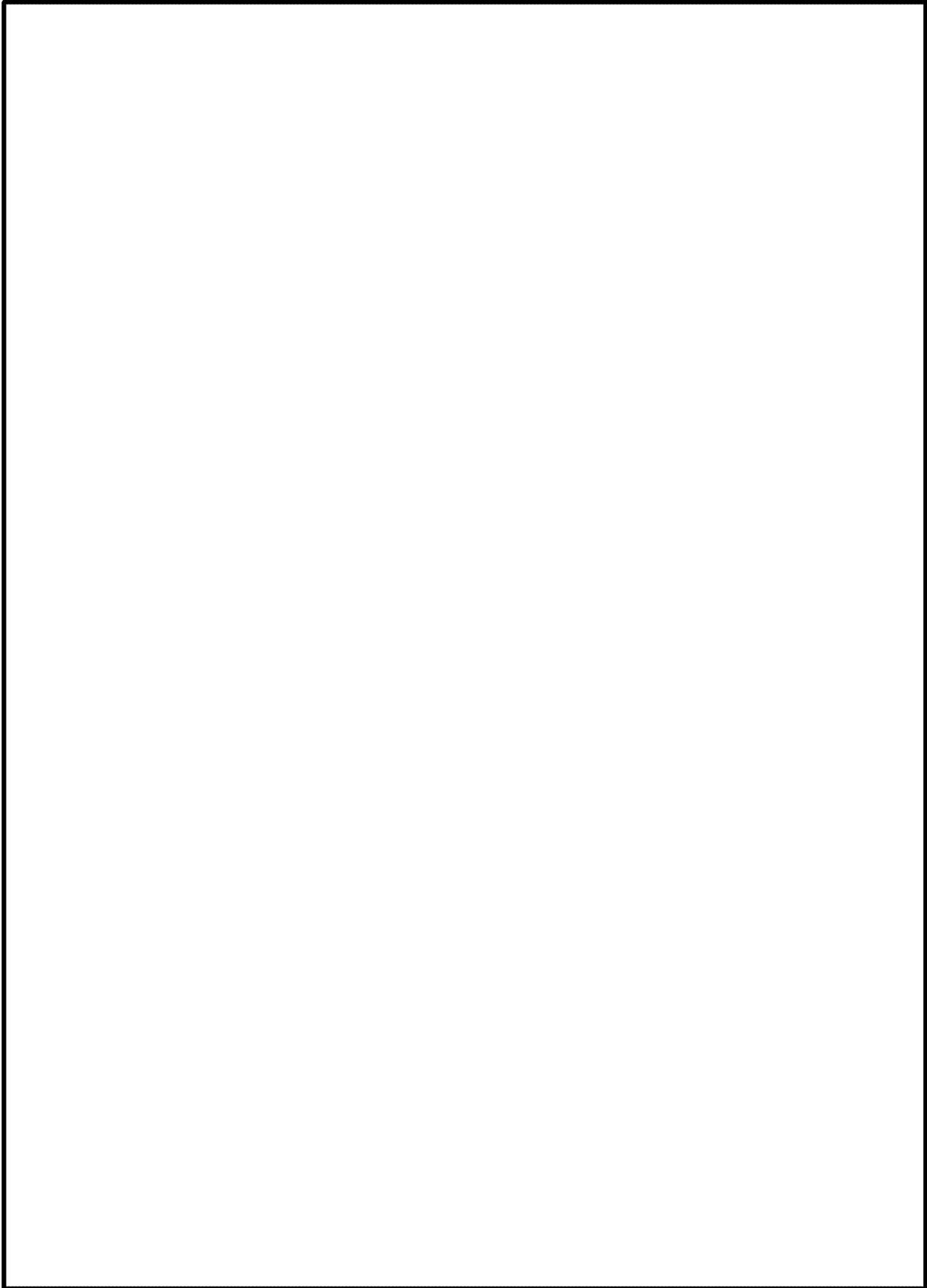


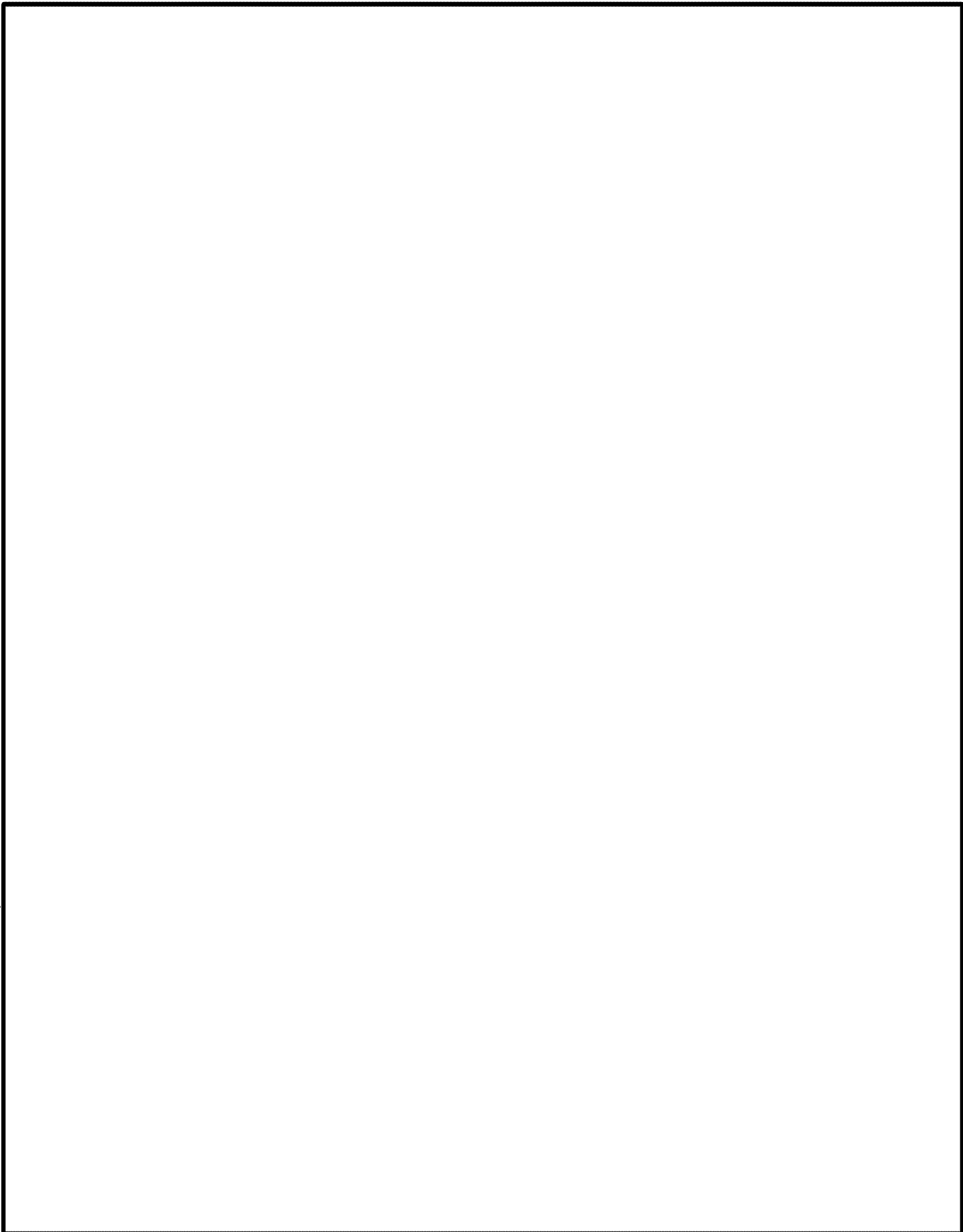


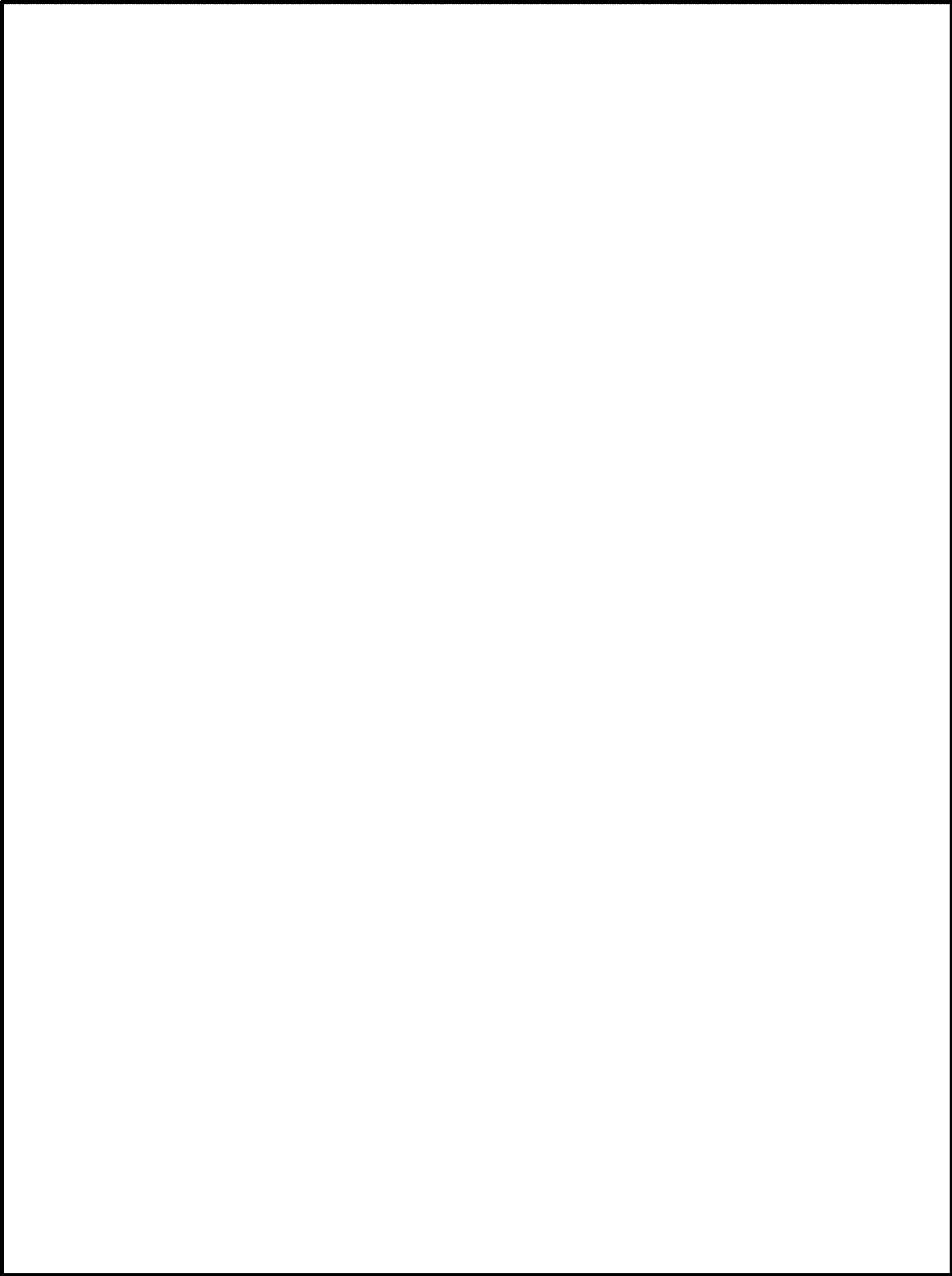


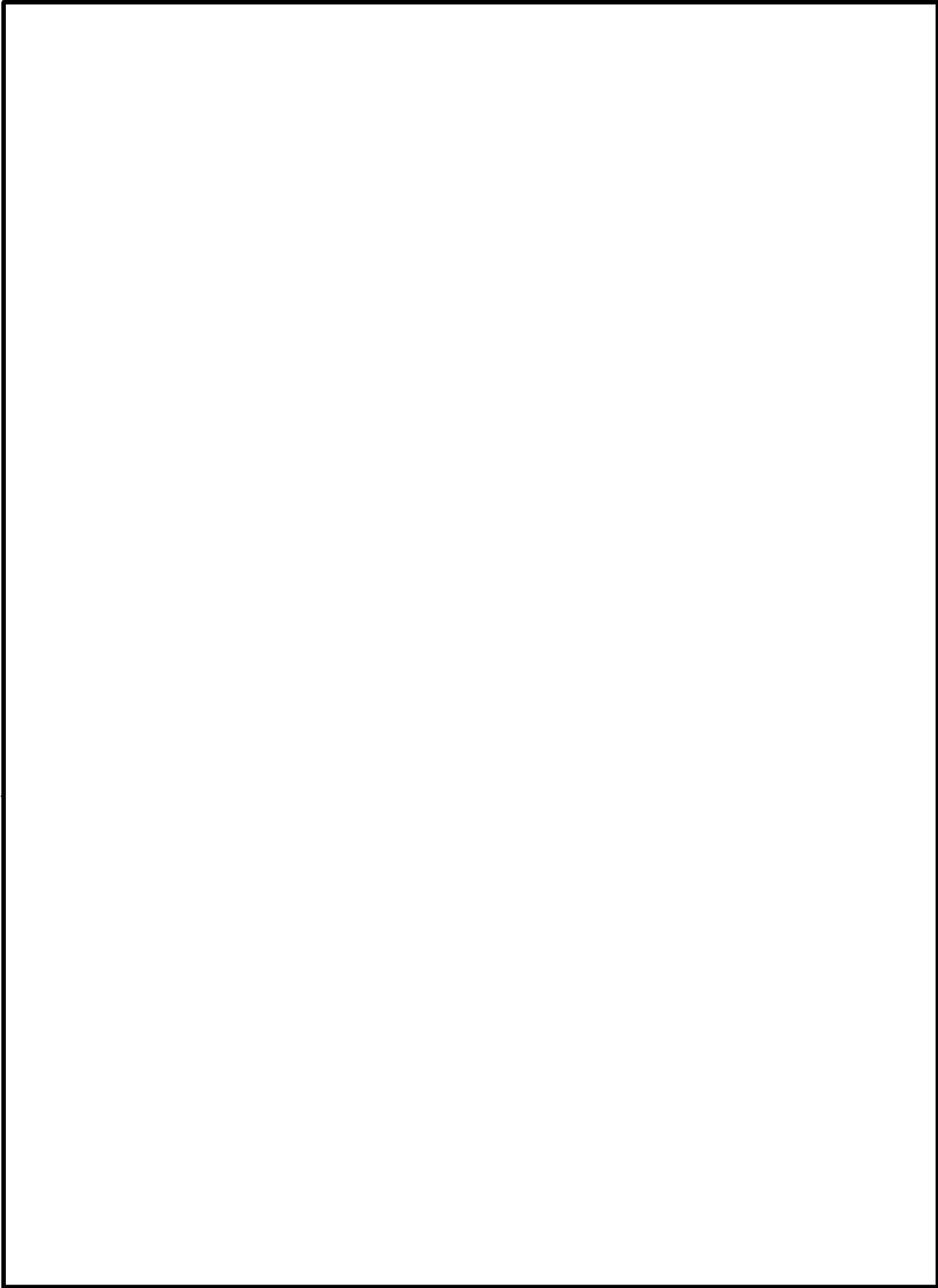


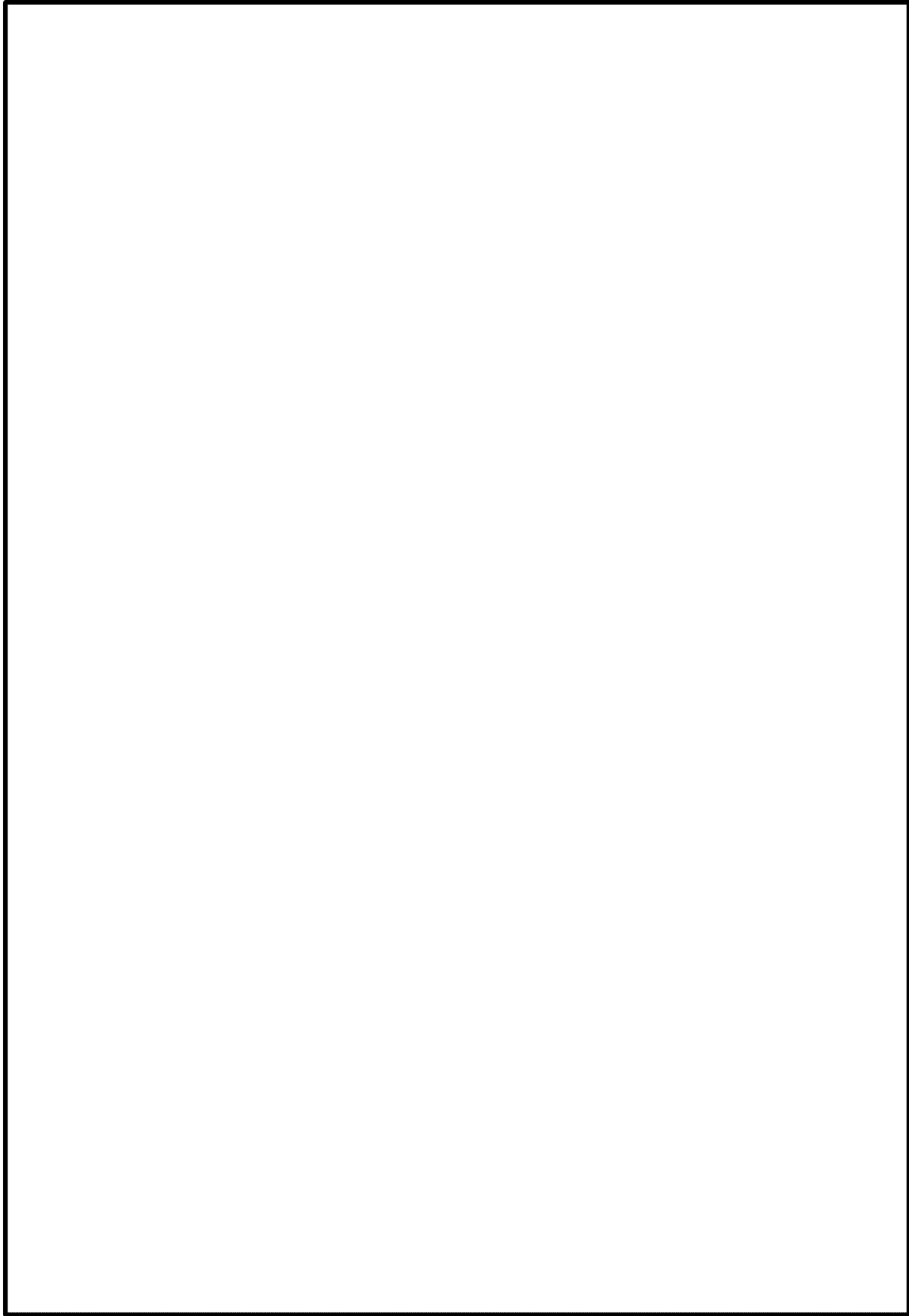


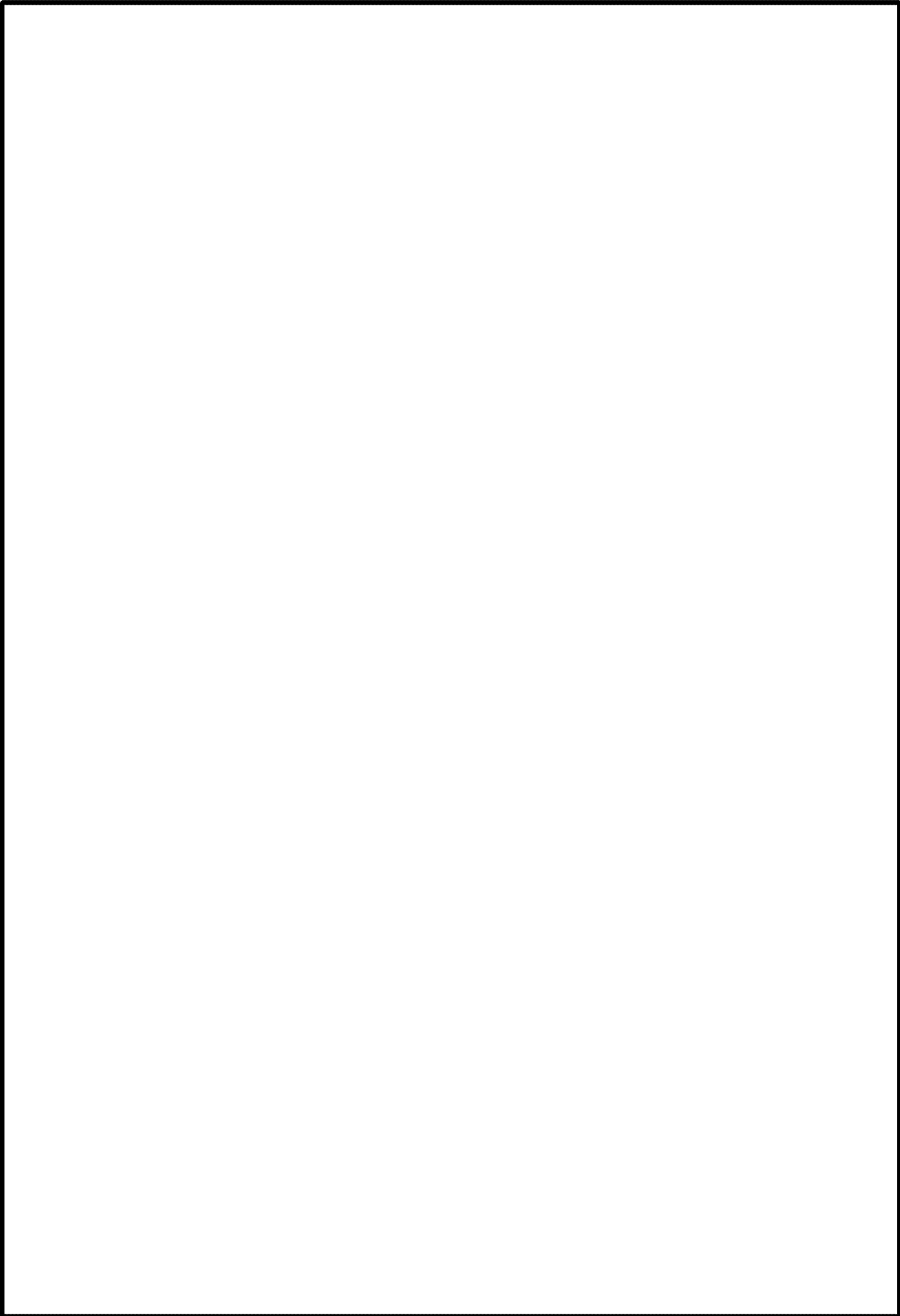




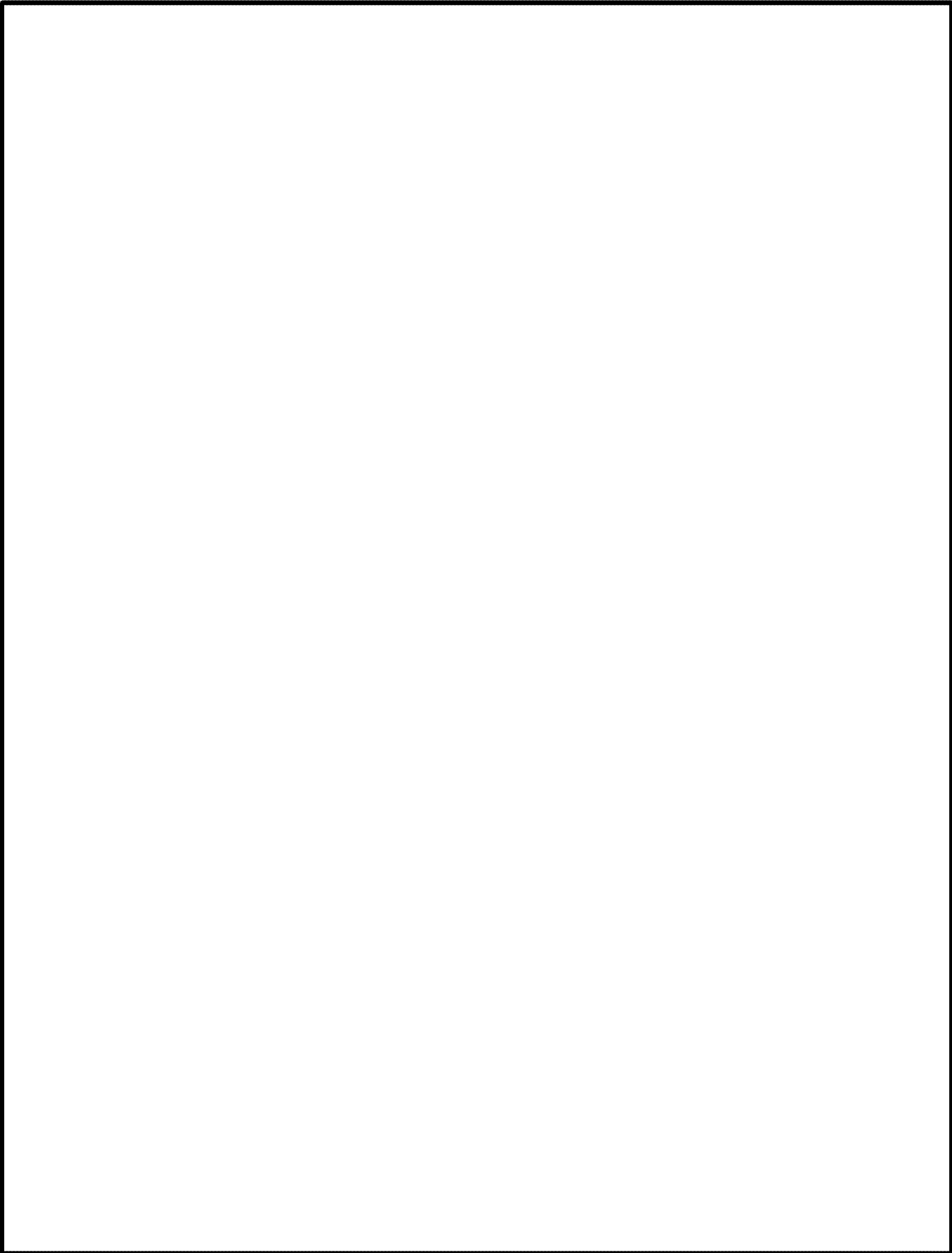




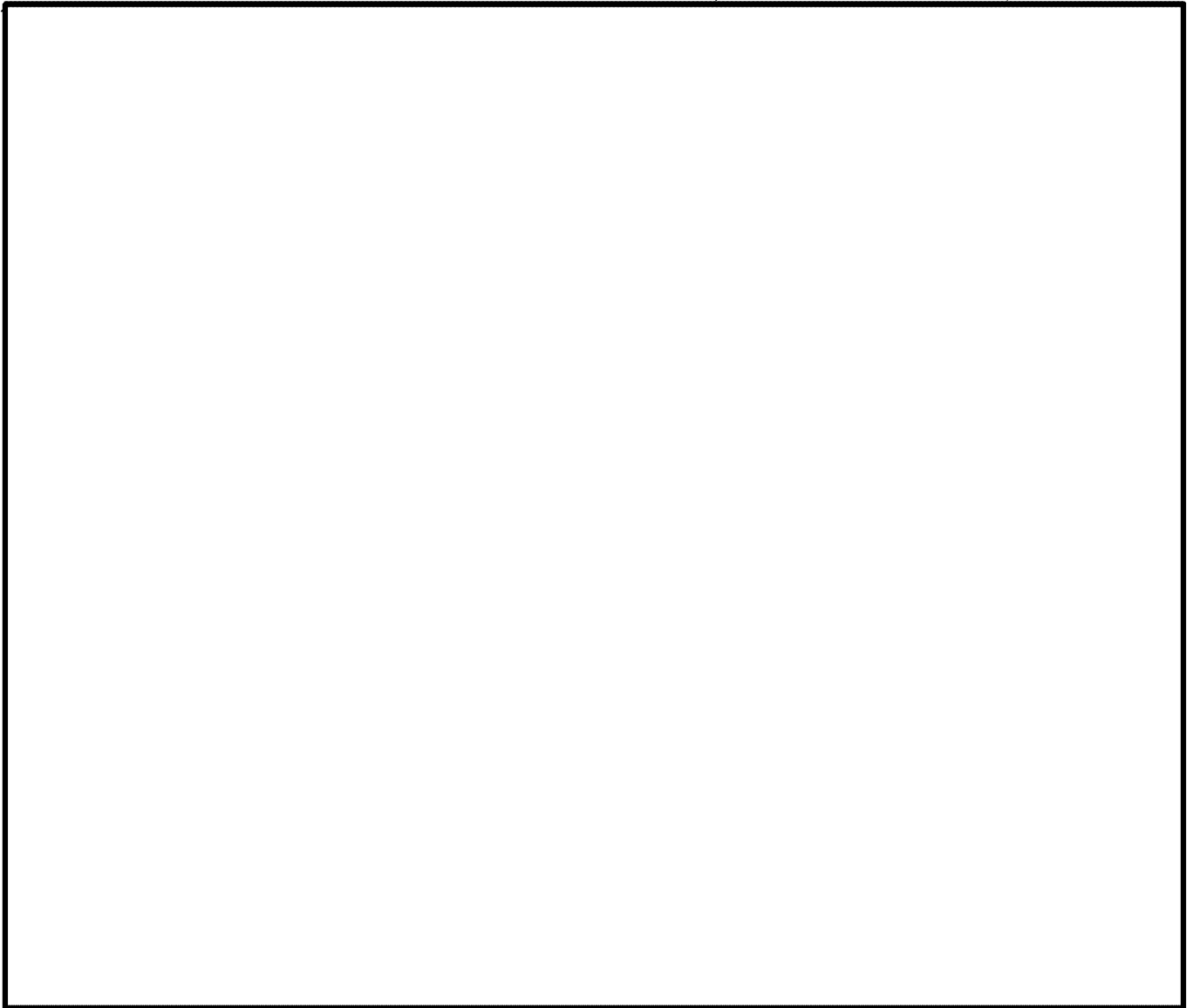
















# U.S. Citizenship and Immigration Services

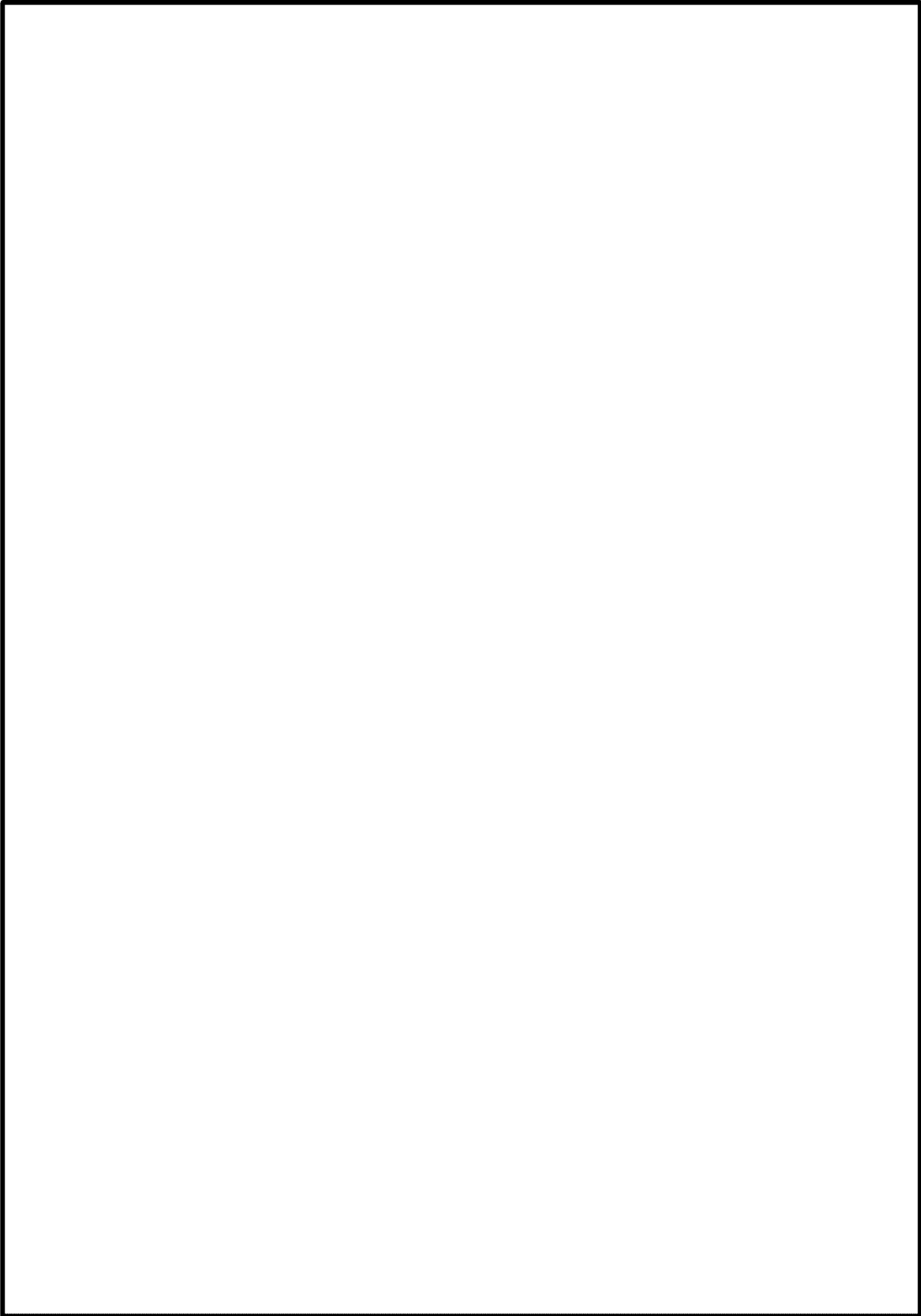
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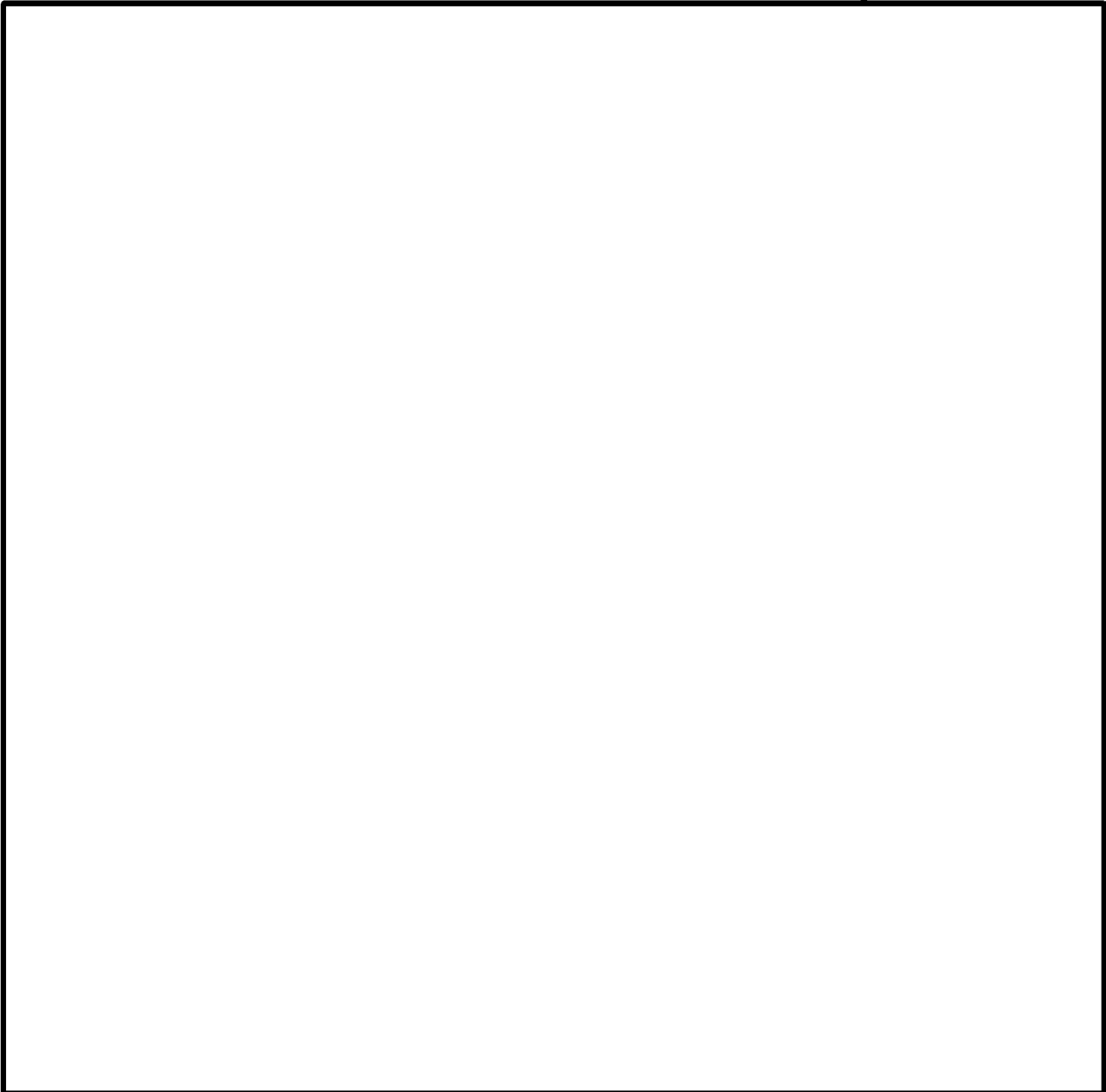
### ADJUSTMENT OF STATUS

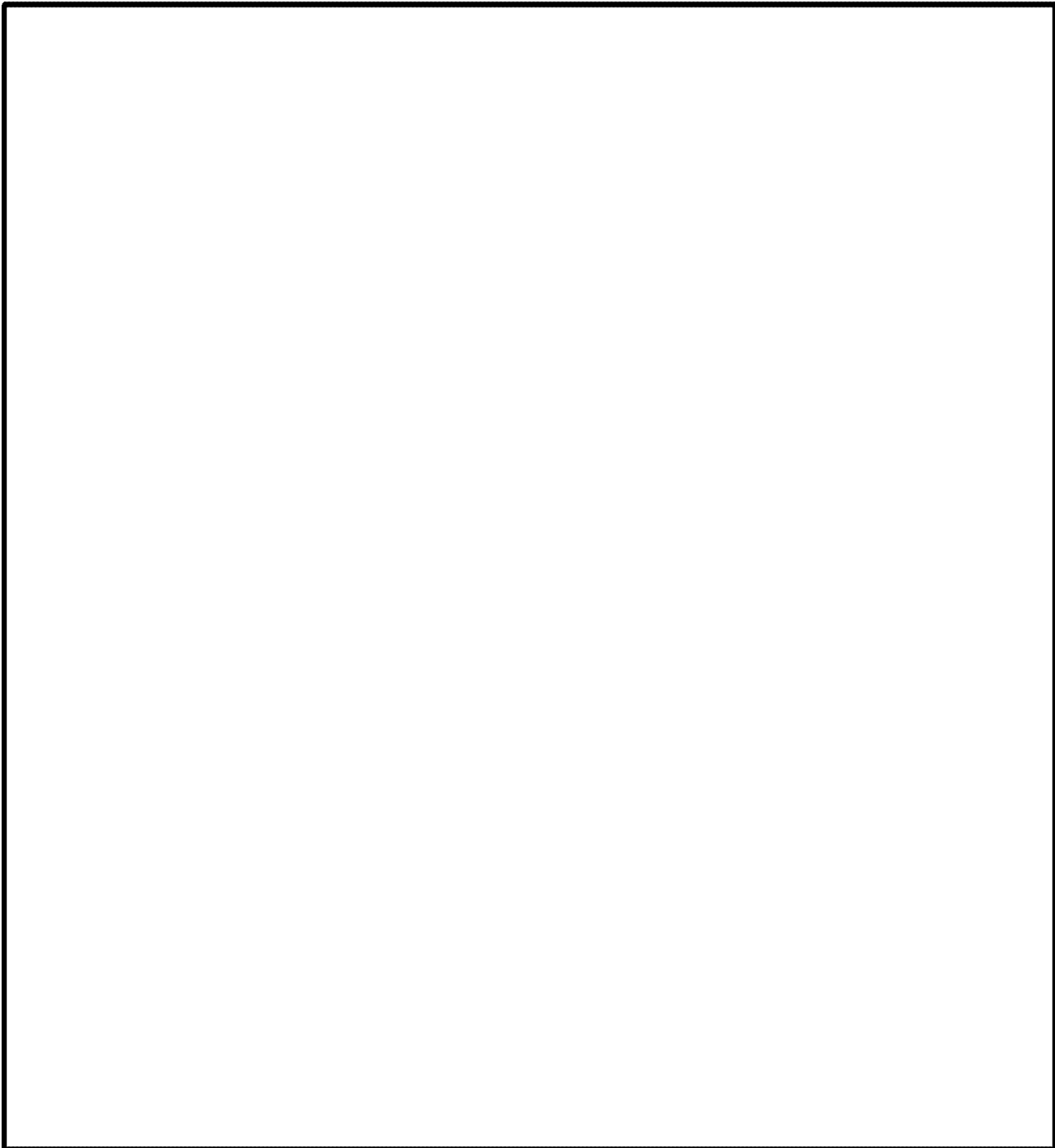
### COURSE 220

### PARTICIPANT GUIDE

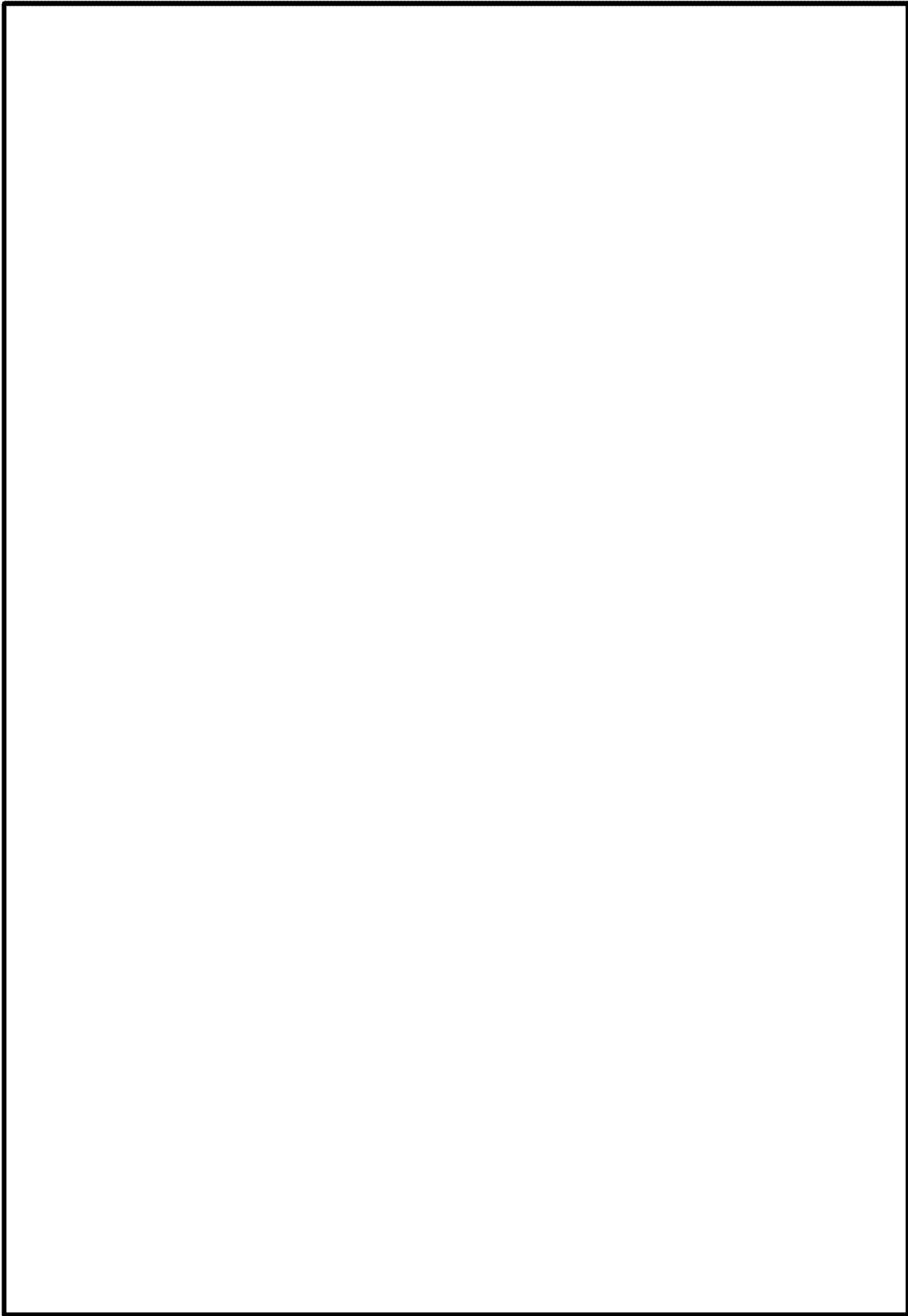
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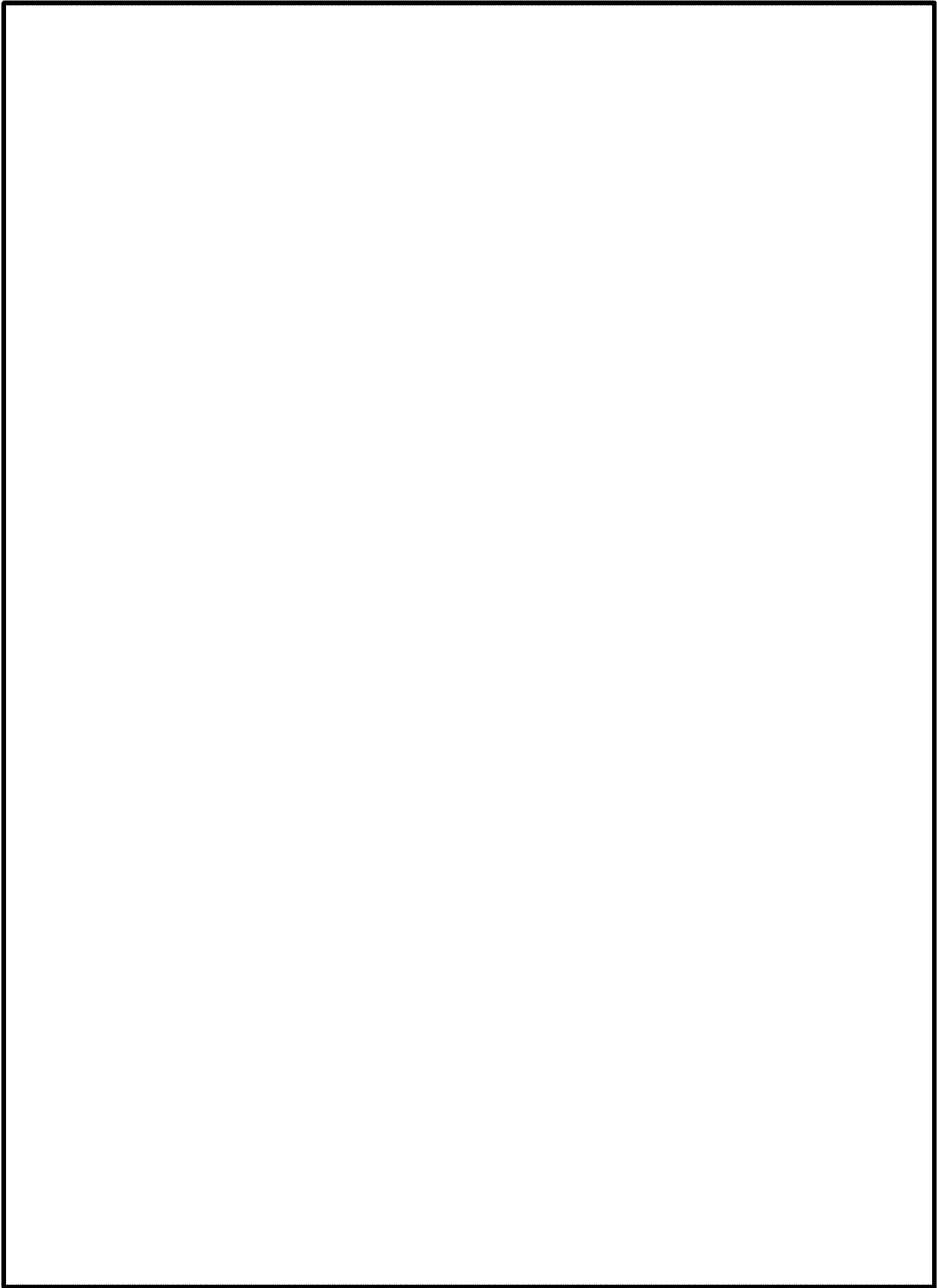


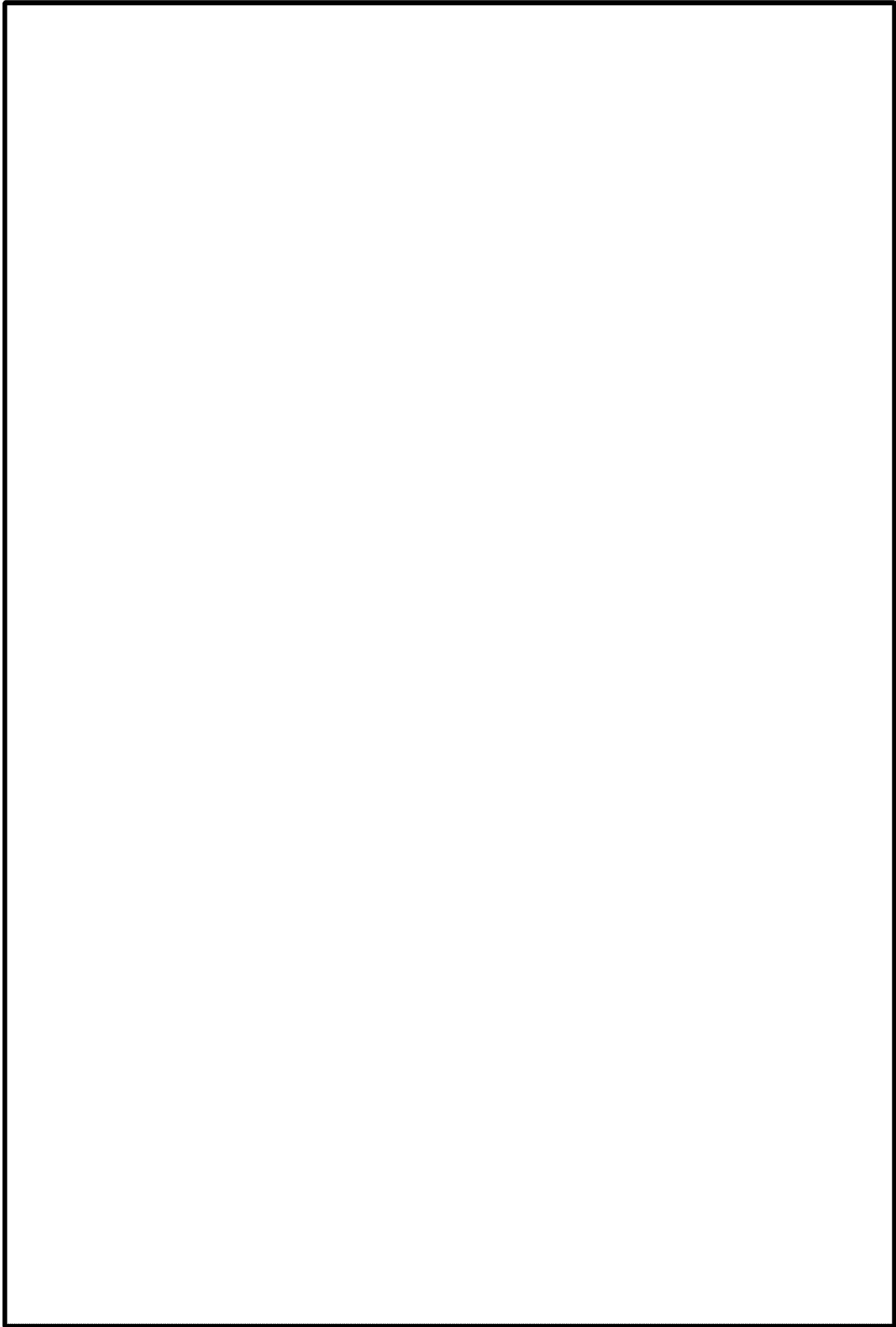


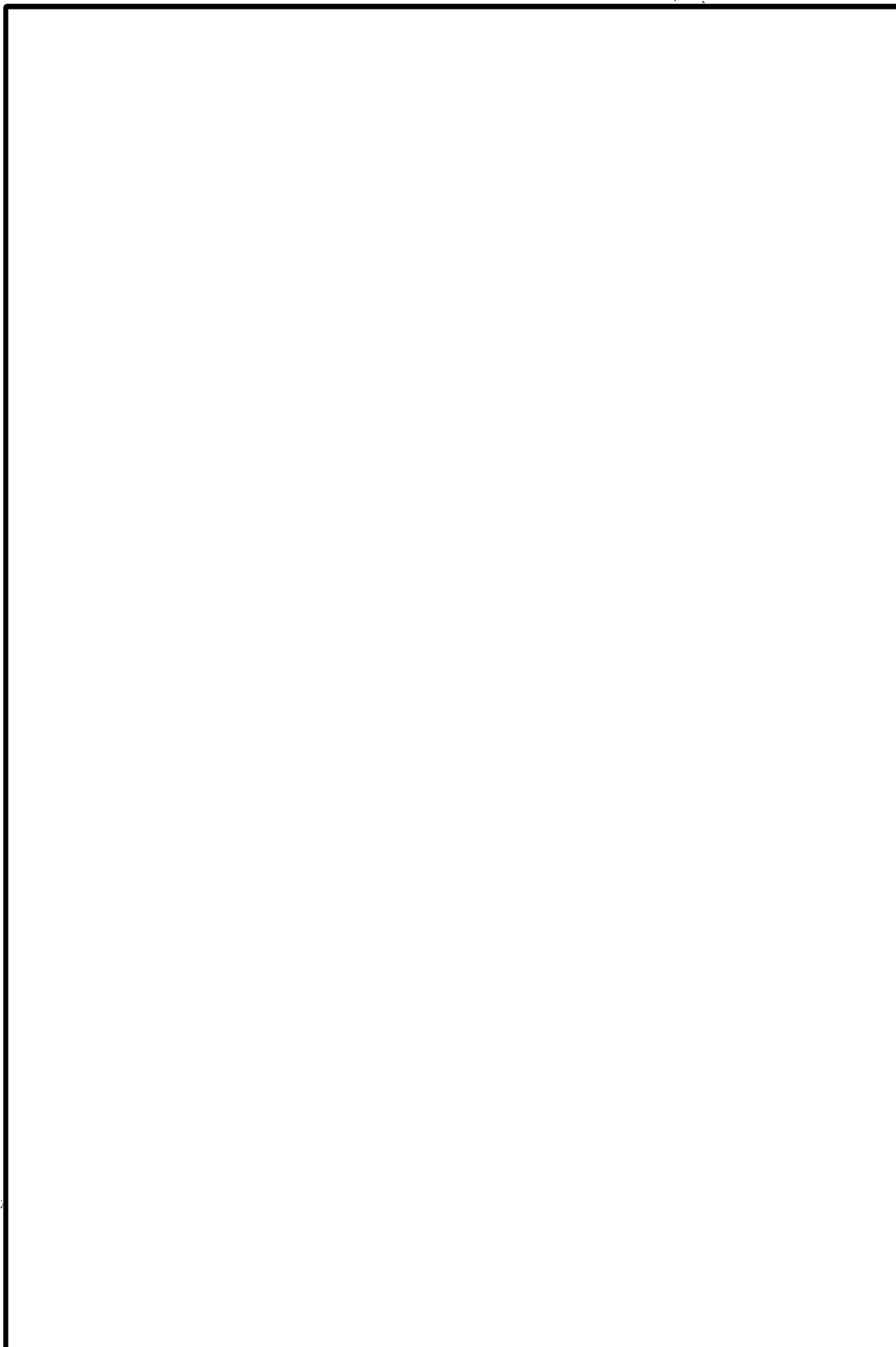


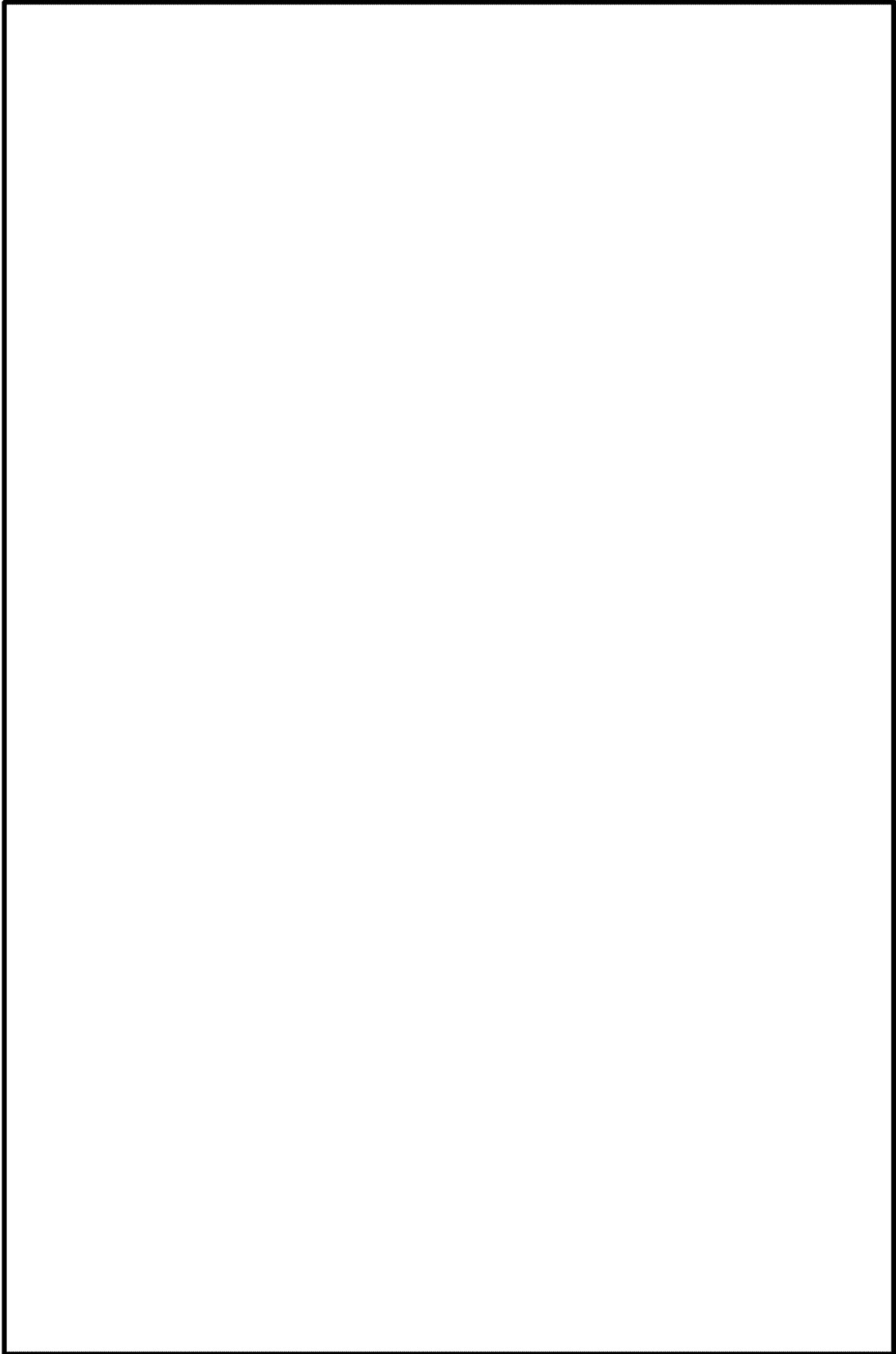


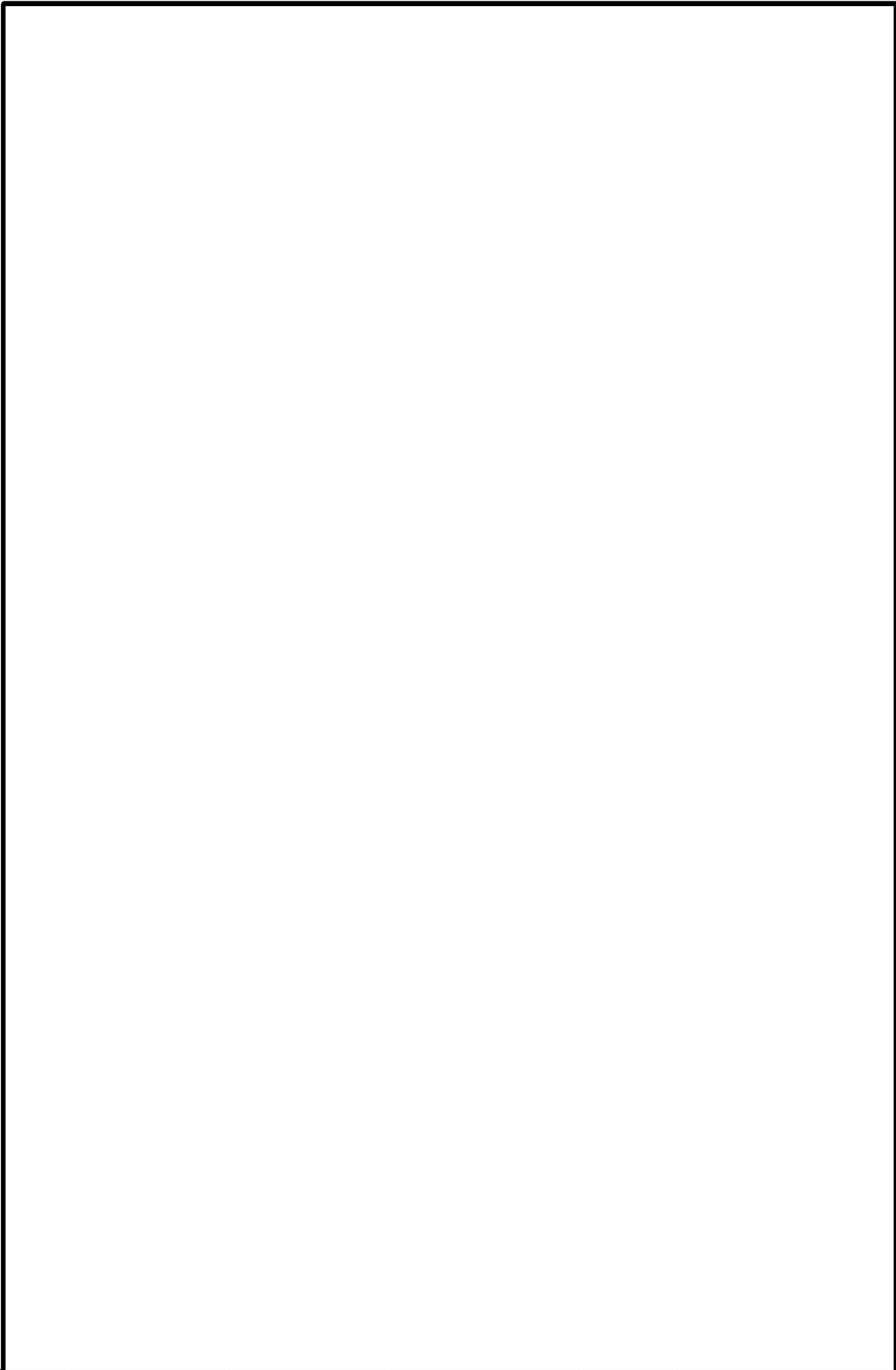


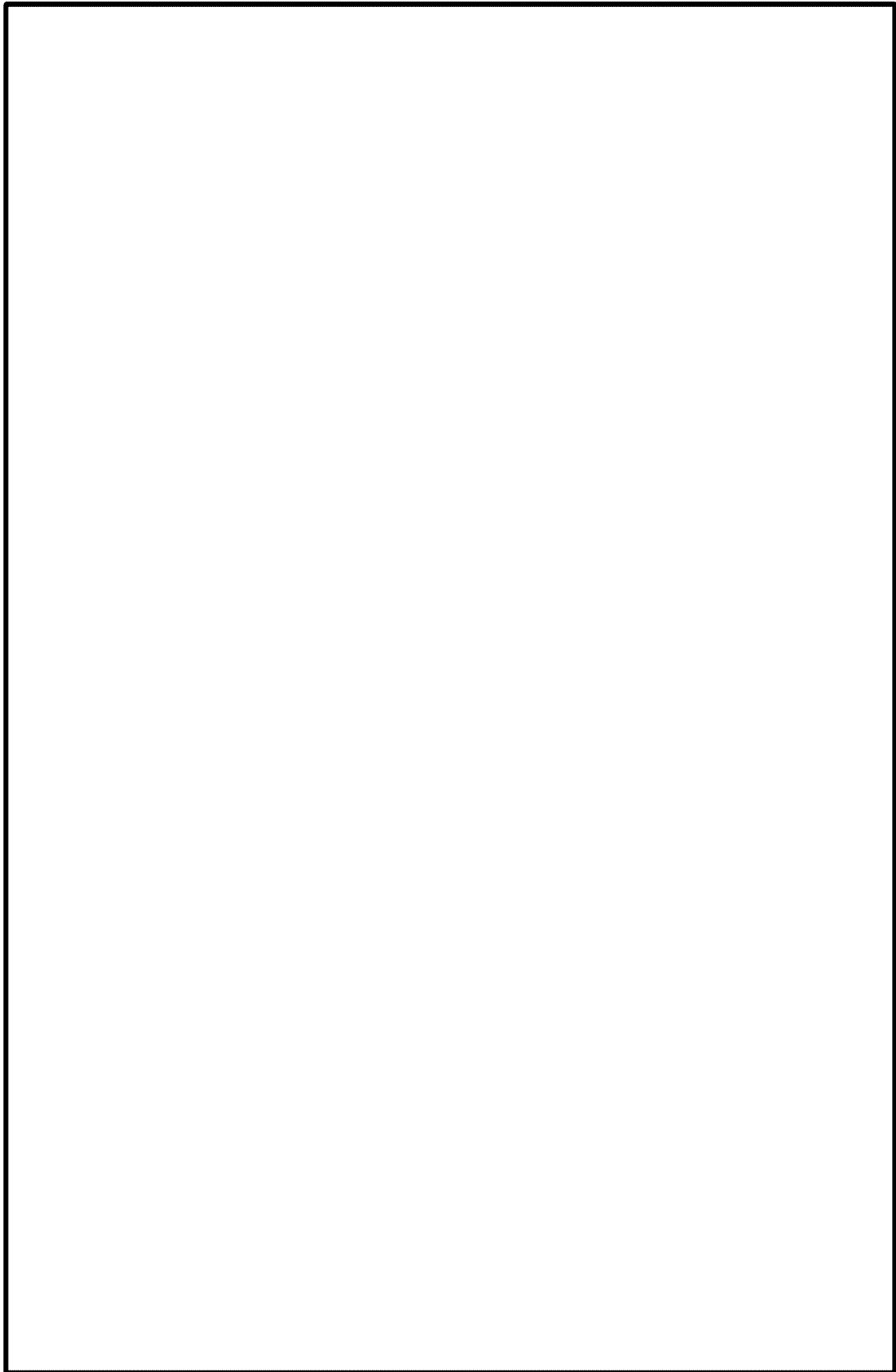














A) Affidavit of Support and Public Charge under INA §212(a)(4)

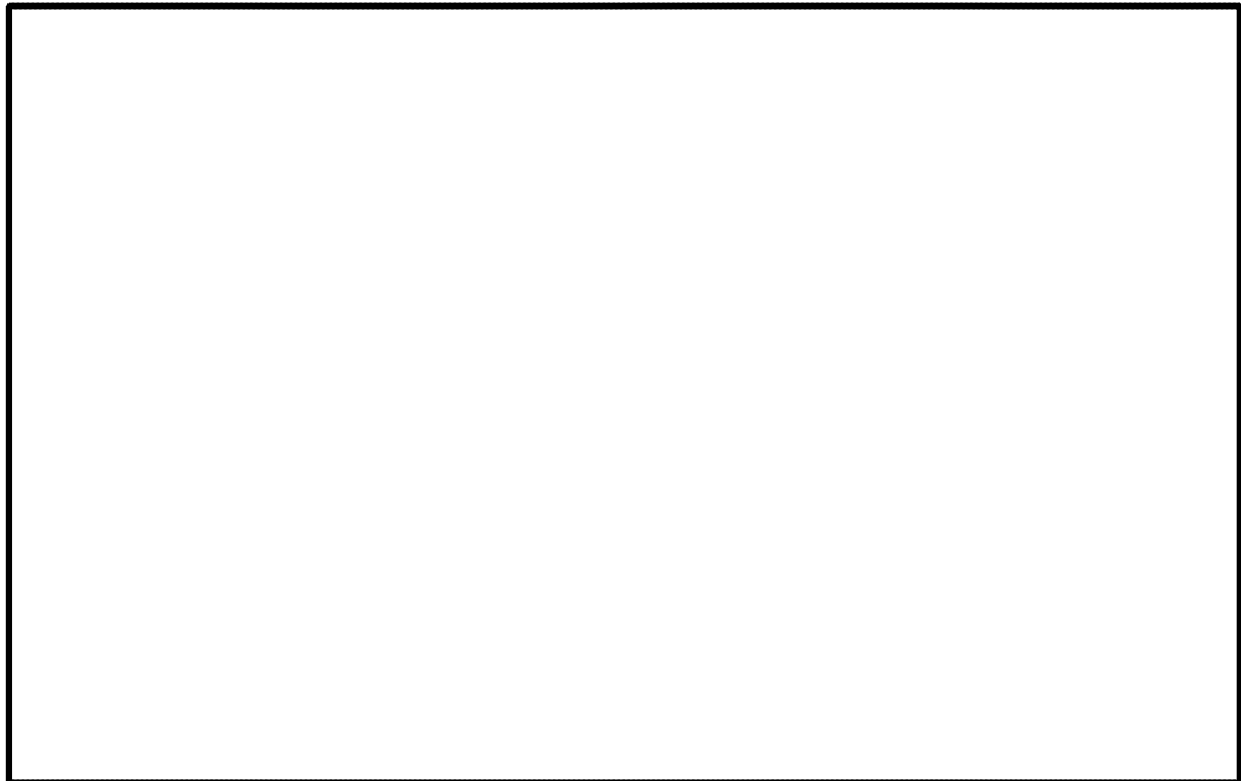
Unless the alien qualifies for an exception, an affidavit of support (Form I-864 or Form I-864EZ) must be filed on behalf of any alien who seeks adjustment of status on the basis of:

- an immediate relative or family-based visa petition (Form I-130, I-129F, or I-600) or
- an employment-based visa petition (Form I-140) if a qualifying relative either filed the Form I-140 as the employer or owns at least 5% of the equity of the for-profit firm that filed the I-140.

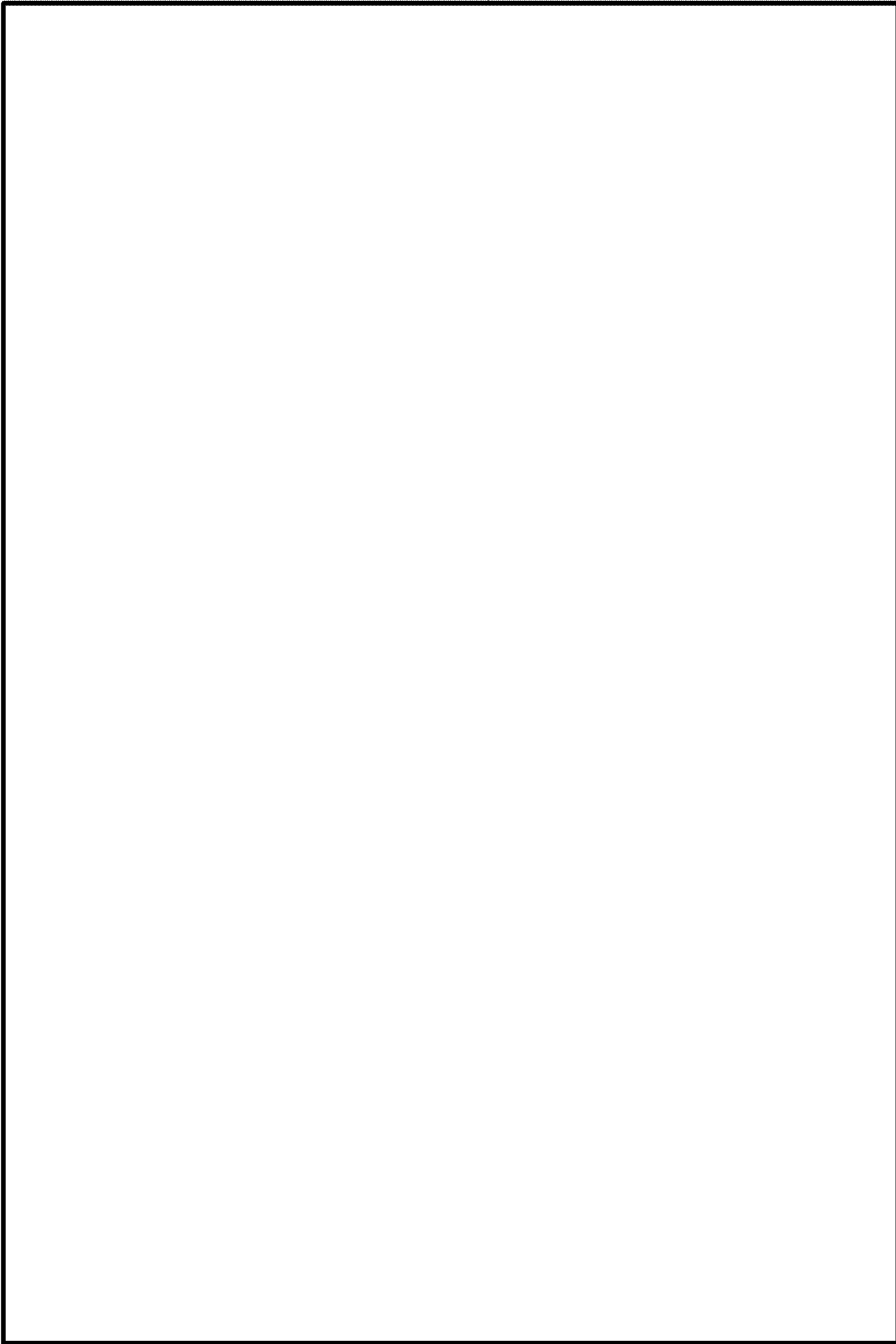
Specific details concerning when a Form I-864 is required, when it is not required, and what evidence must be submitted with a Form I-864 is found in 8 CFR part 213a and chapter 20.5 of the Adjudicators Field Manual.

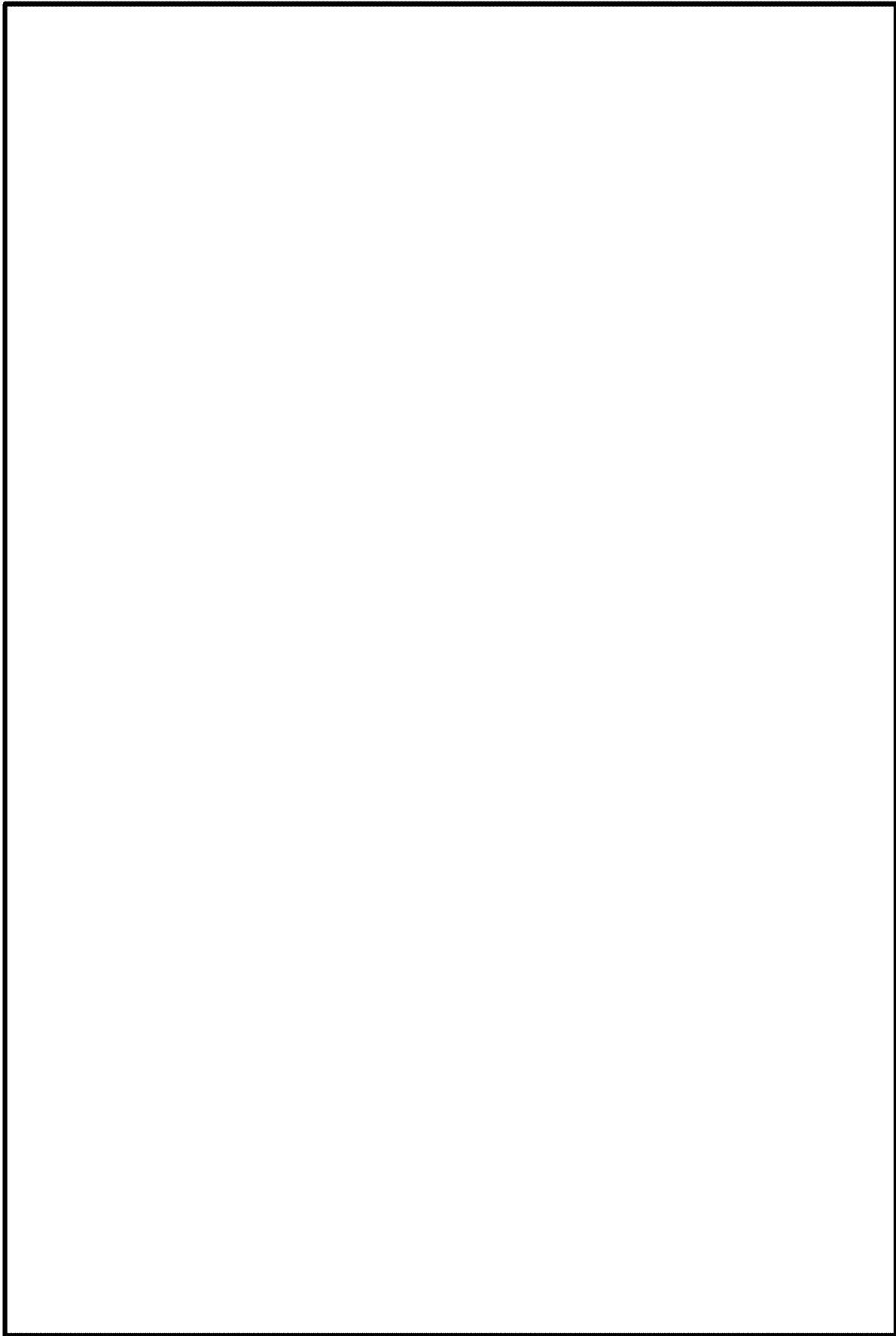
If an affidavit of support is required, but no Form I-864 is filed (or the Form I-864 that is filed does not satisfy the requirements of section 213A), then the alien is inadmissible under Section 212(a)(4)(C) of the INA.

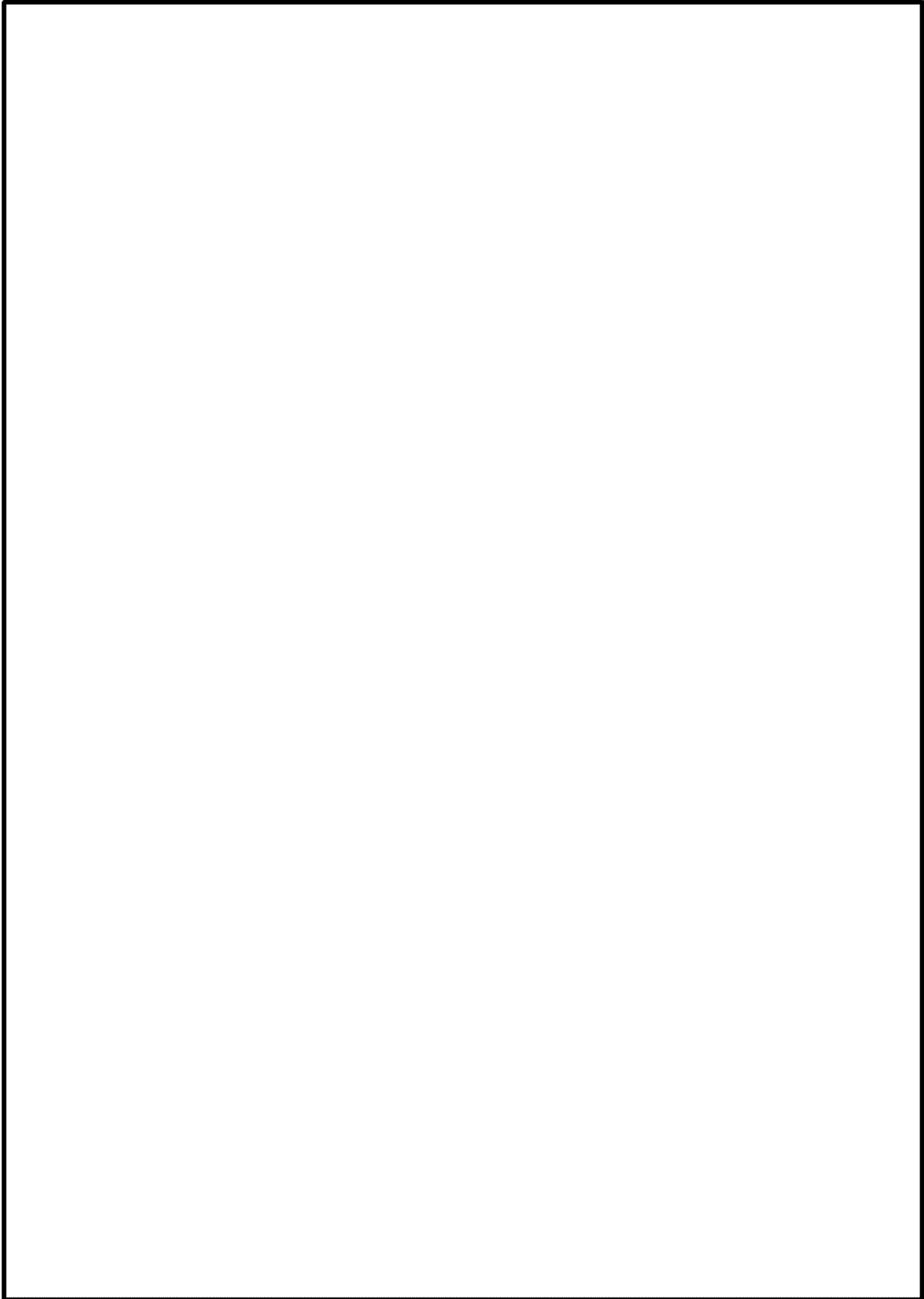
Out-of-Scope

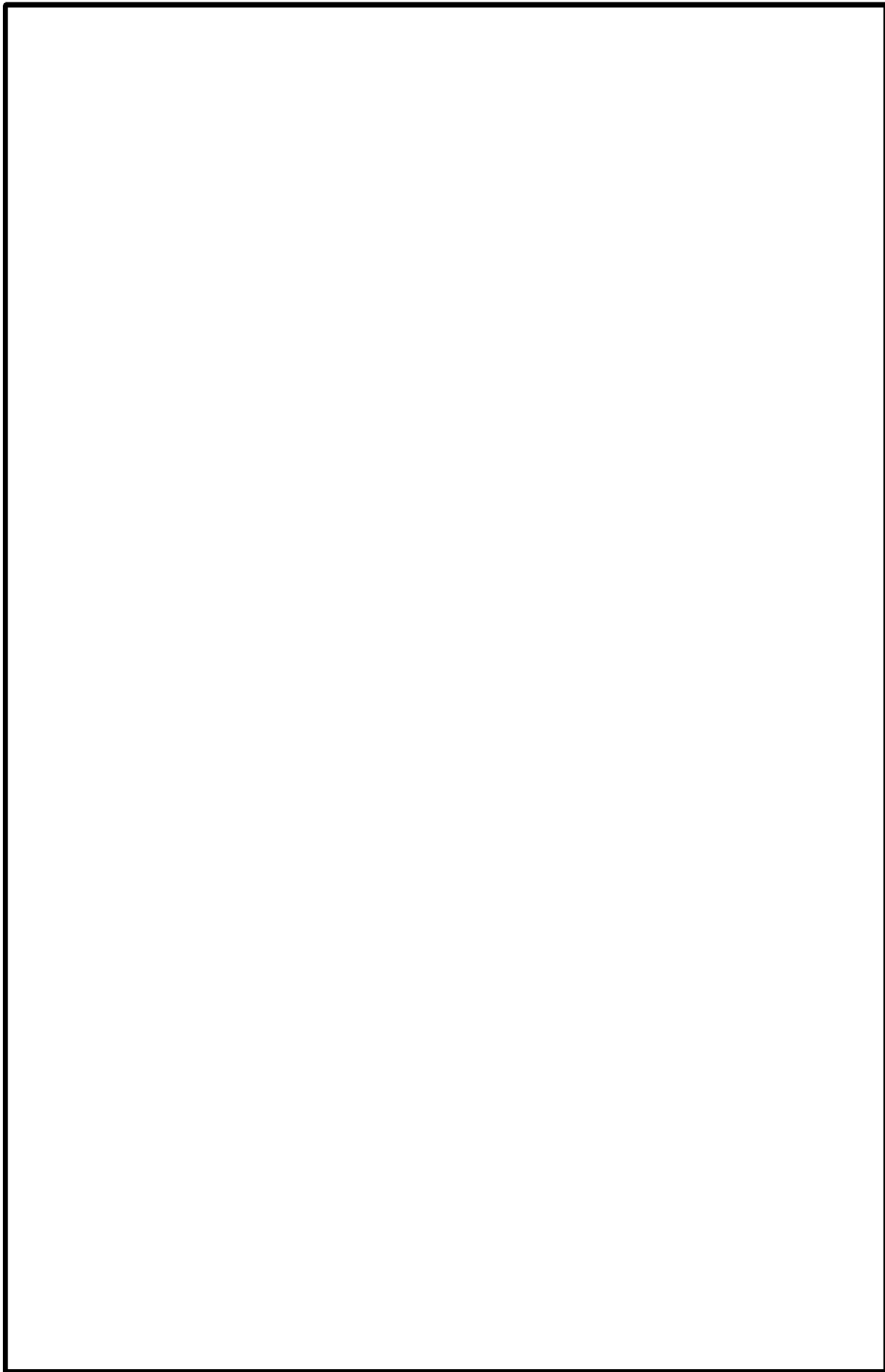


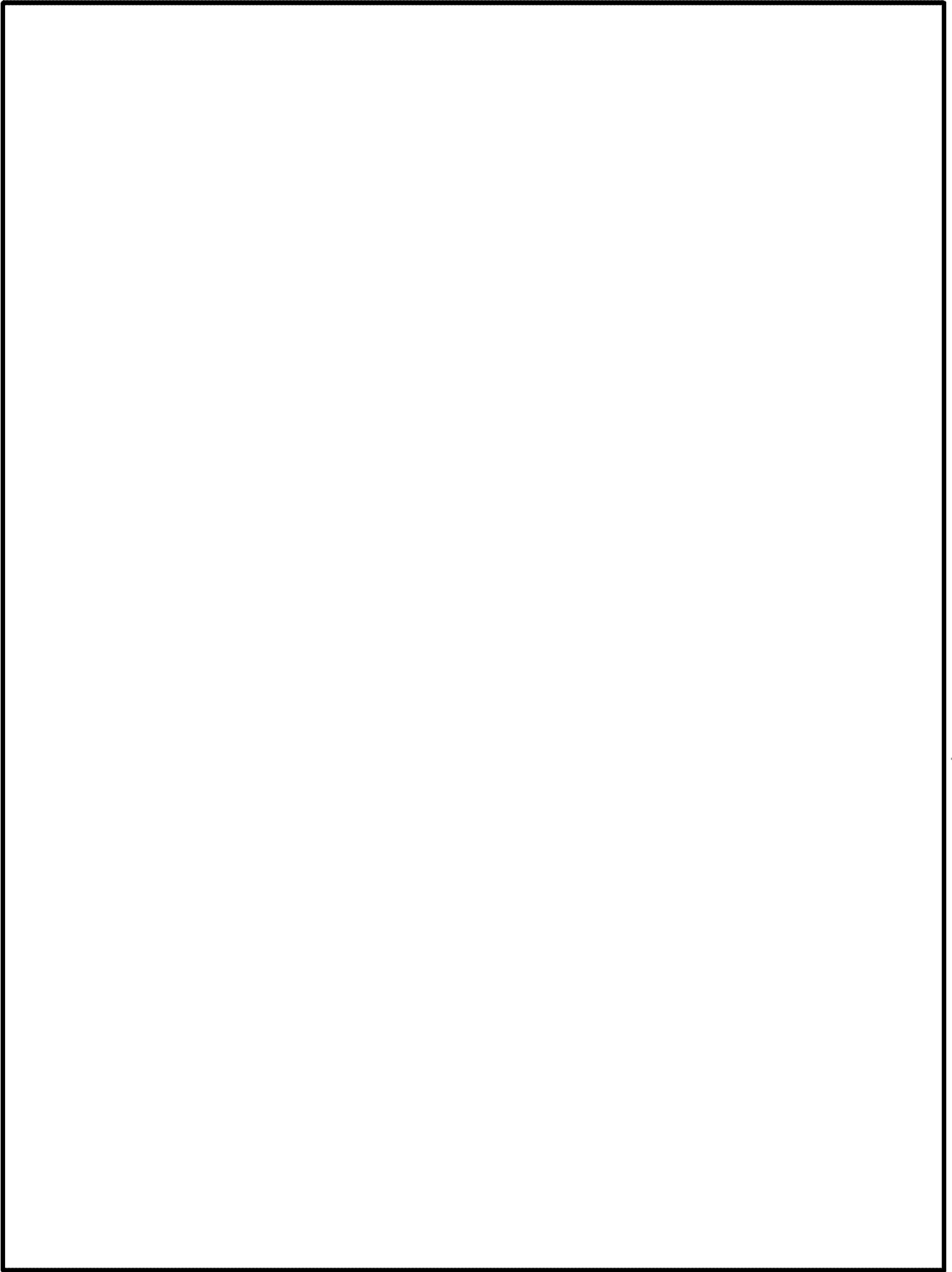




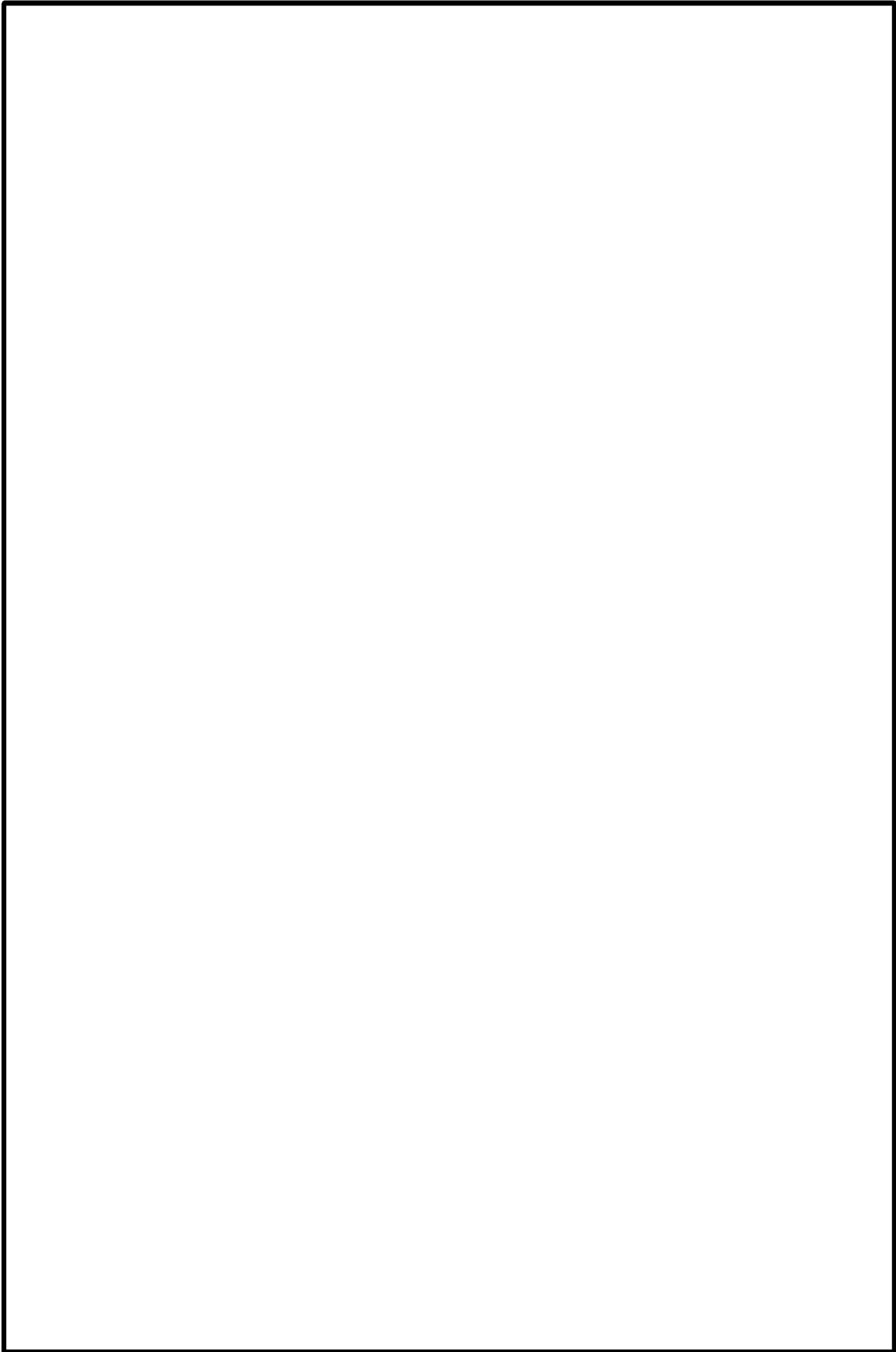


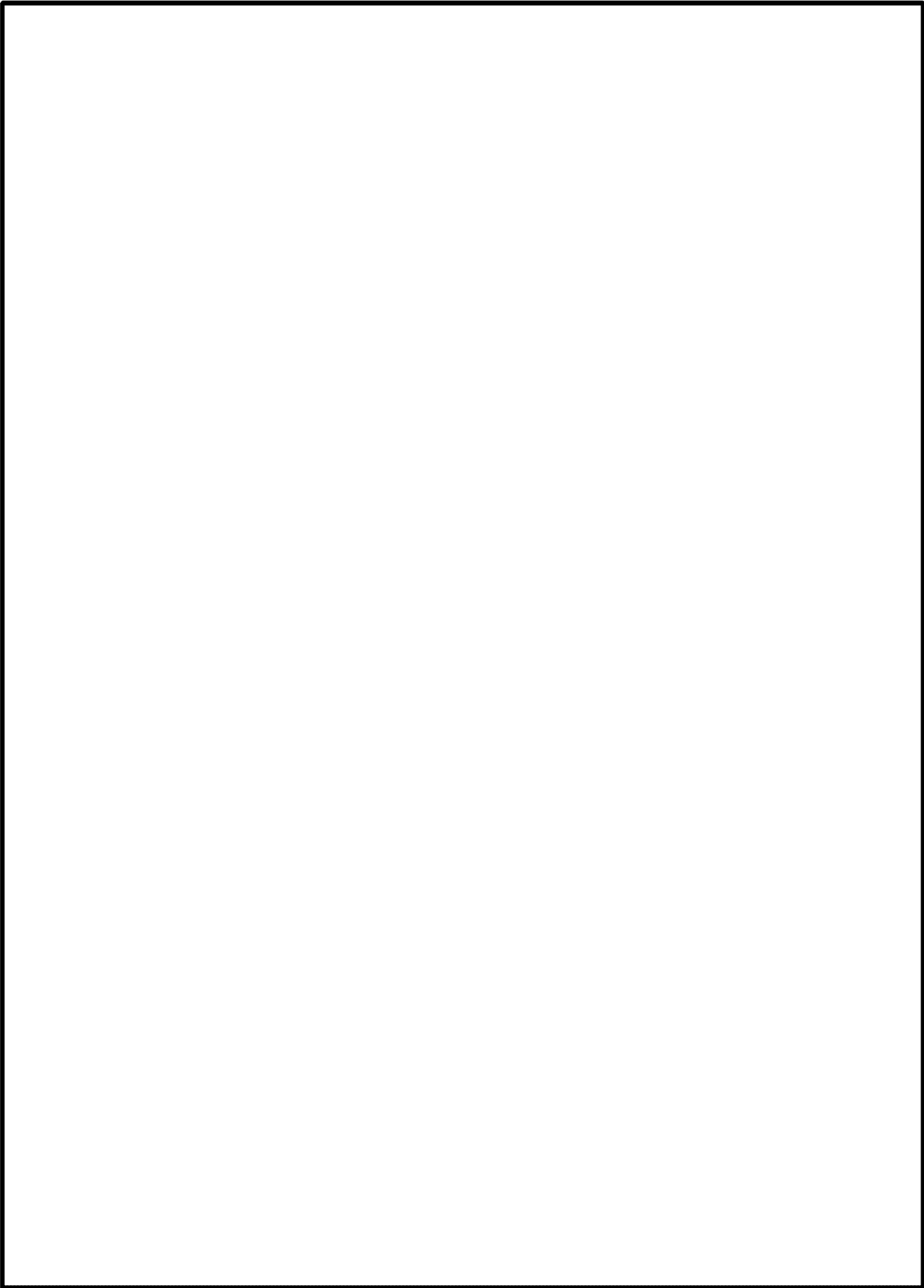




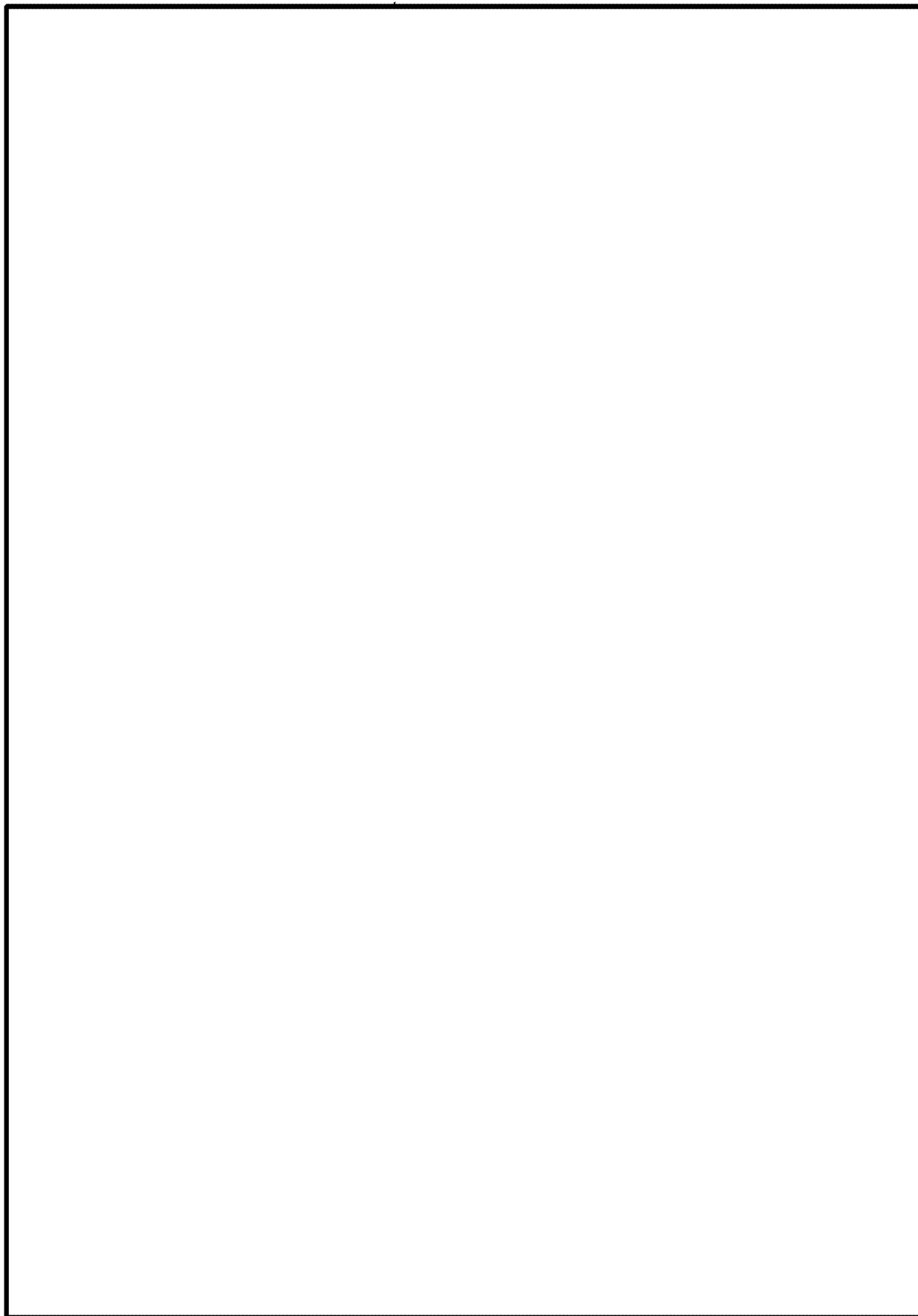


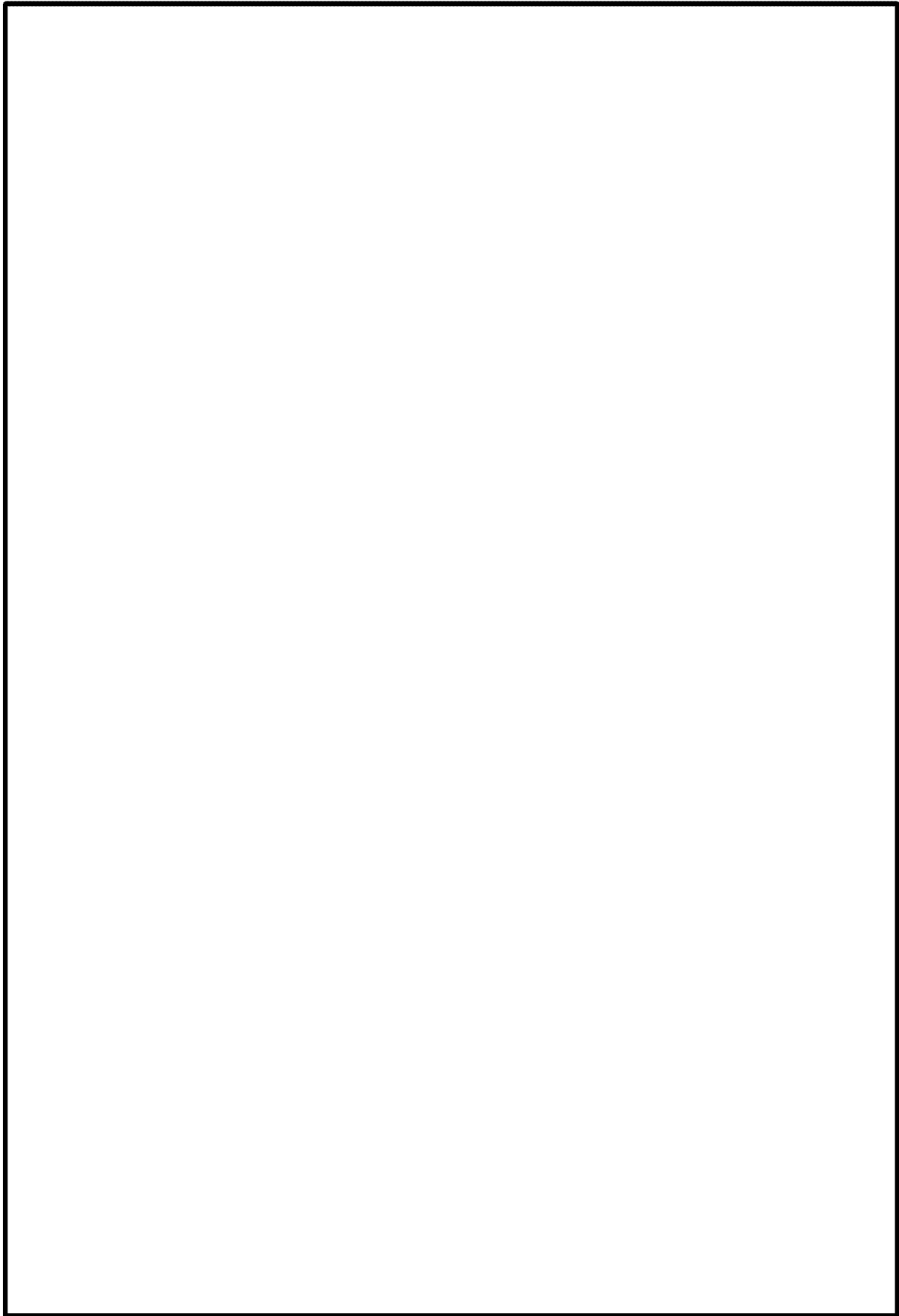


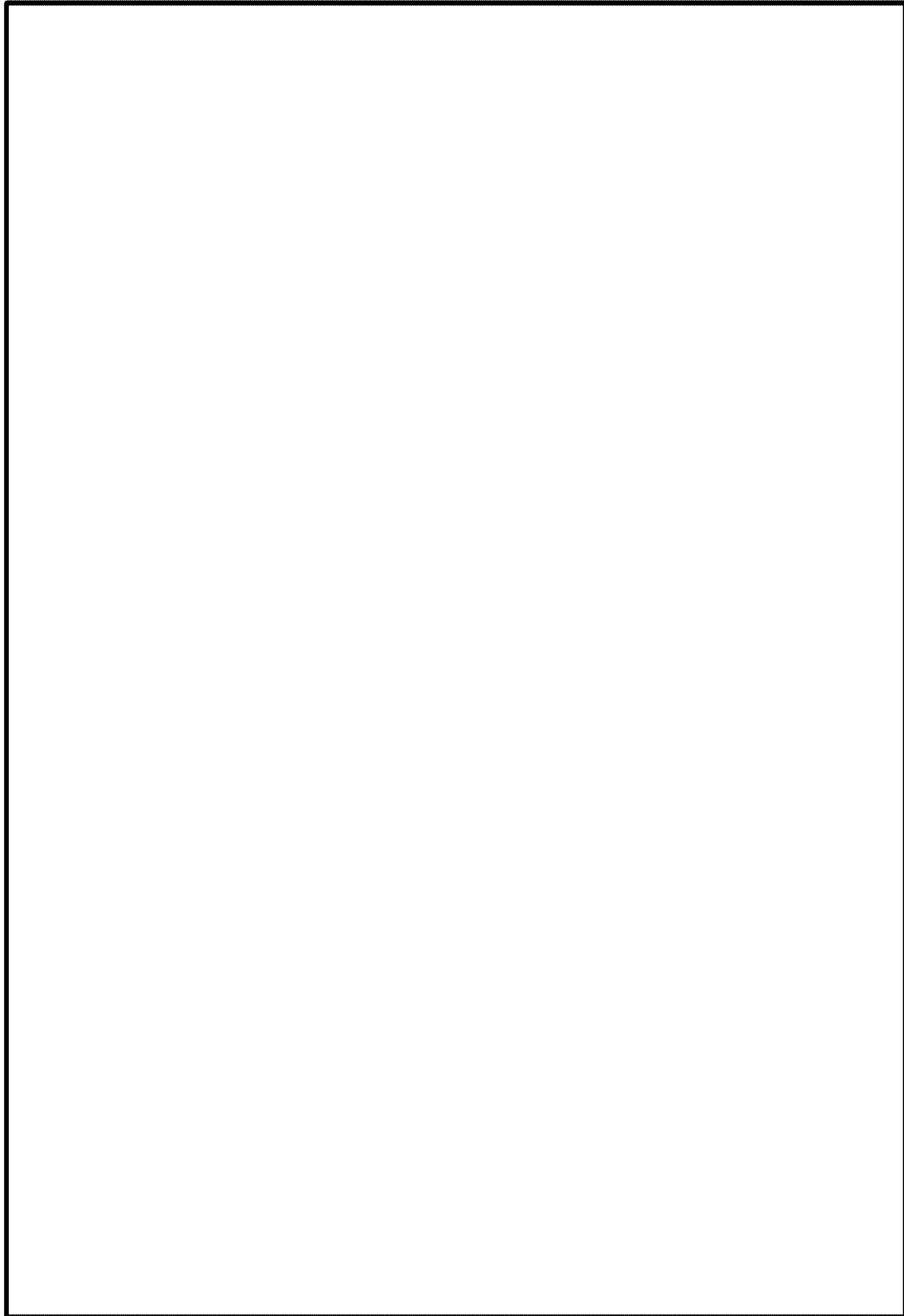


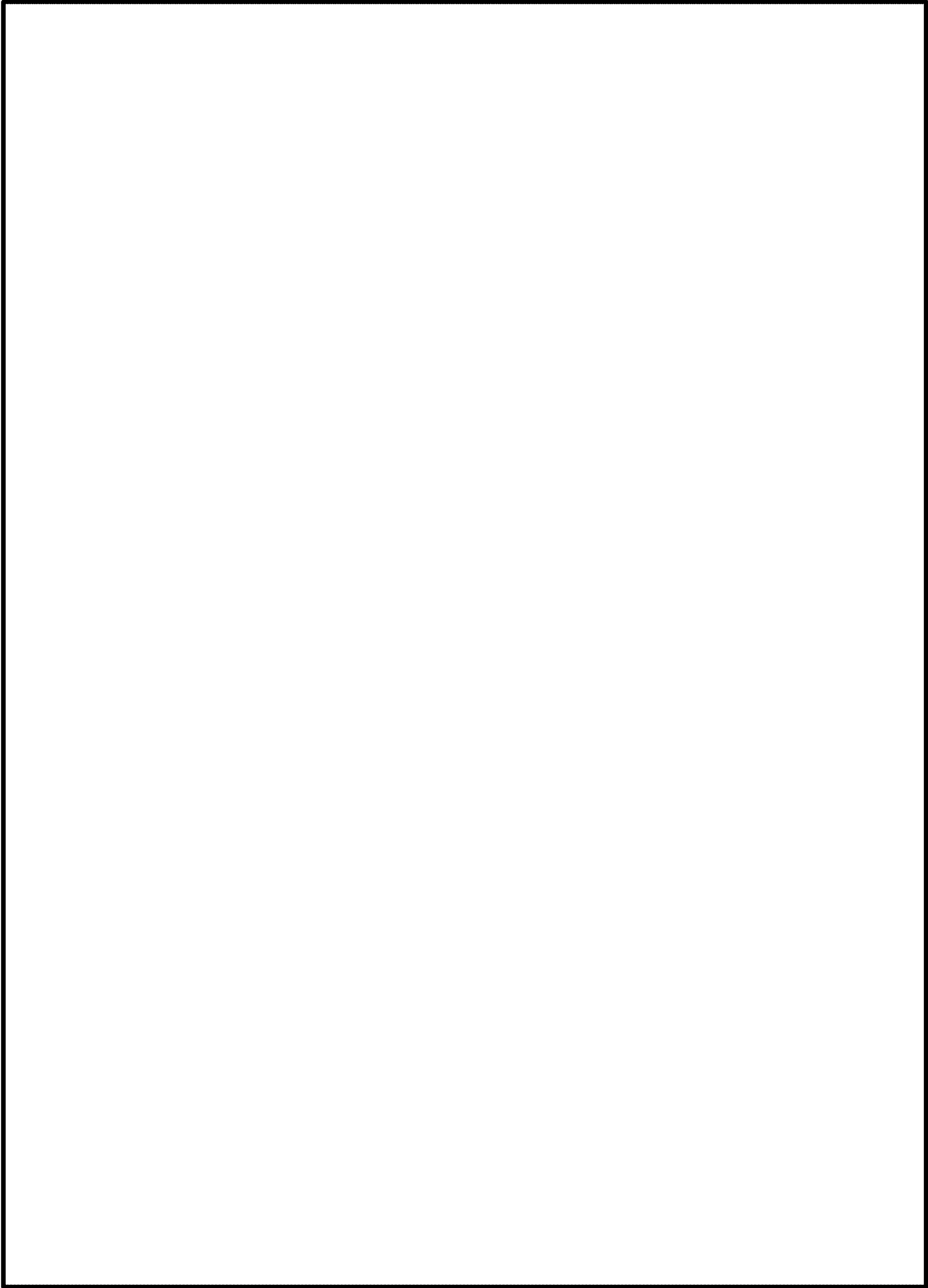


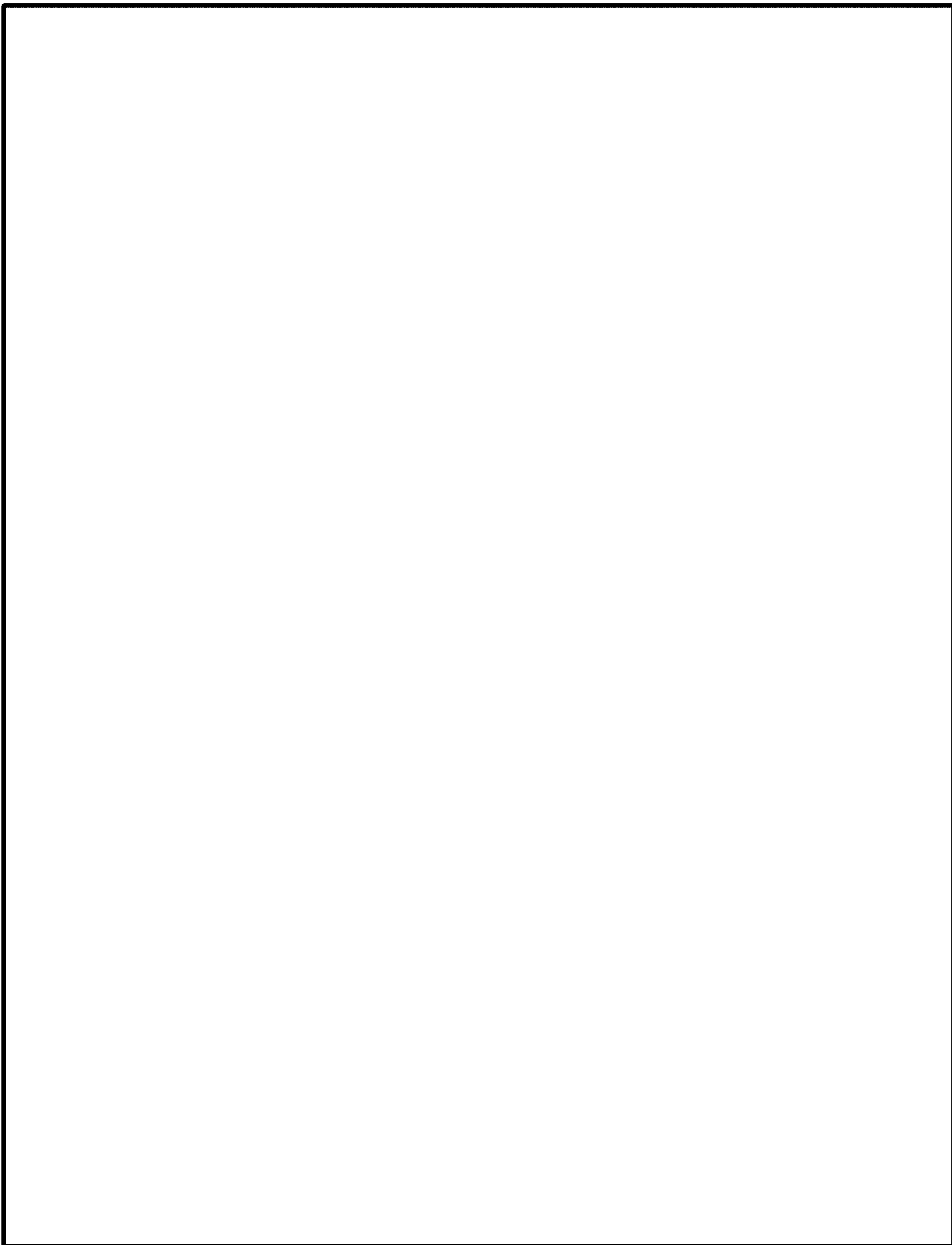


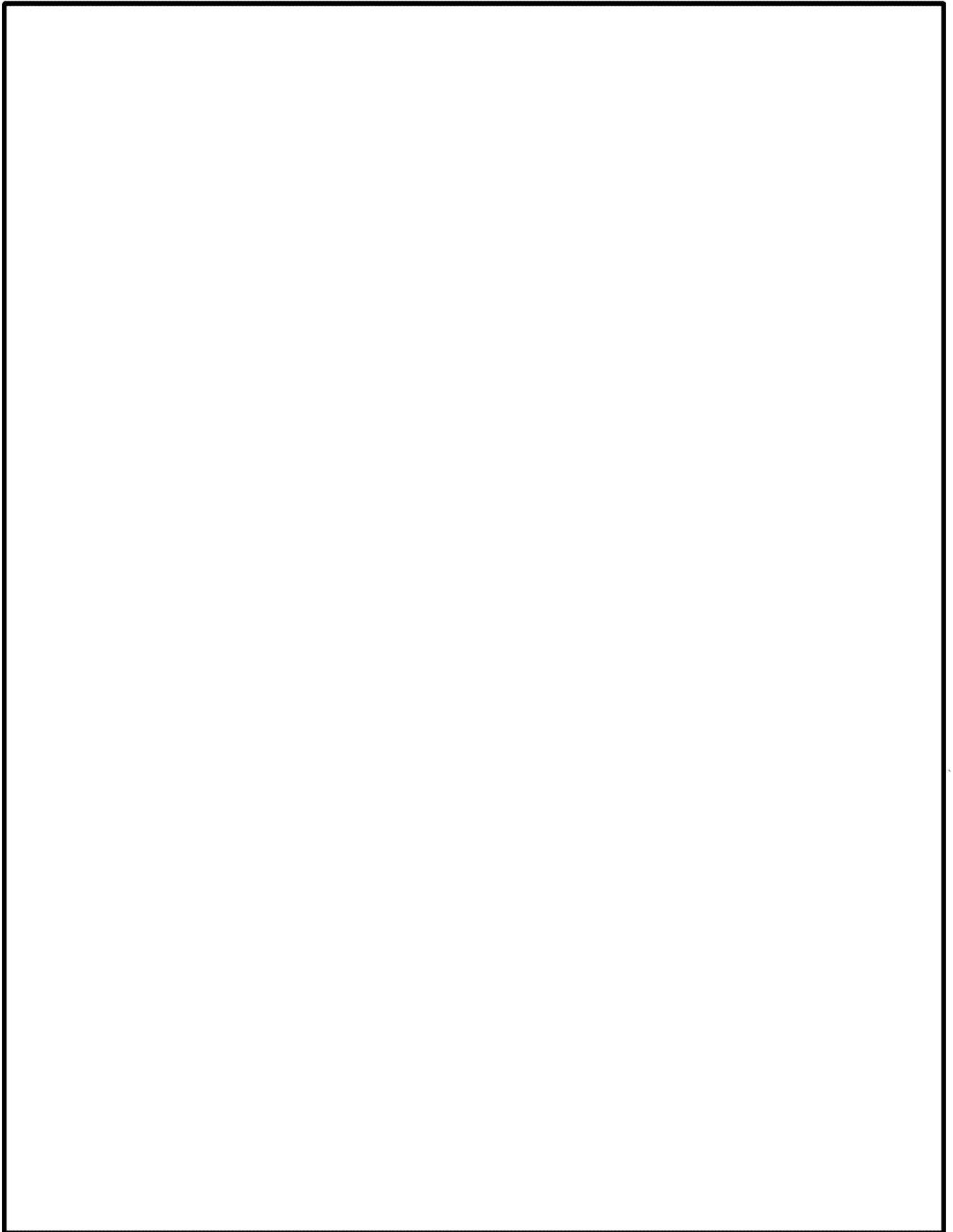




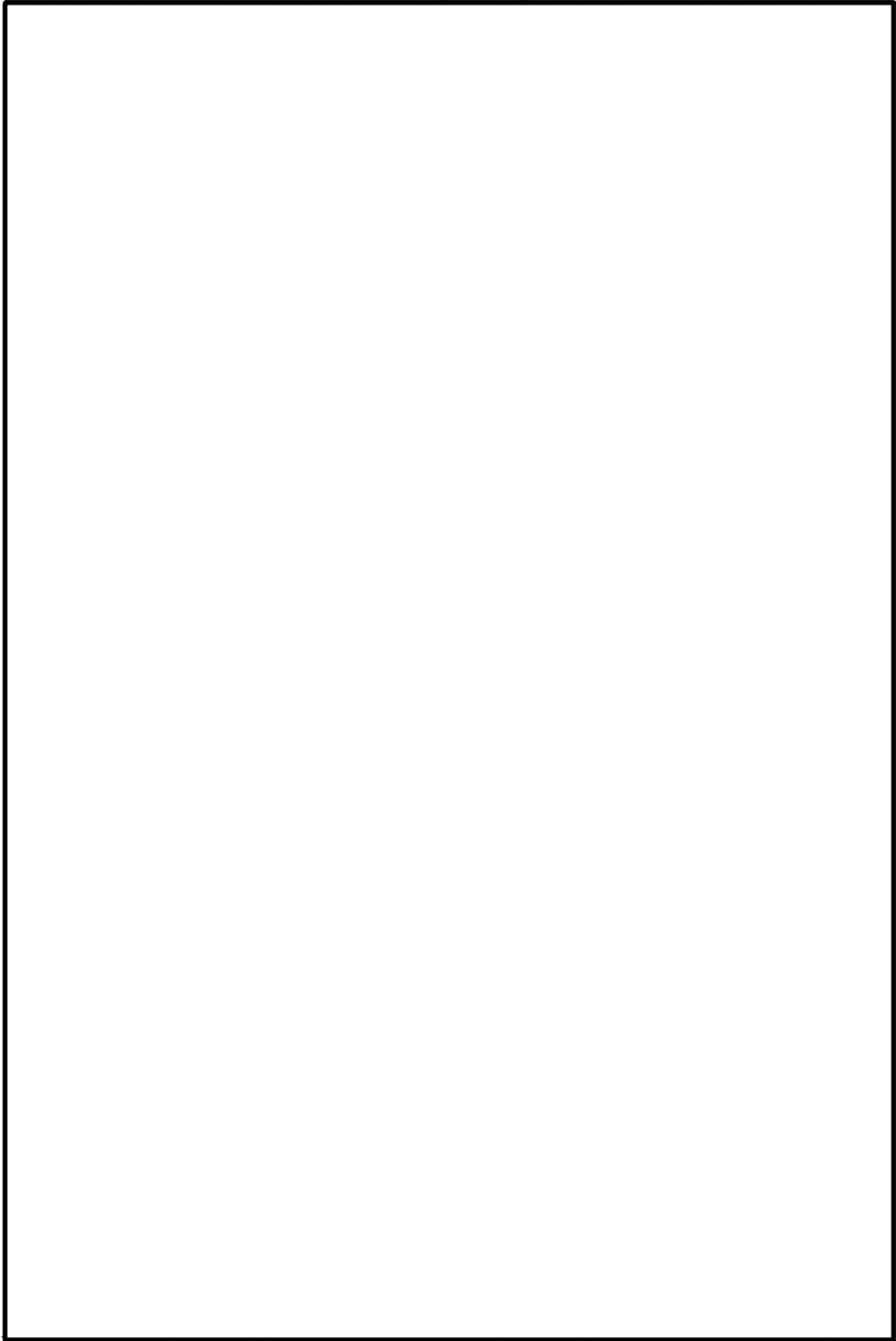




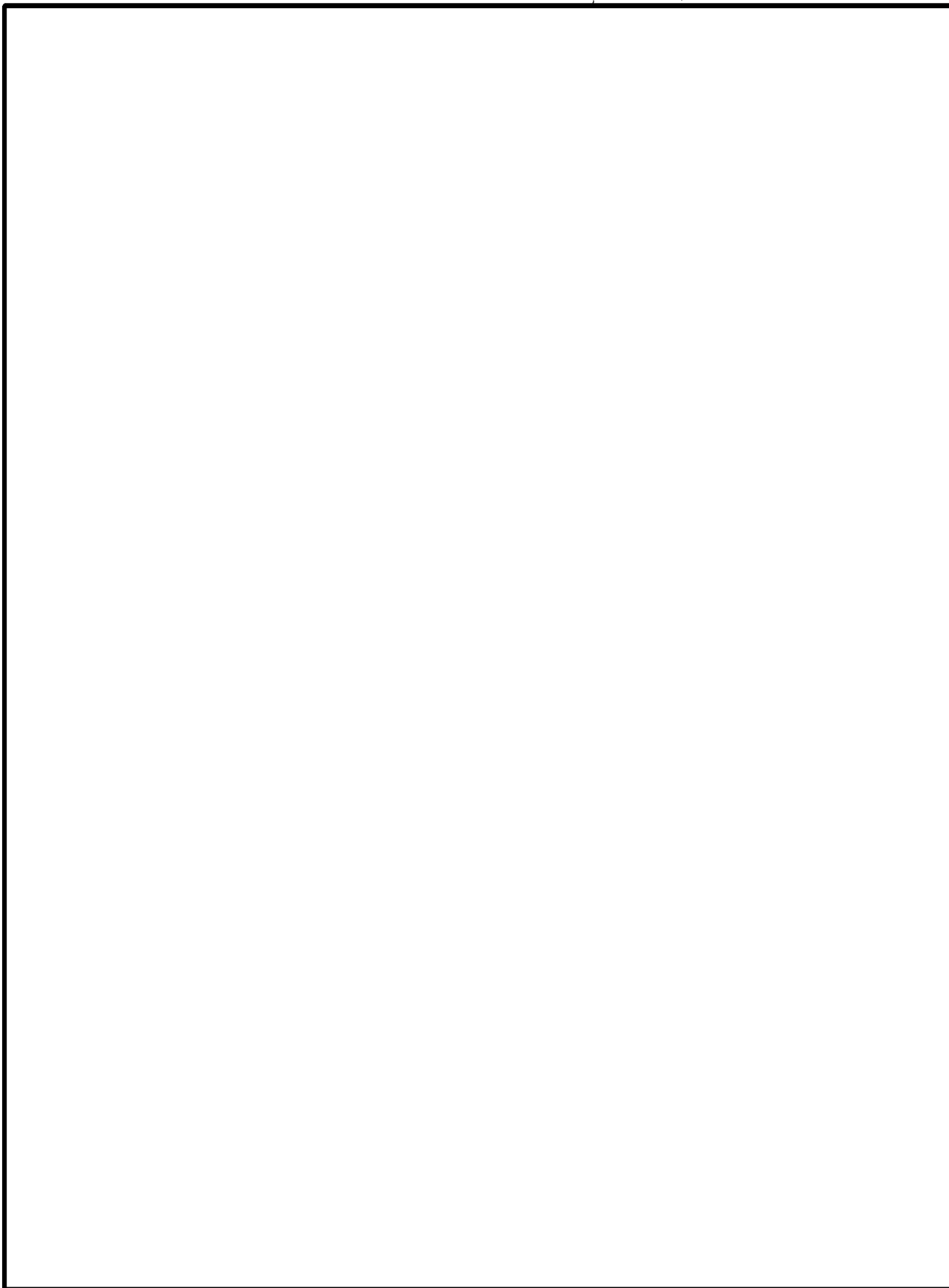


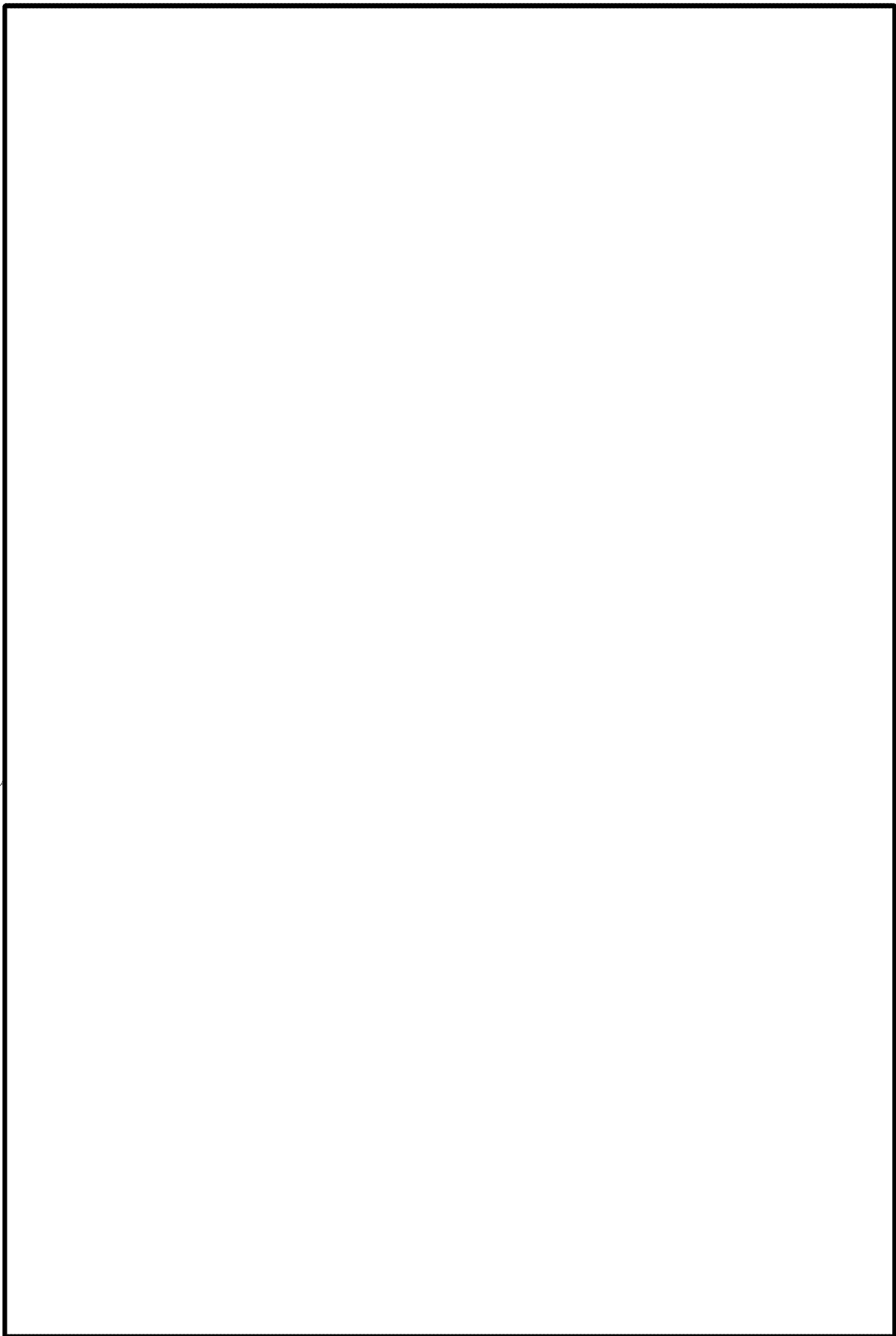


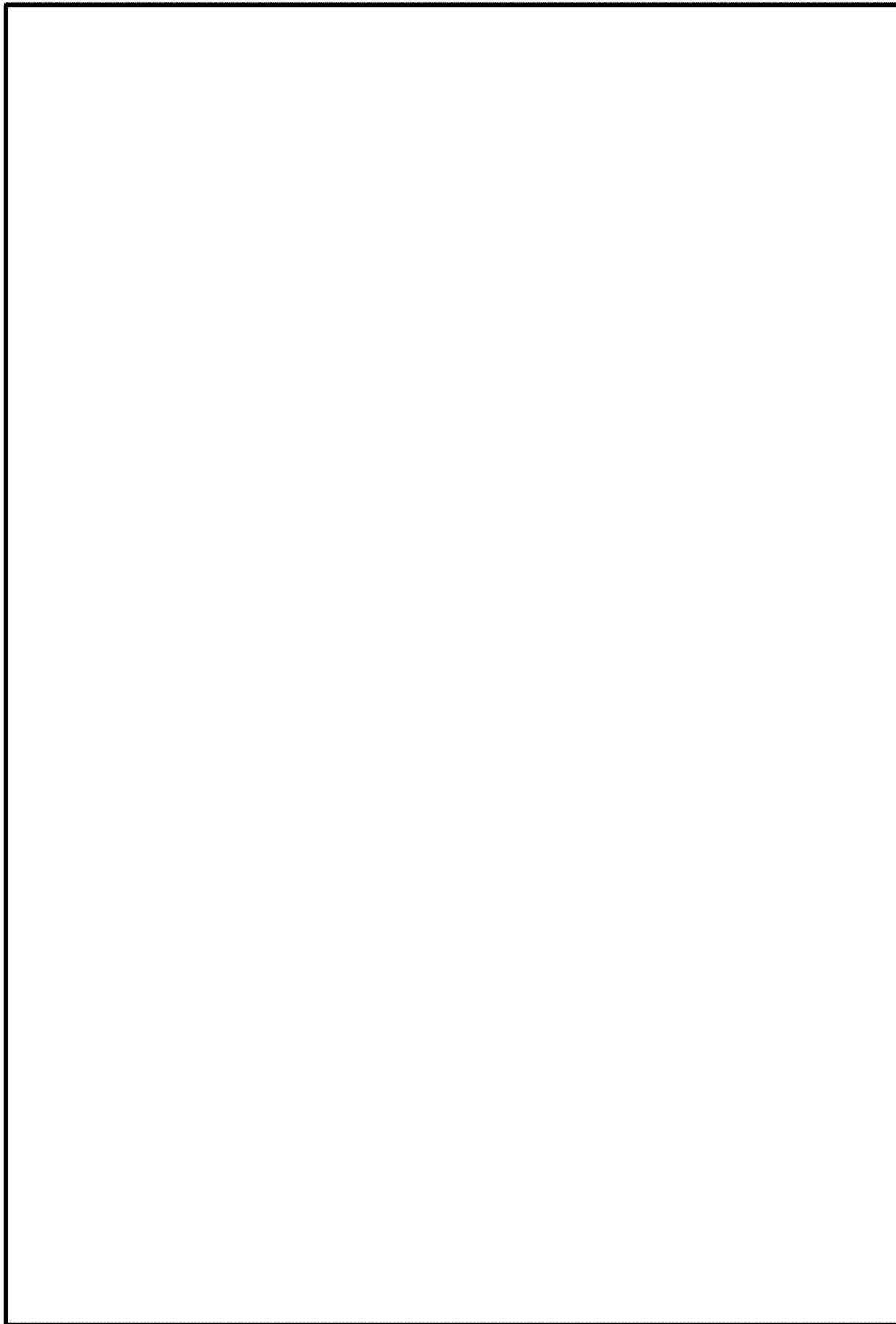


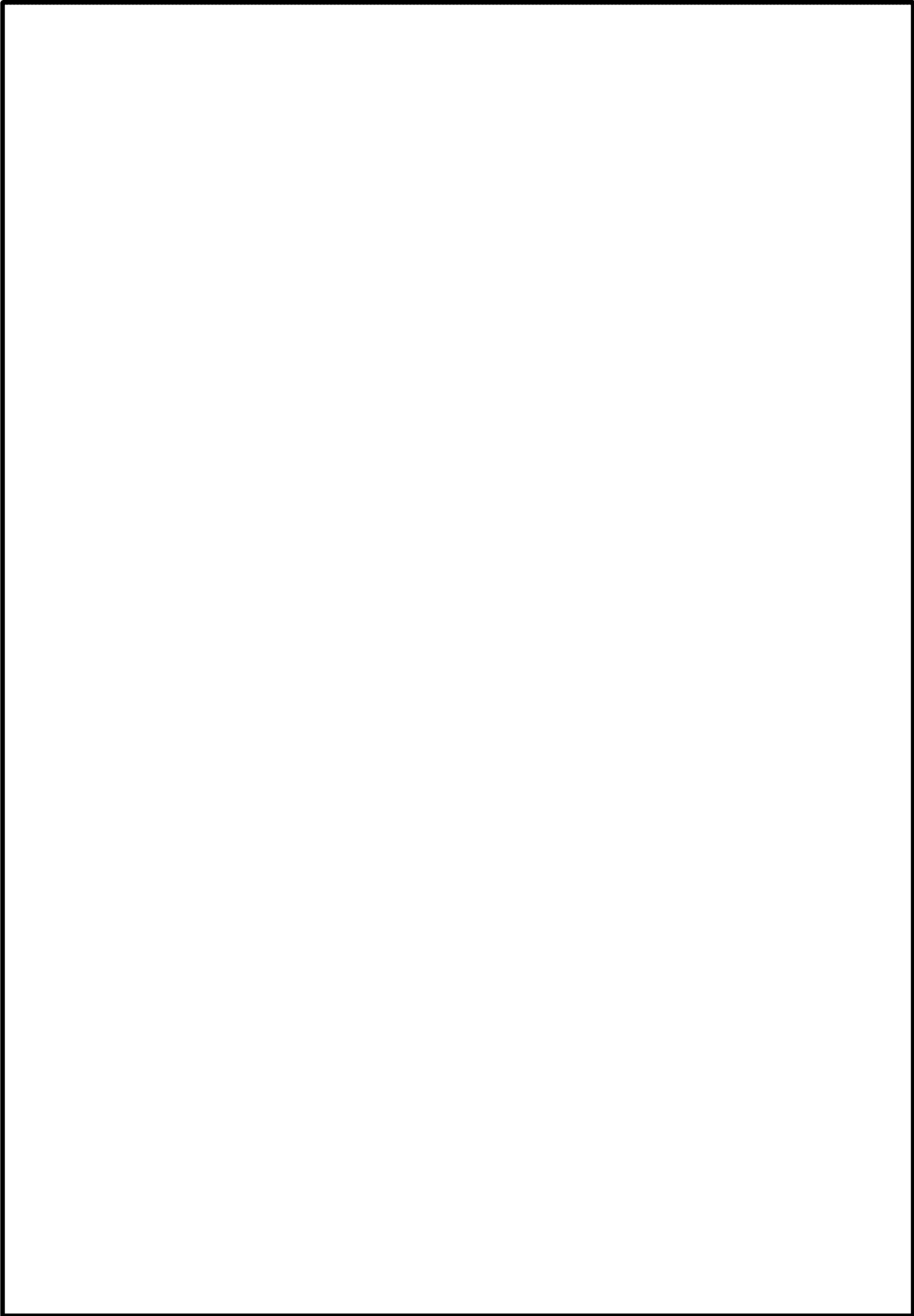


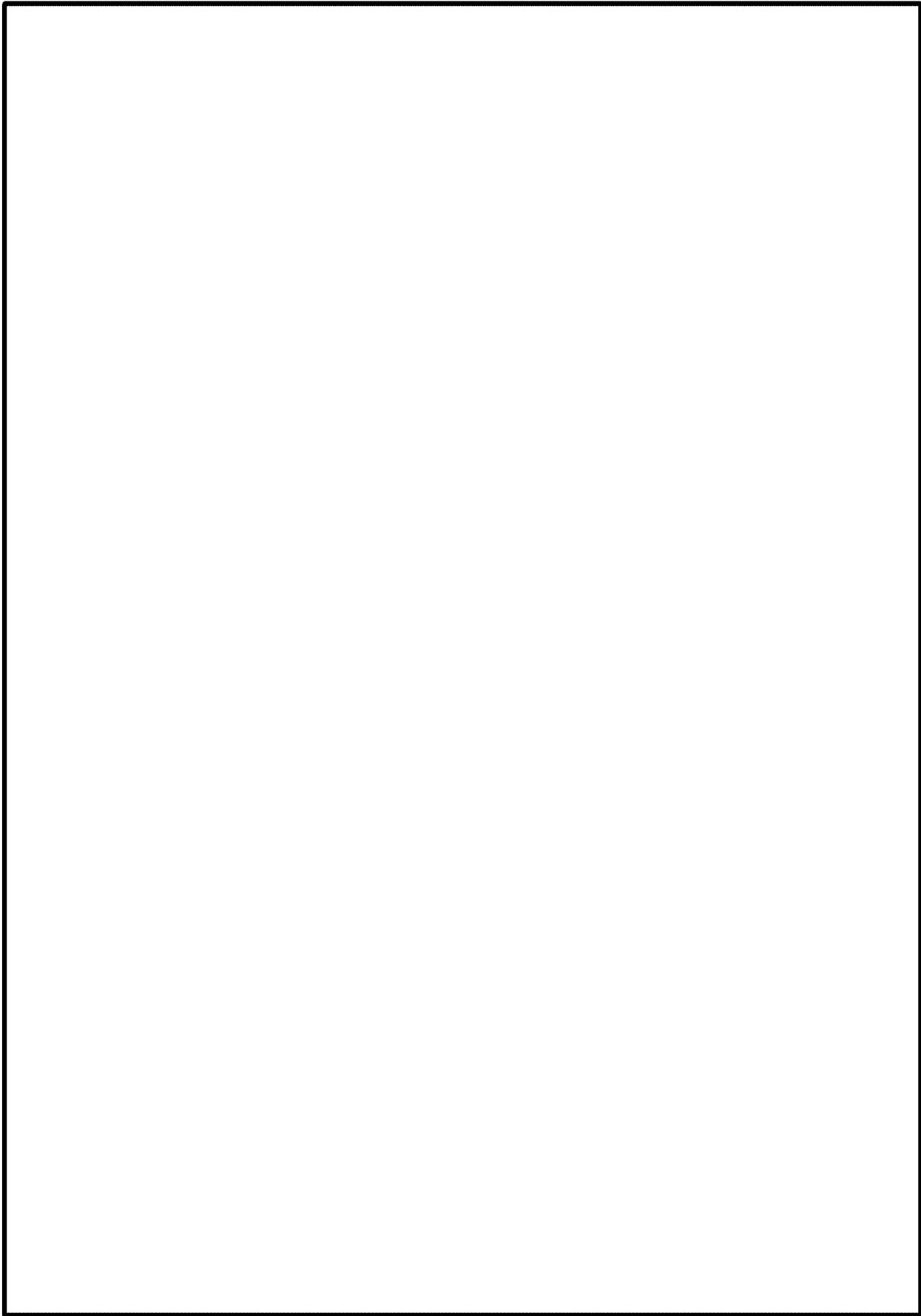


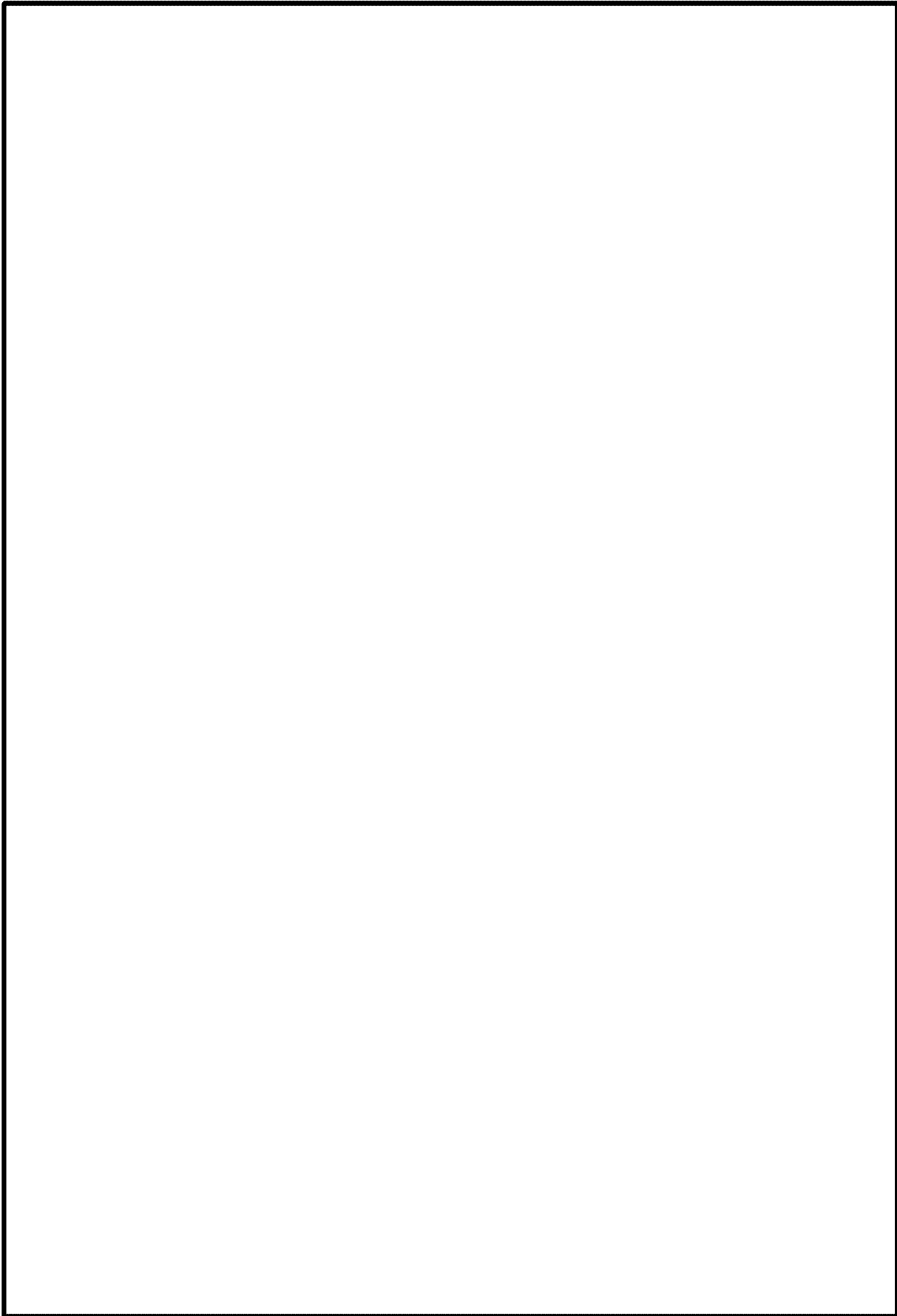


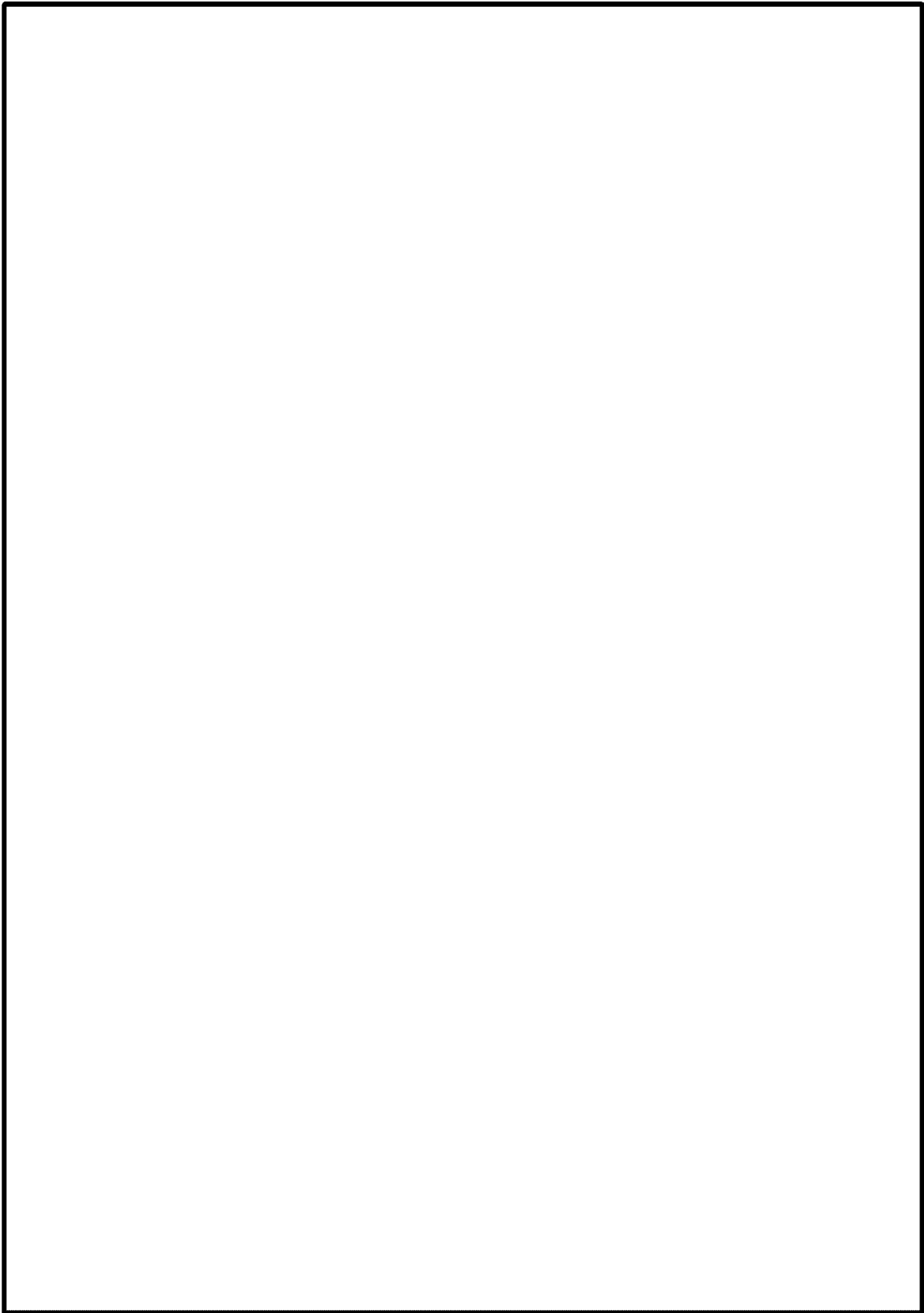


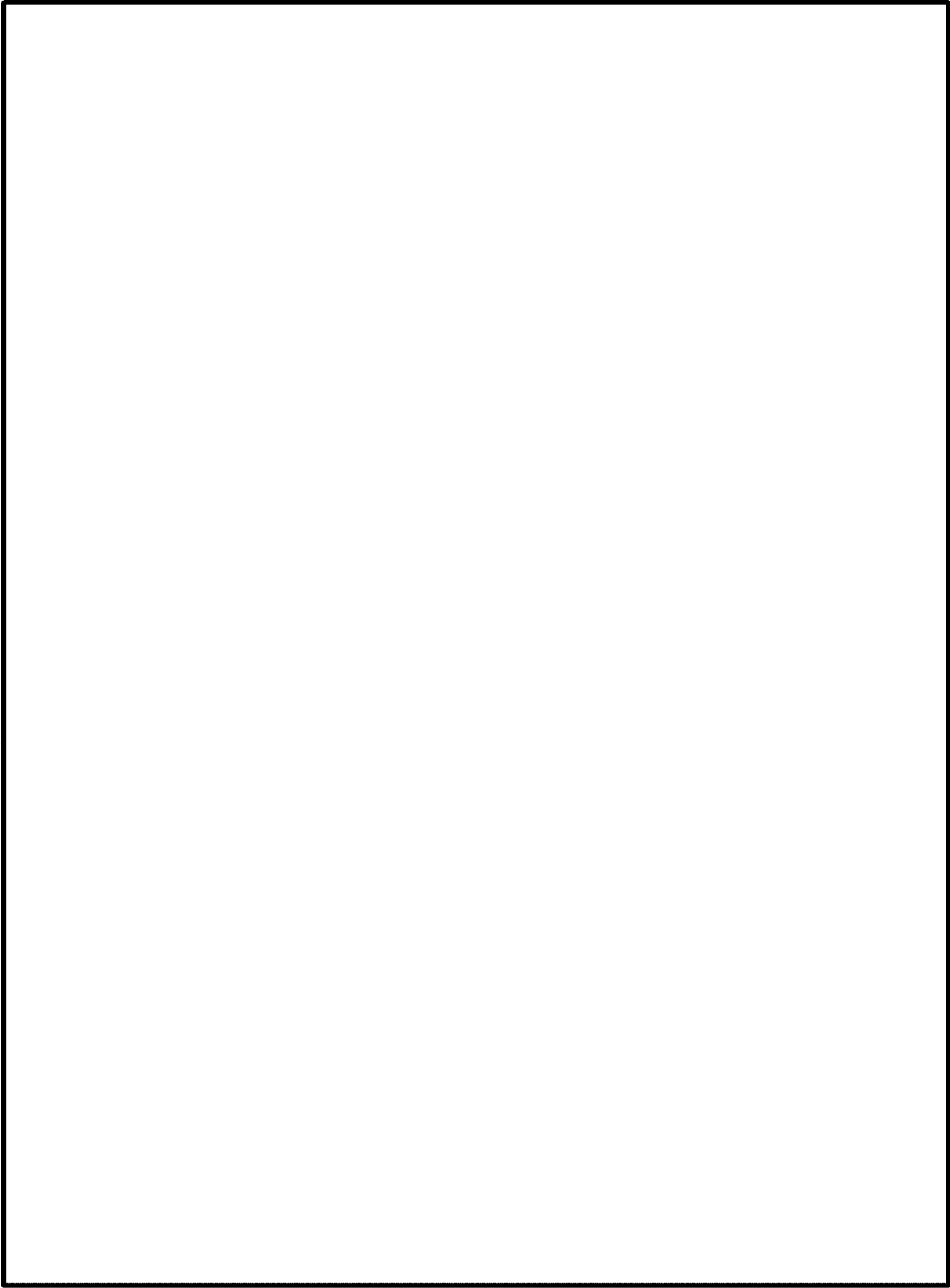




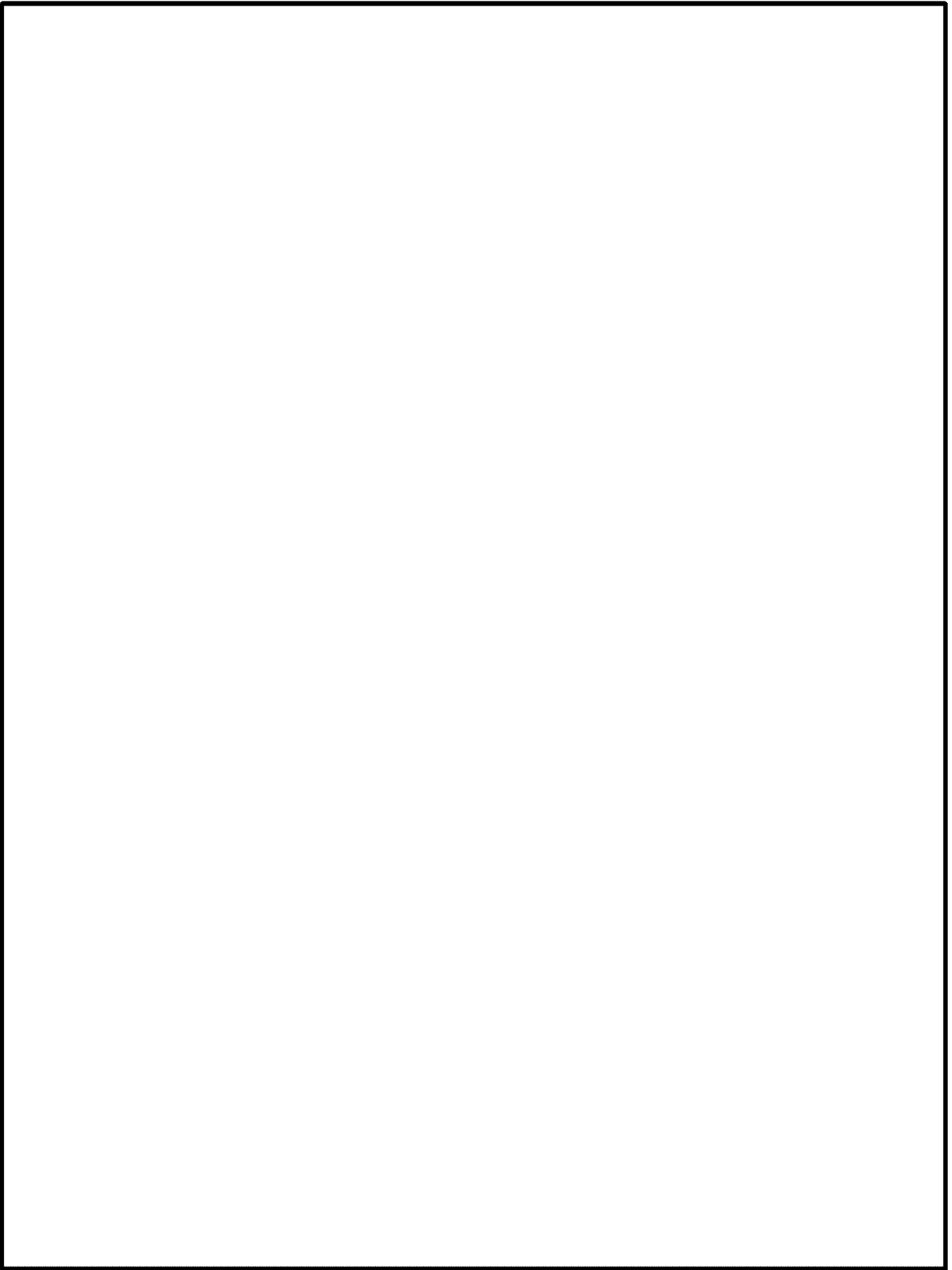






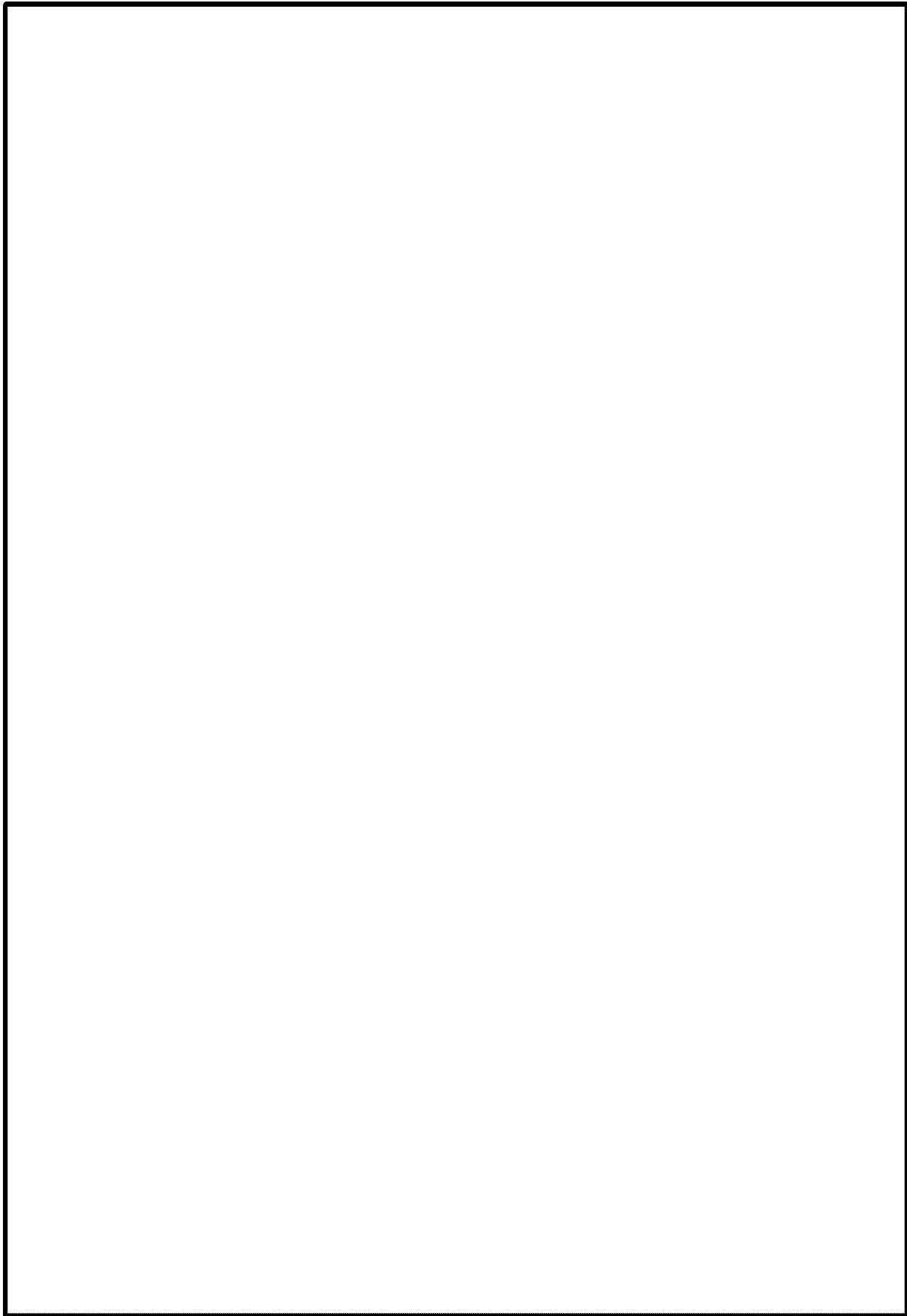


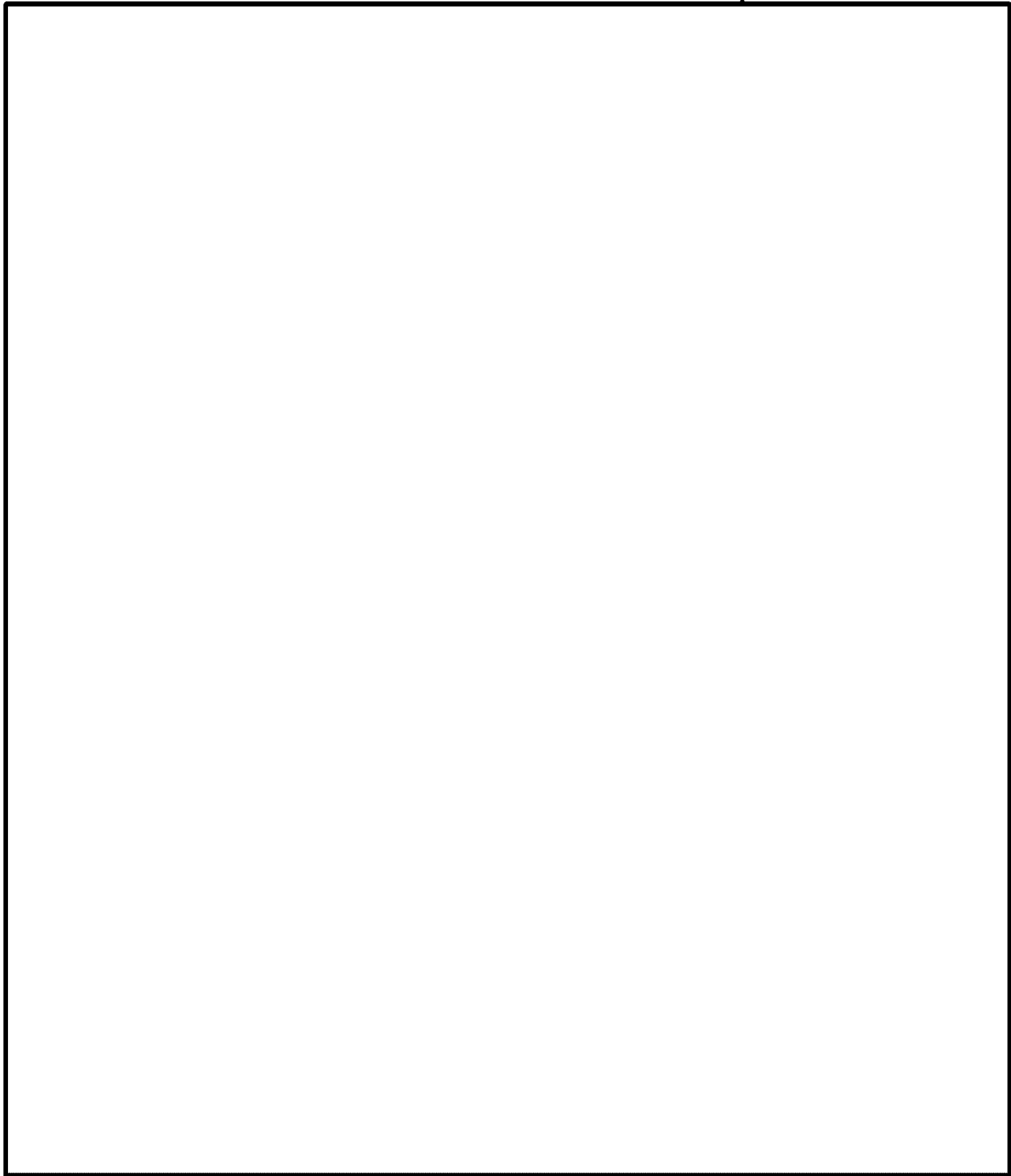


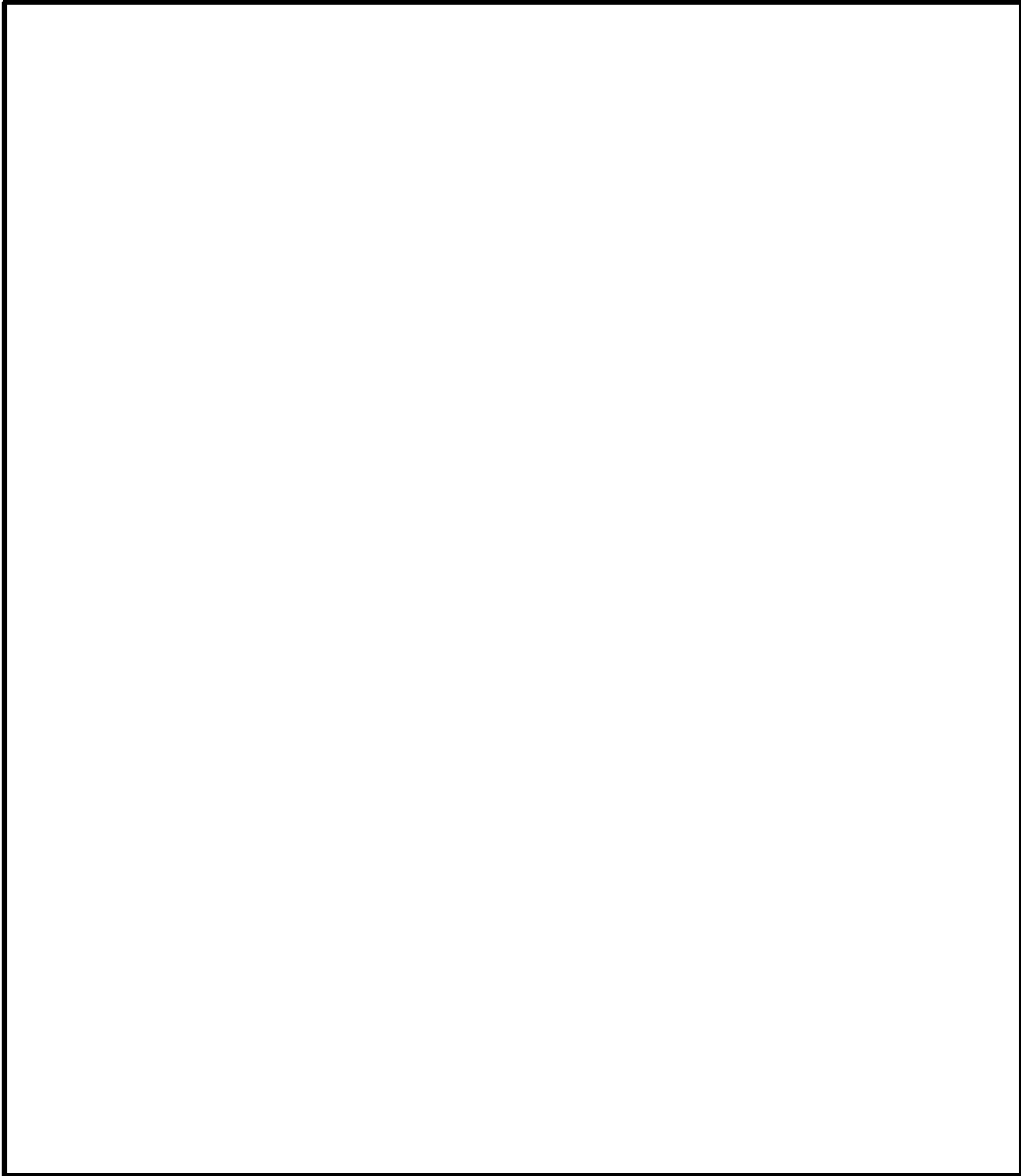


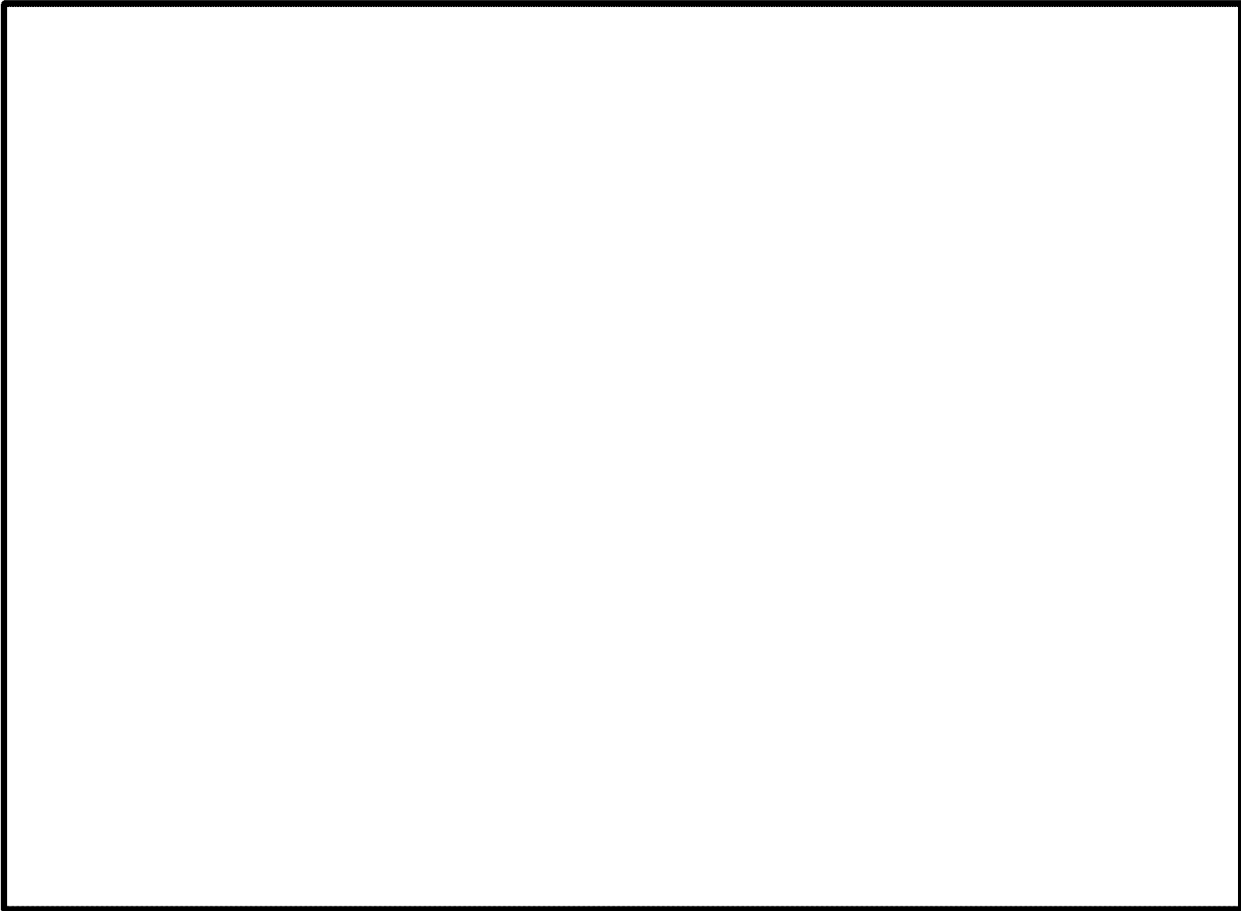














# U.S. Citizenship and Immigration Services

## *BASIC*

### **EMPLOYMENT-BASED PETITIONS**

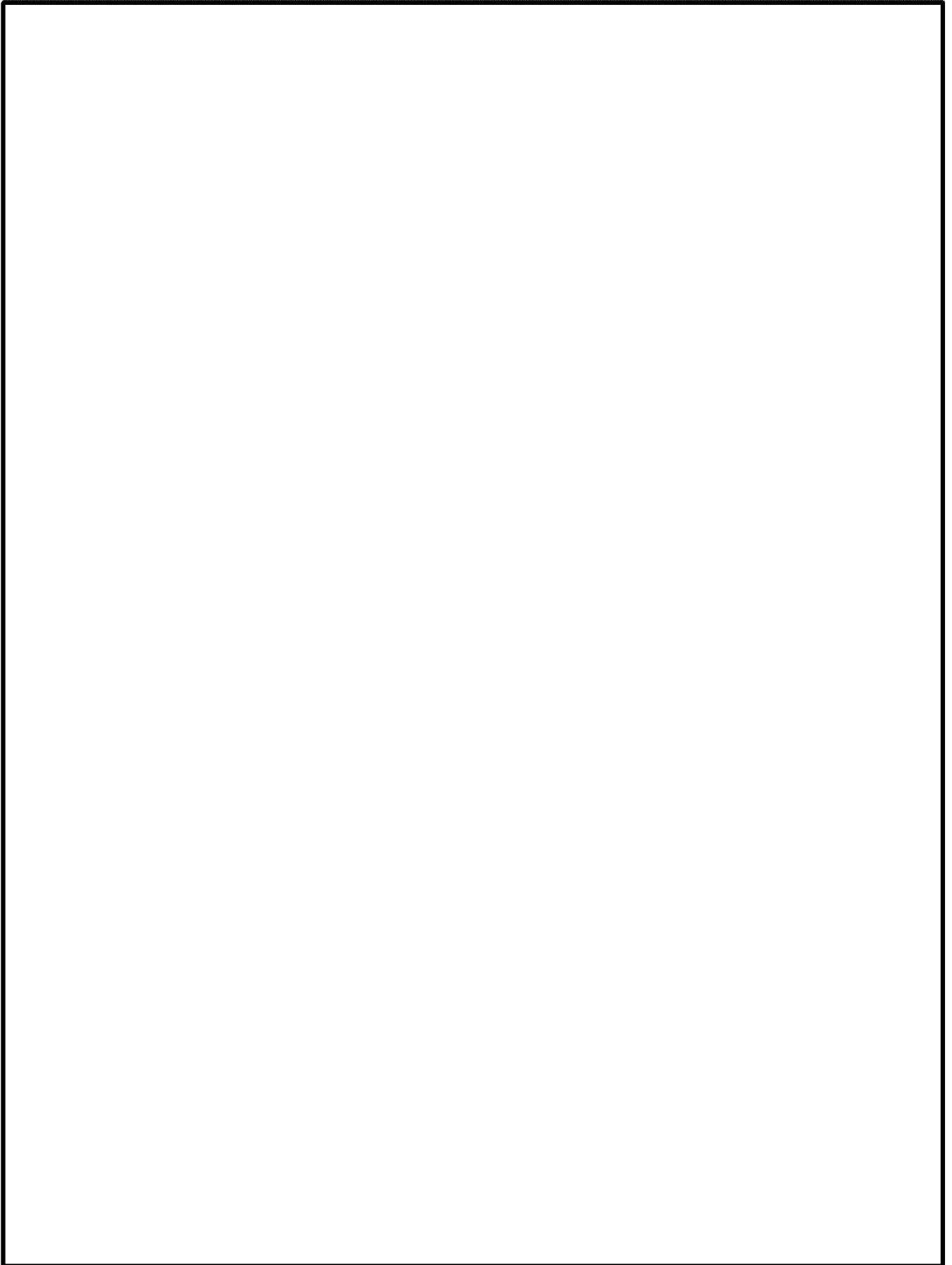
**COURSE 213**

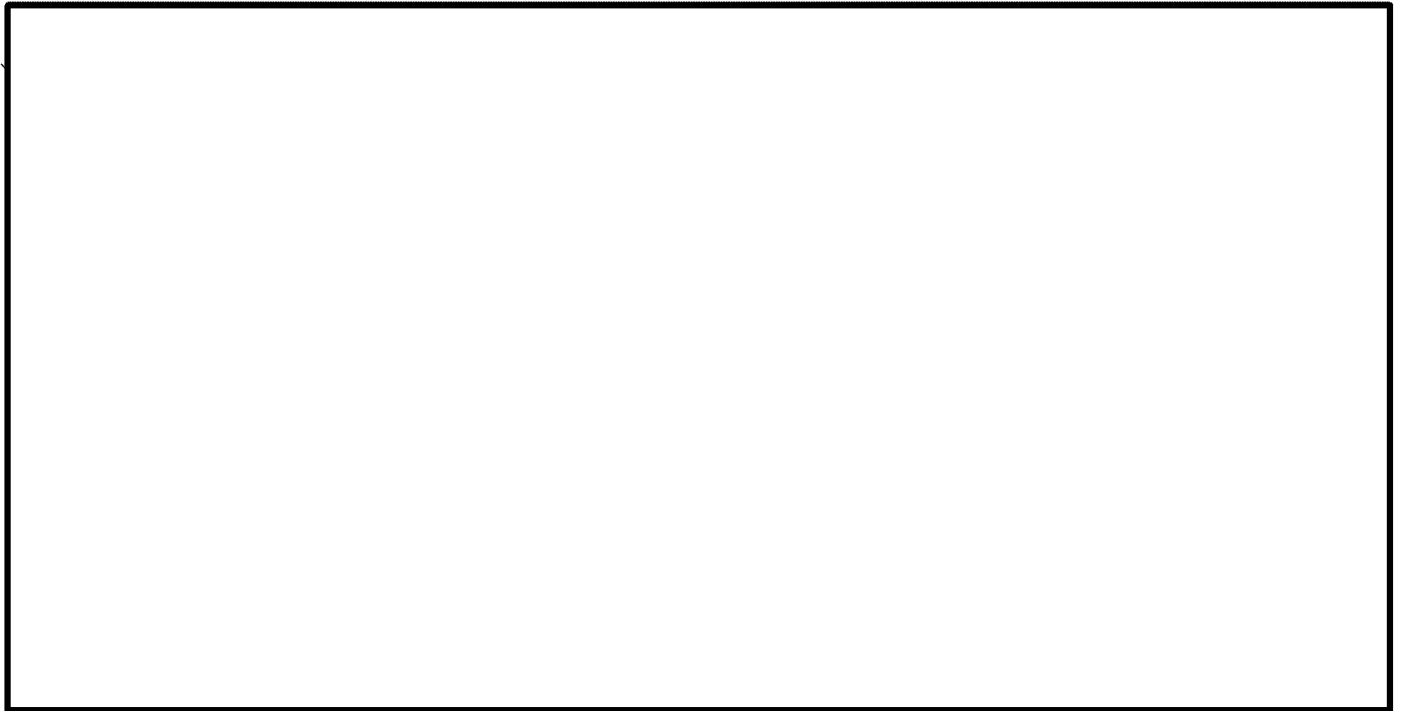
**PARTICIPANT GUIDE**

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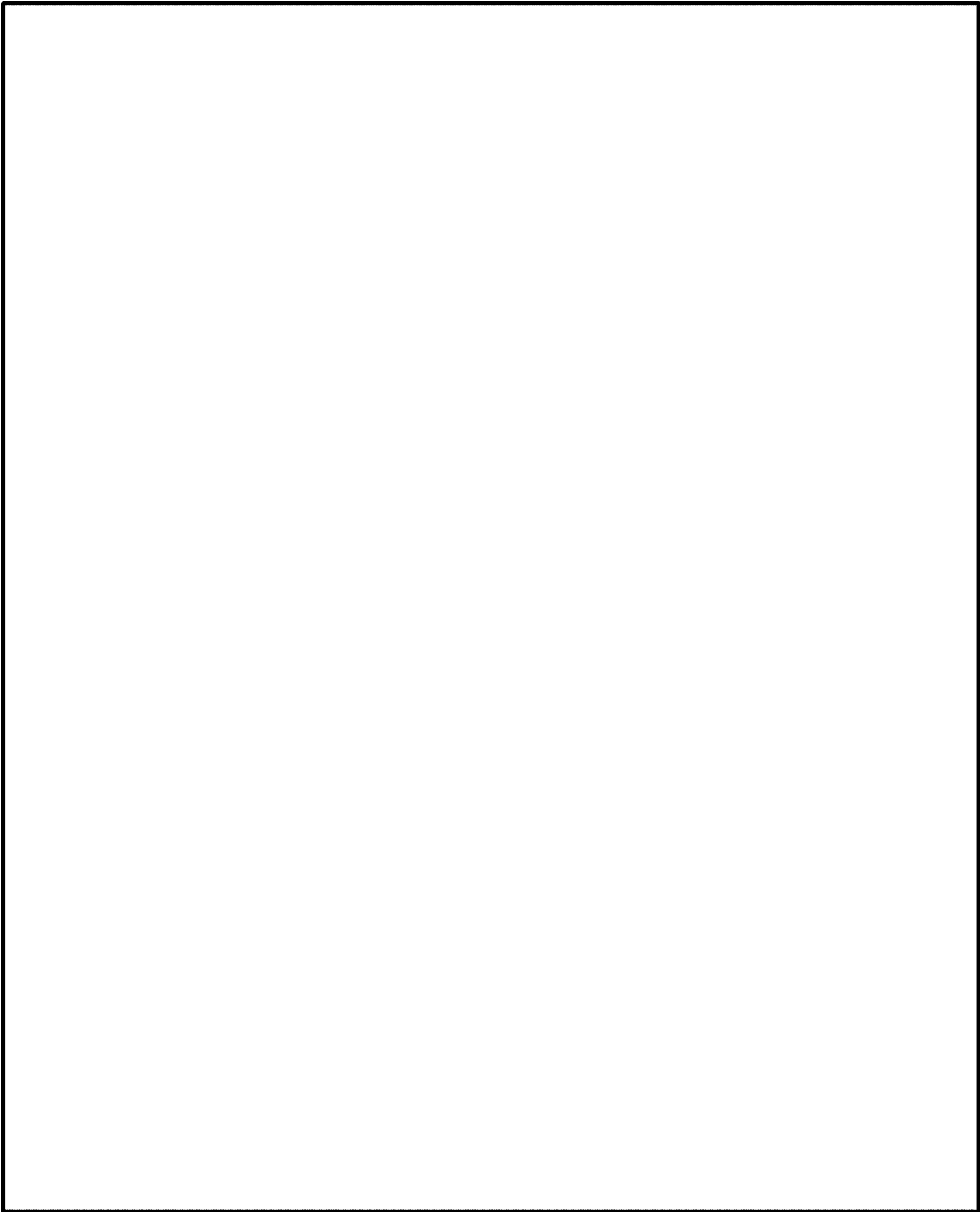
**March 2013**



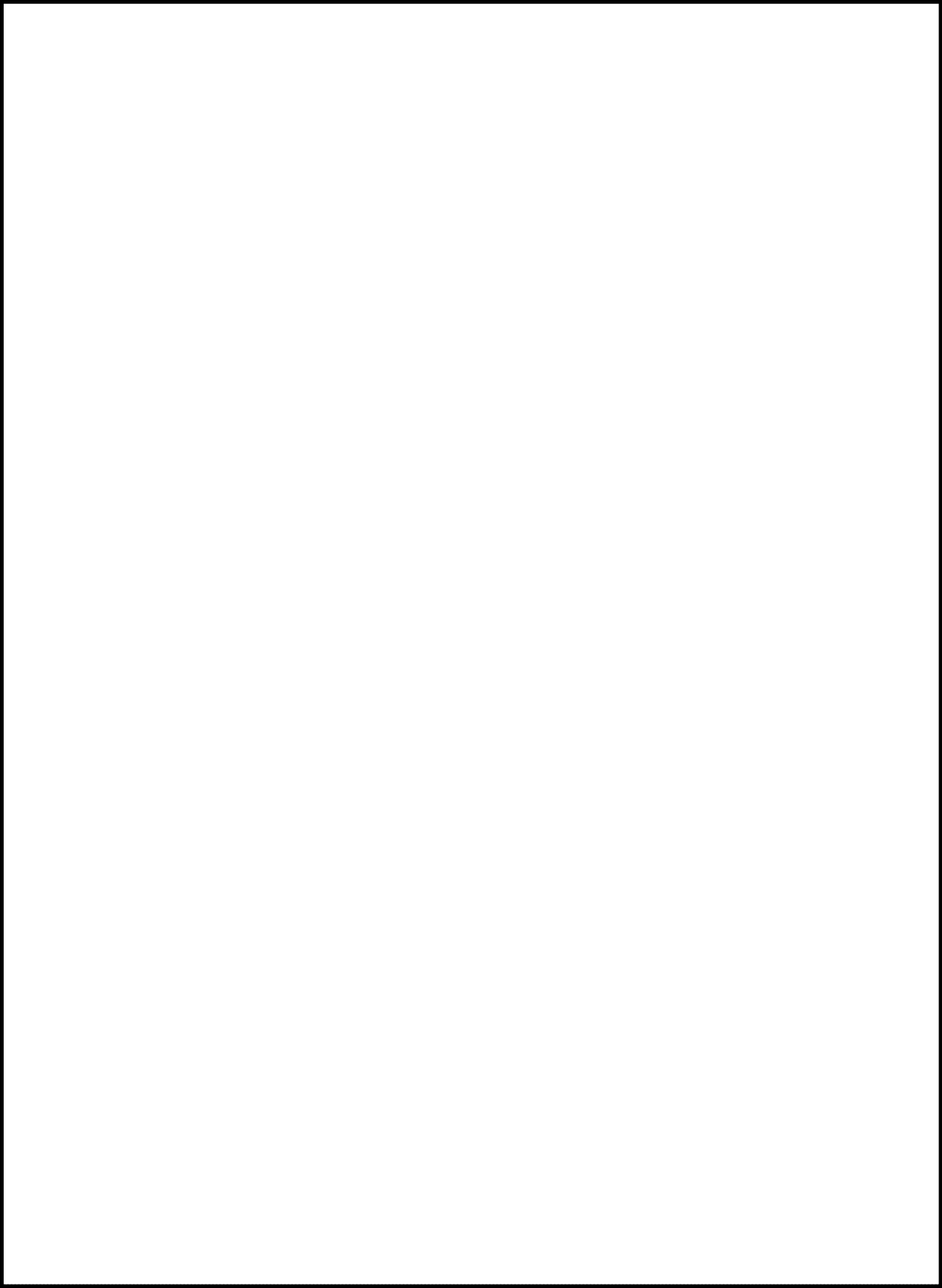


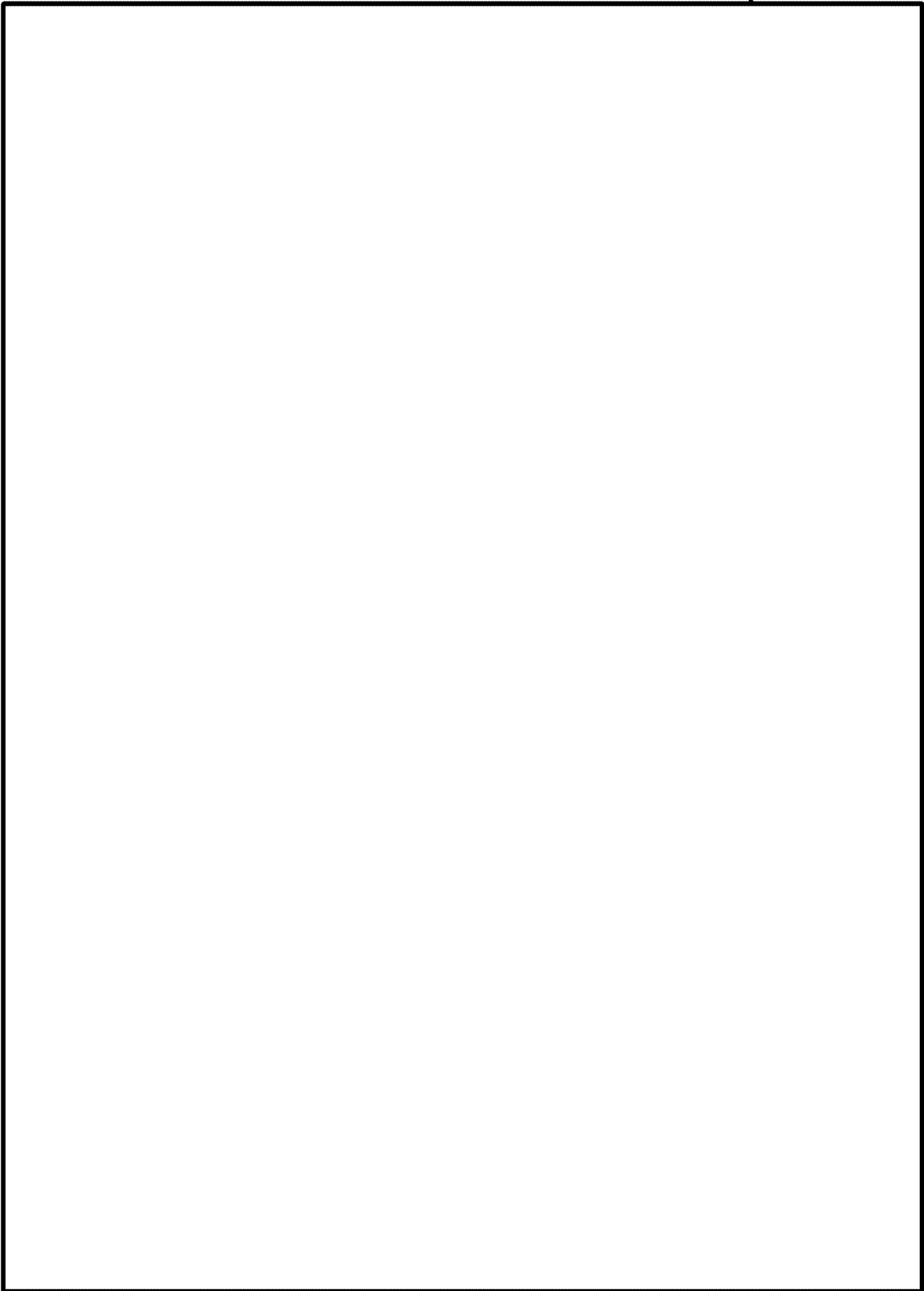












8. Documentary Requirements for Employment Based Immigrants.

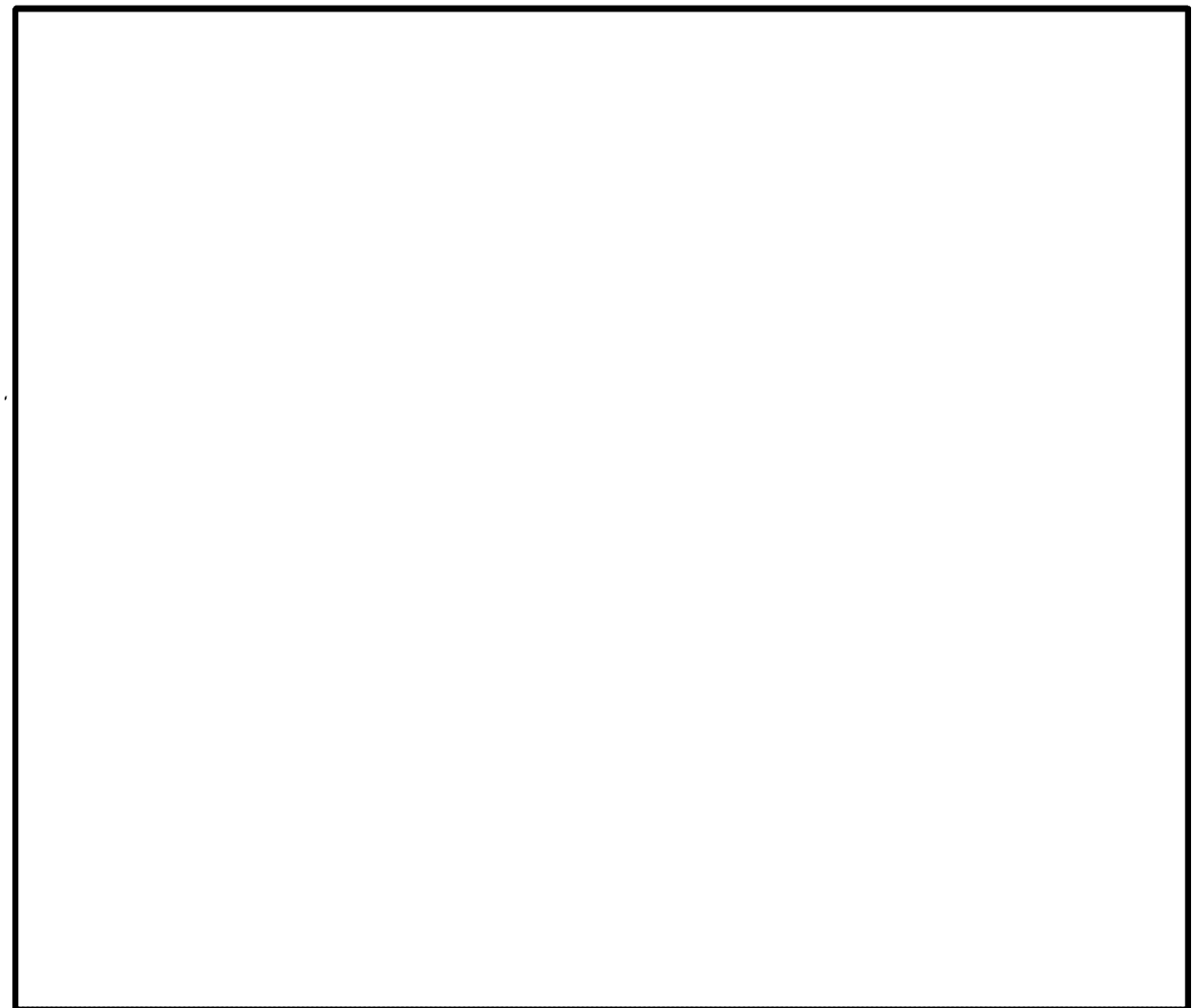
- a. Certain employment-based immigrants are required to have Affidavits of Support (Form I-864) when they immigrate to the United States.
  - A Form I-864 is required if the petitioning employer is a relative of the alien.
  - A Form I-864 is also required if a relative of the alien owns a significant ownership interest in the petitioning company (significant ownership is currently defined as 5% or more).
- b. The sponsor who files the Form I-864 Affidavit of Support must be an individual. The Form I-864 cannot be filed by a corporation, organization, or other entity.

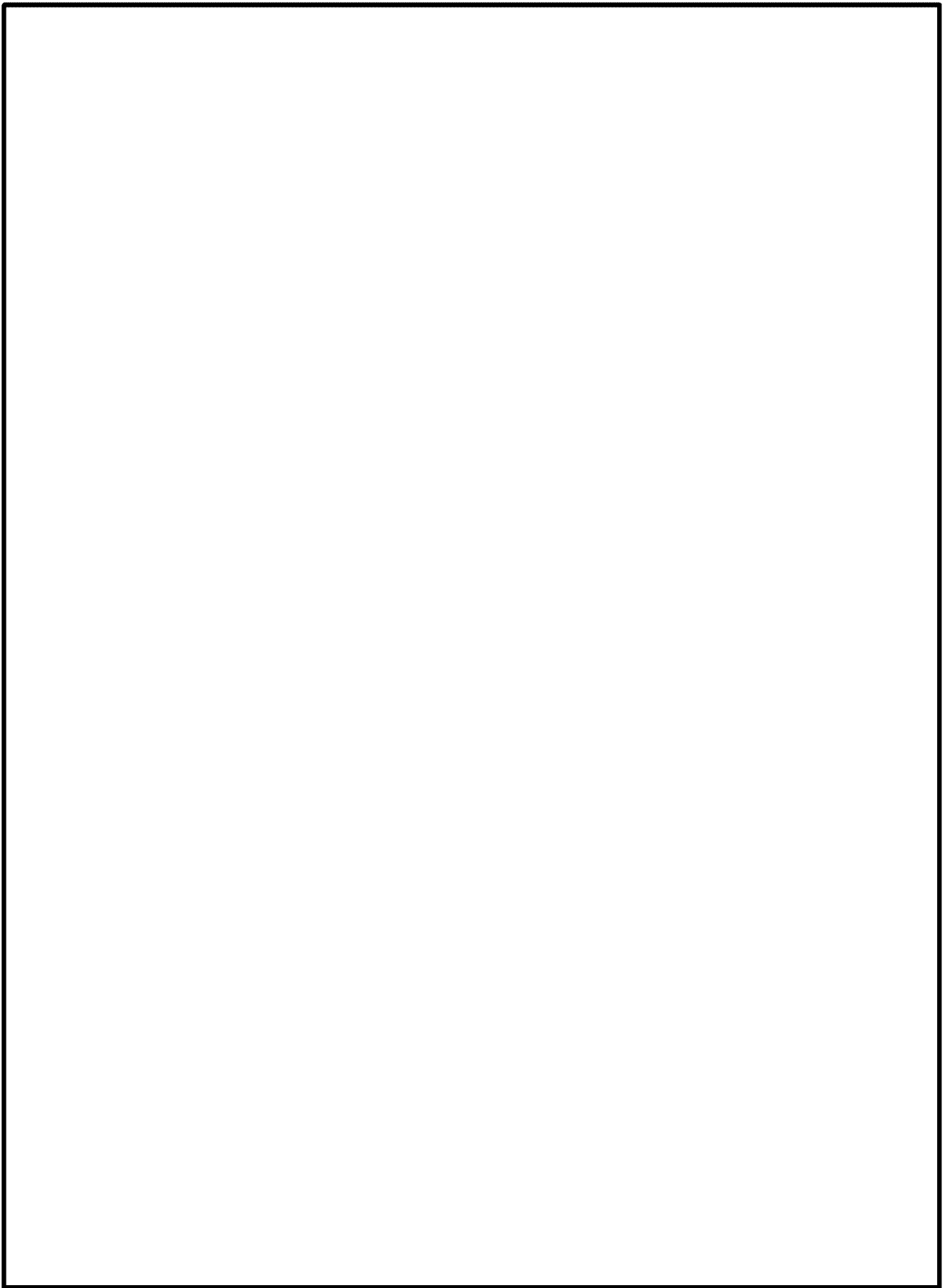
6. Assessing the Petitioner's Ability to Pay the Required Wage.

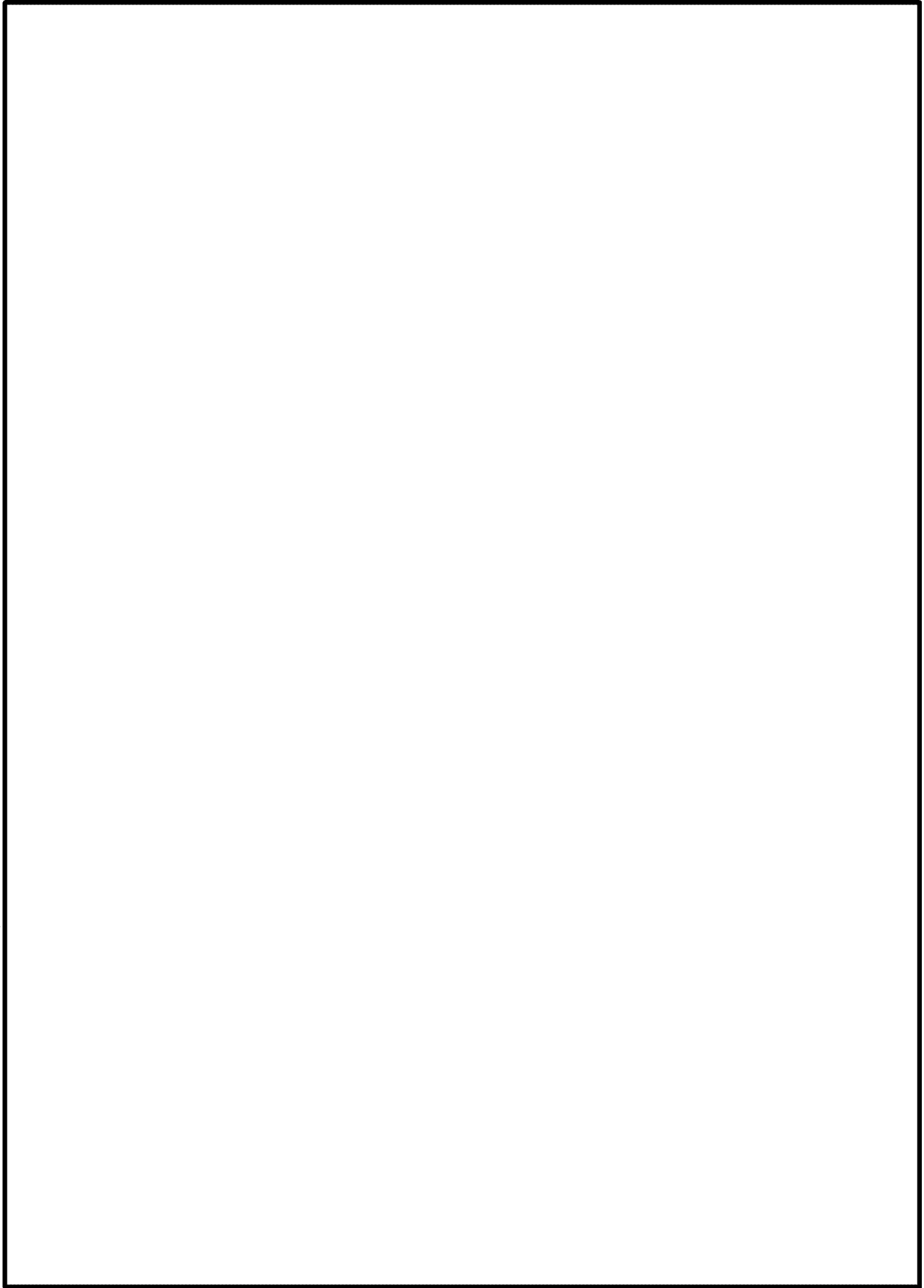
- a. Any petition which requires a job offer must be accompanied by evidence that the U.S. employer had the ability to pay the proffered wage at the time the permanent employment certification application was filed, and continues to have the ability to pay the proffered wage until the beneficiary obtains permanent residence.

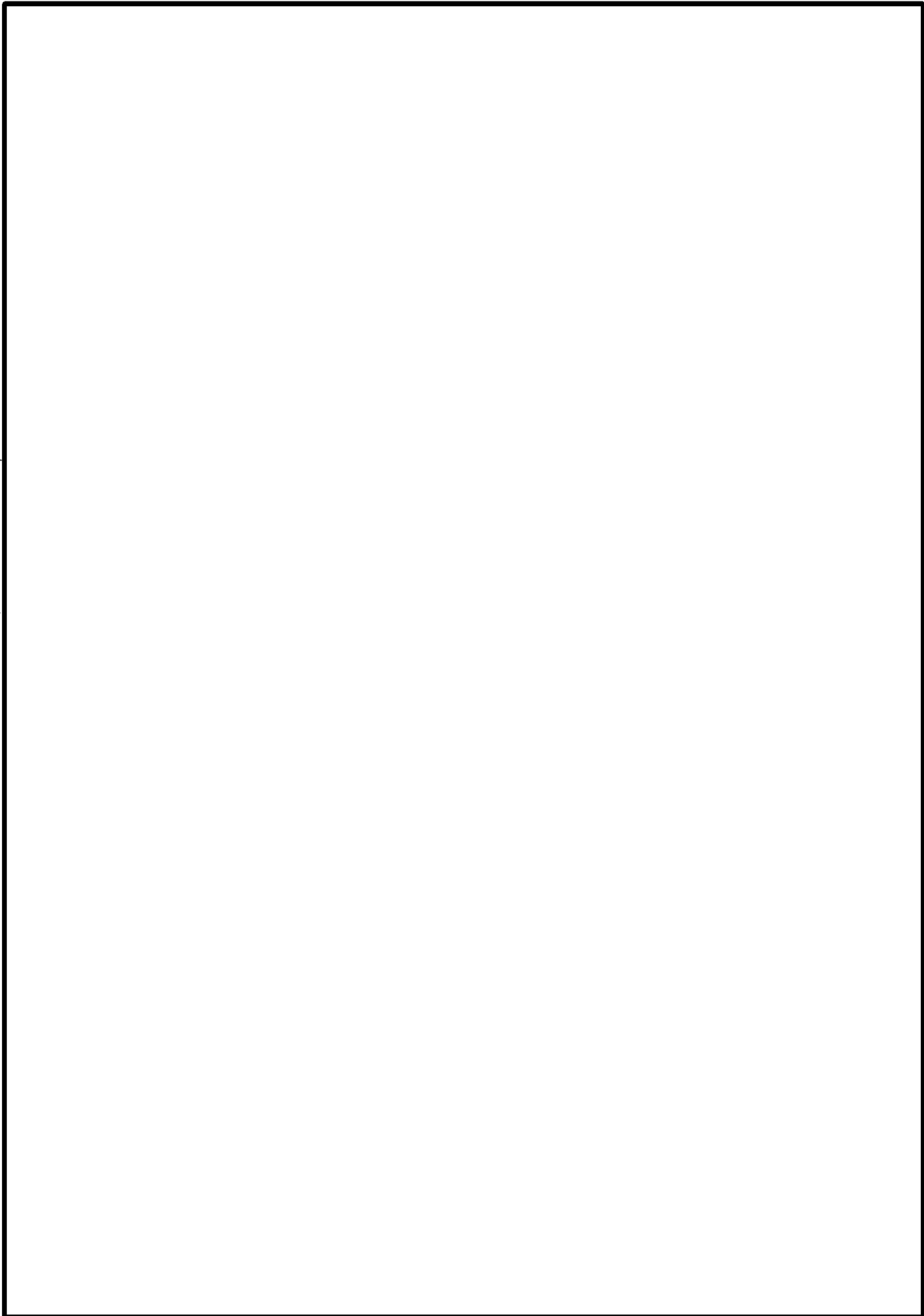


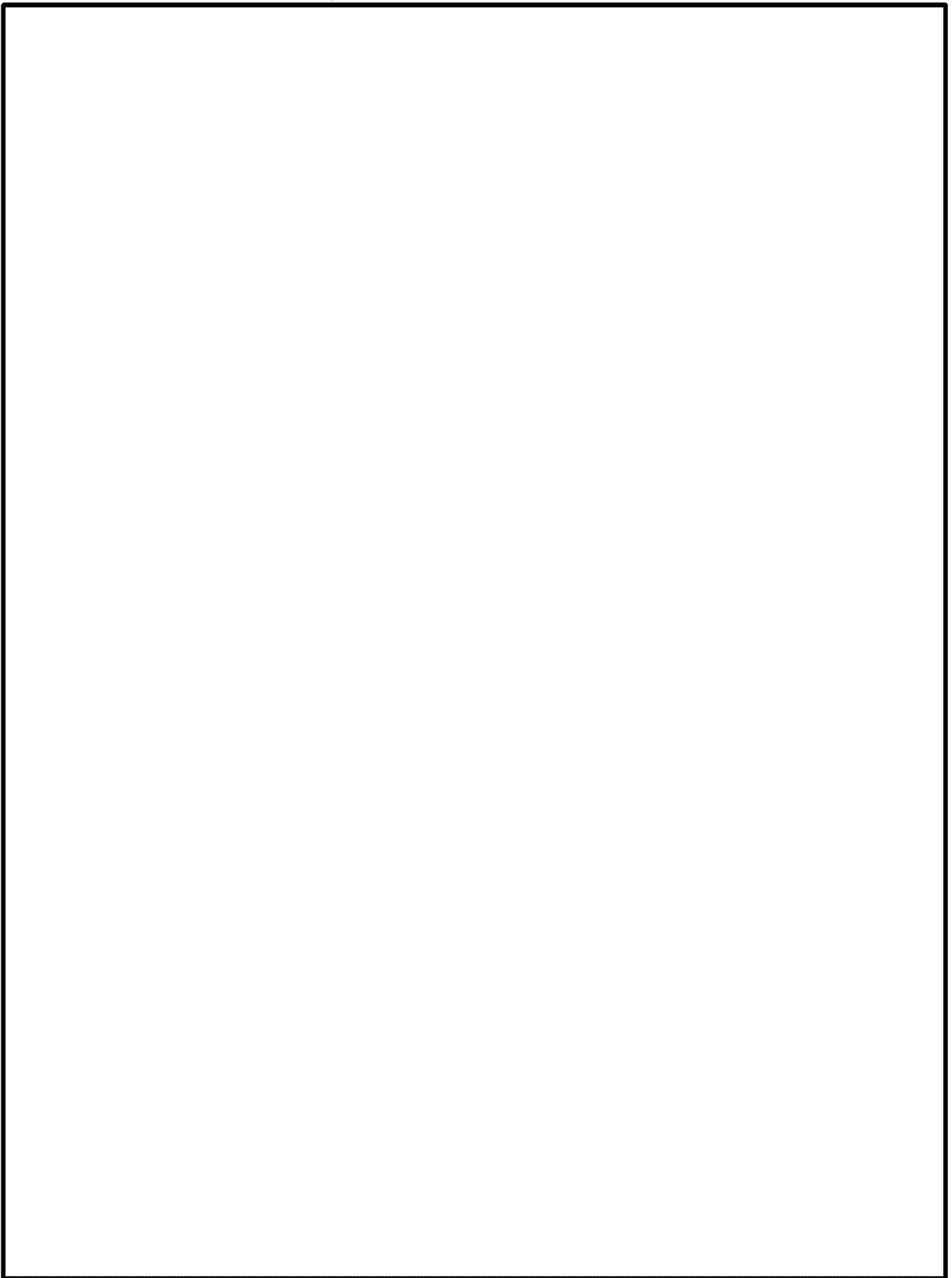
- Establishing that the employer has the ability to pay the proffered wage *is different from* establishing that the employer is already paying the proffered wage.
- b. 8 CFR § 204.5(g)(2) requires that the evidence be in the form of annual reports, federal tax returns, or audited financial statements. In a case where the prospective employer employs 100 or more workers, adjudicators may accept a statement from a financial officer of the organization regarding its ability to pay the proffered wage.
  - In appropriate cases the petitioner may submit, or USCIS may request, additional evidence such as profit/loss statements, bank account records, or personnel records. The burden remains on the petitioner to establish its ability to pay the wage.
- c. USCIS Operational guidance, “Determination of Ability to Pay under 8 CFR 204.5(g)(2)” dated May 4, 2004 is provided as further background reading in the Memo Folder.

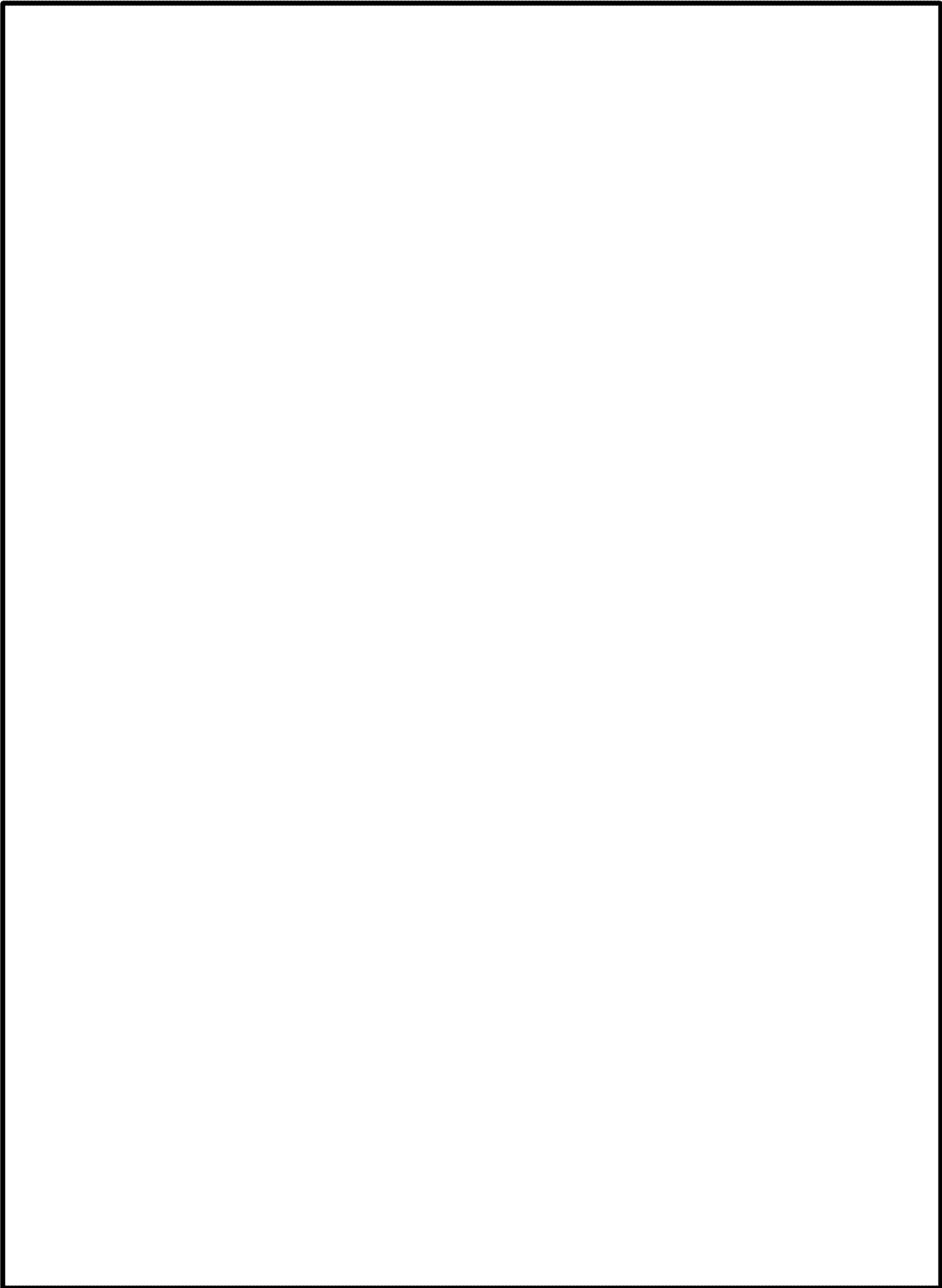


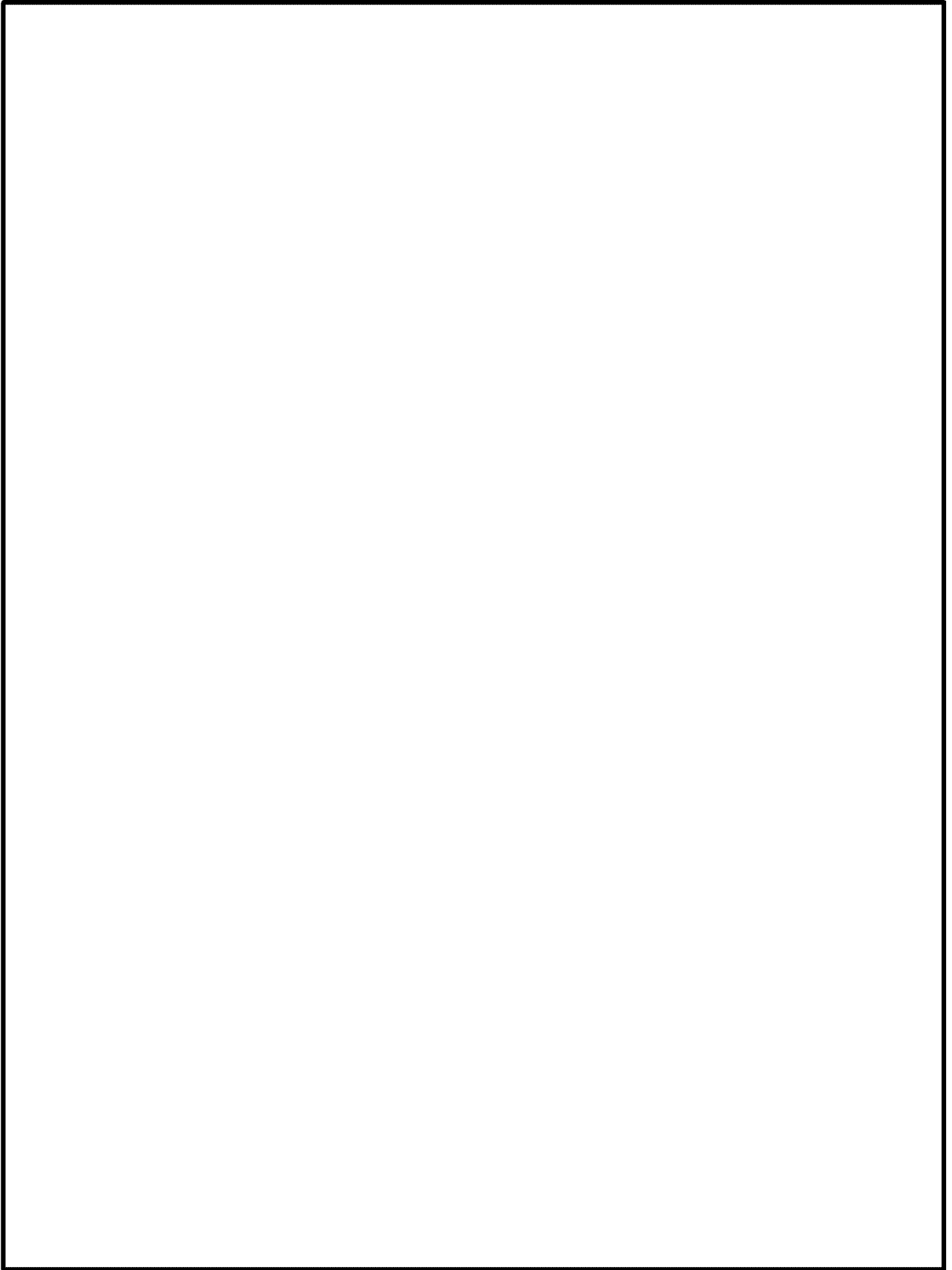


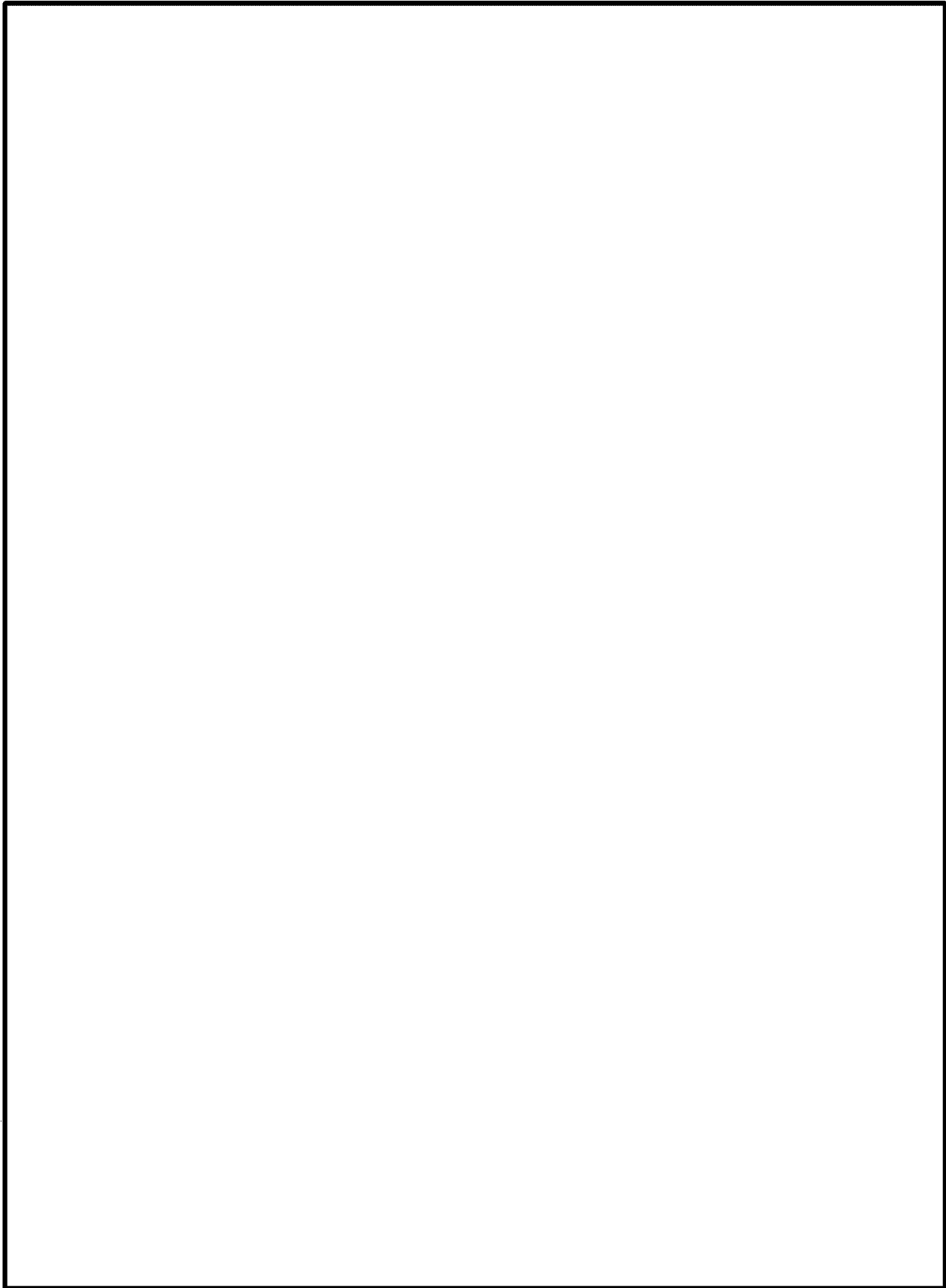




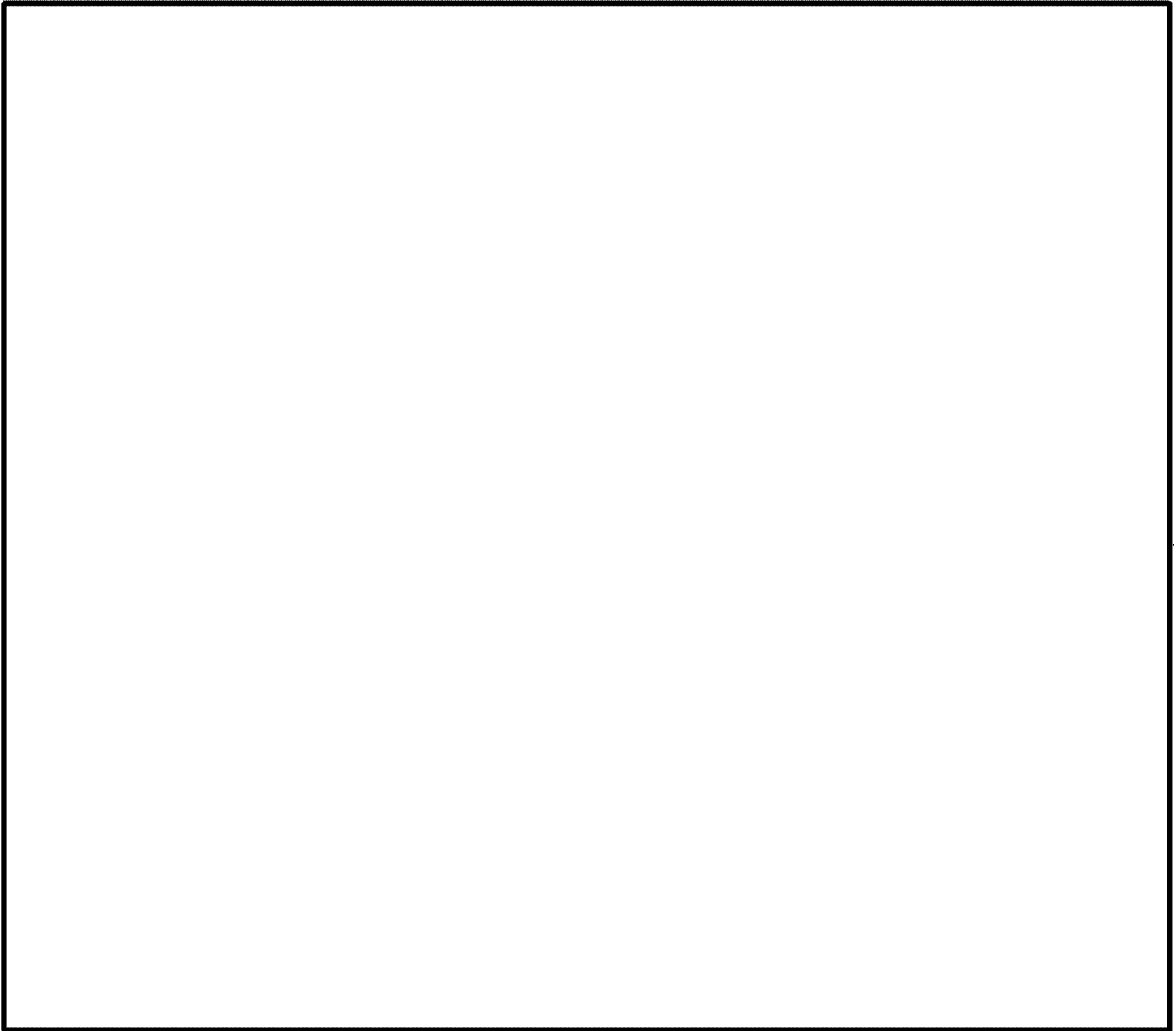




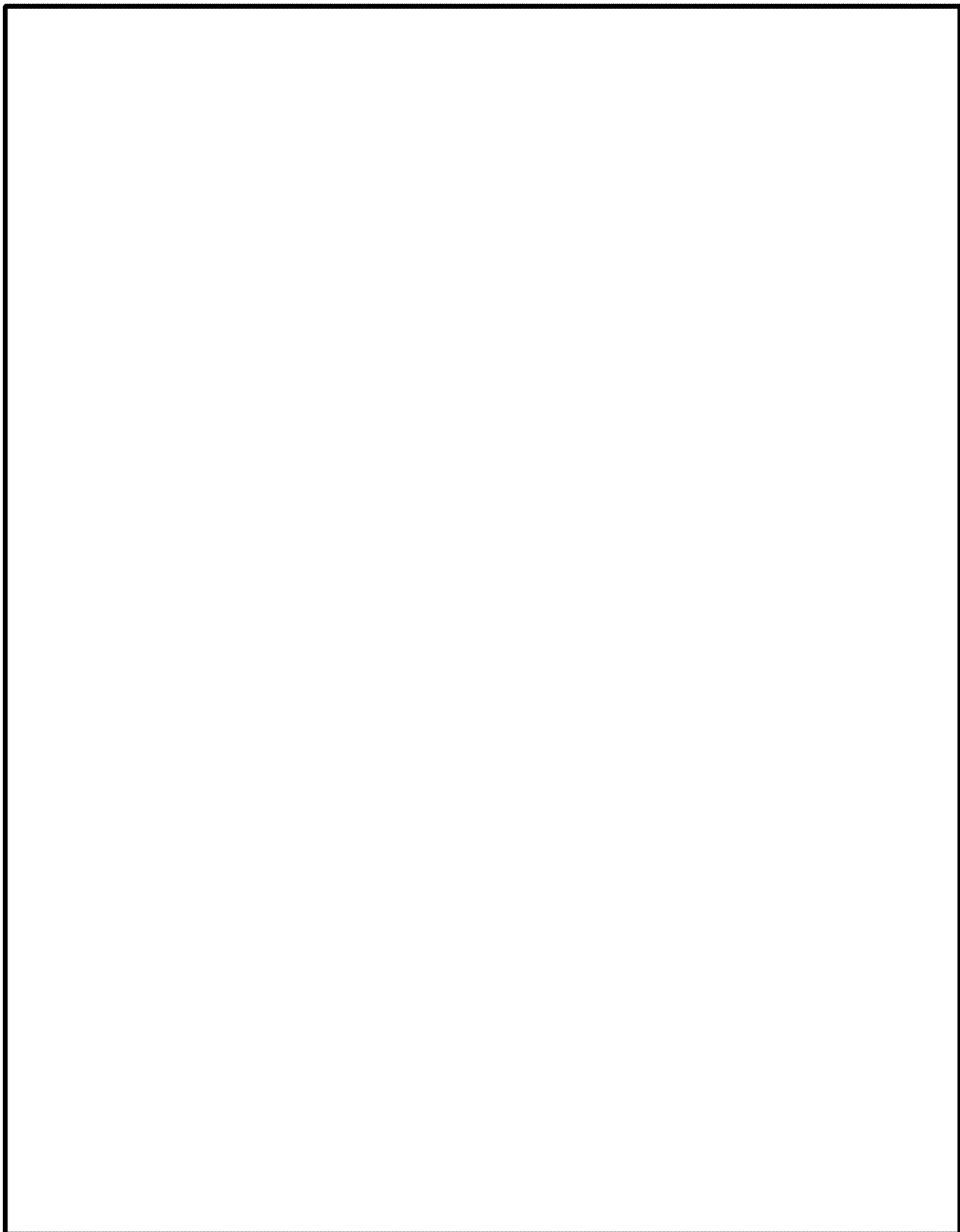


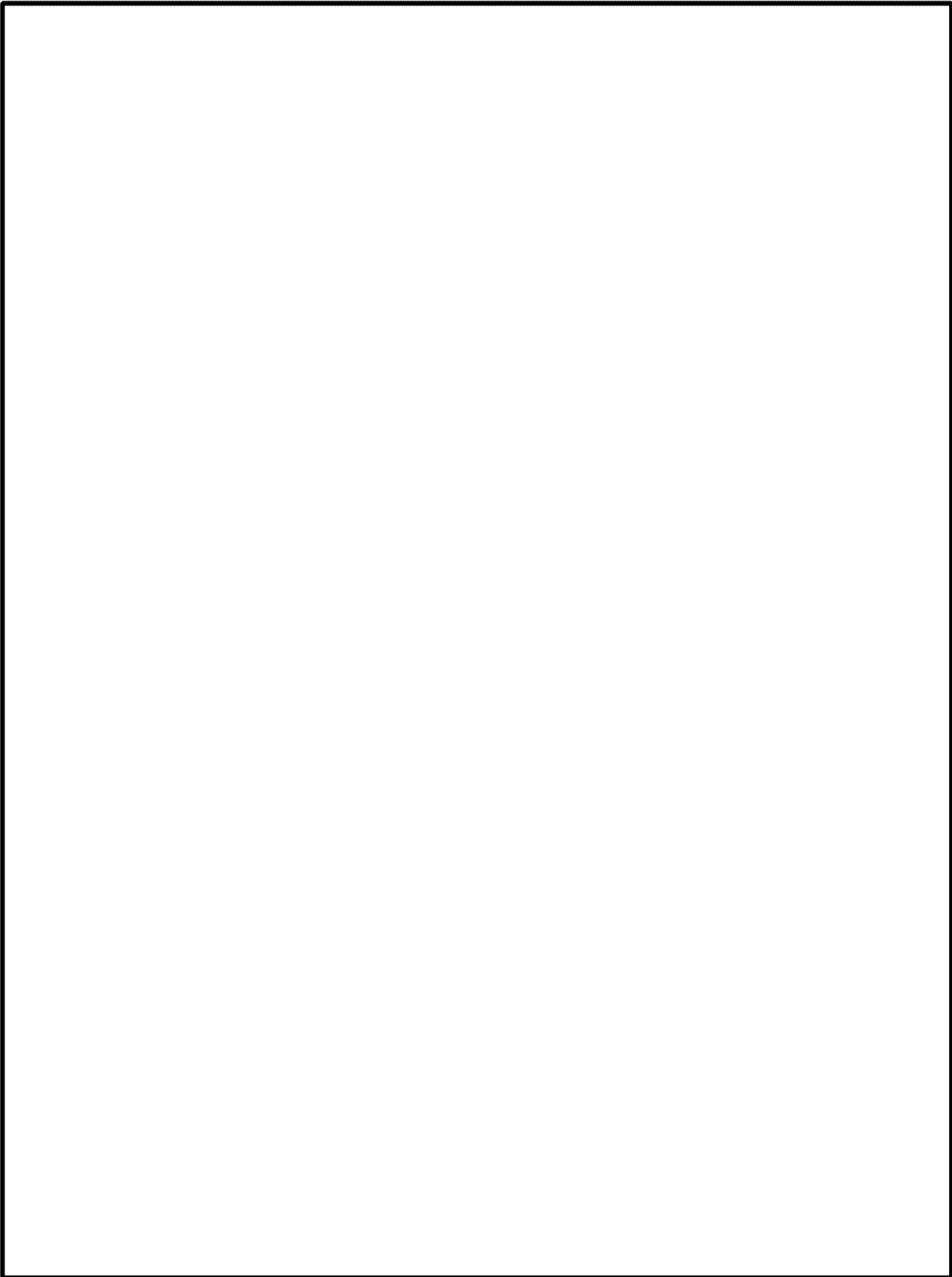














# U.S. Citizenship and Immigration Services

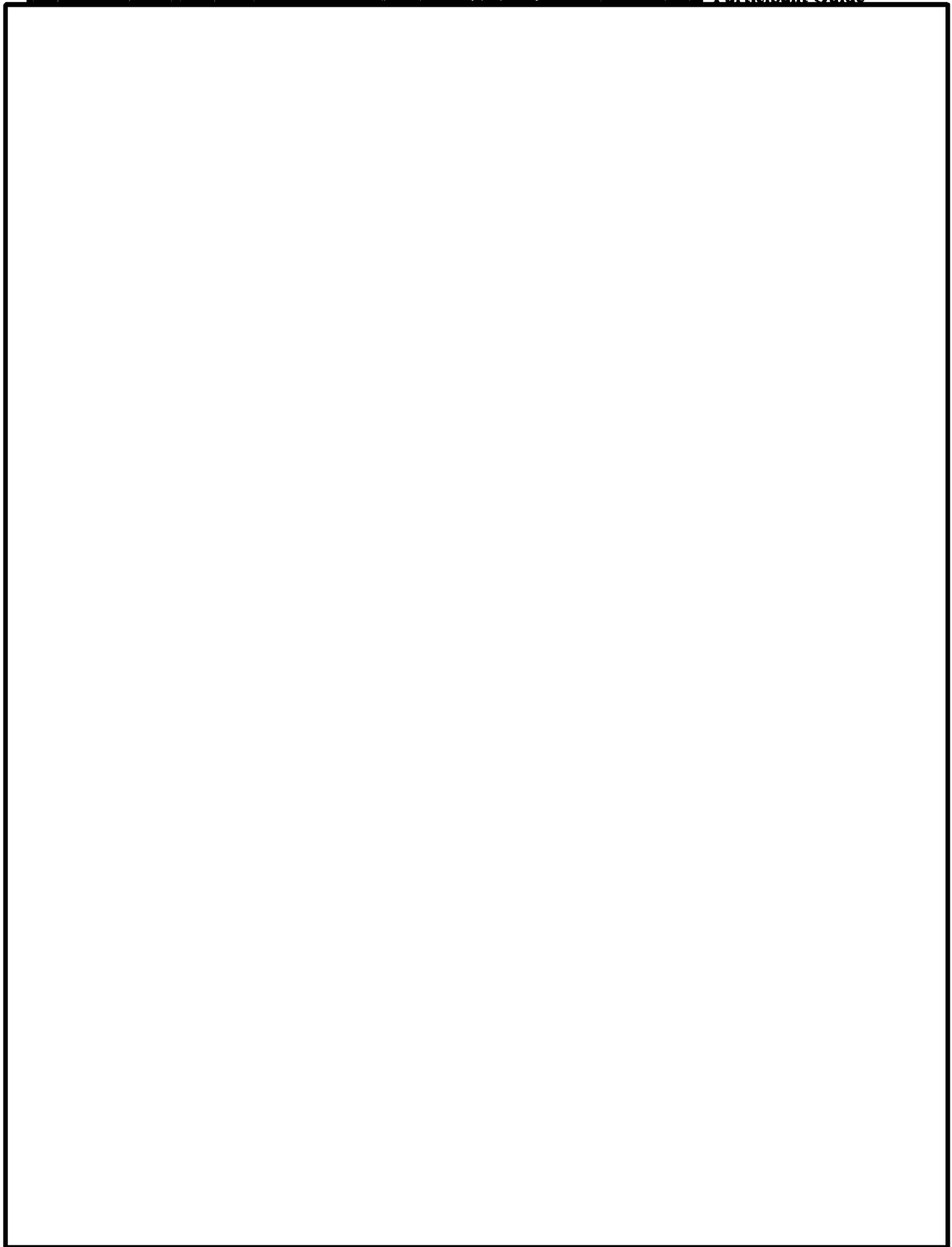
## ***BASIC BSC 217***

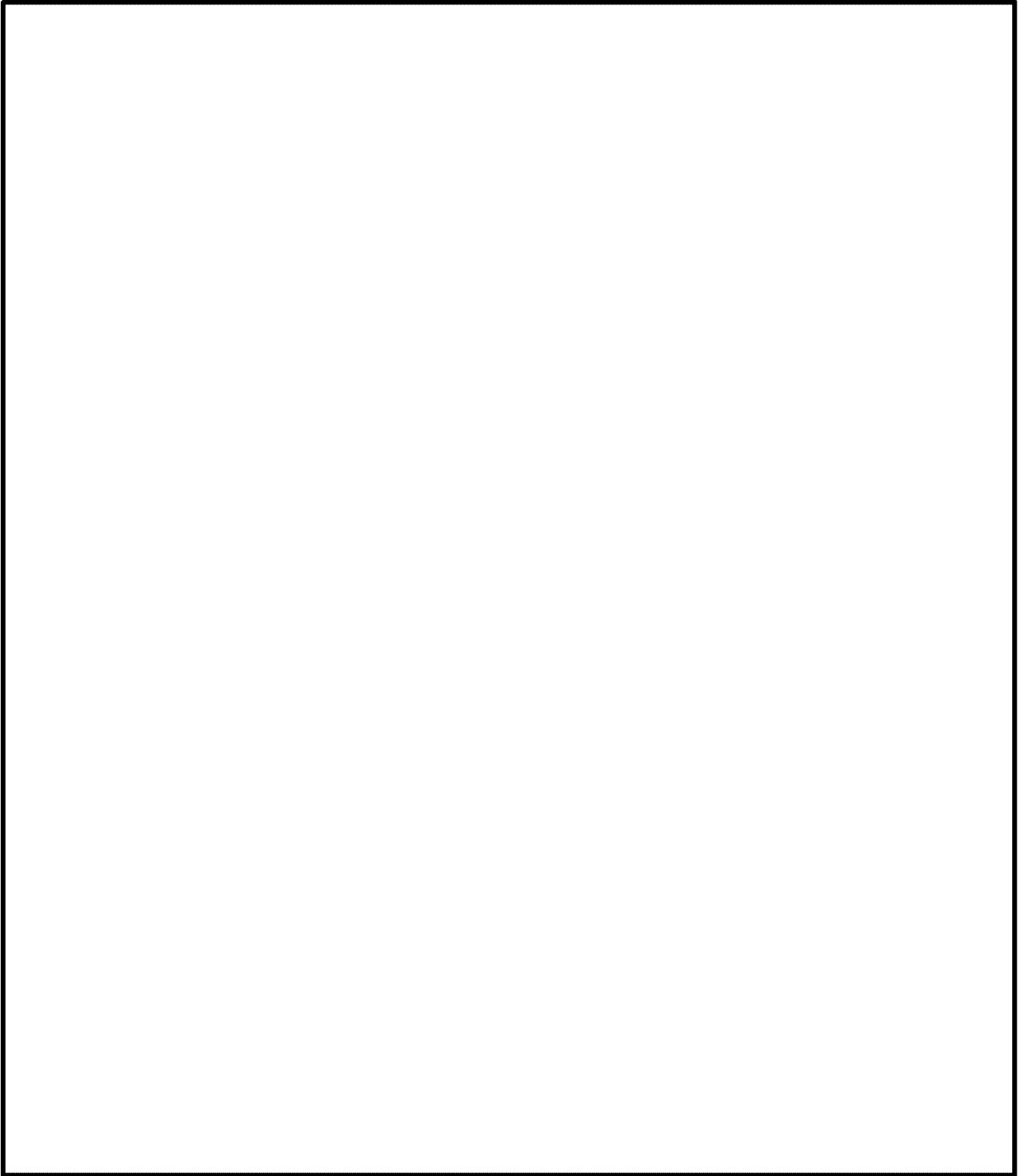
**INADMISSIBILITY, DEPORTABILITY, AND WAIVERS**

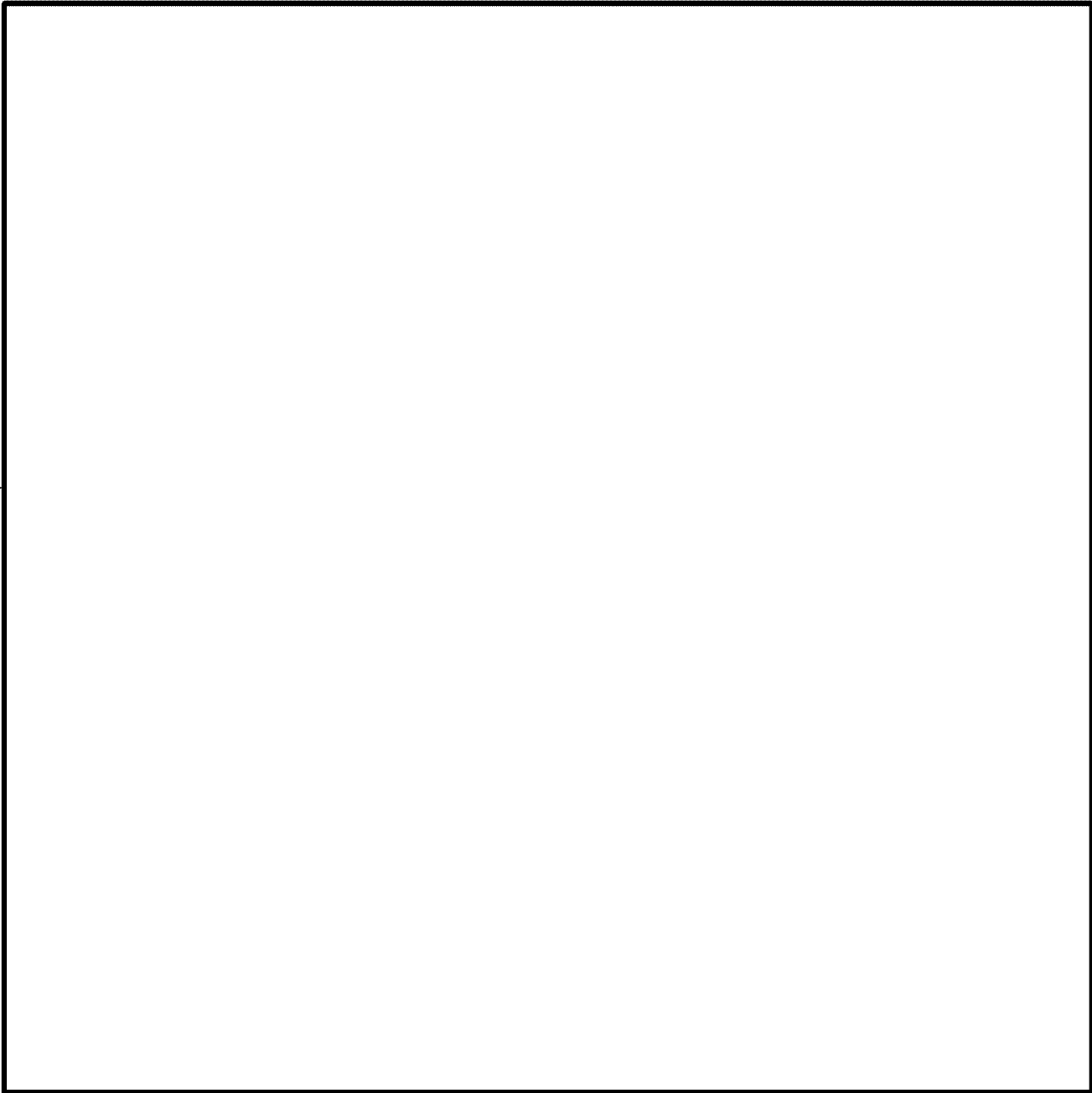
**PARTICIPANT GUIDE**

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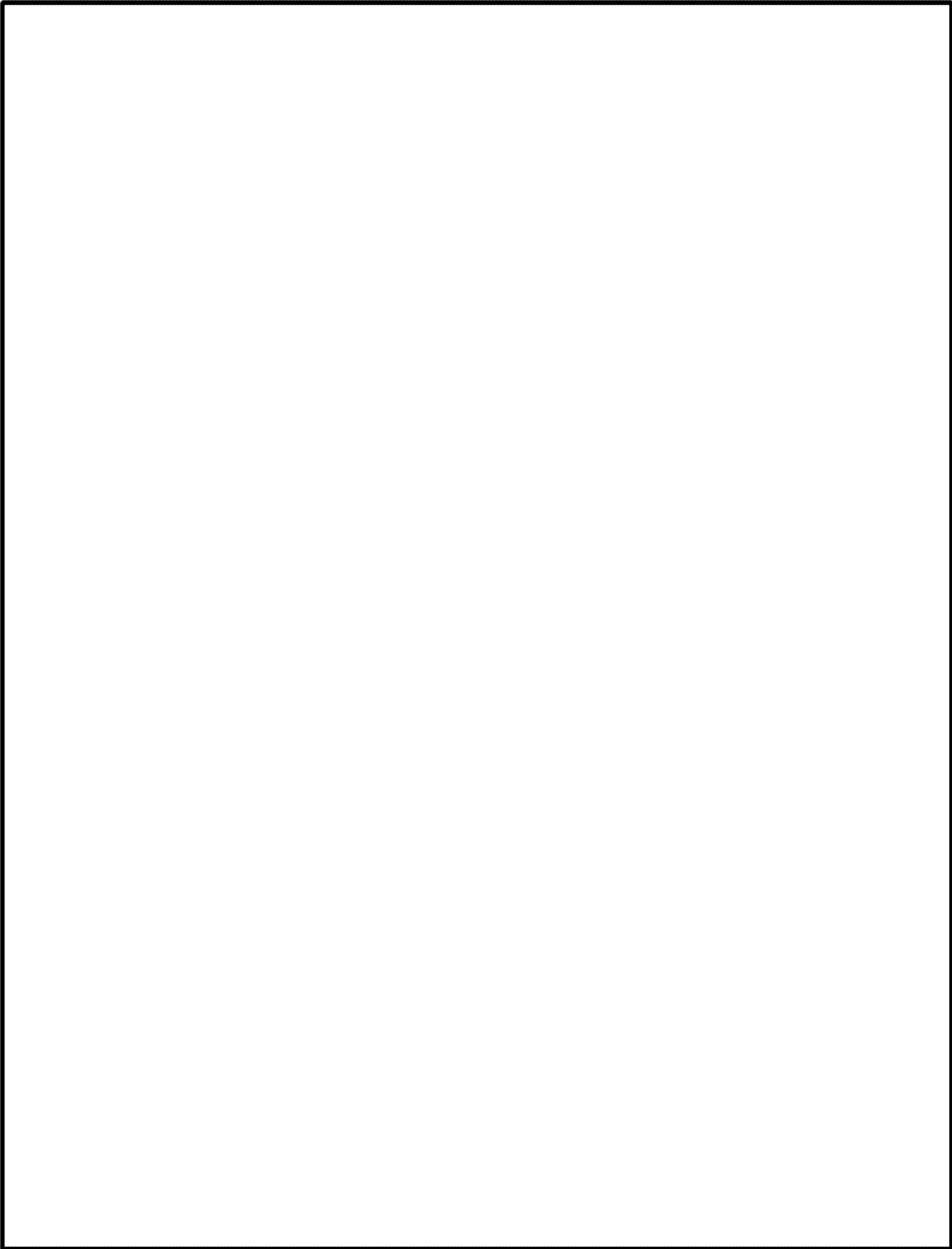
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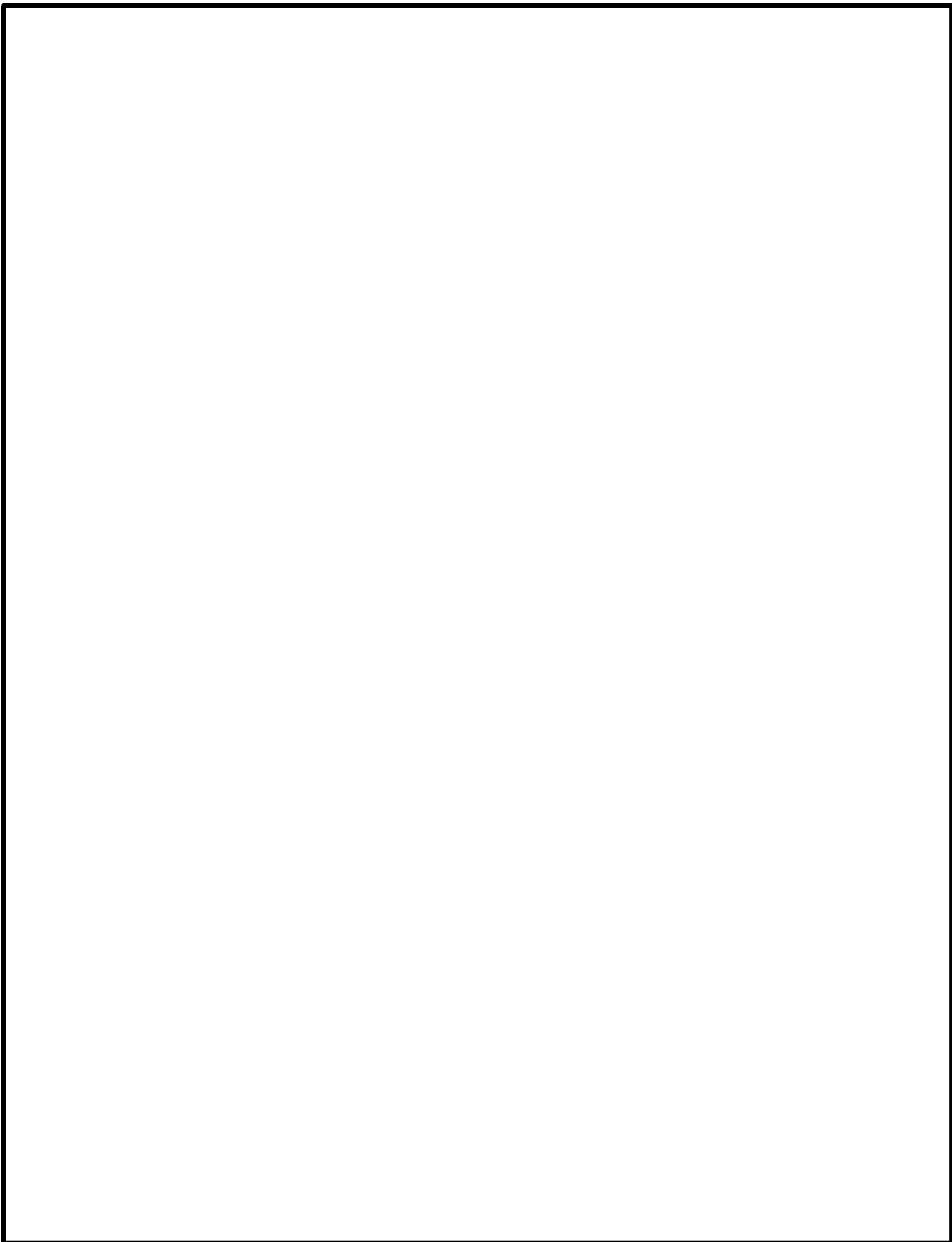


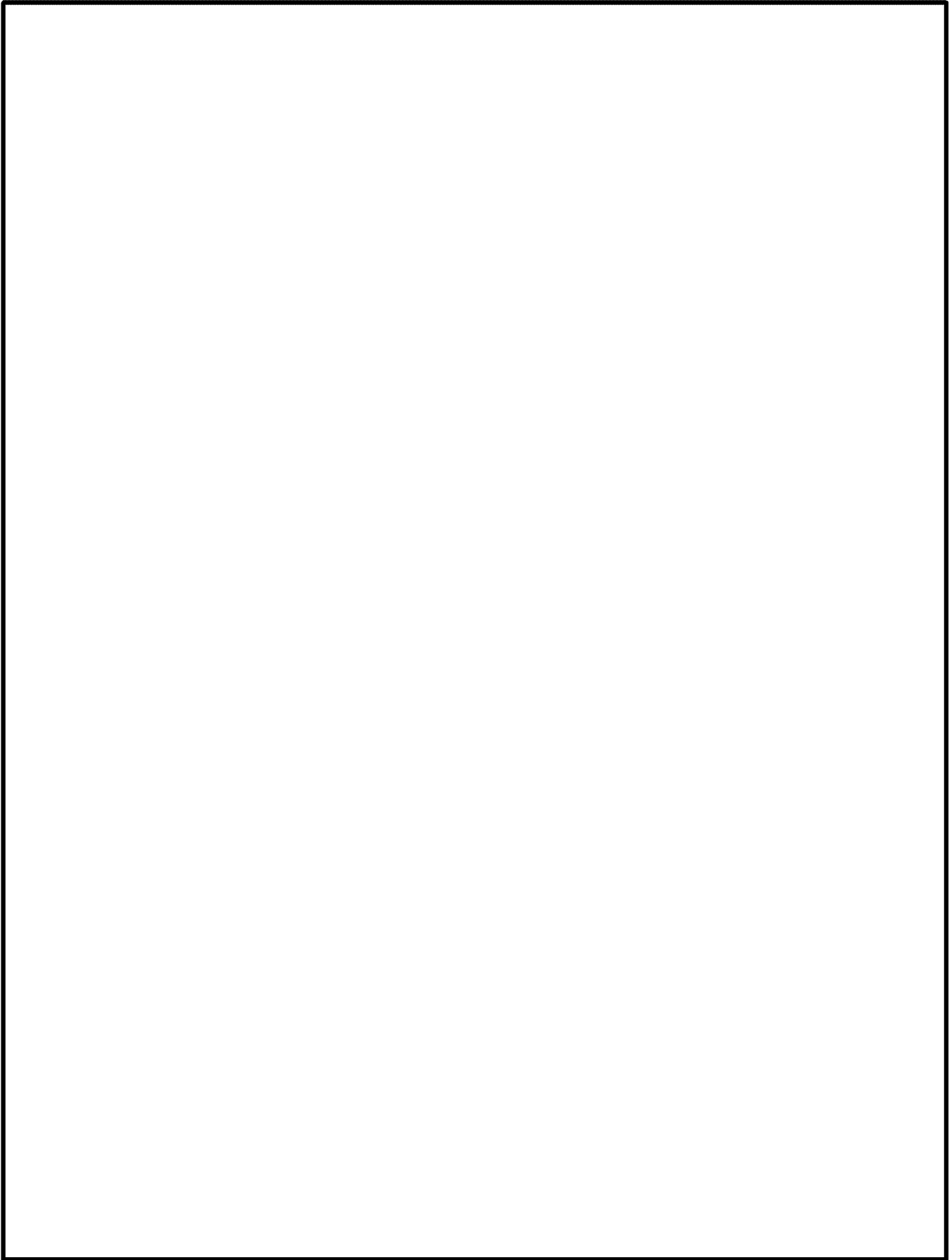


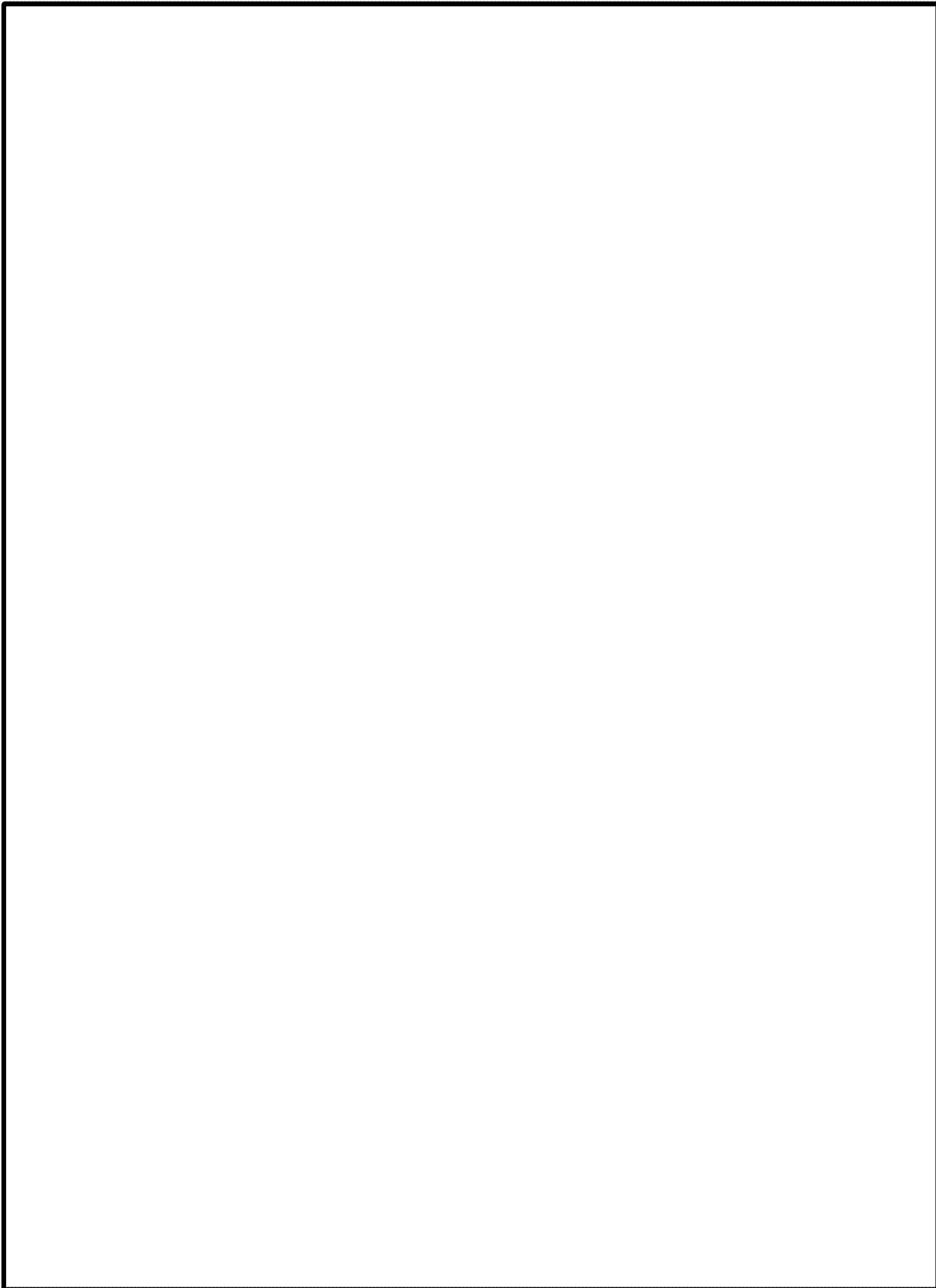


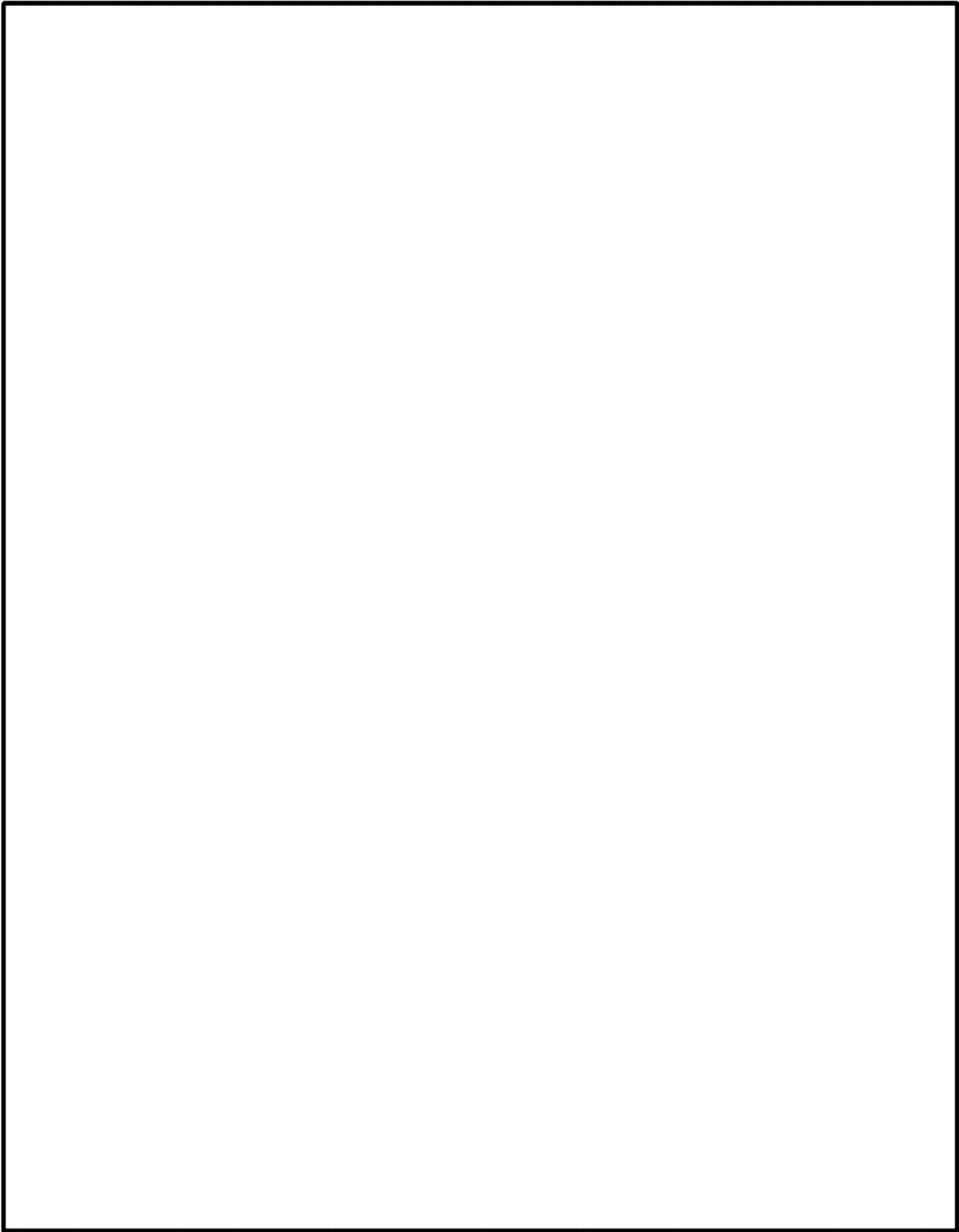


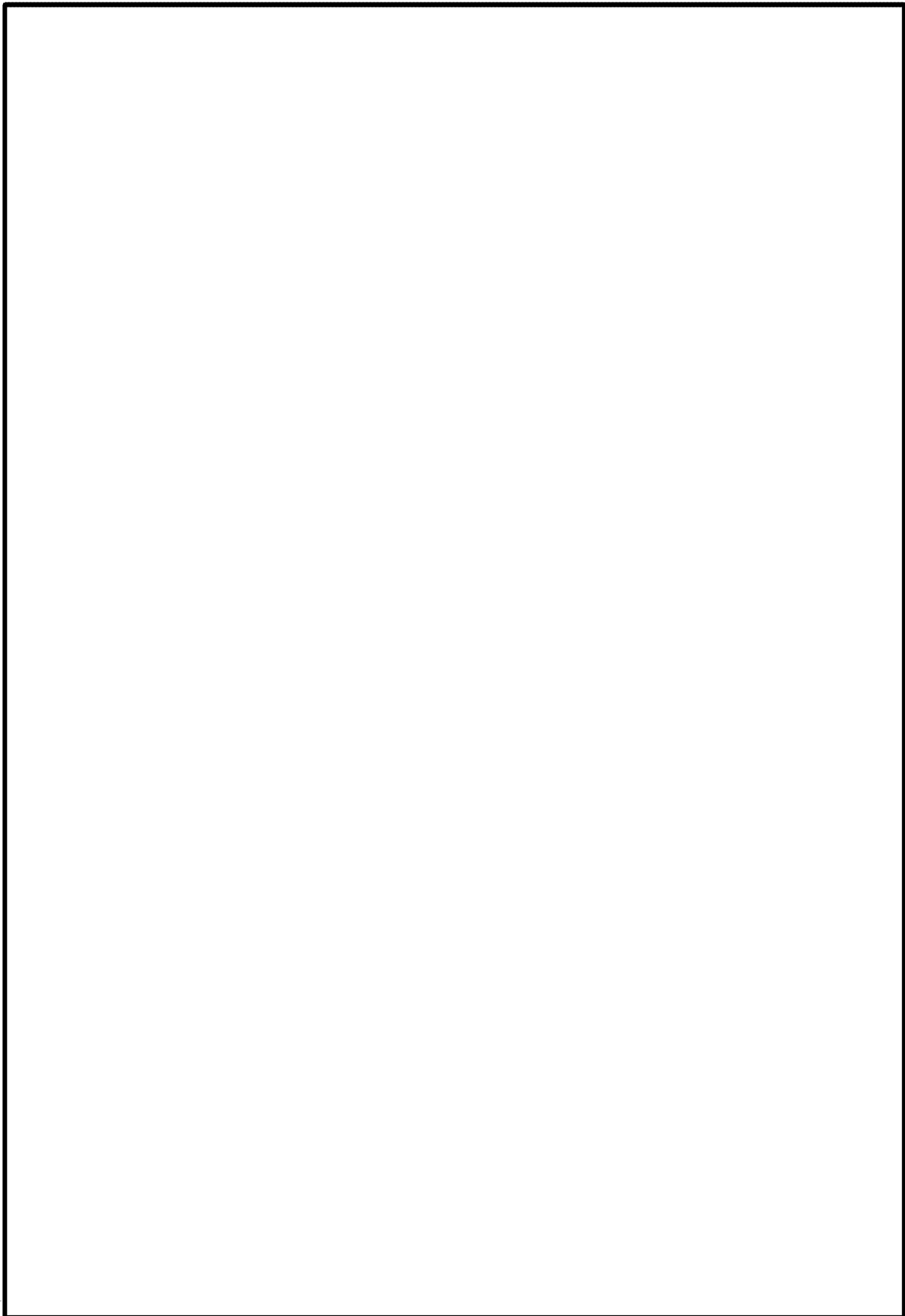


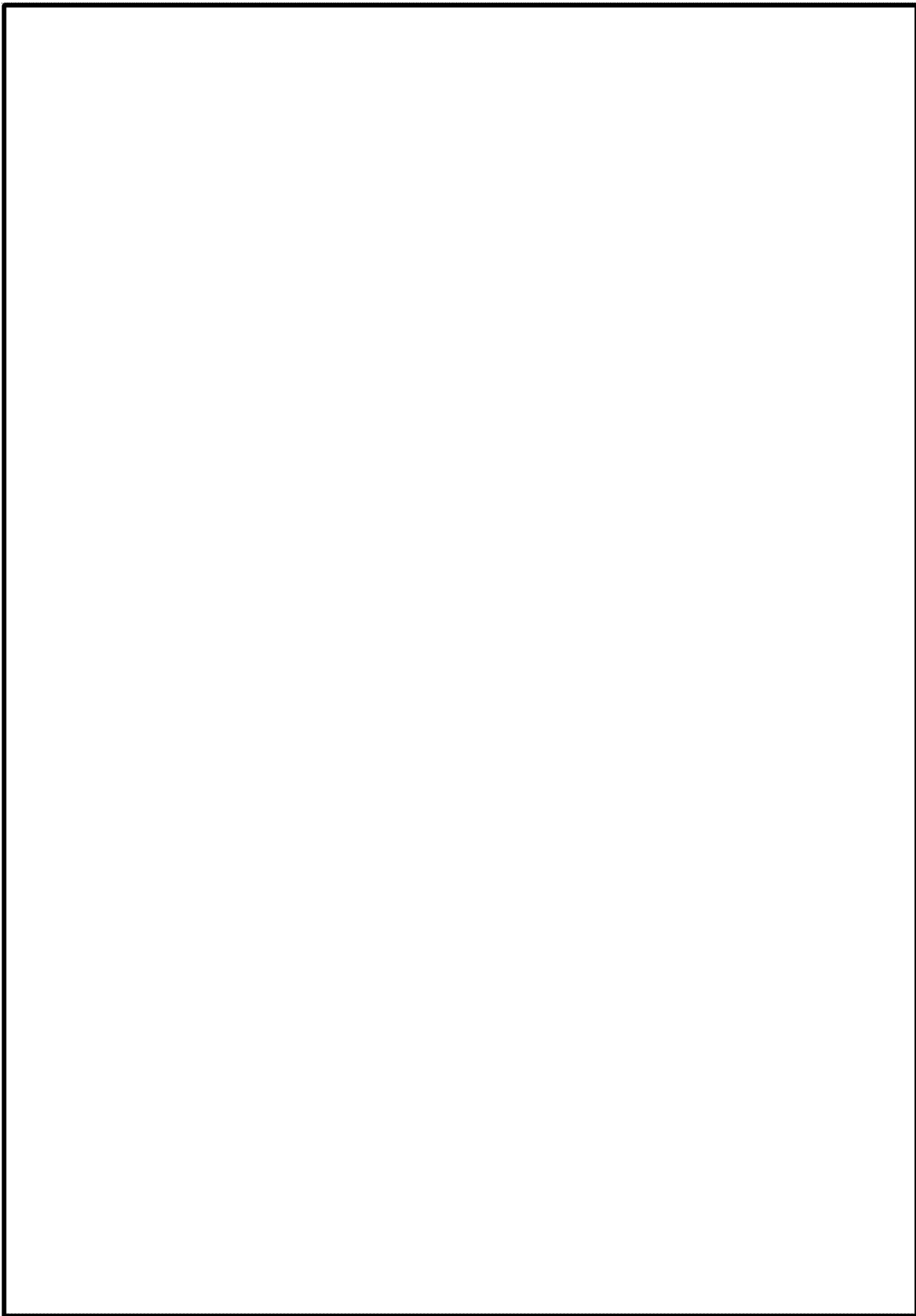


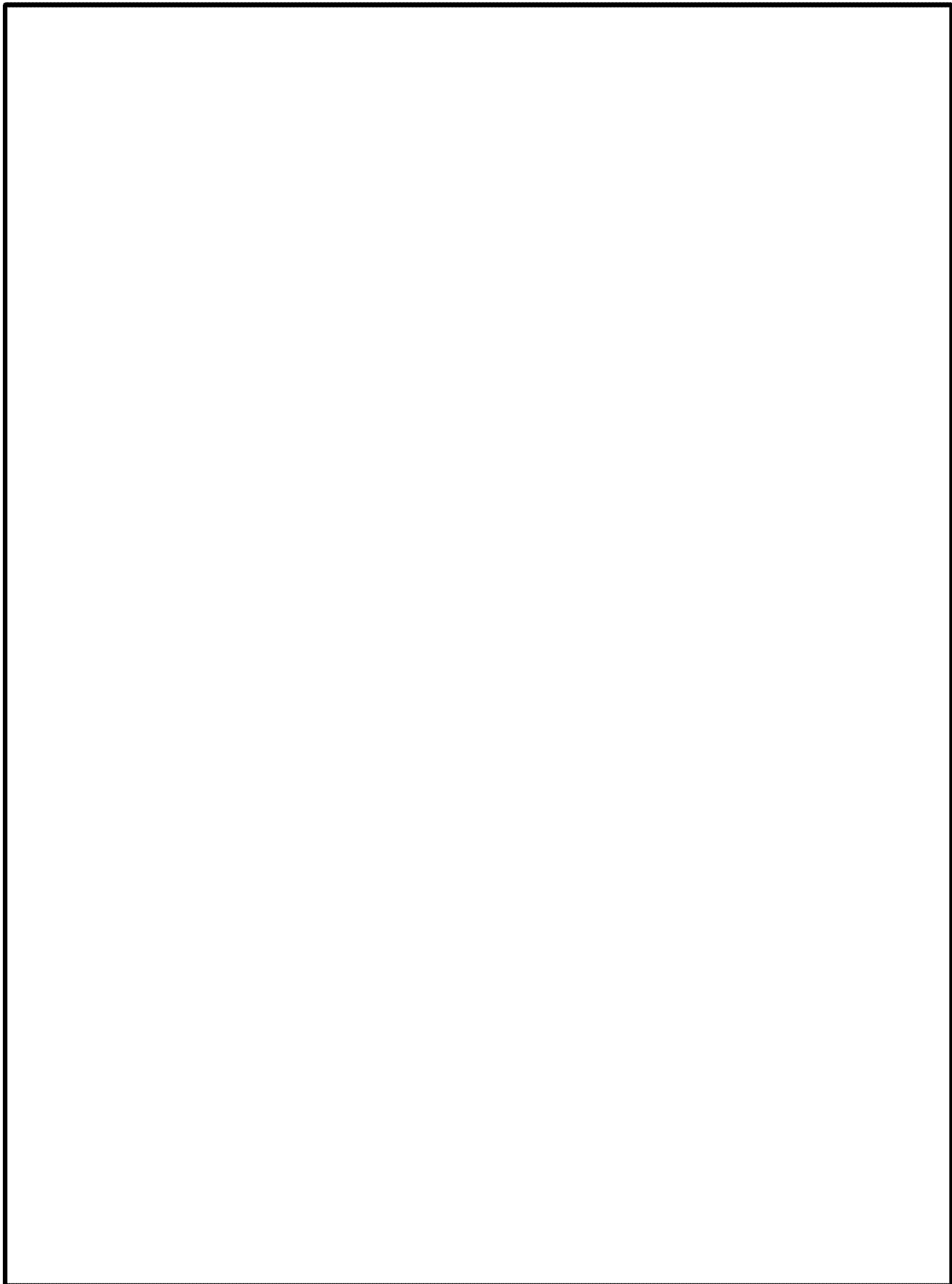




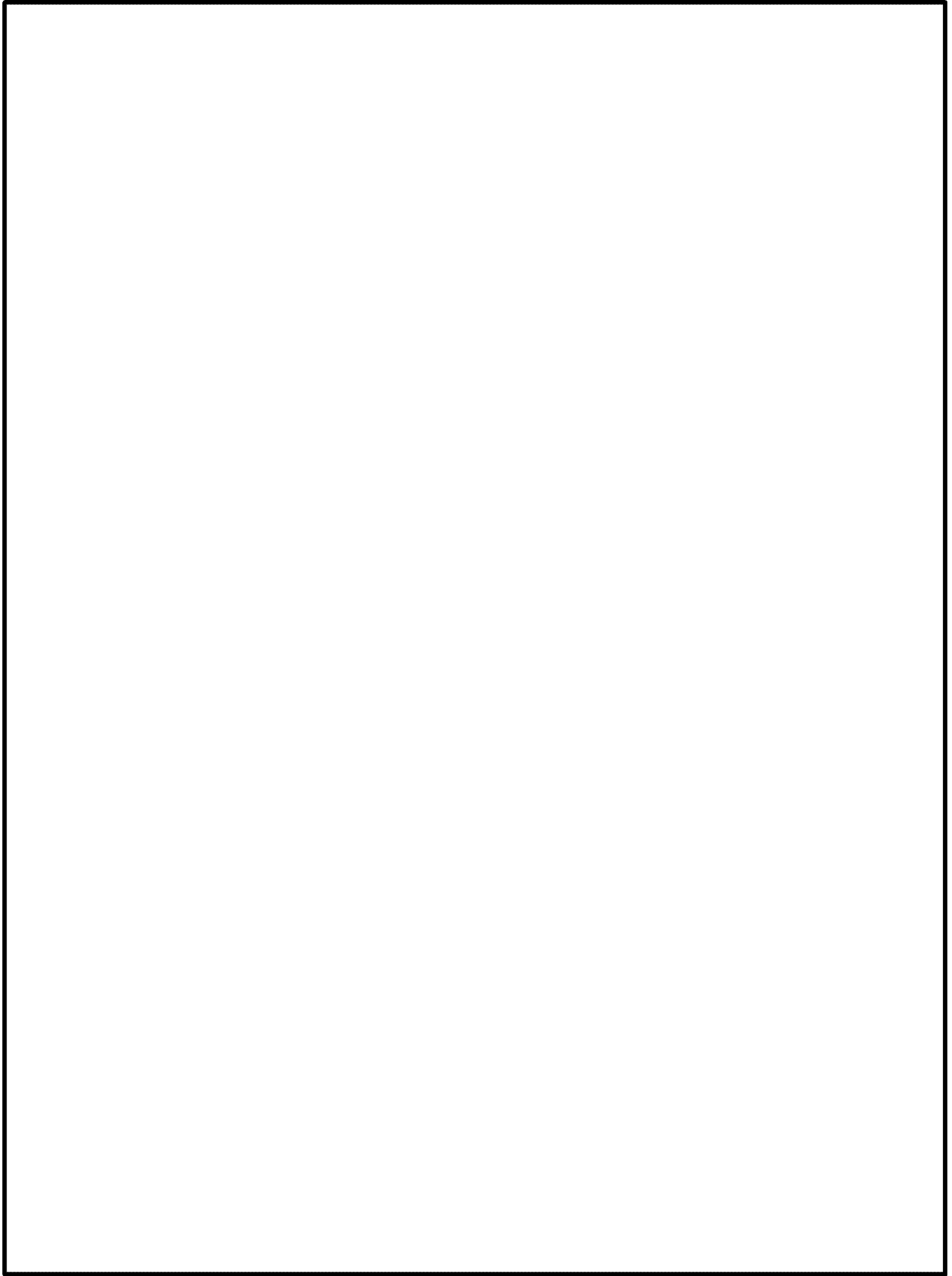


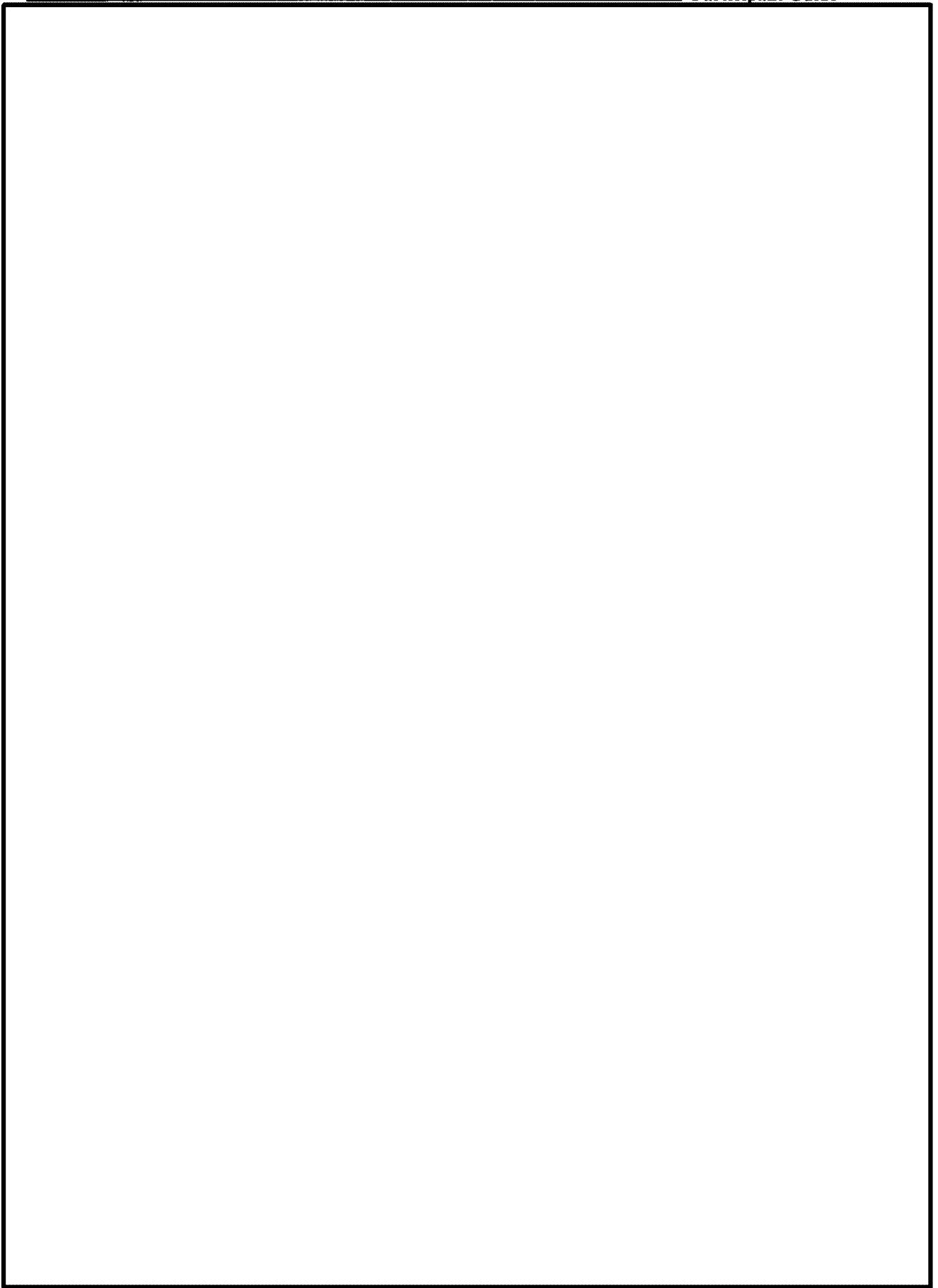




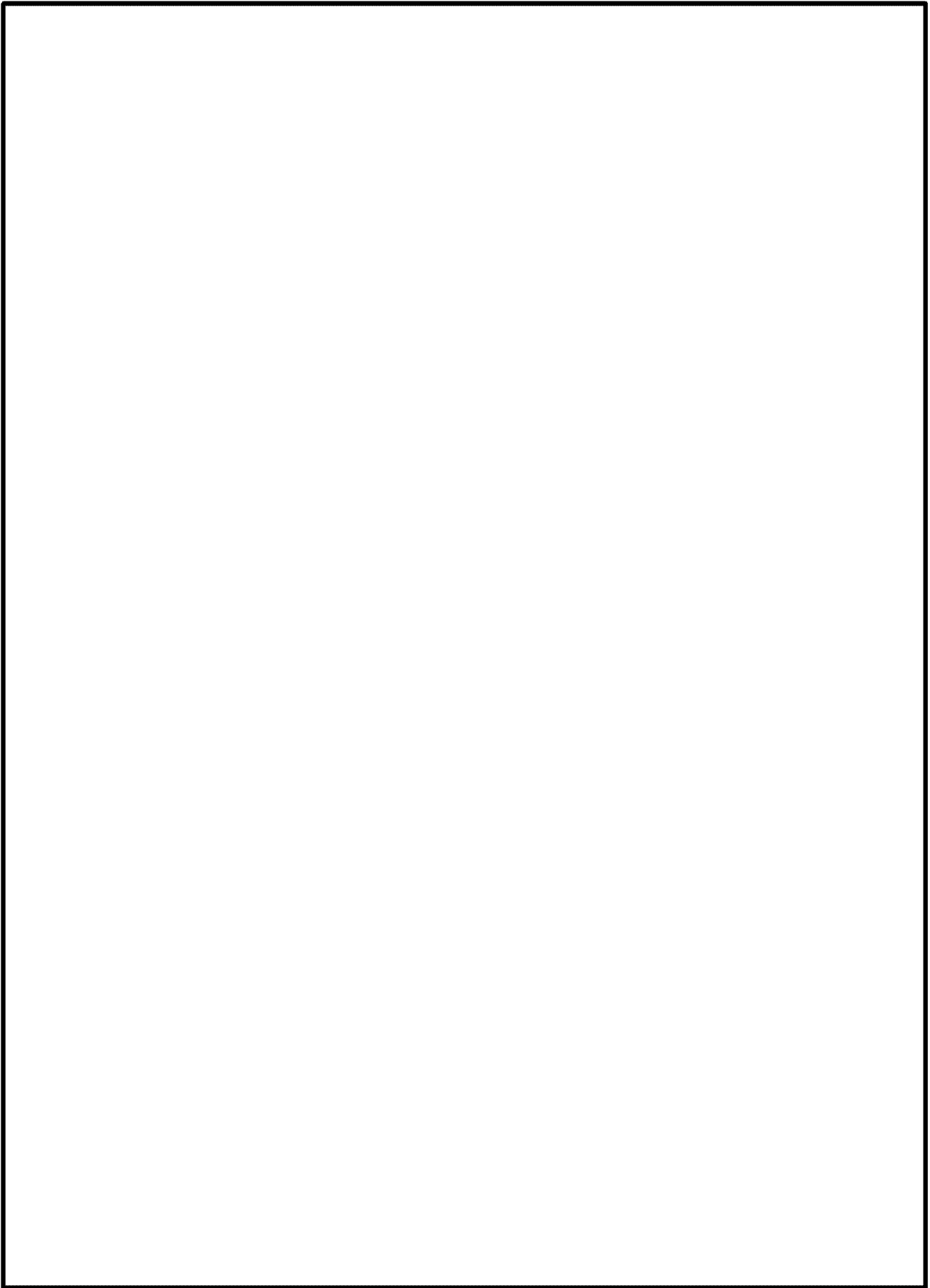


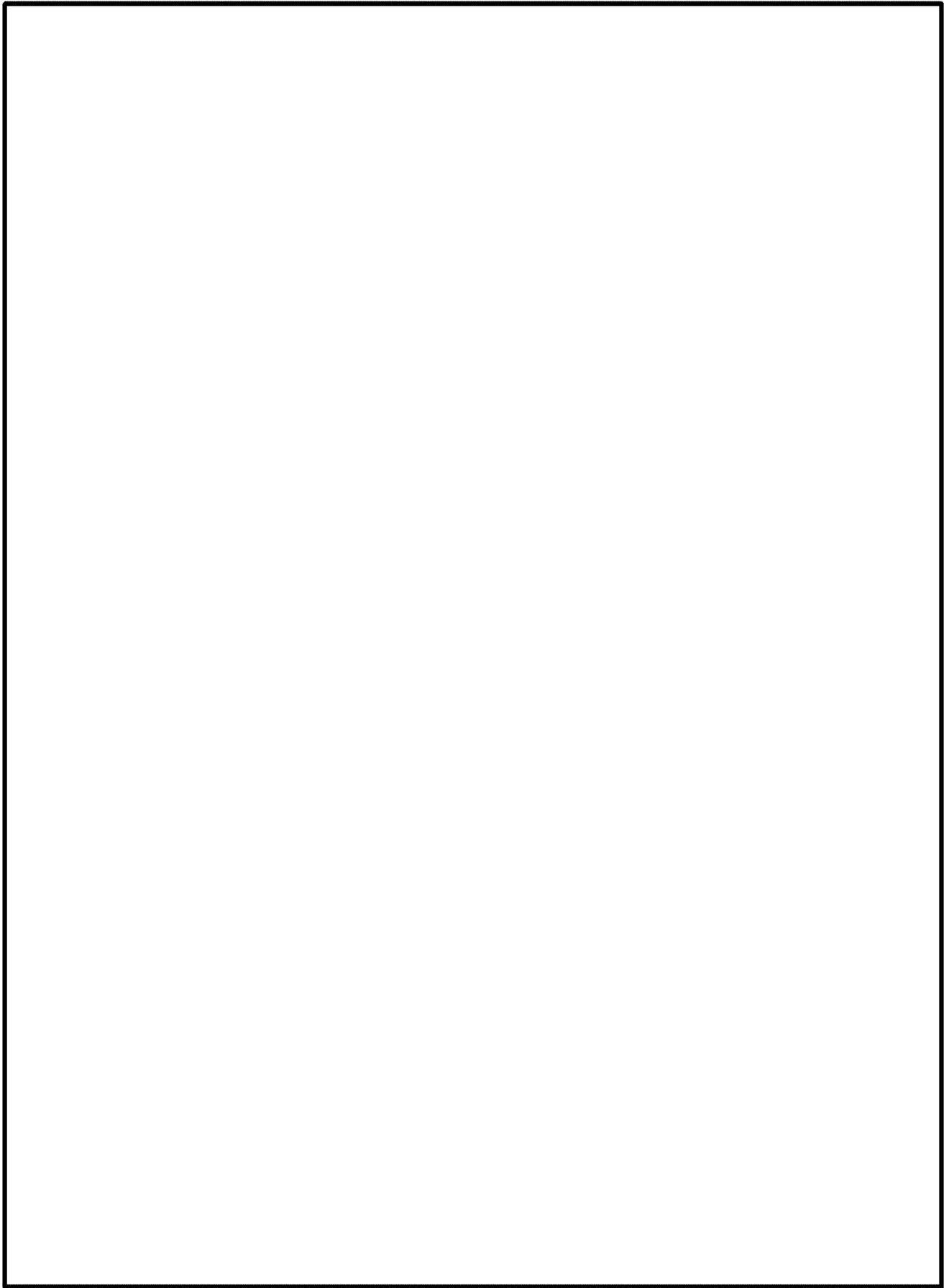


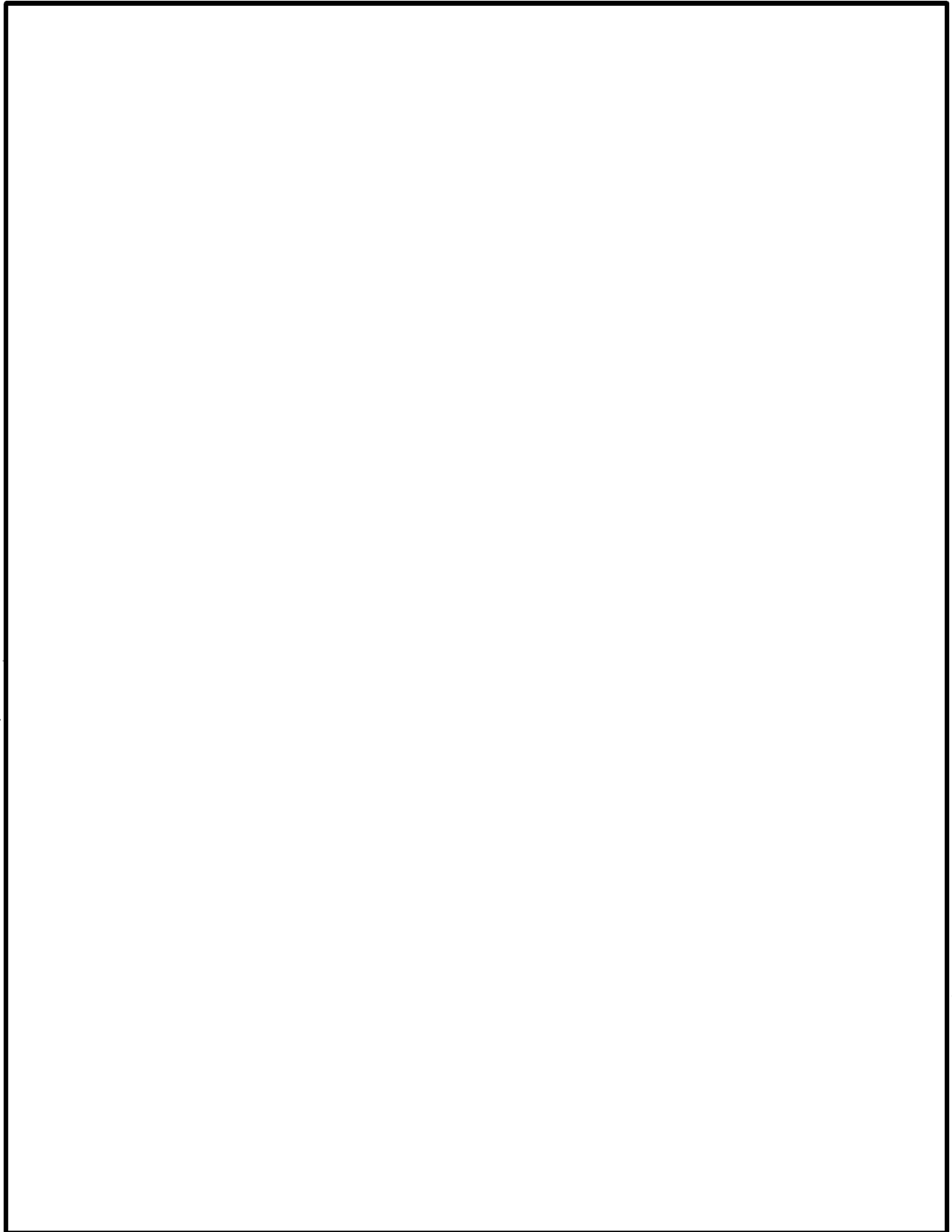


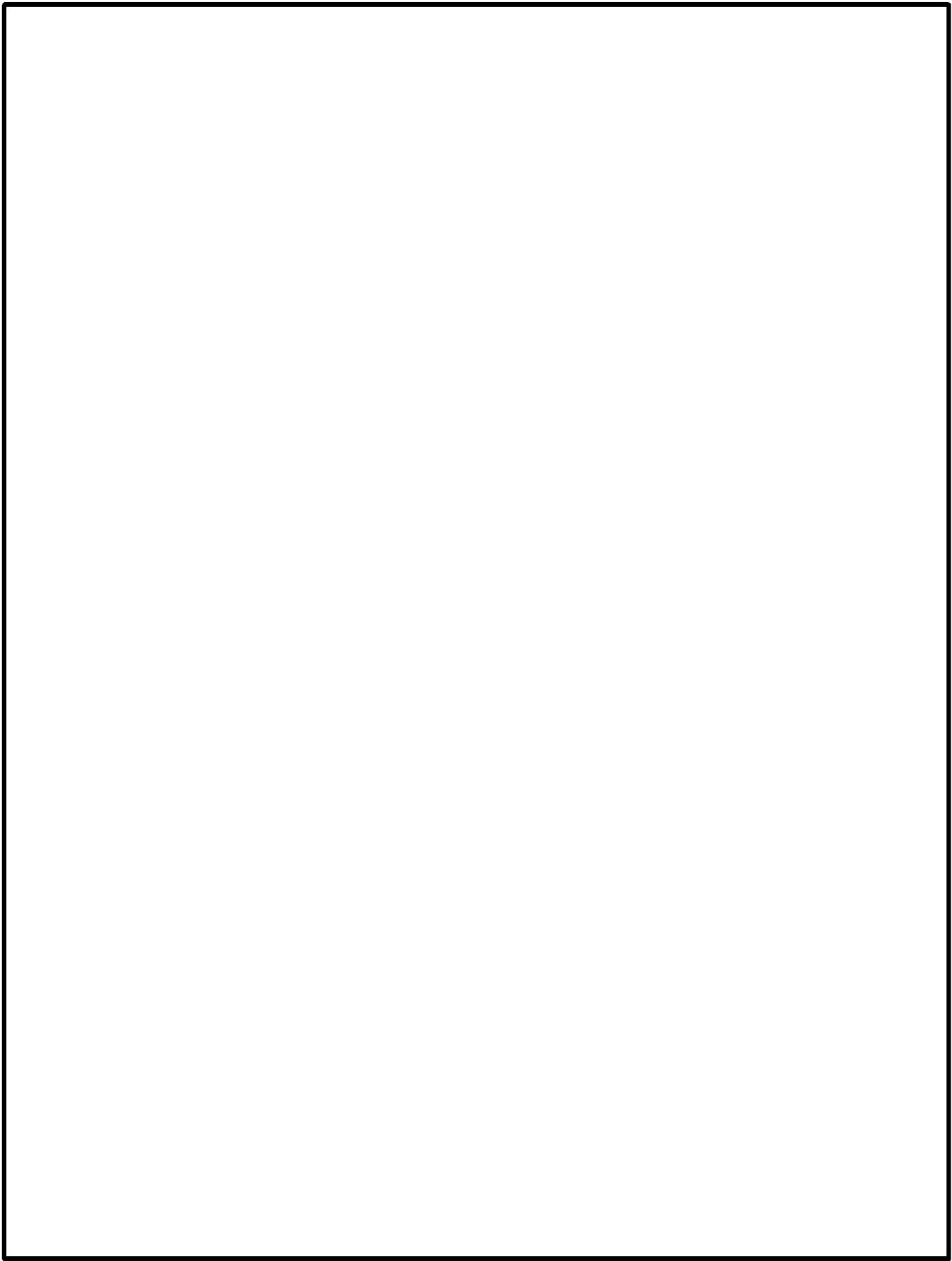






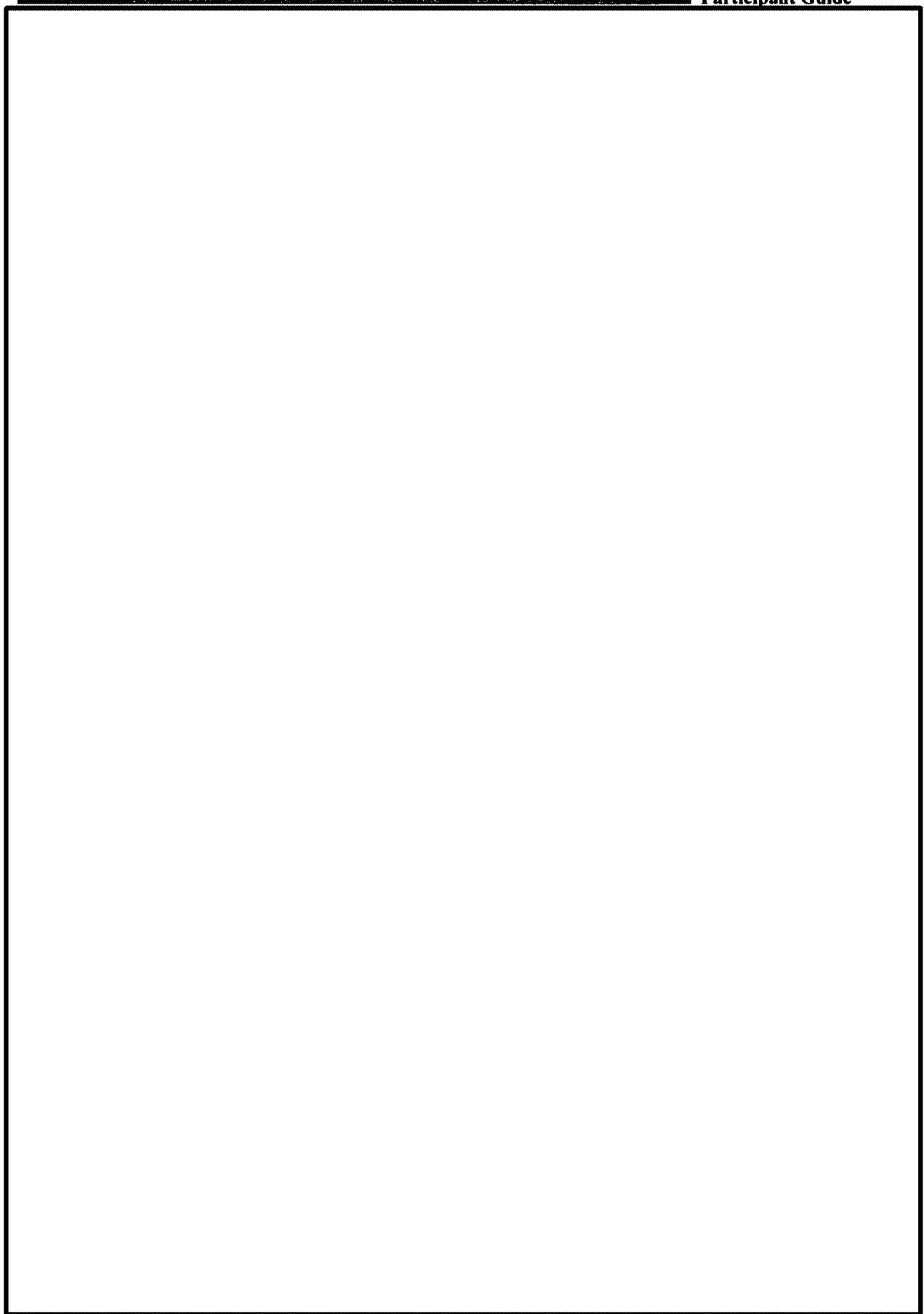


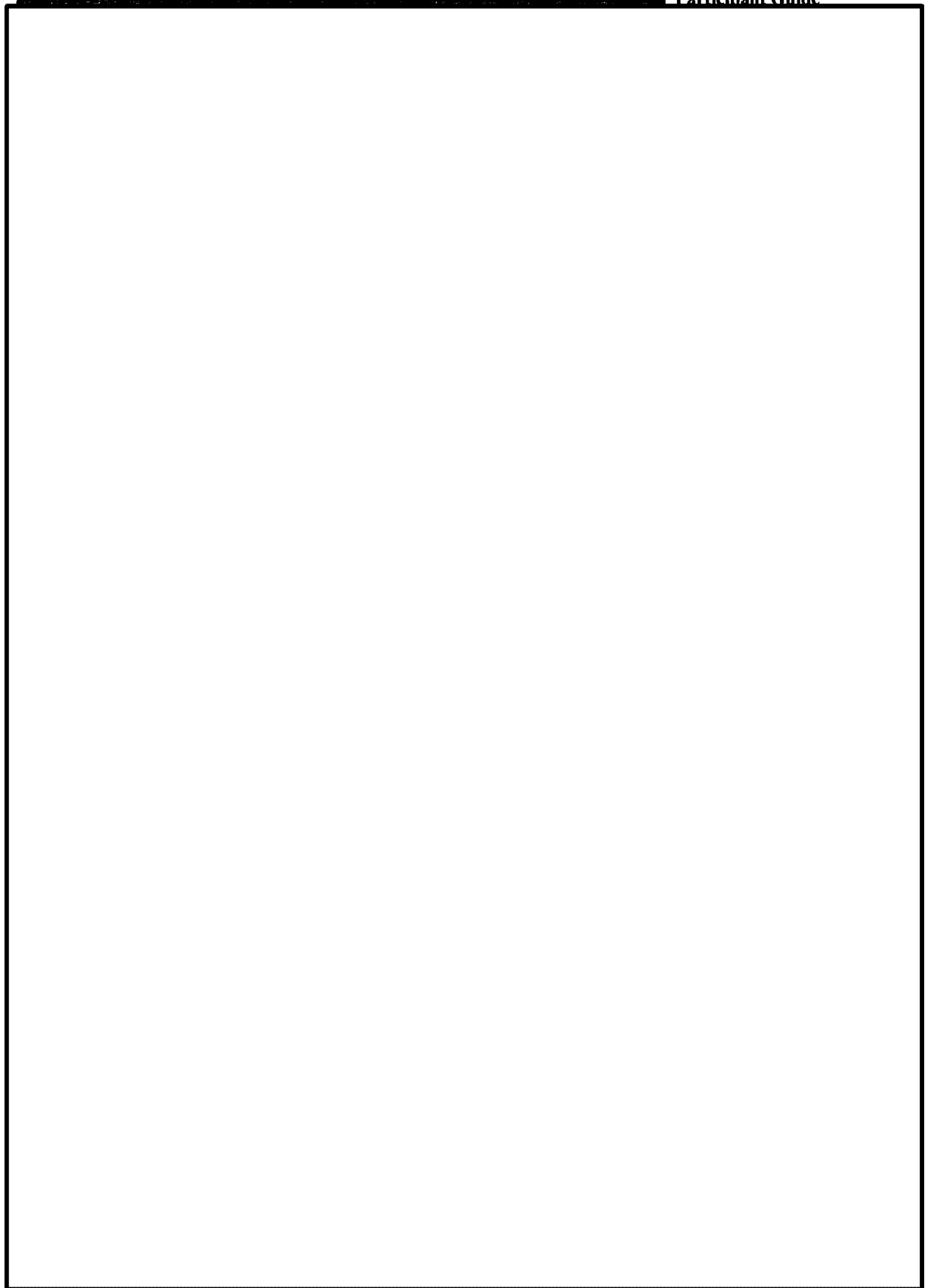


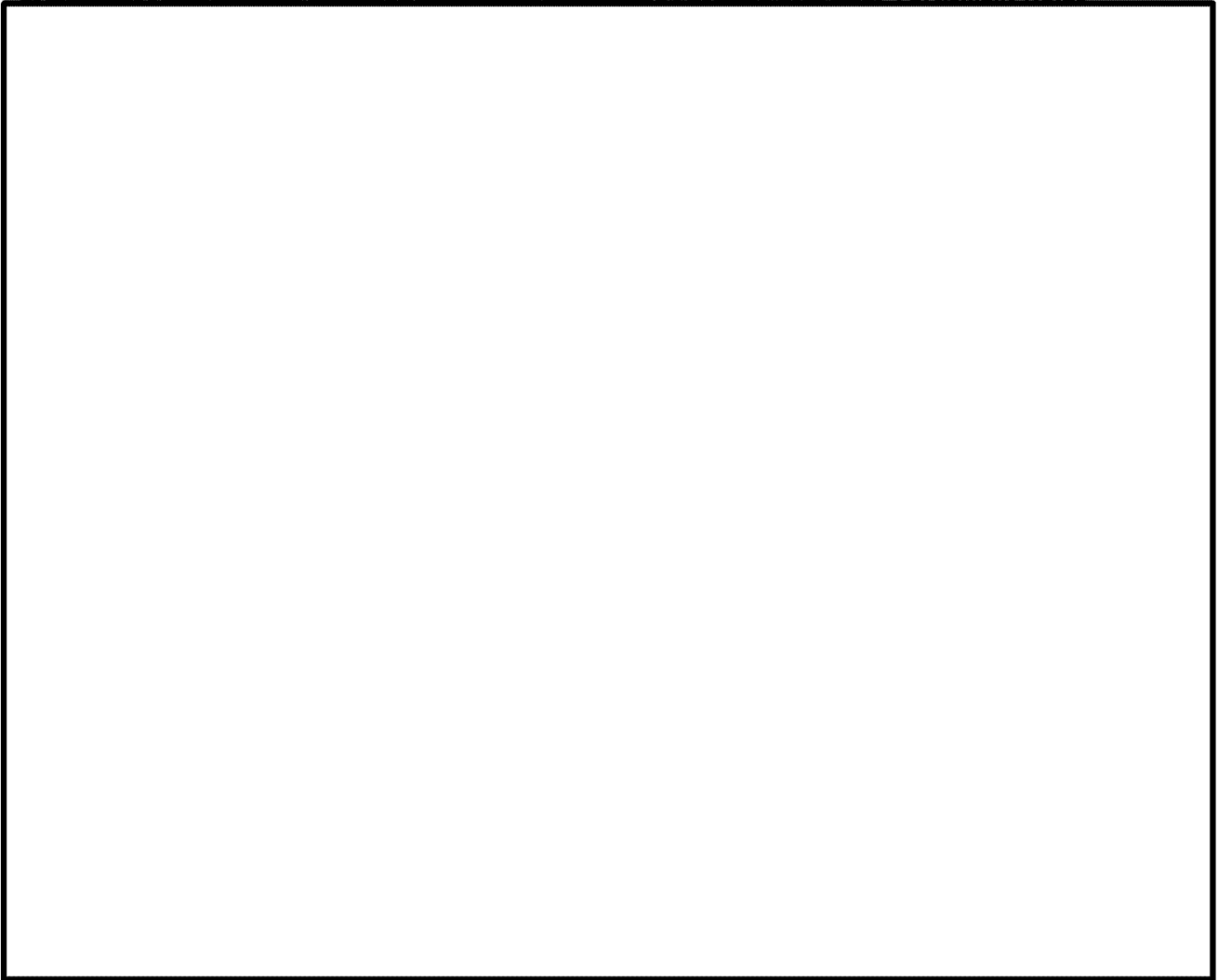












c. Affidavit of Support (Form I-864)

- 1) Certain immigrant visa and adjustment of status applicants are inadmissible on public charge grounds, unless their sponsor has signed a legally binding Affidavit of Support (Form I-864) on their behalf.
- 2) Required for immediate relatives under INA § 201(b)(2) and all family-based immigrants under INA § 203(a) (except for battered spouses and children and widows/widowers).
- 3) There are several memos discussing the adjudication of Form I-864. *See* affidavit of support memo by Michael Aytes dated November 23, 2005 and for new rules for affidavit of support that became effective on July 21, 2006, *see Consolidation of Policy Regarding USCIS Form I-864, Affidavit of Support*, dated June 27, 2006.

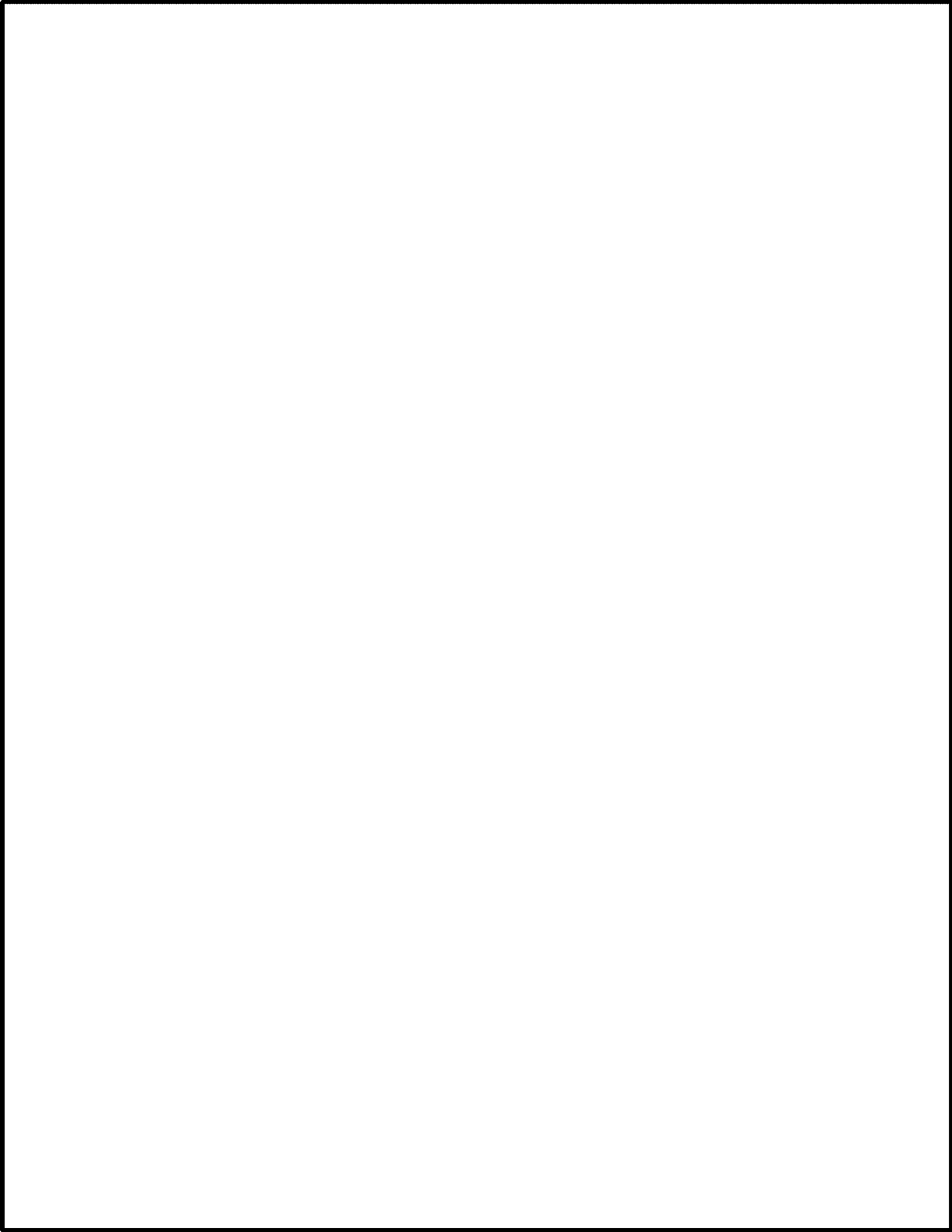
d. Affidavit of Support (Form I-134)

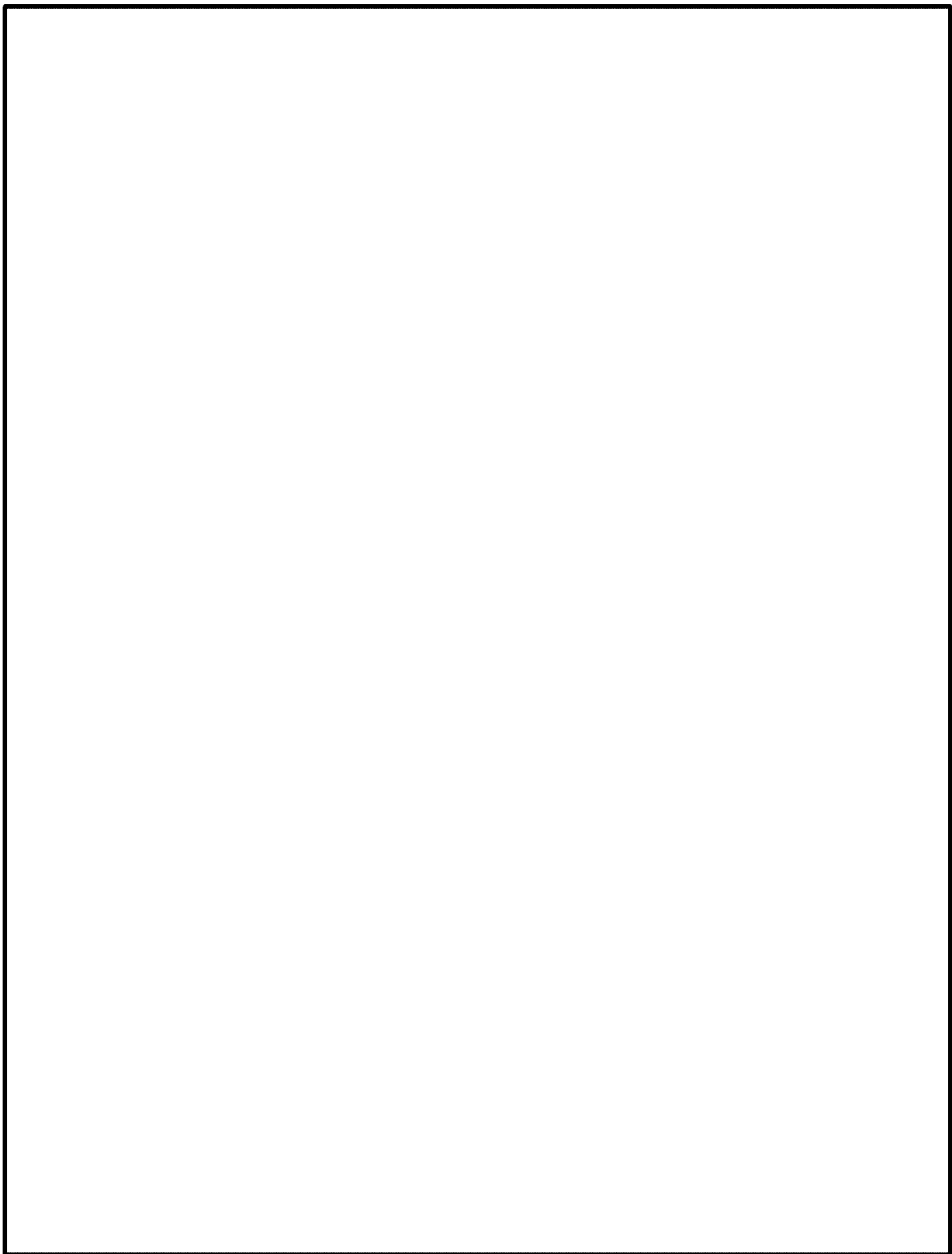
May be used to overcome inadmissibility in cases where a public charge ground of inadmissibility appears, and where the legally binding affidavit of support (Form I-864) is not mandatory.

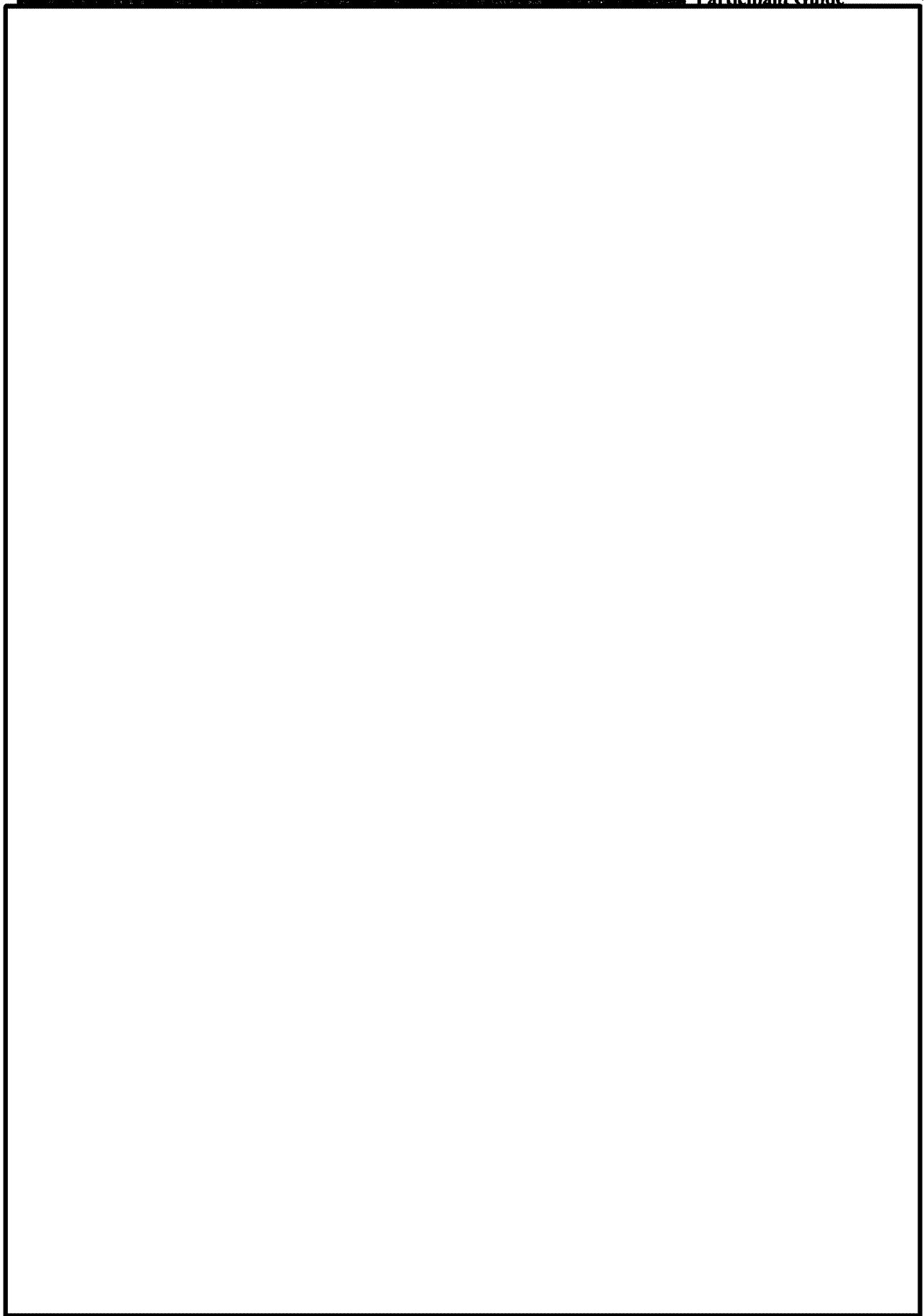
e. Public Charge Inapplicable to:

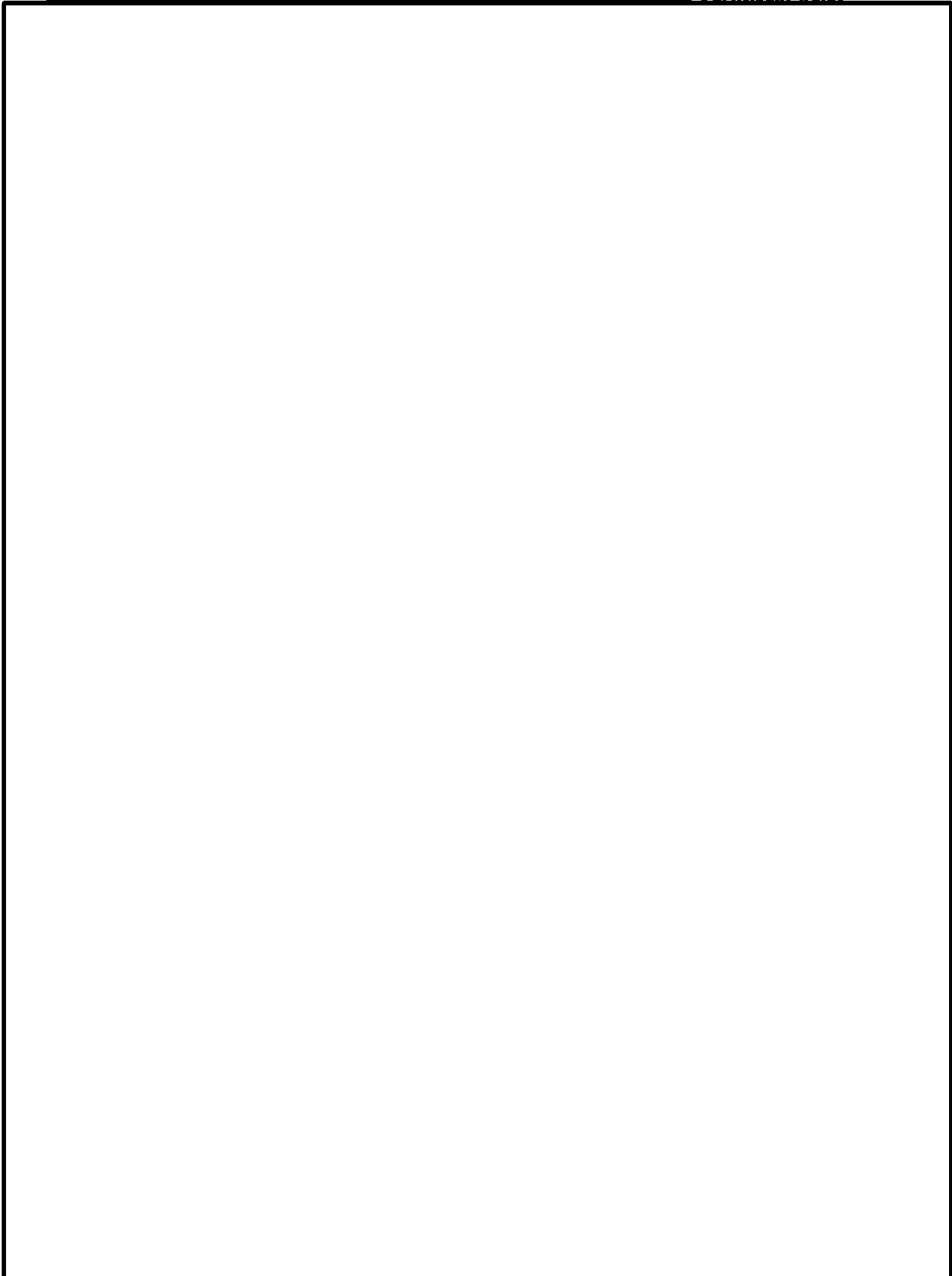
- 1) Refugees seeking admission under INA § 207
- 2) Refugees and asylees adjusting under INA § 209
- 3) Amerasians
- 4) Applicants for adjustment under the Cuban Adjustment Act
- 5) Applicants for adjustment under NACARA or HRIFA
- 6) Special Immigrant Juveniles
- 7) Lautenberg parolees
- 8) Applicants for registry under INA § 249
- 9) Victims of Trafficking (INA § 101(a)(15)(T)), pursuant to provisions of INA § 212(d)(13)(A)

Out-of-Scope

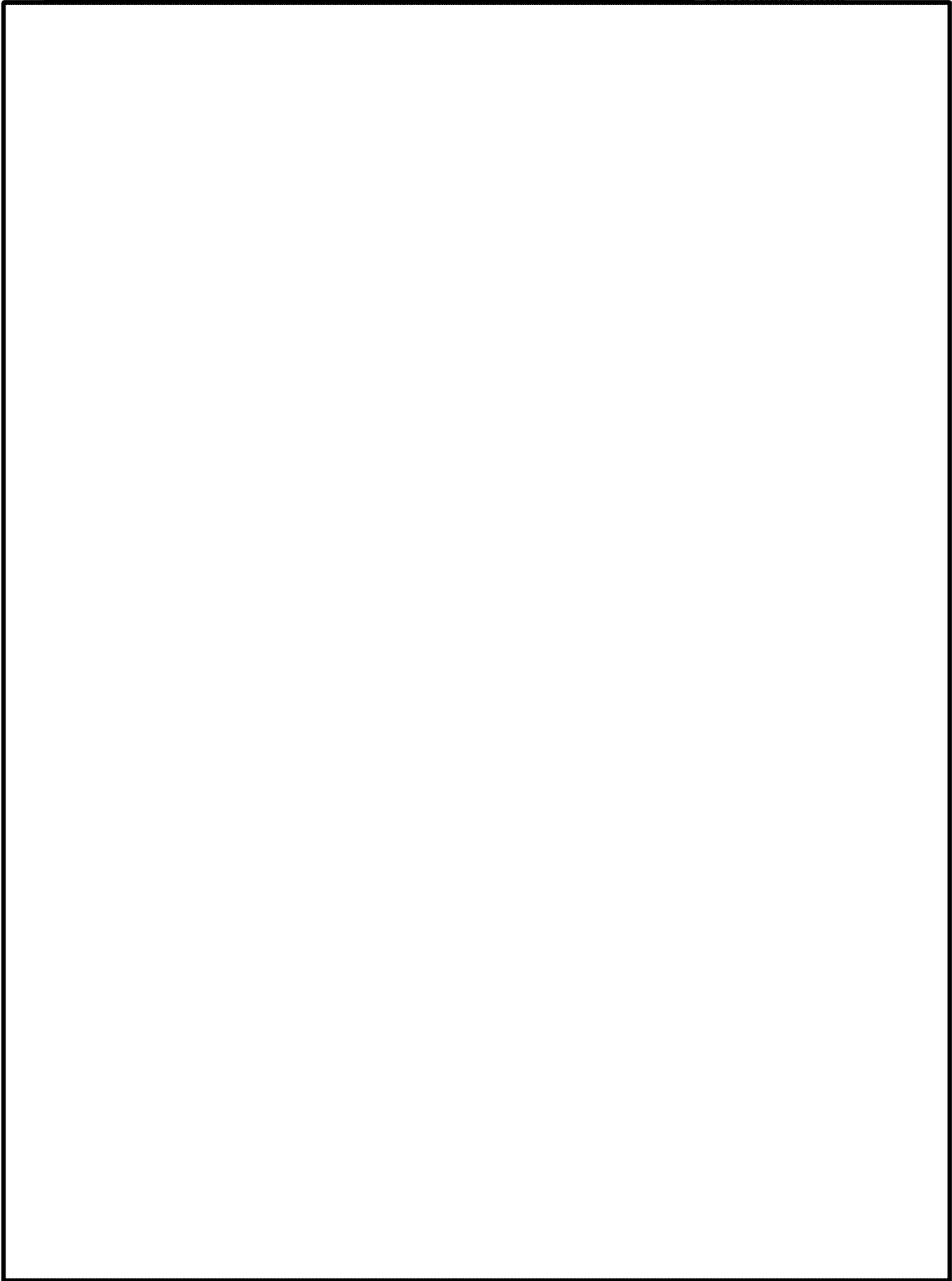


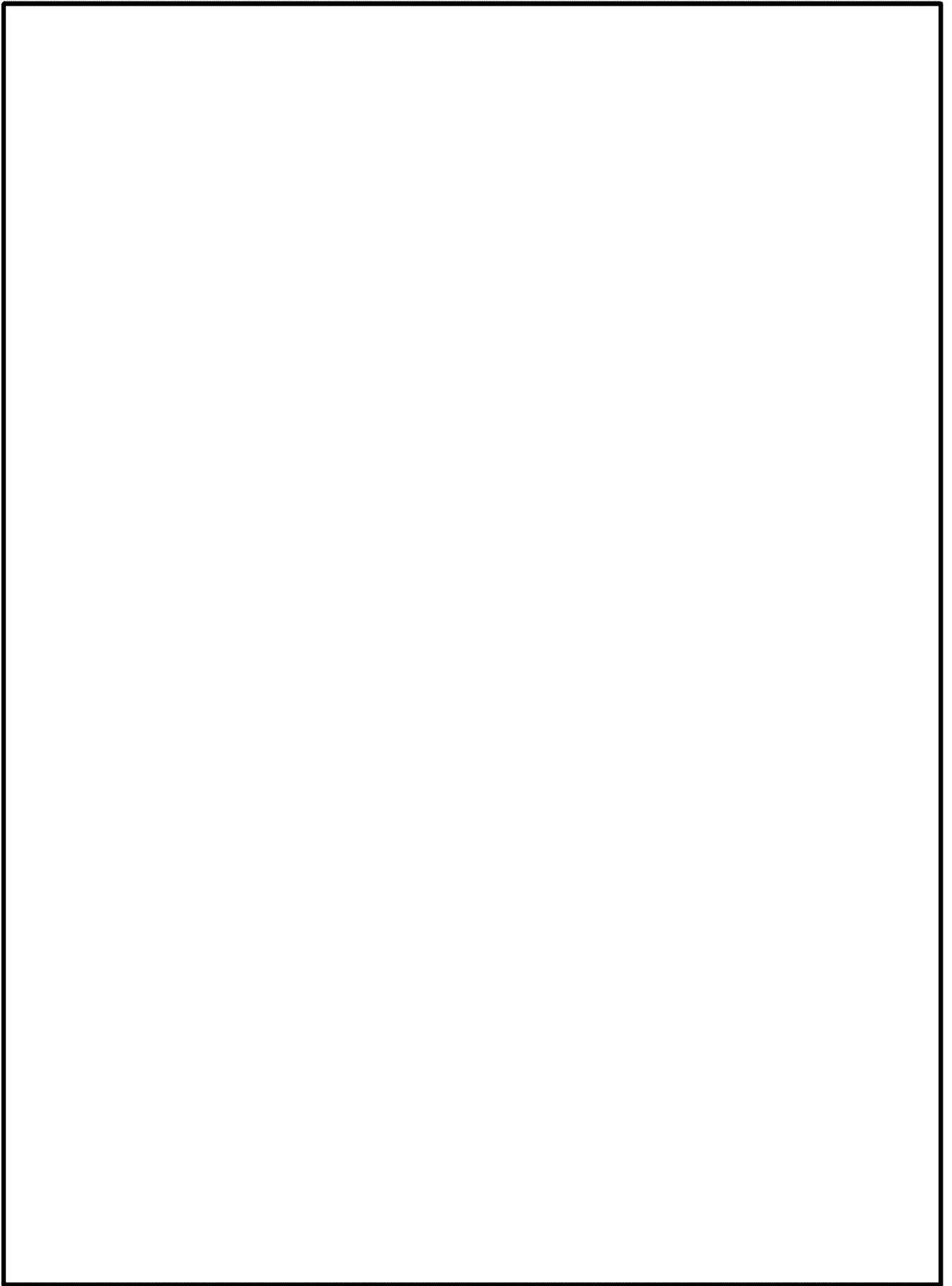


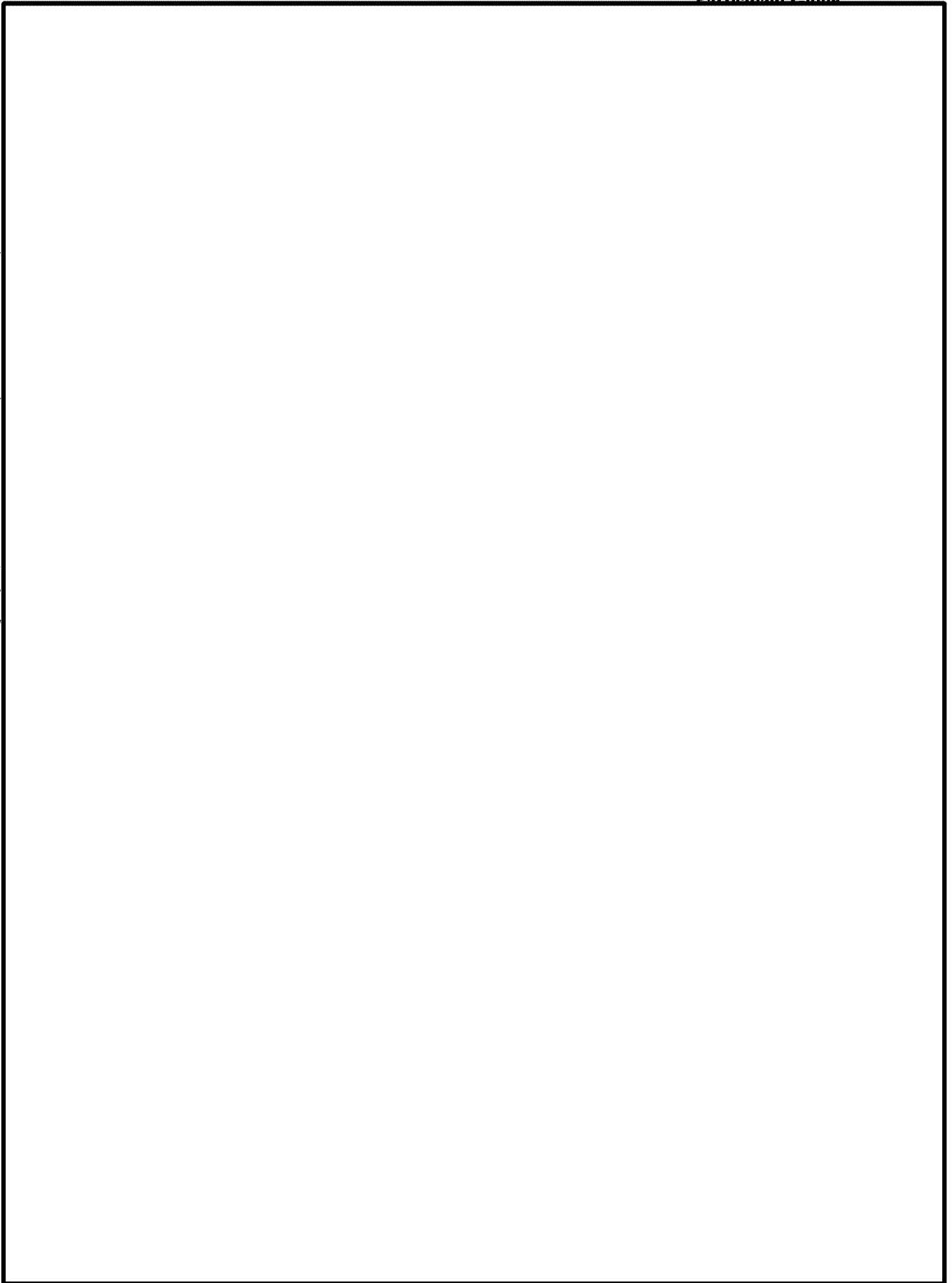


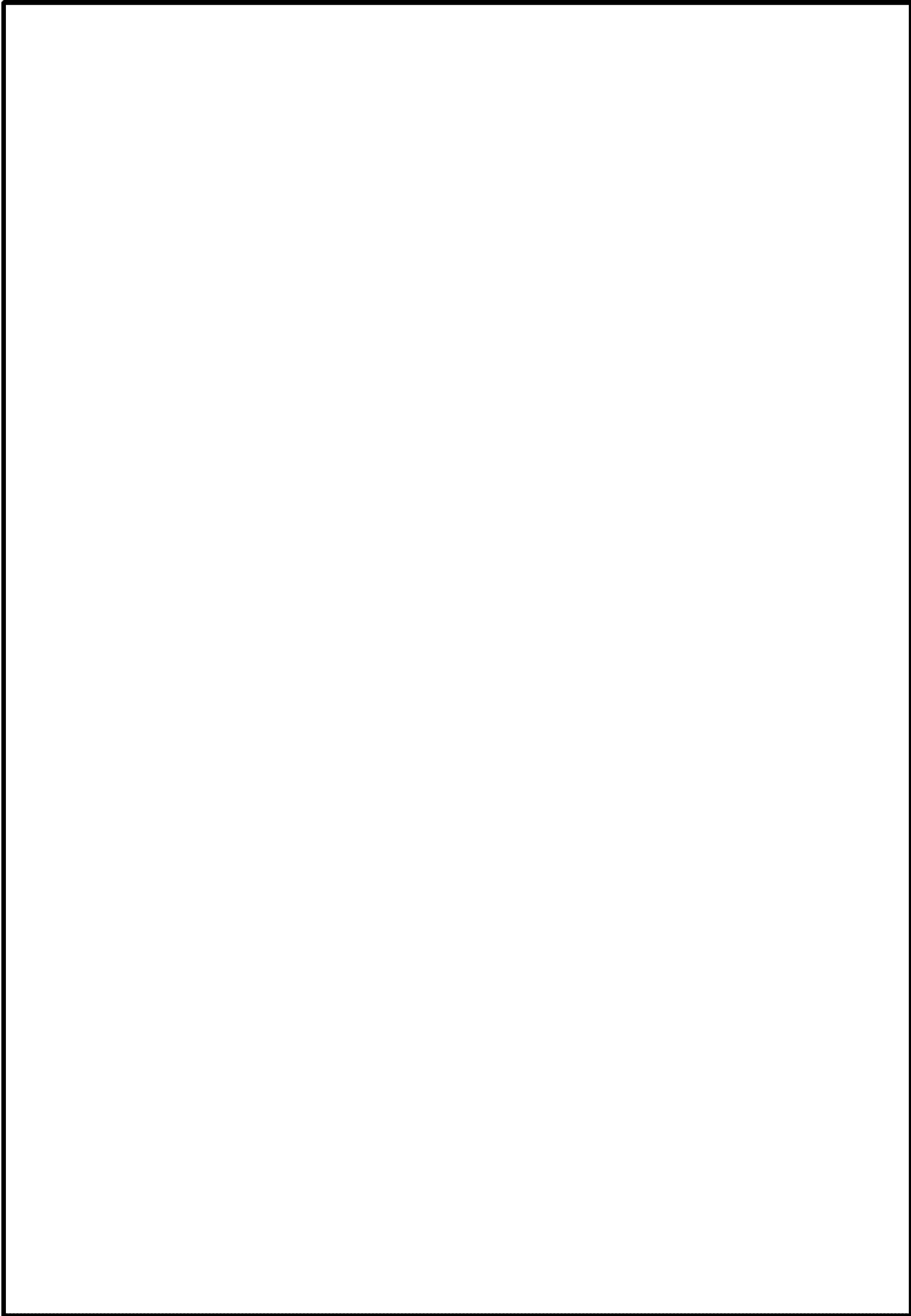




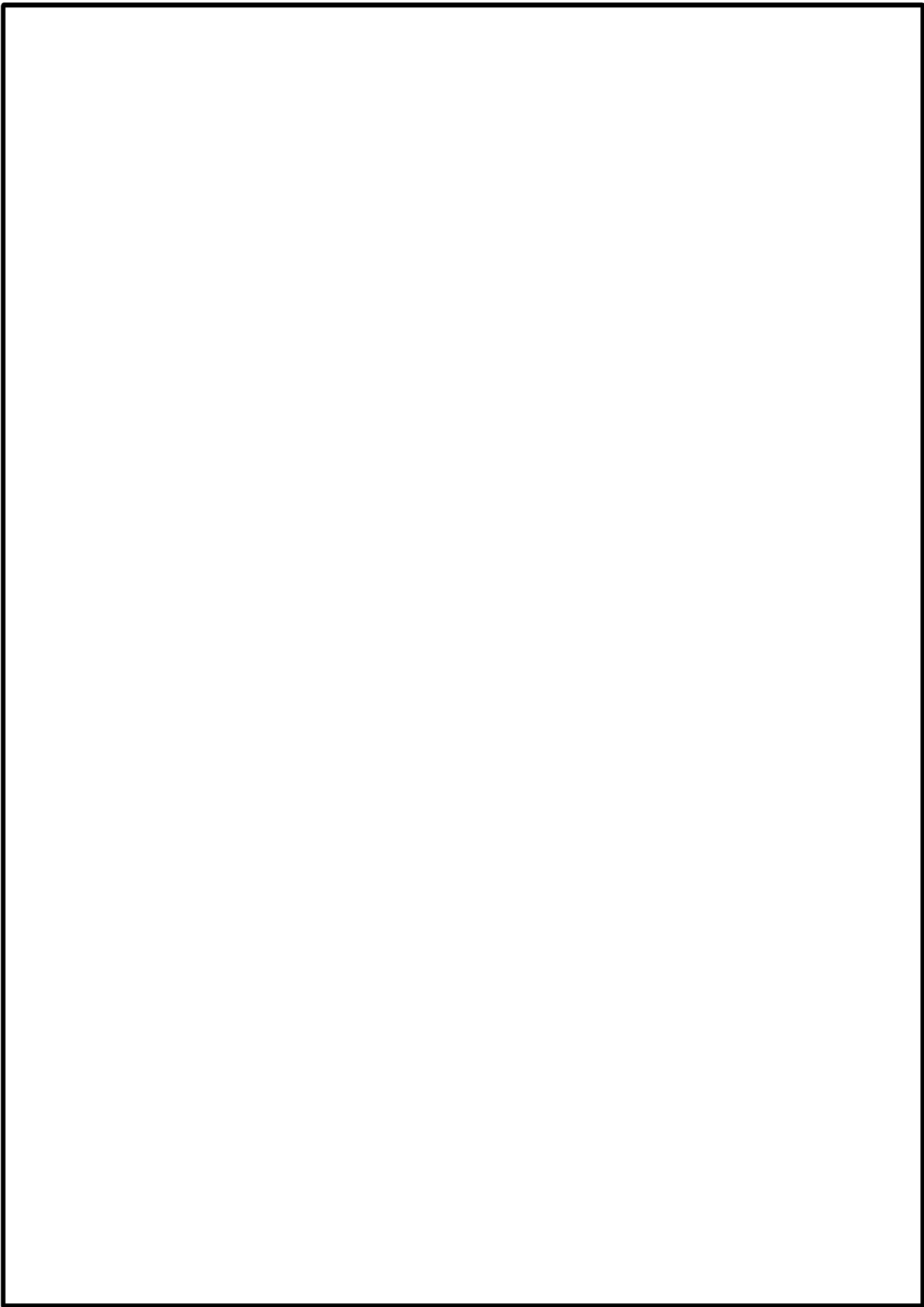


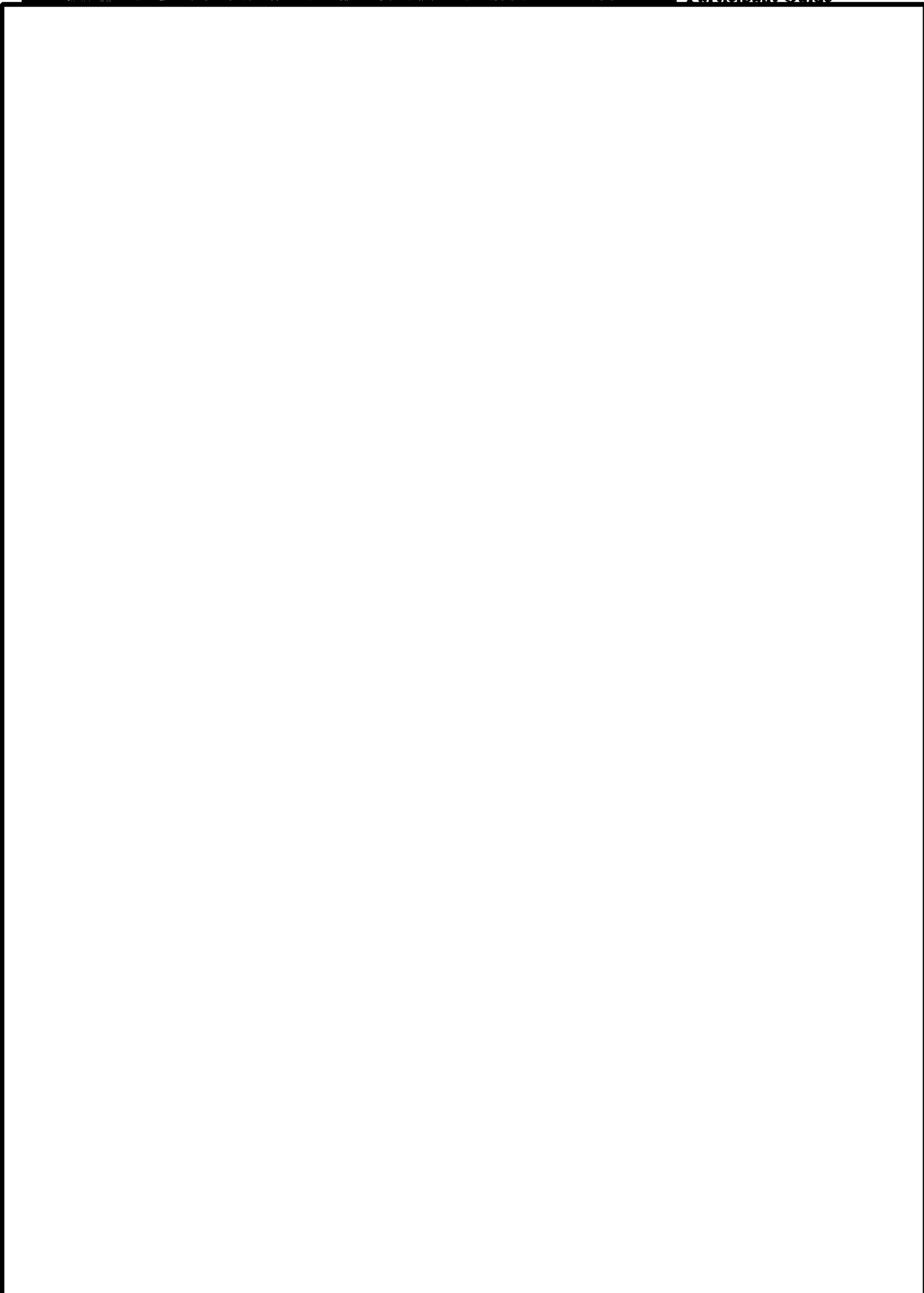


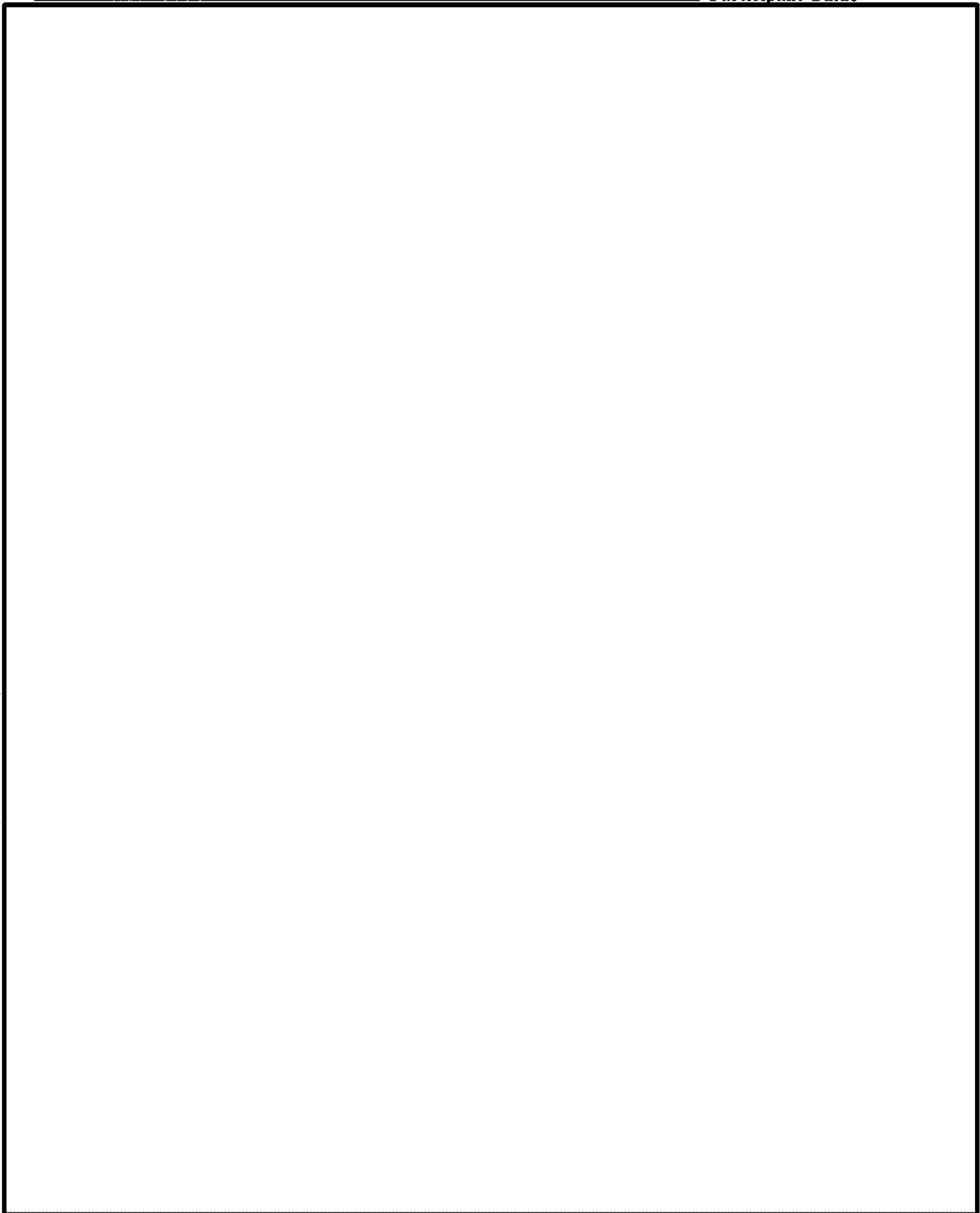




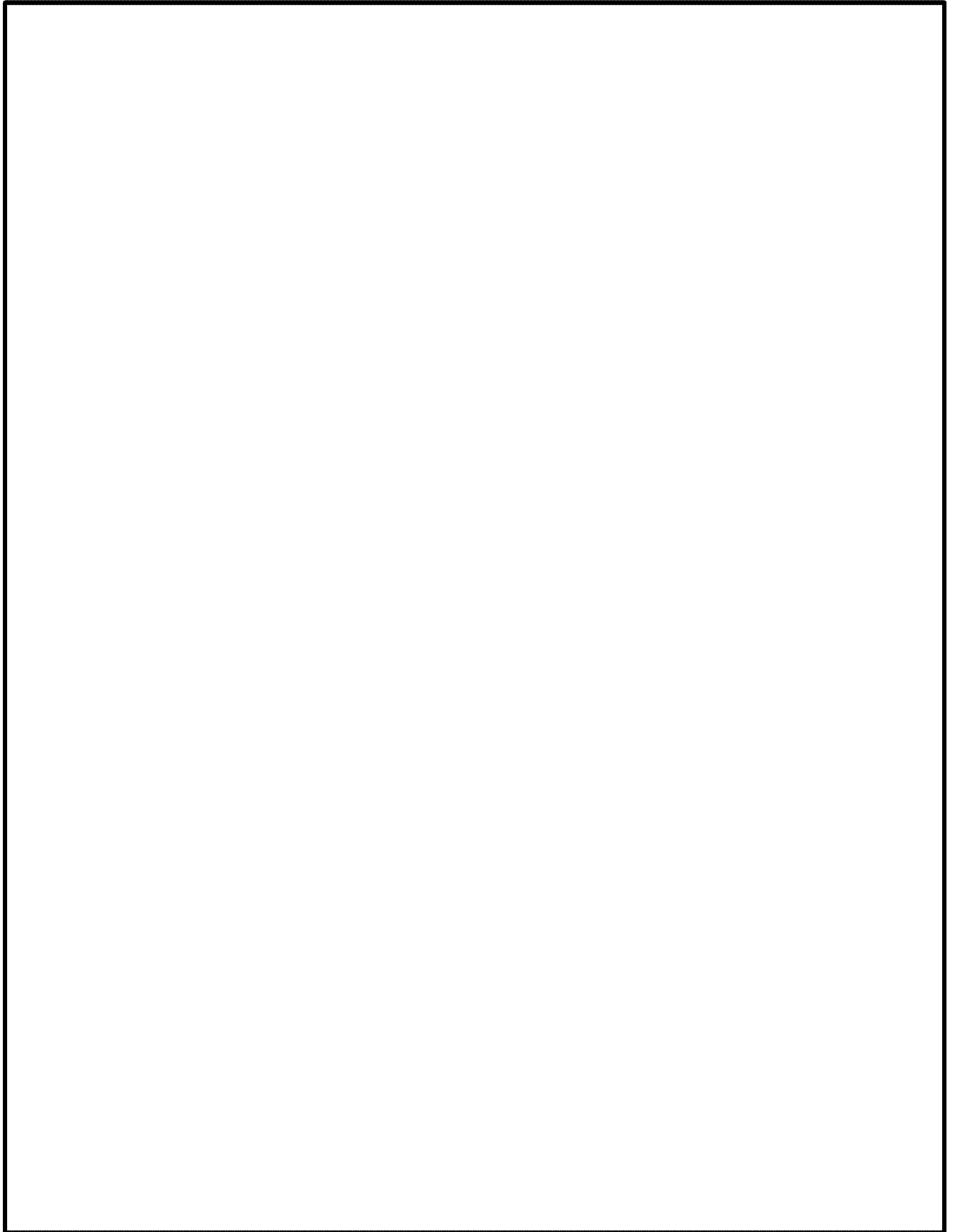


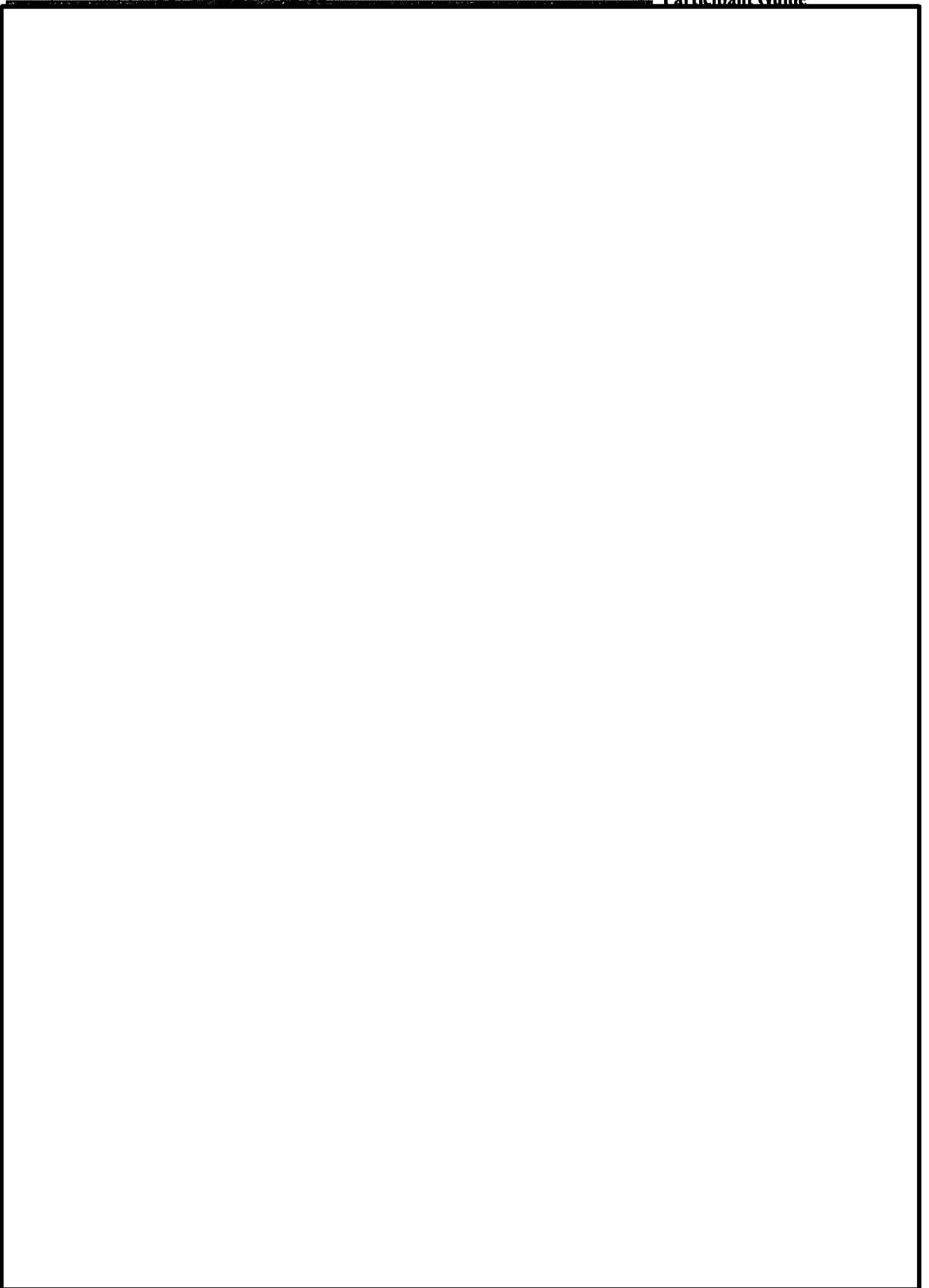


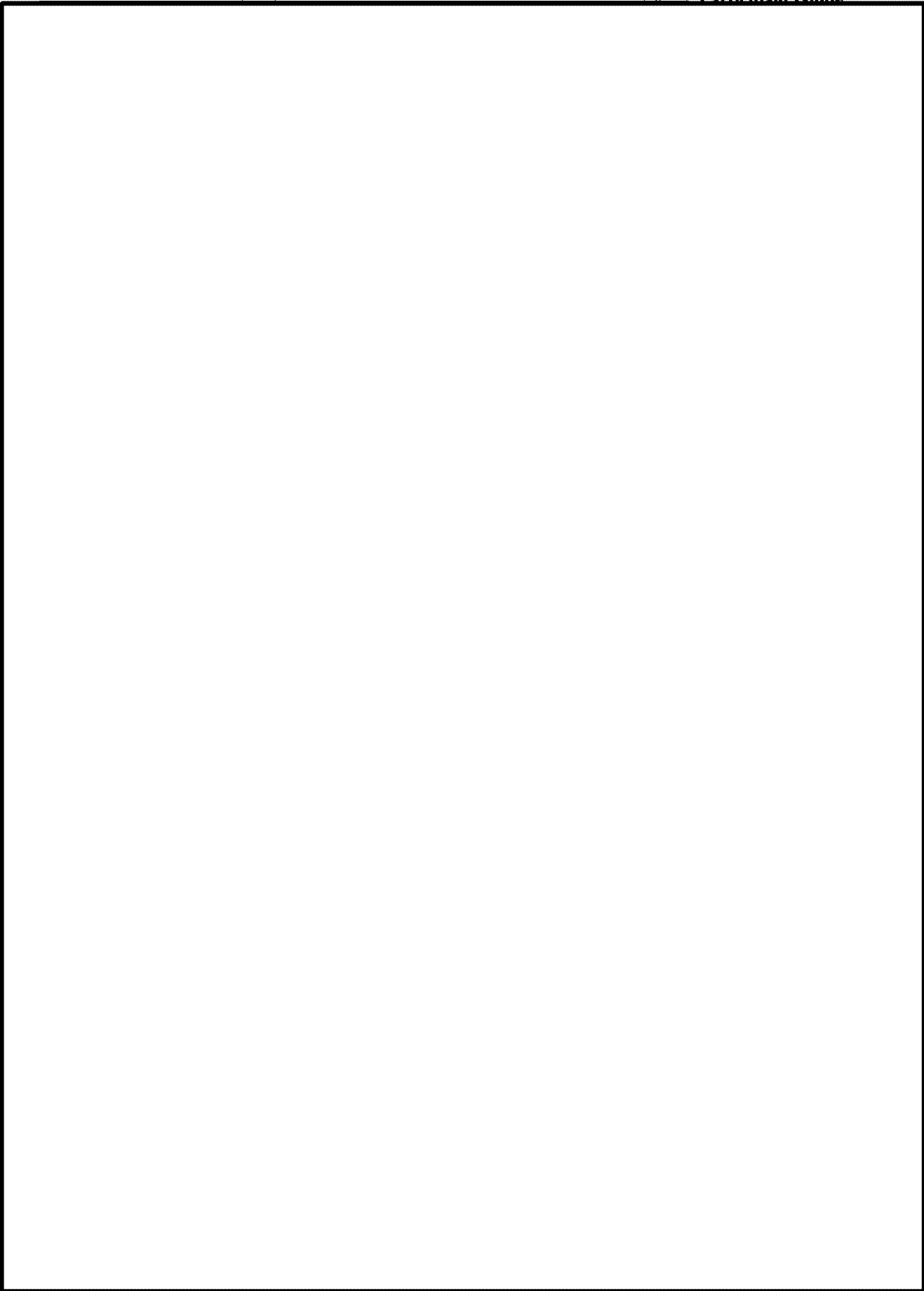


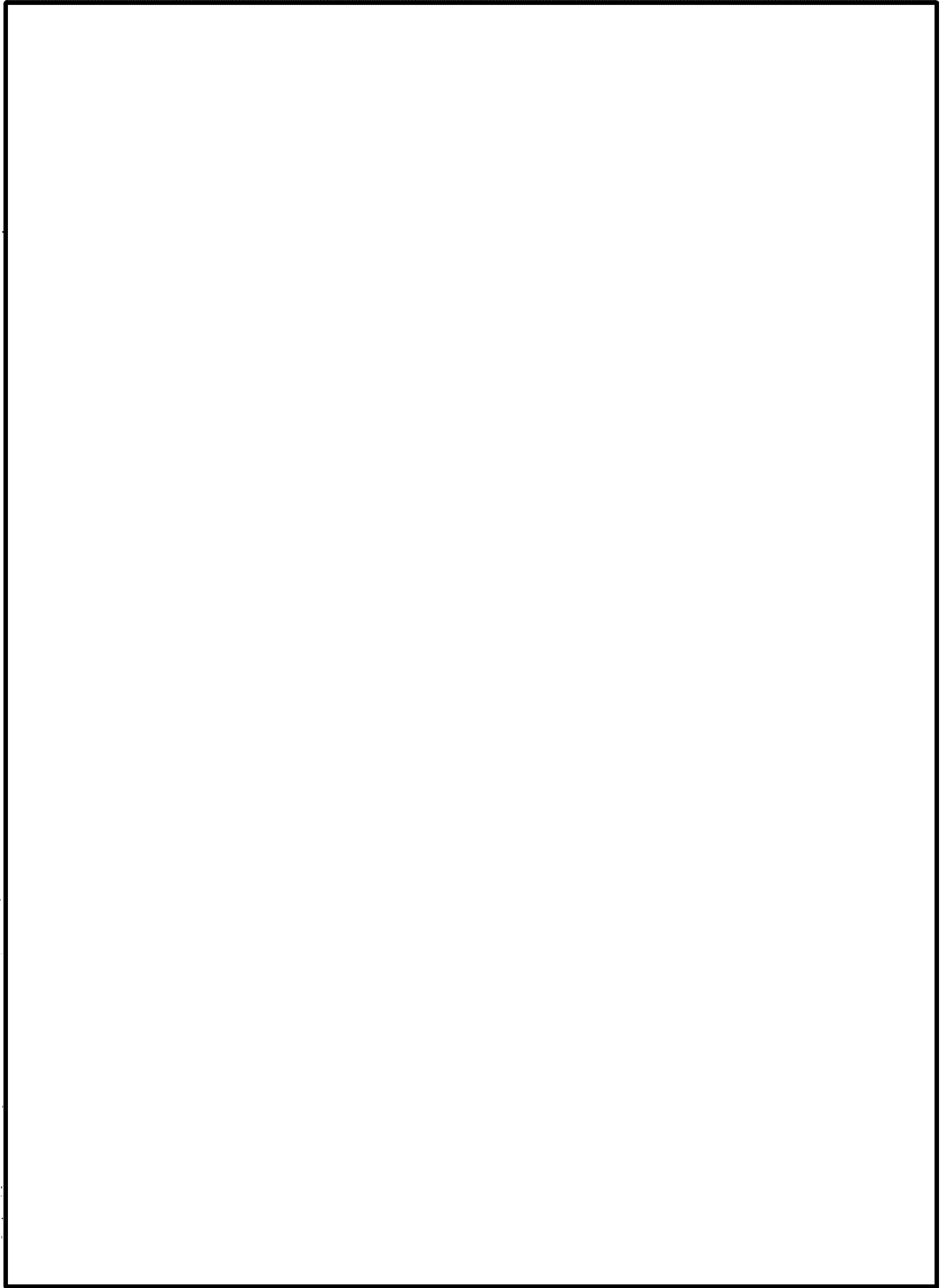


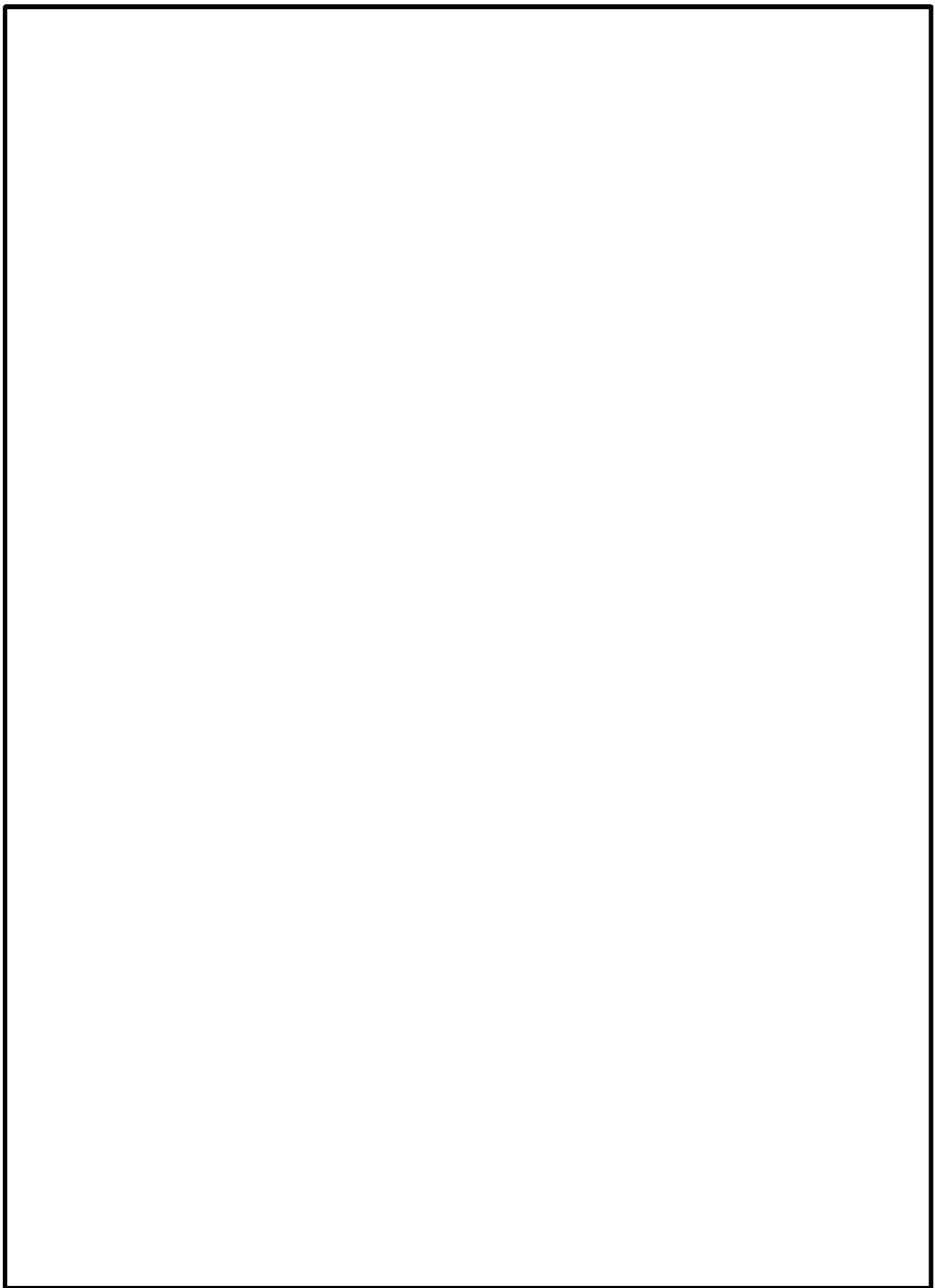


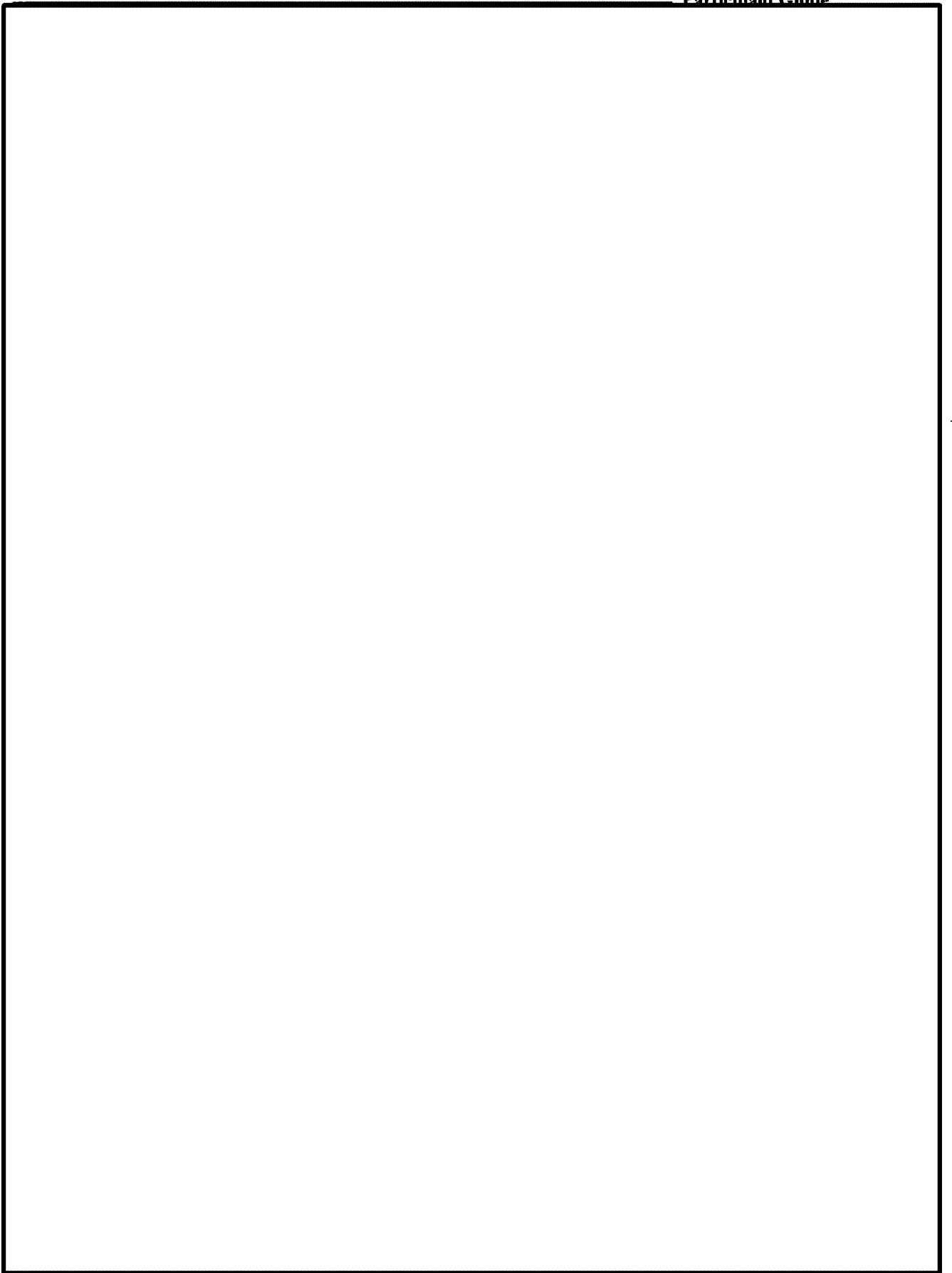


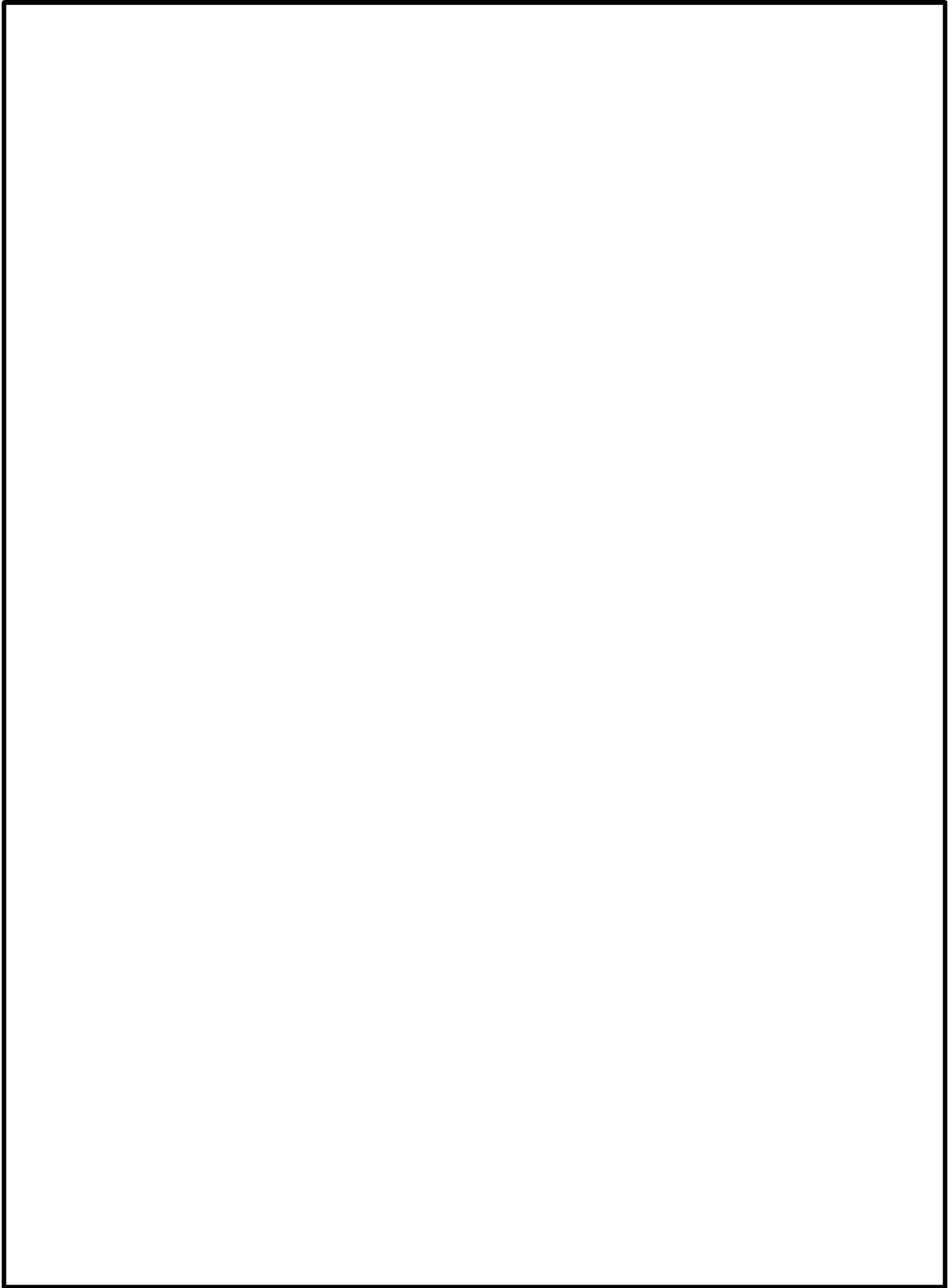


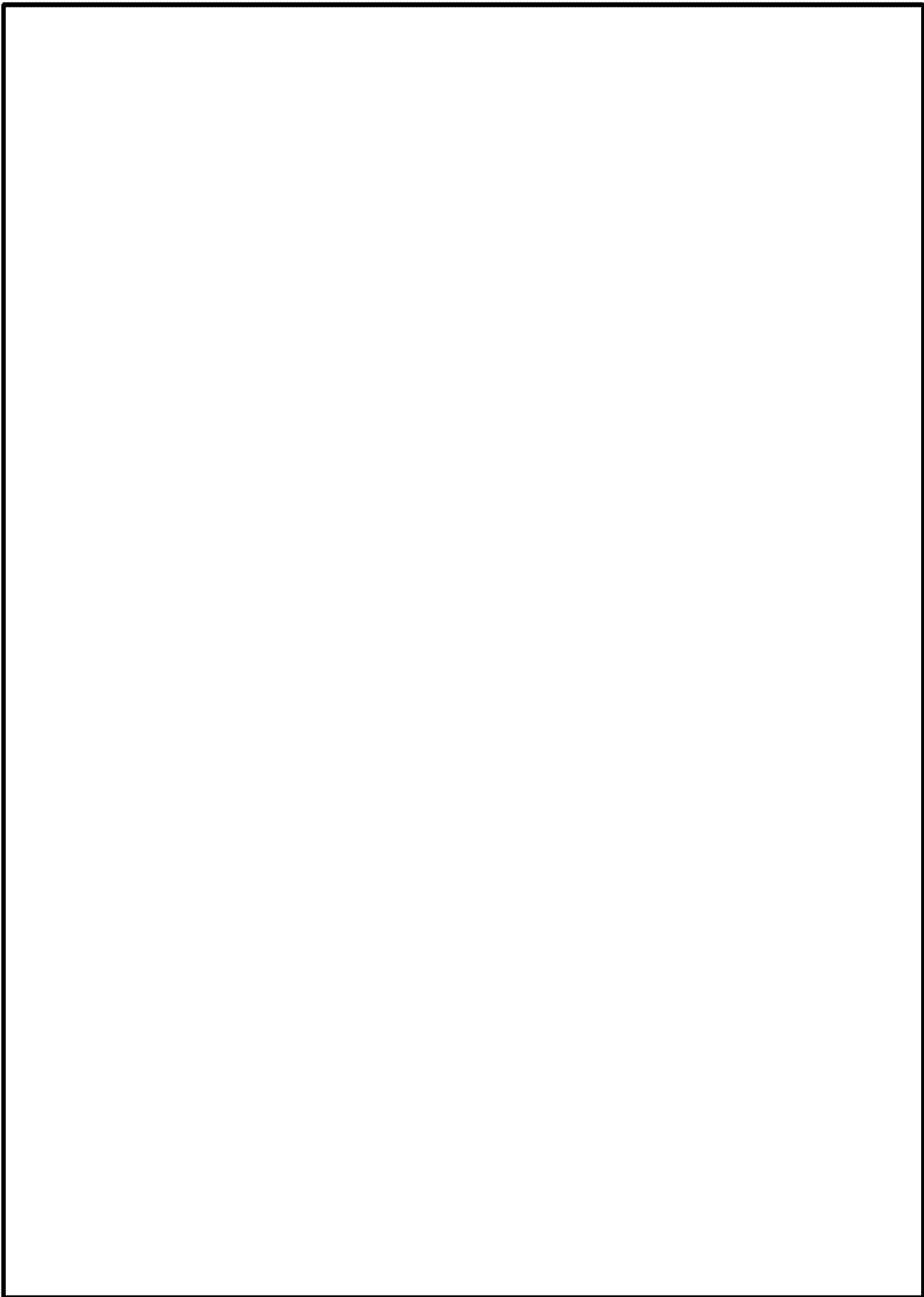






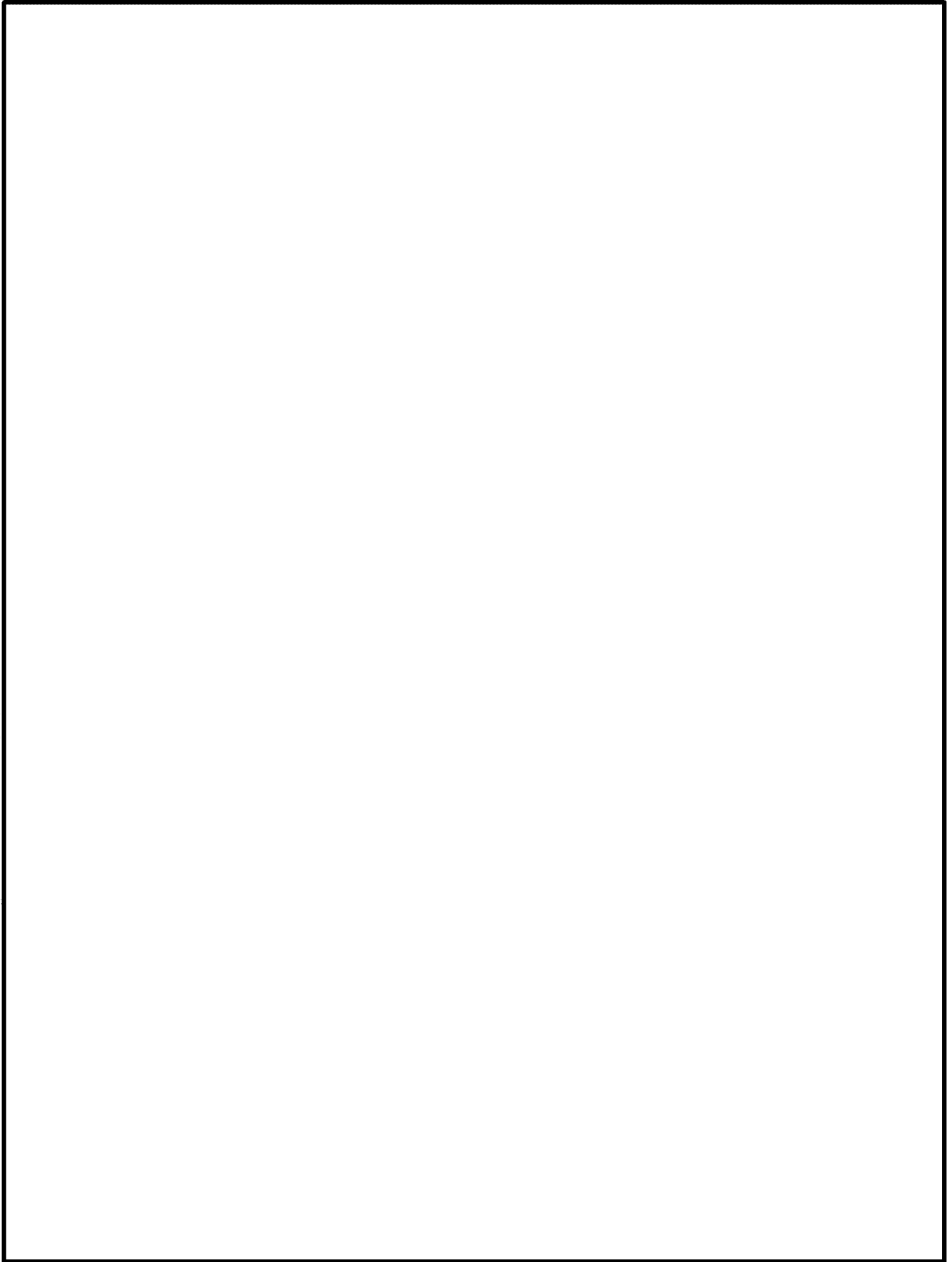


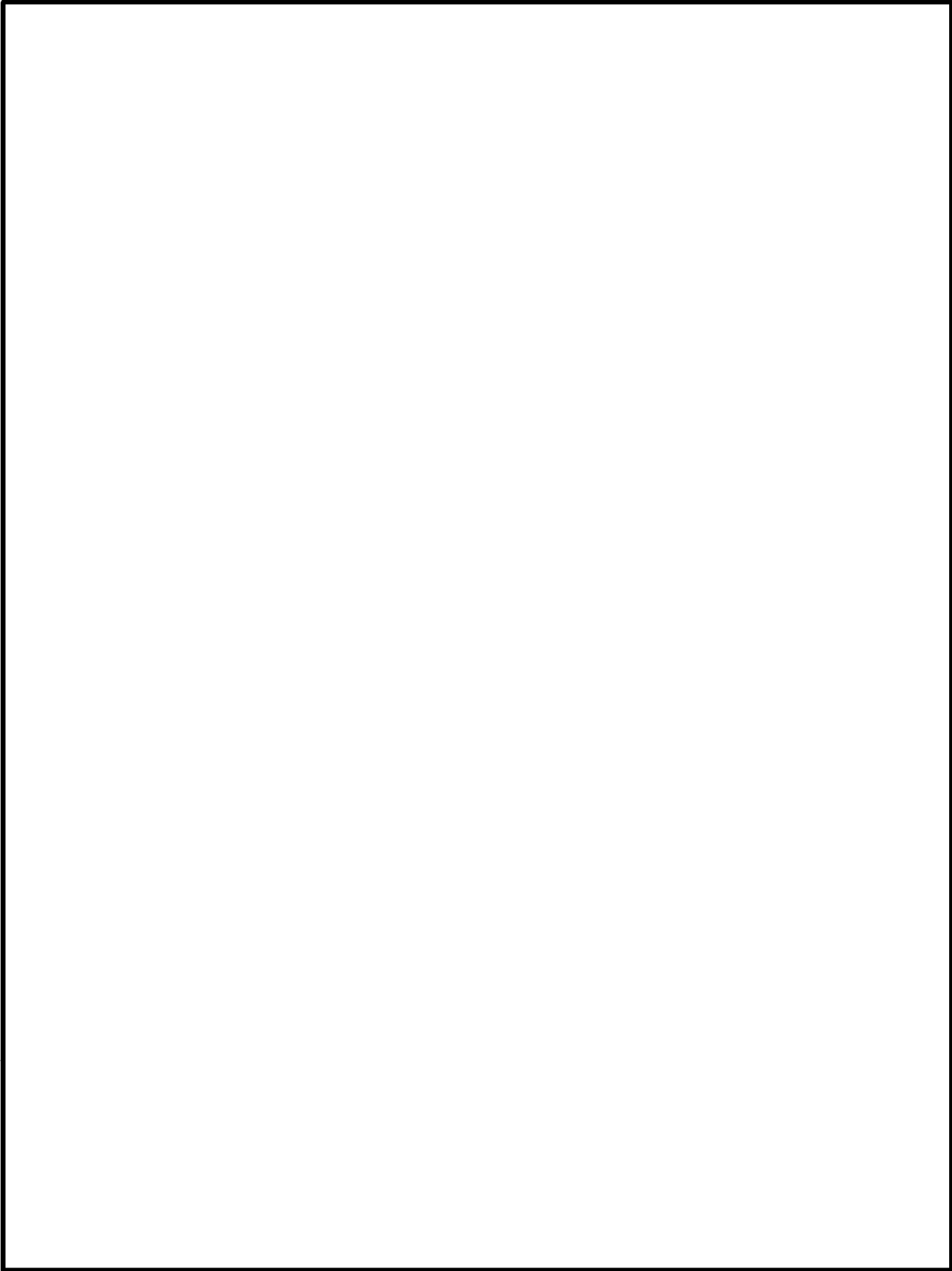


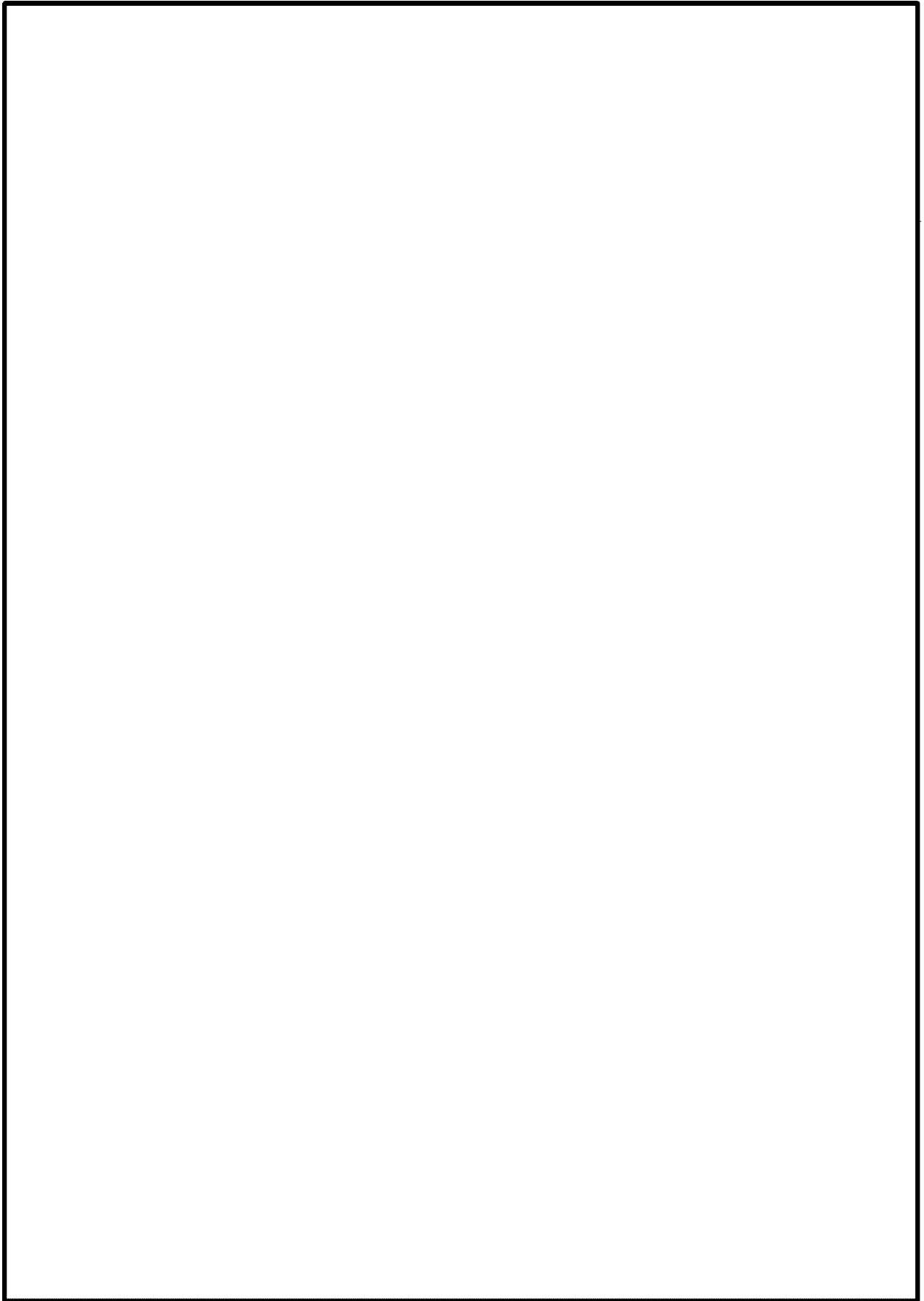


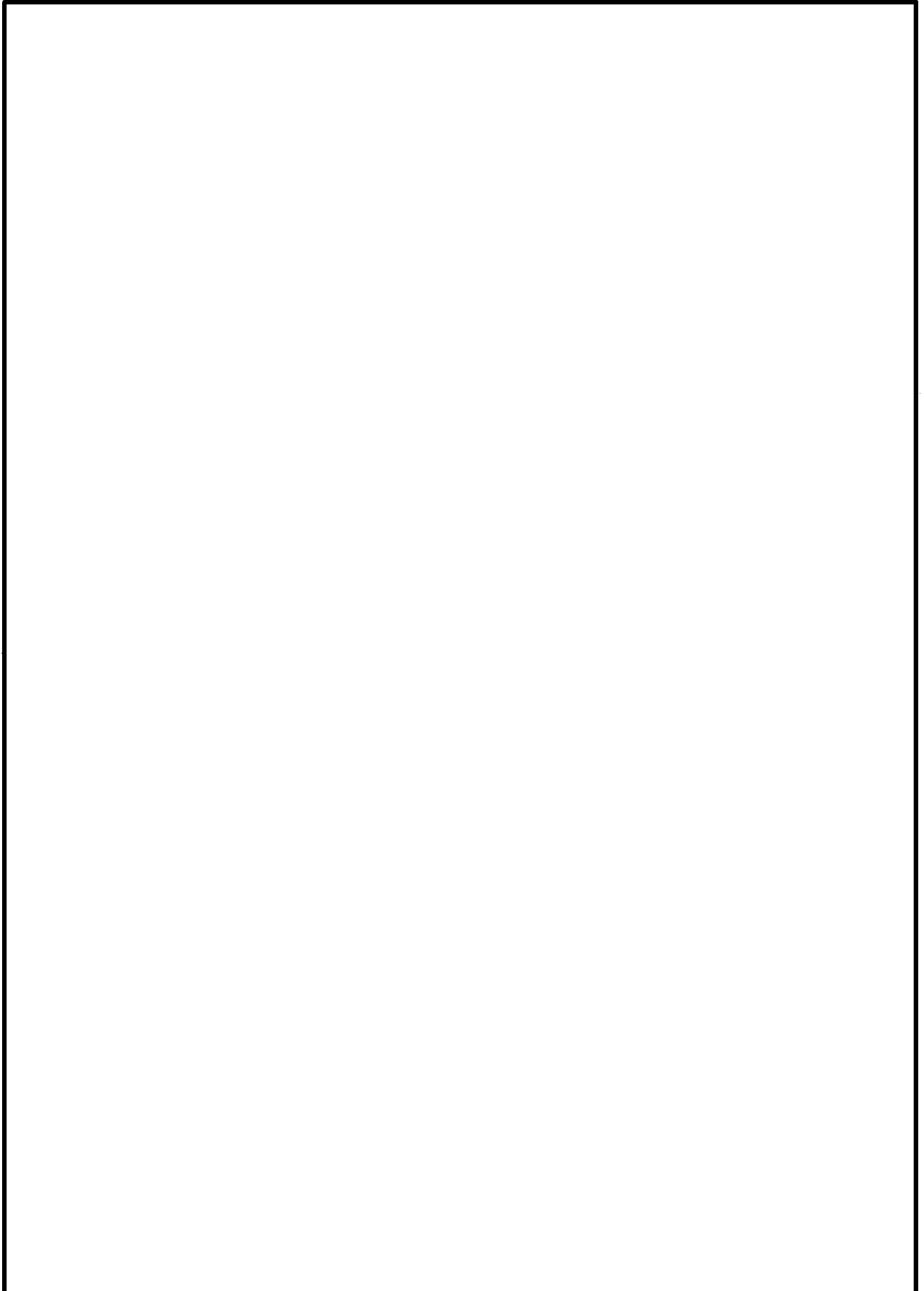


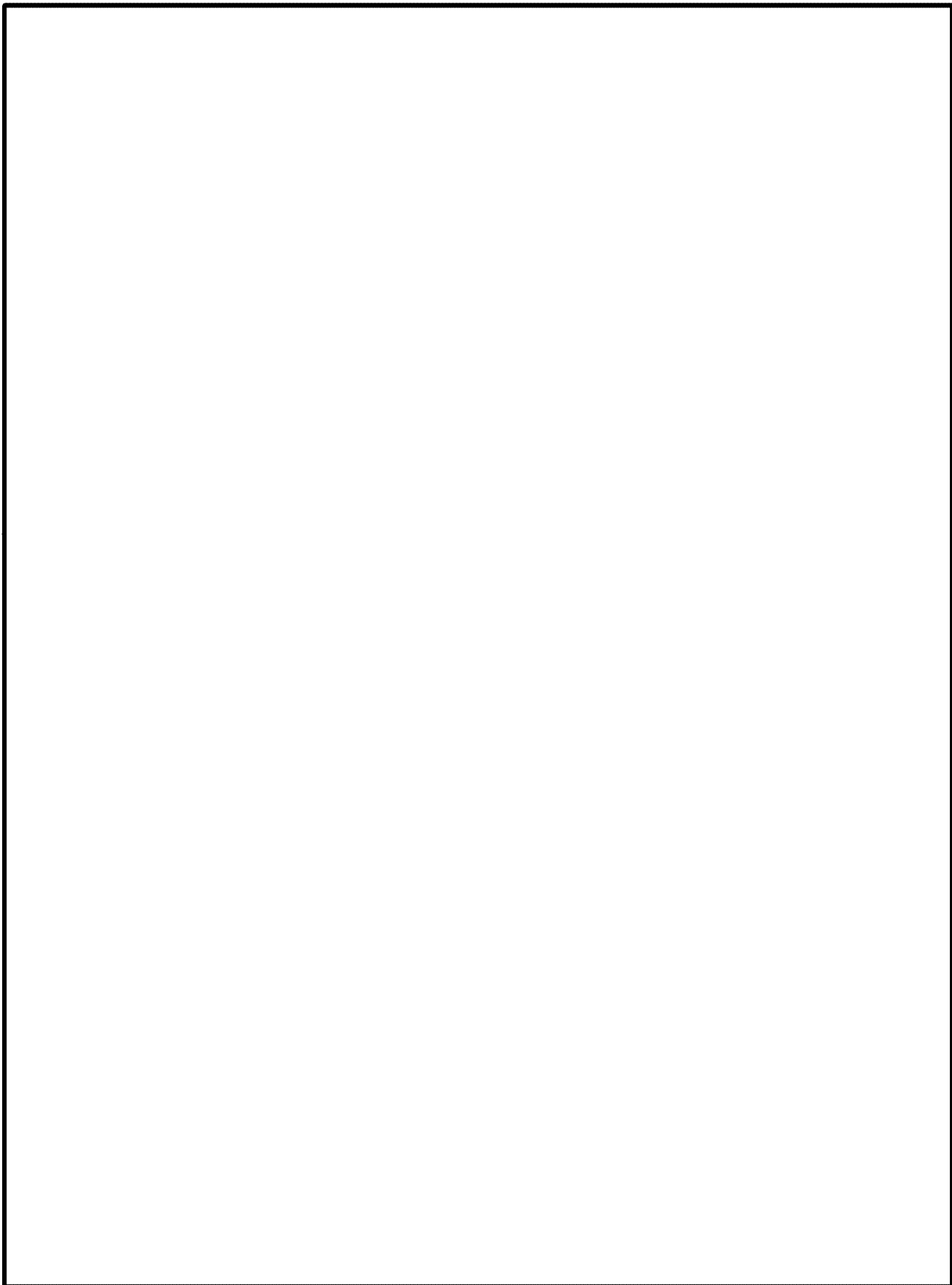


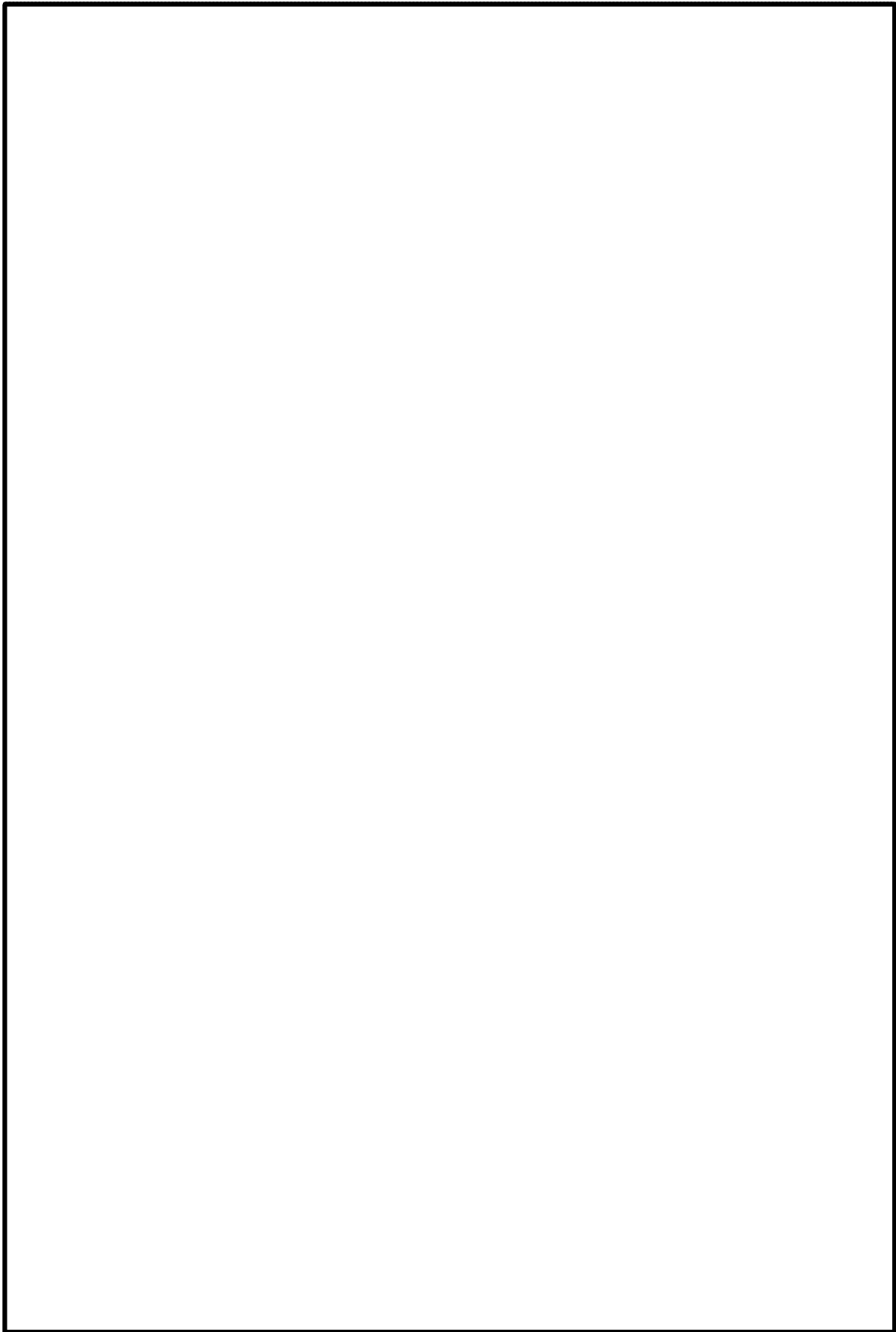


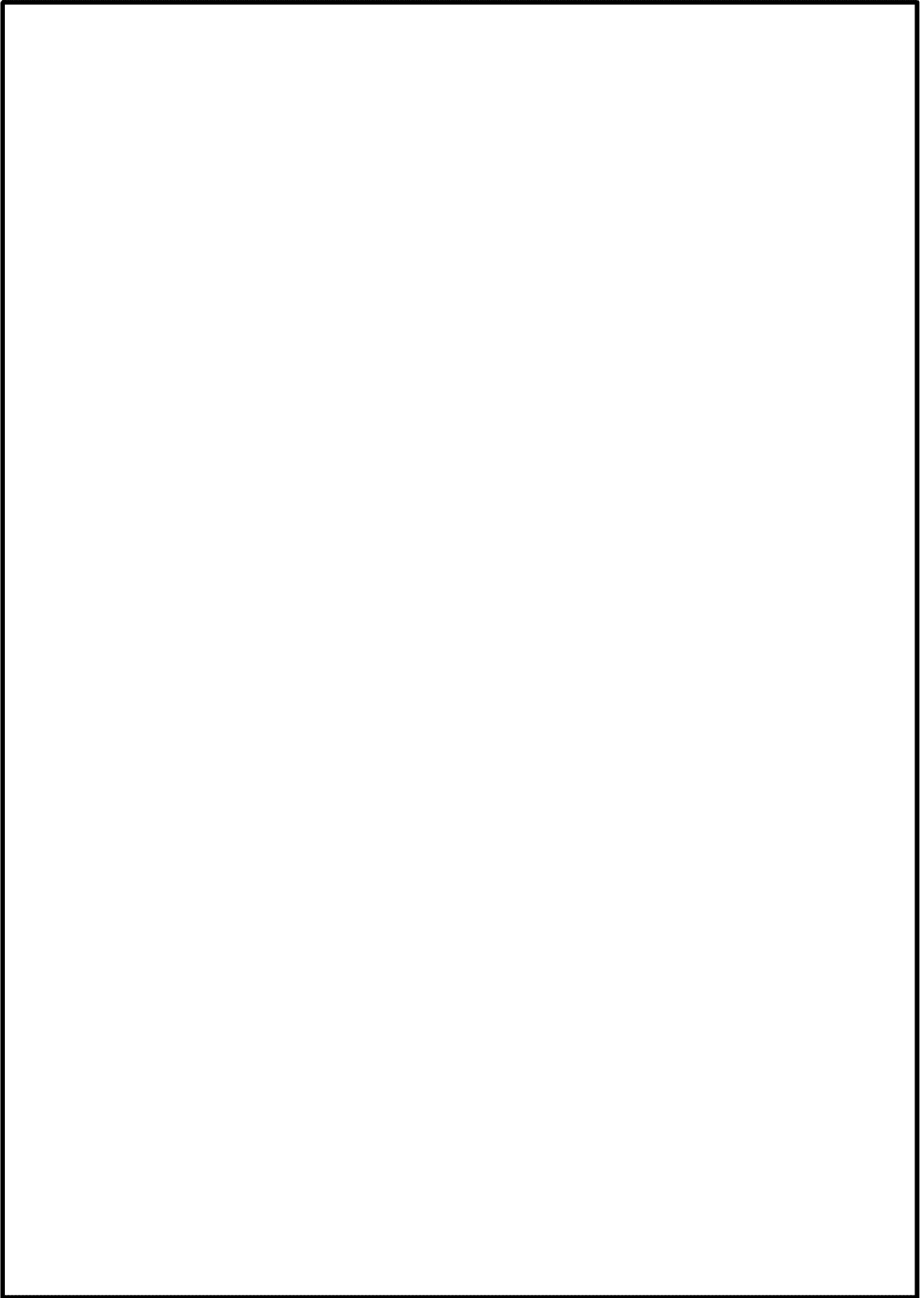




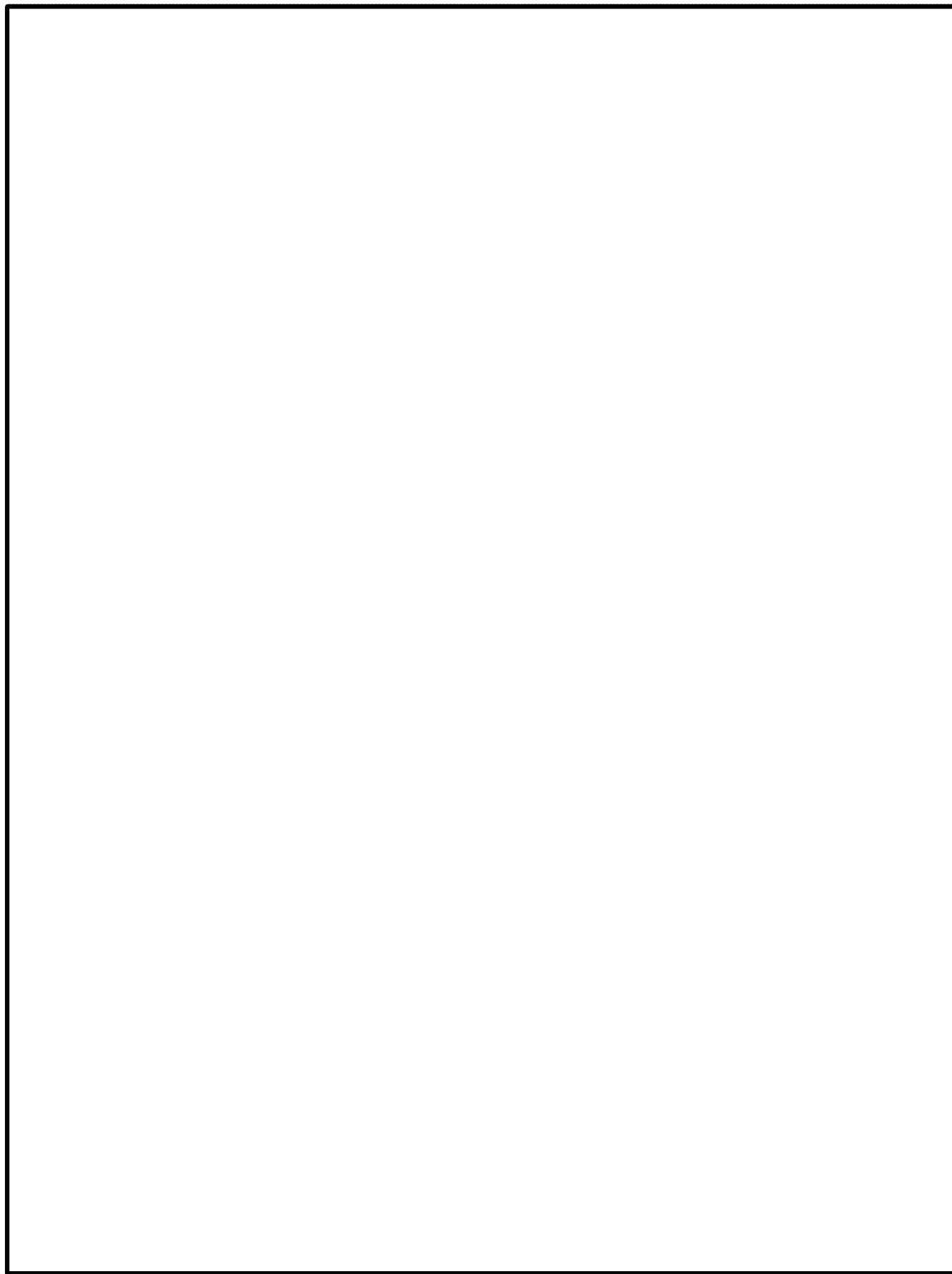


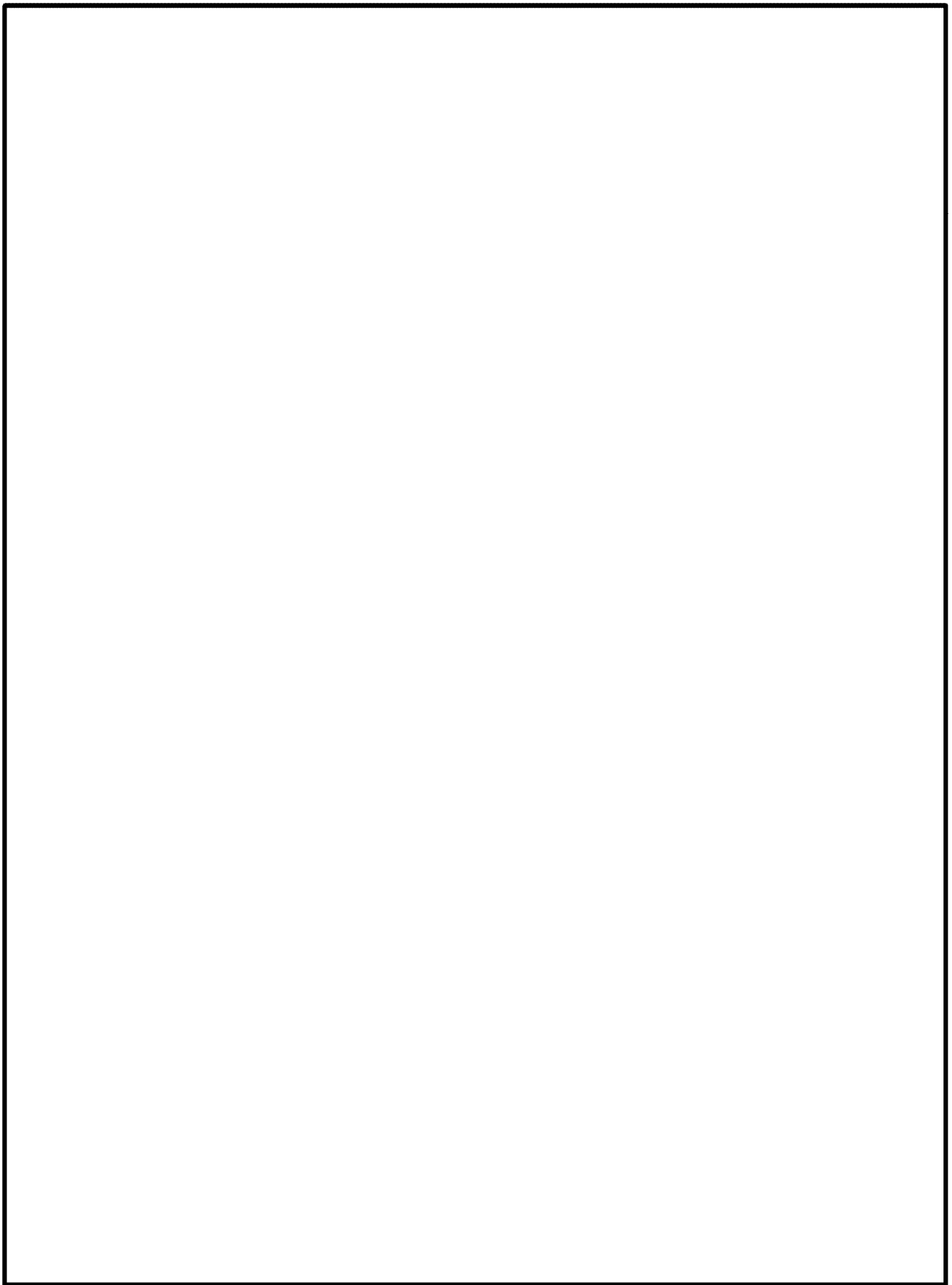


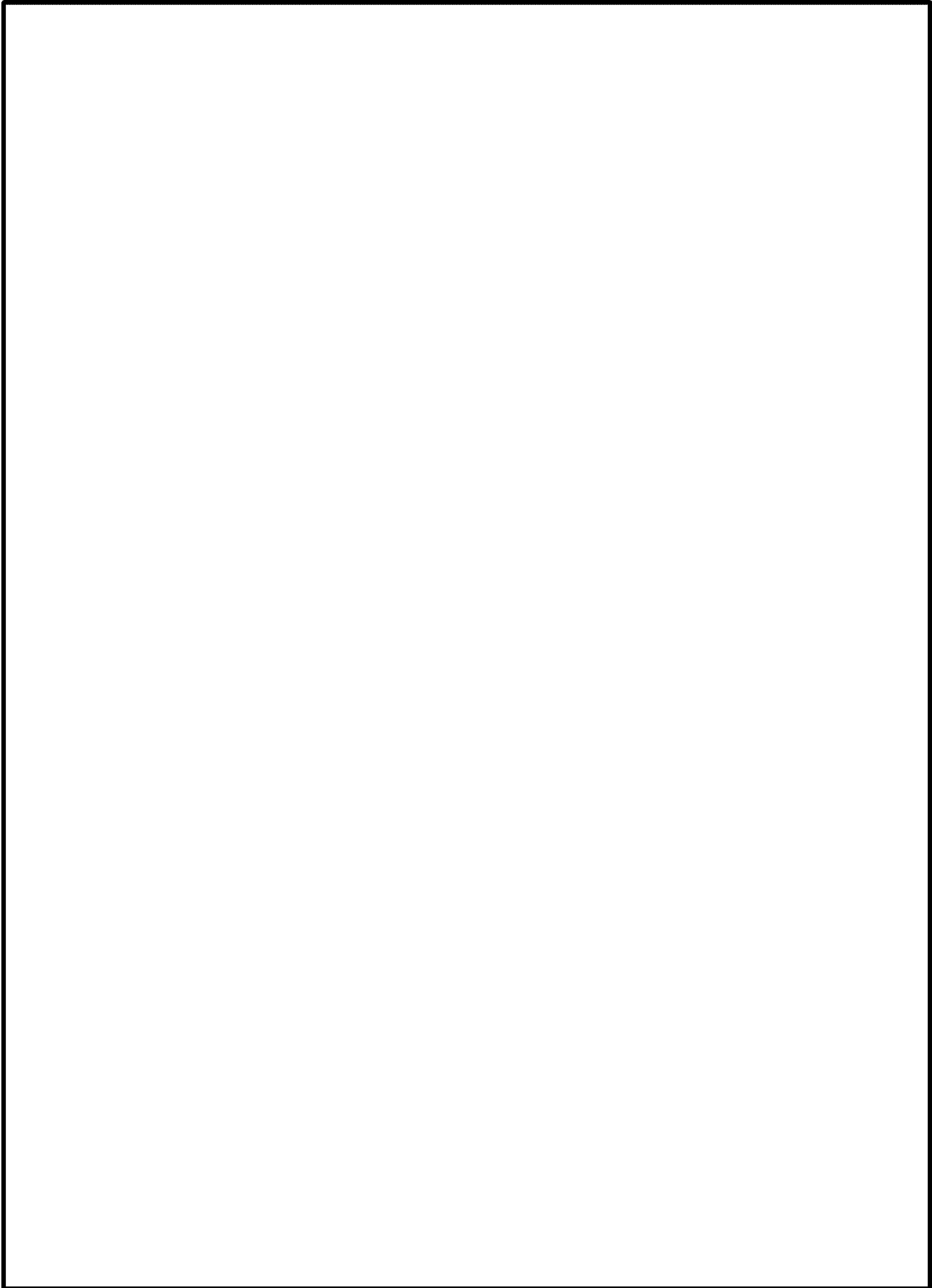


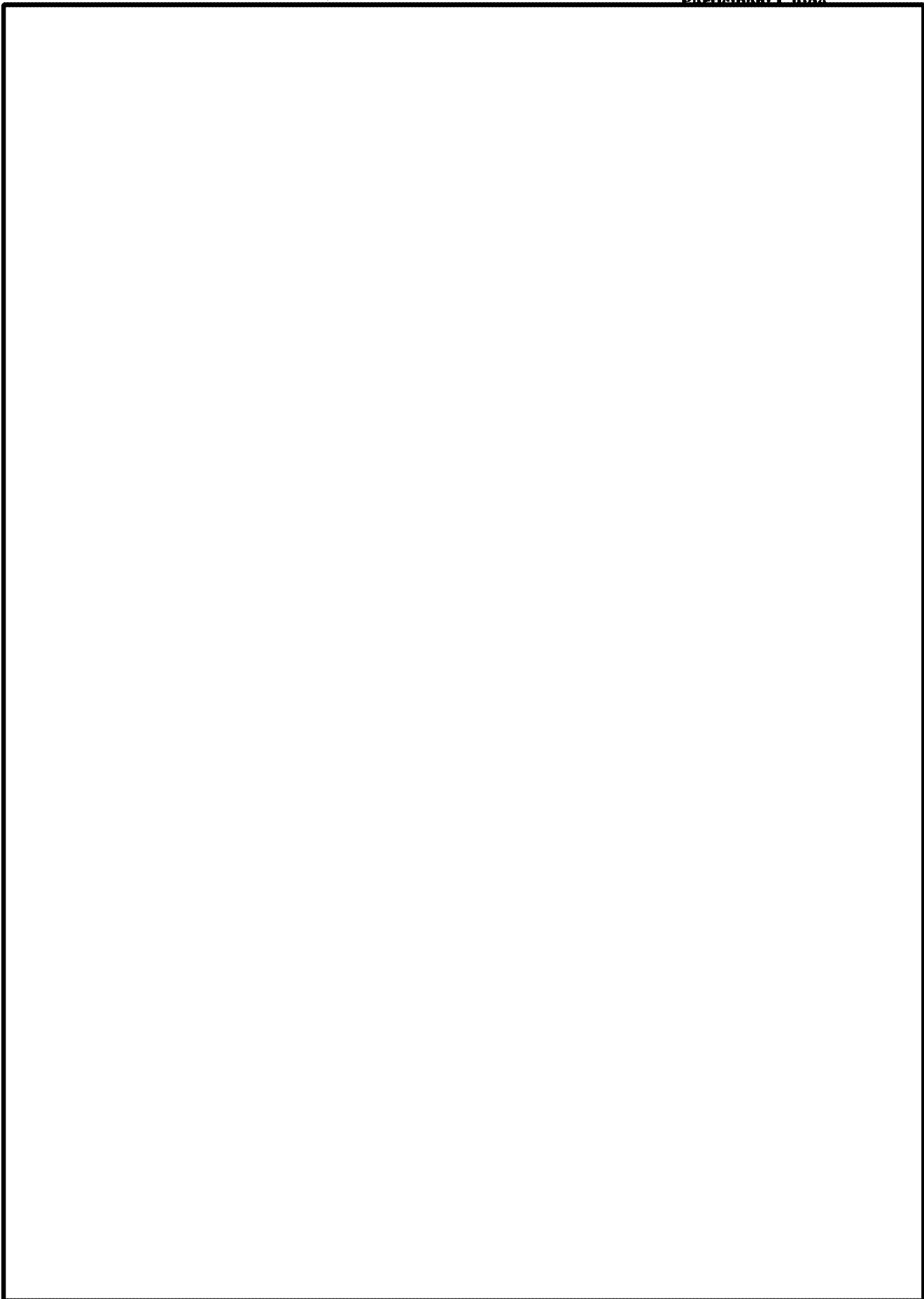


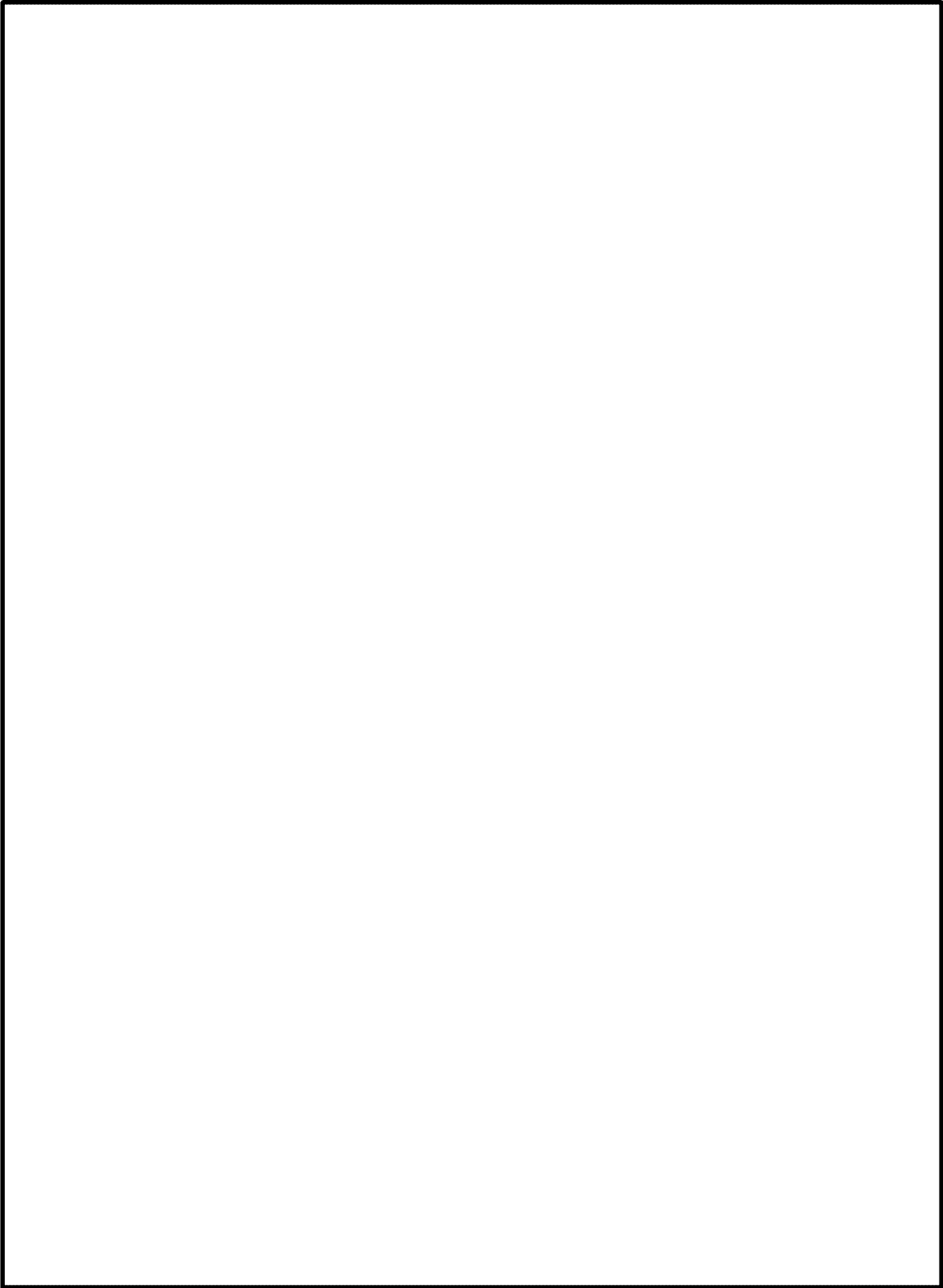


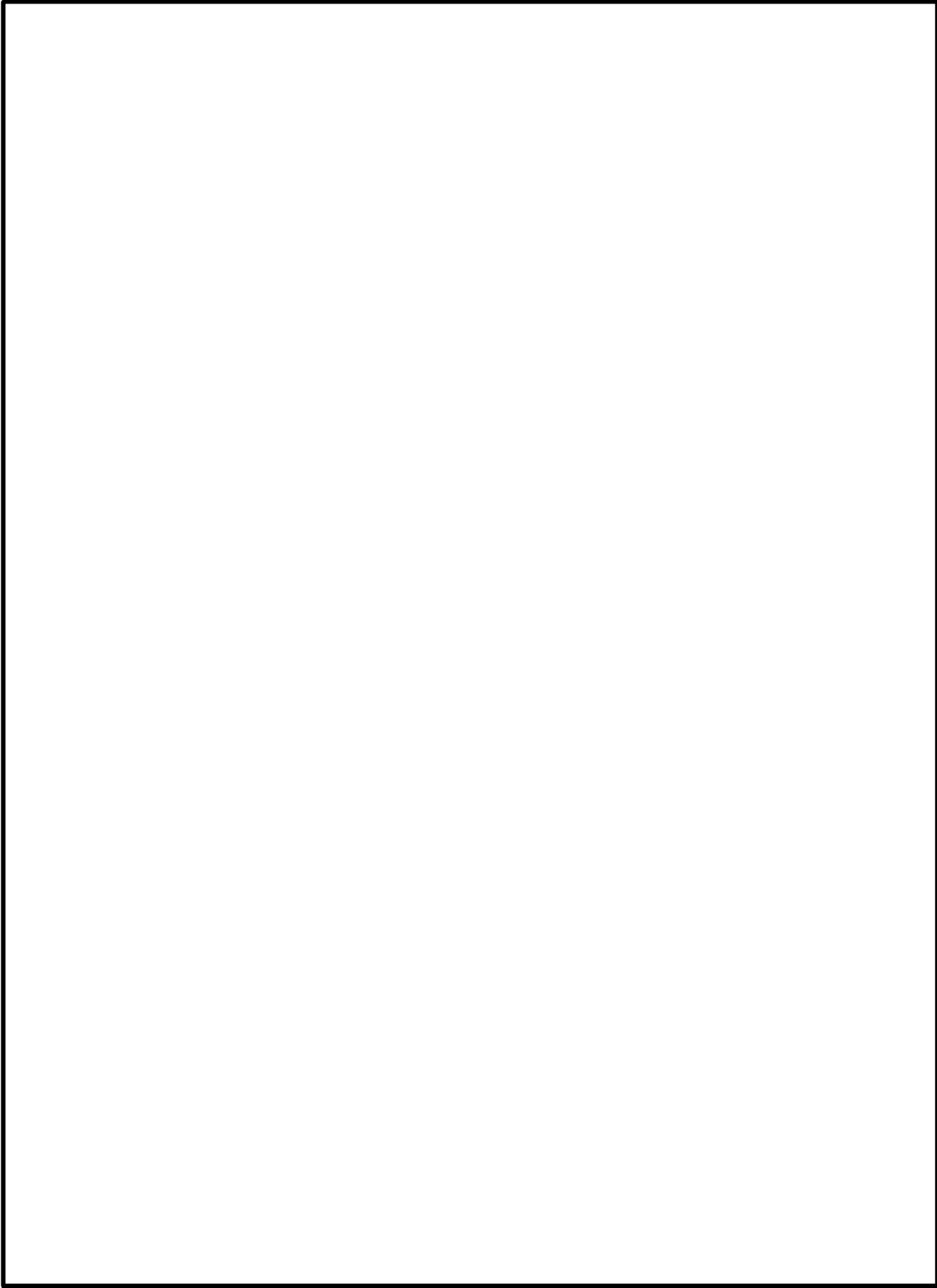


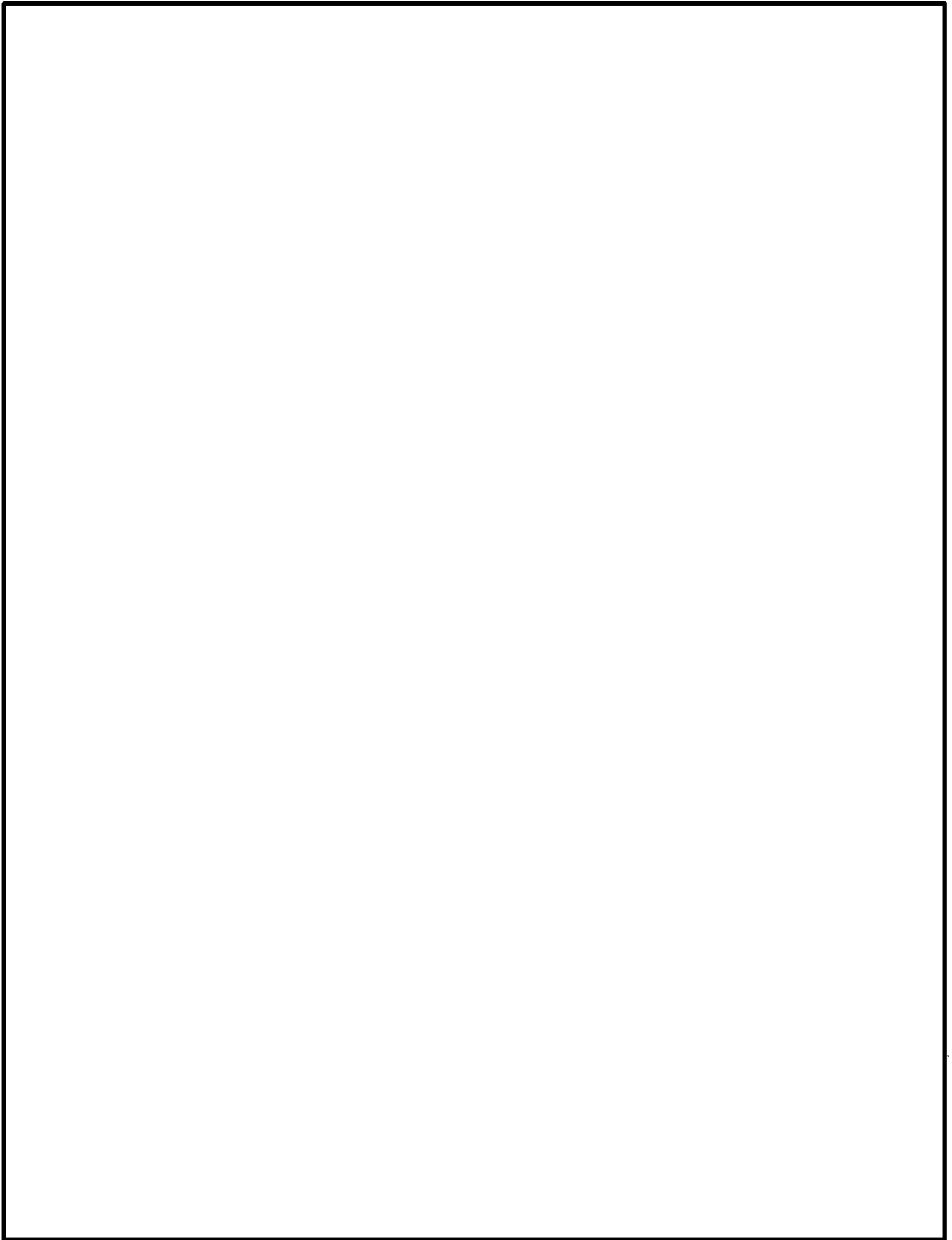


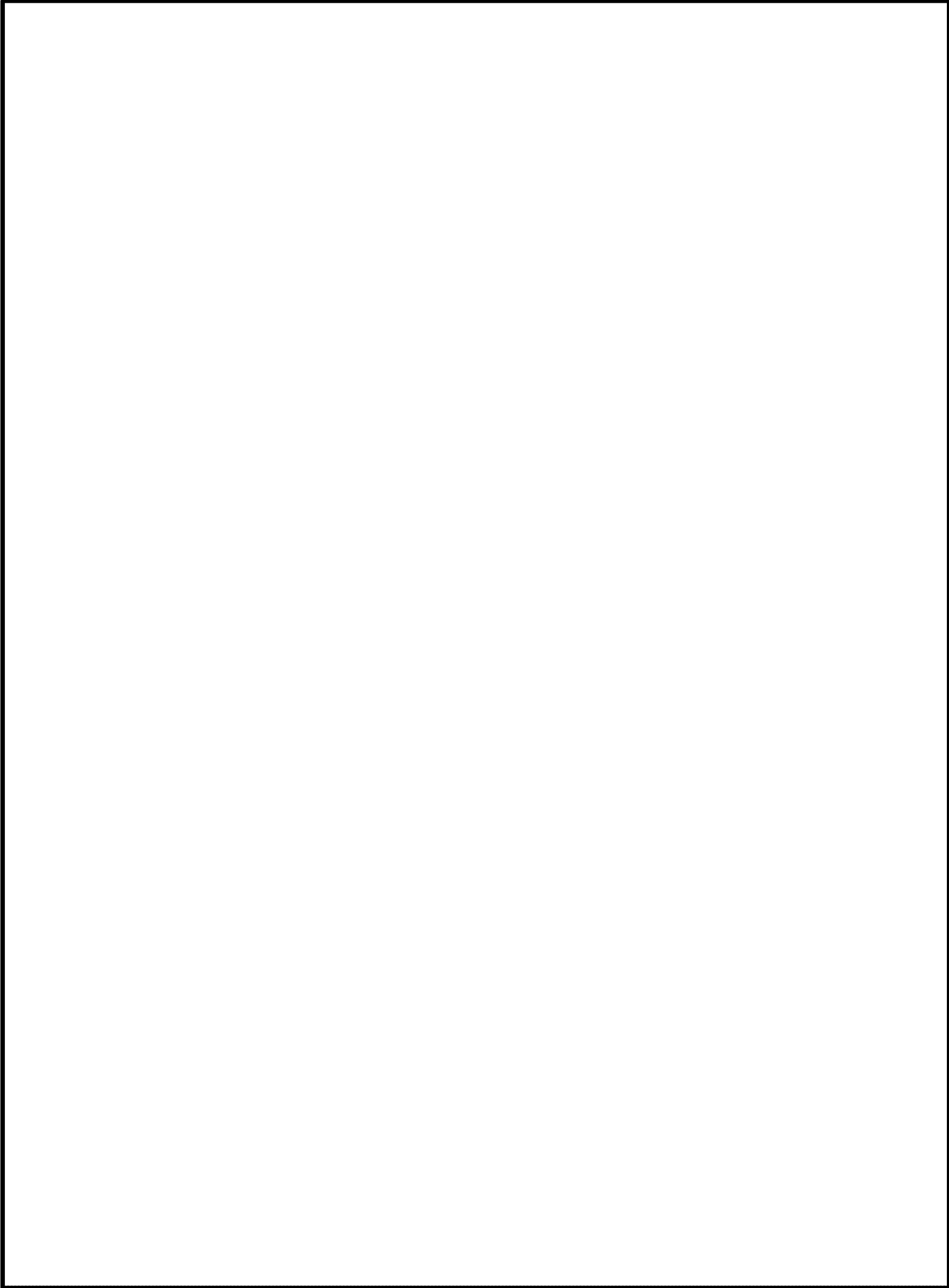




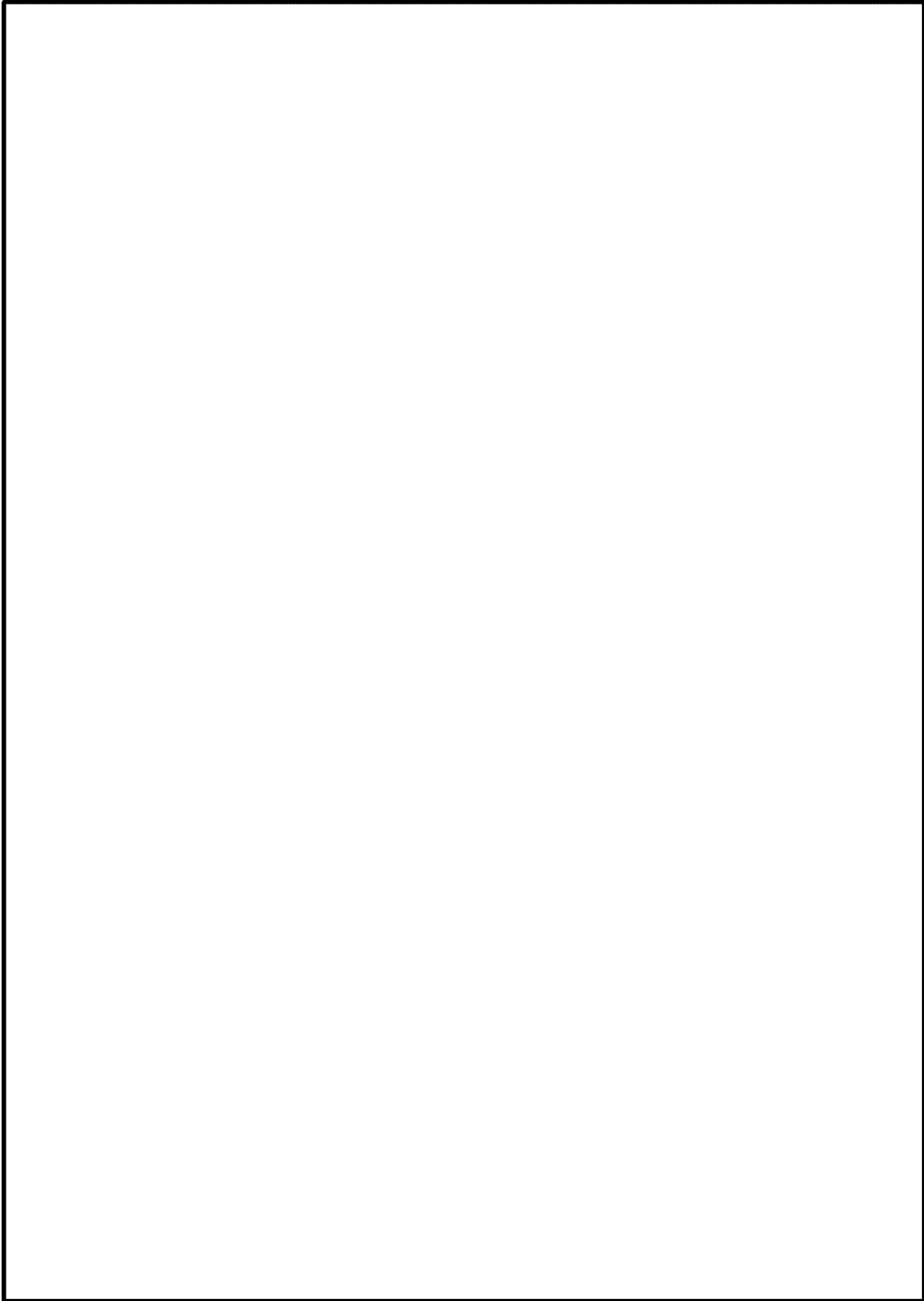


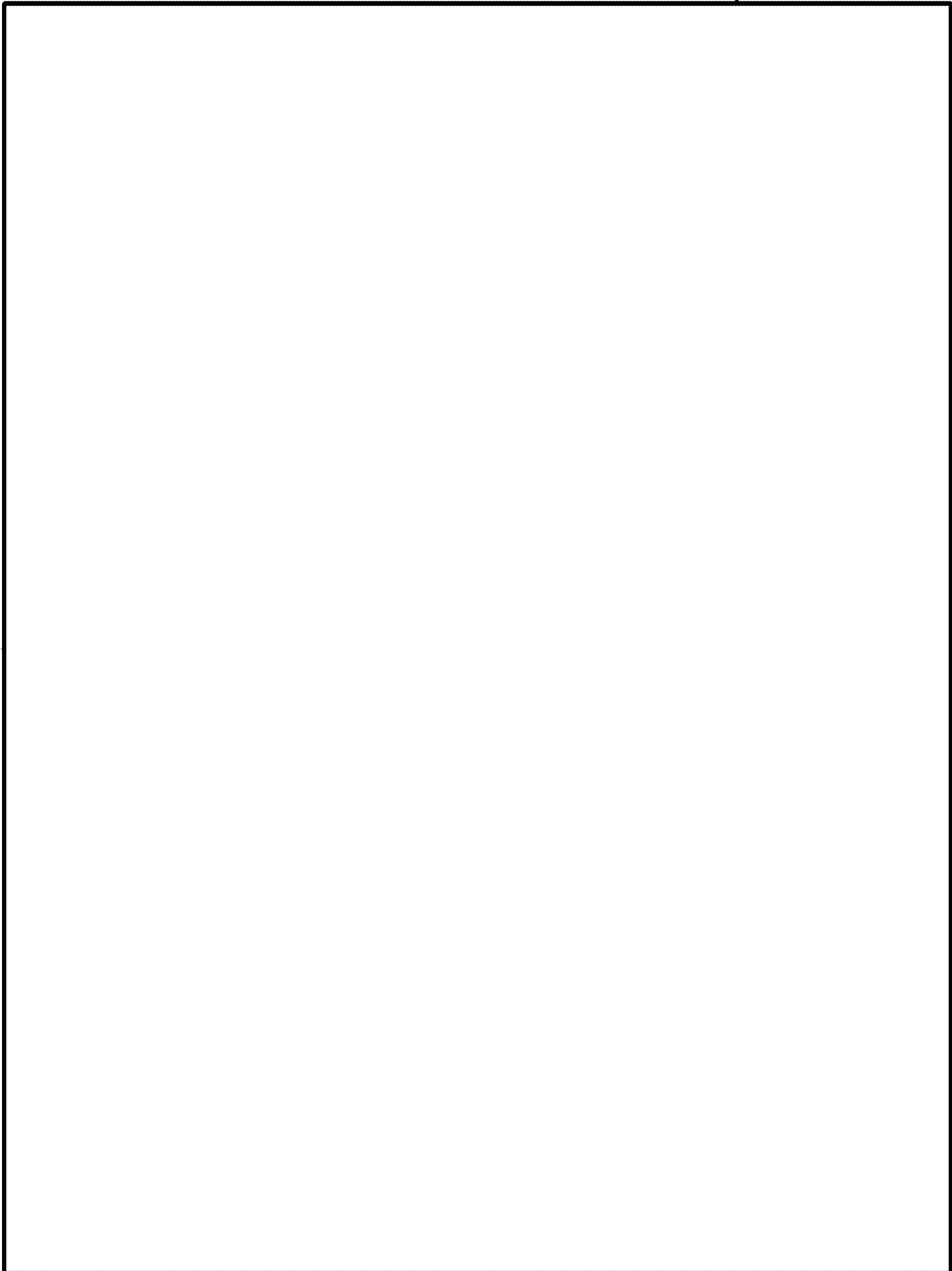


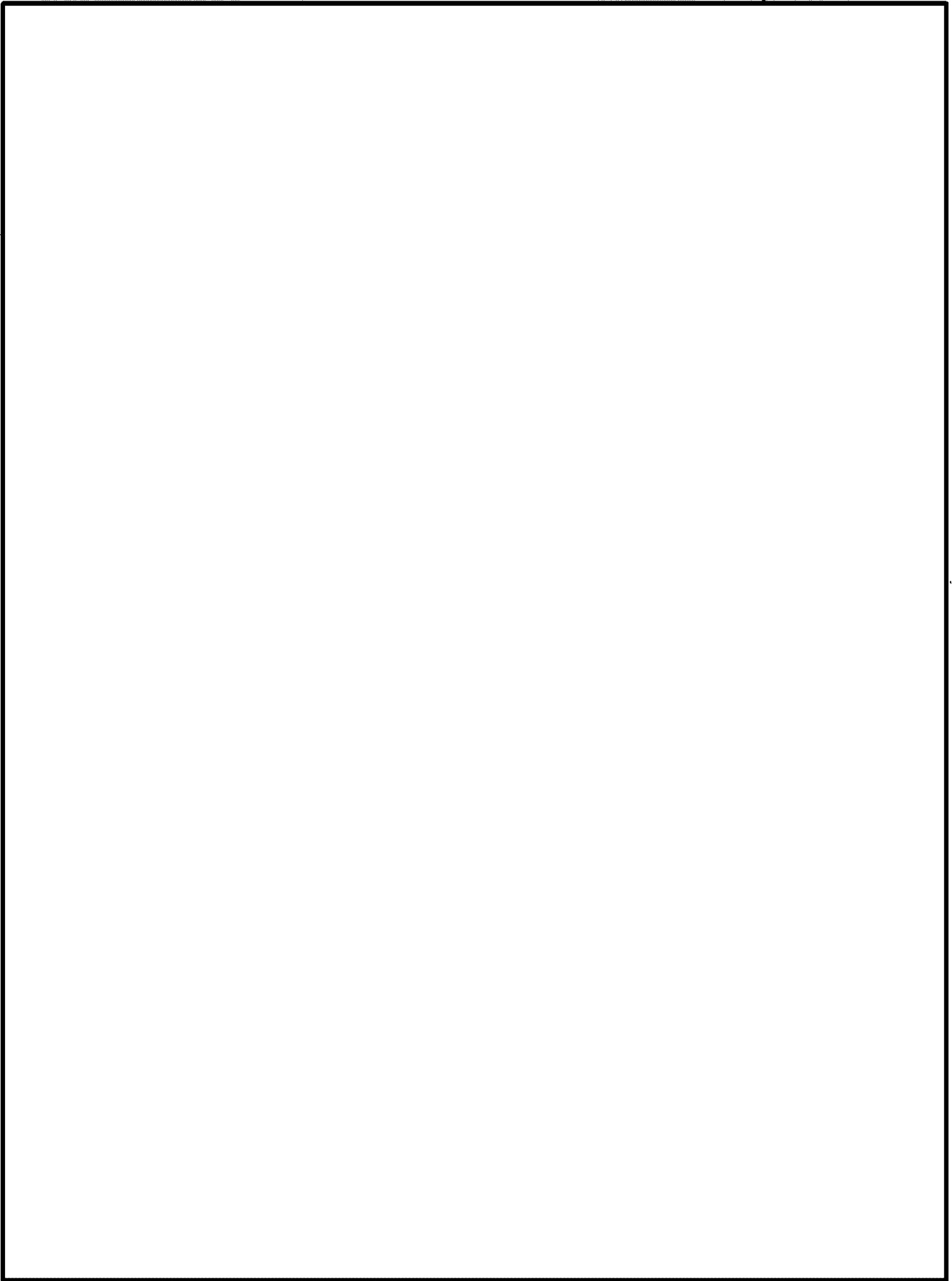


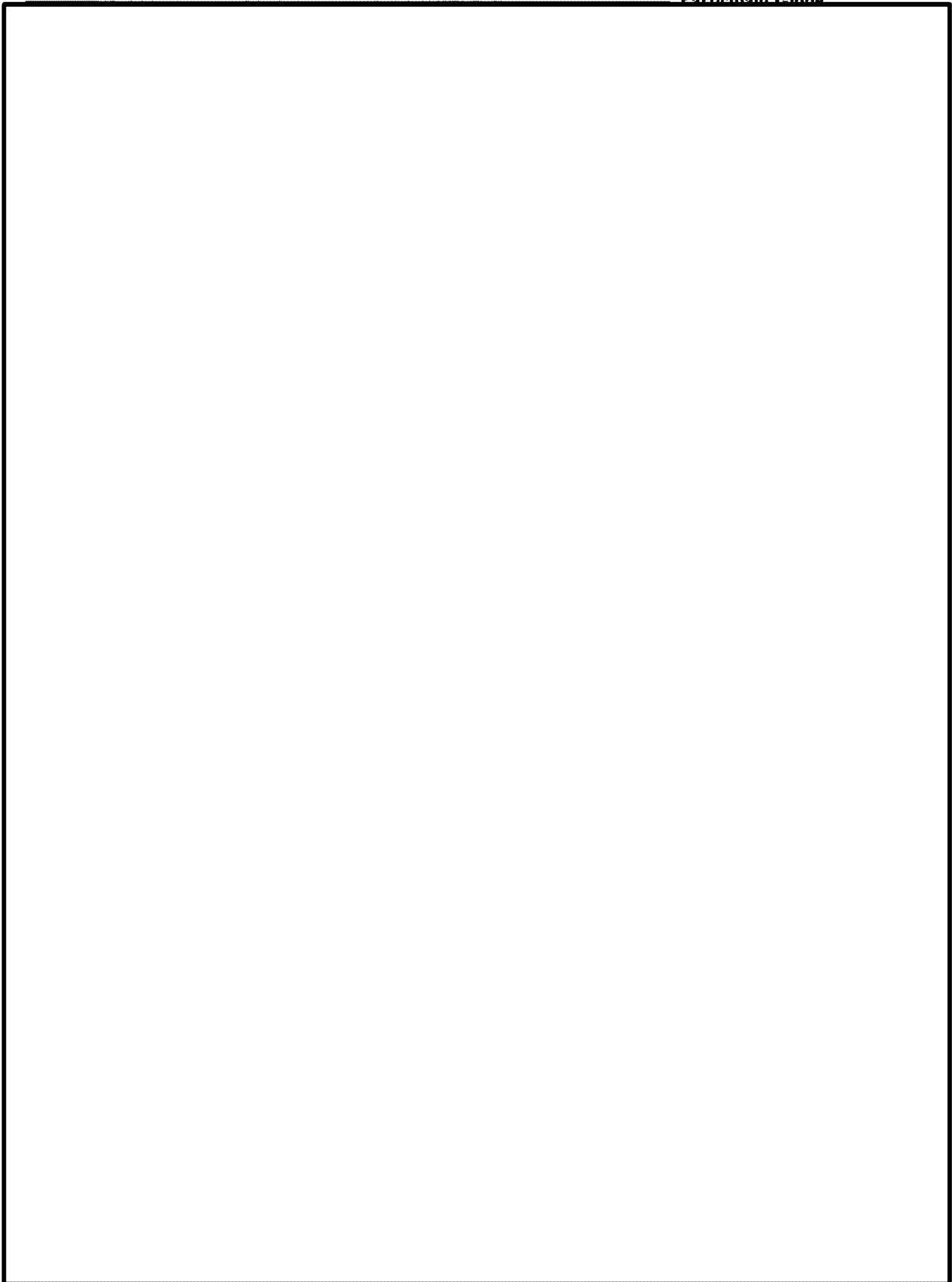


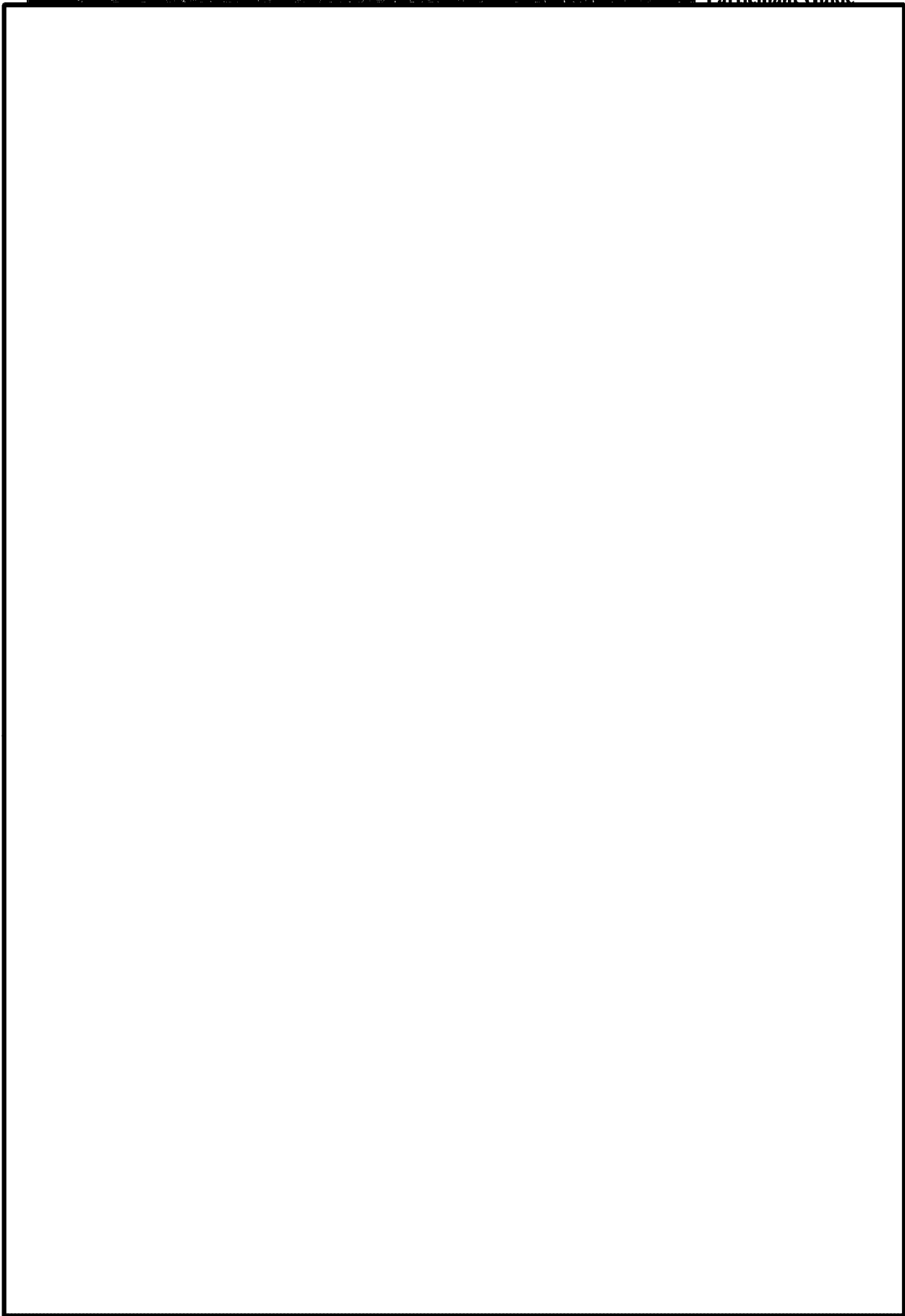


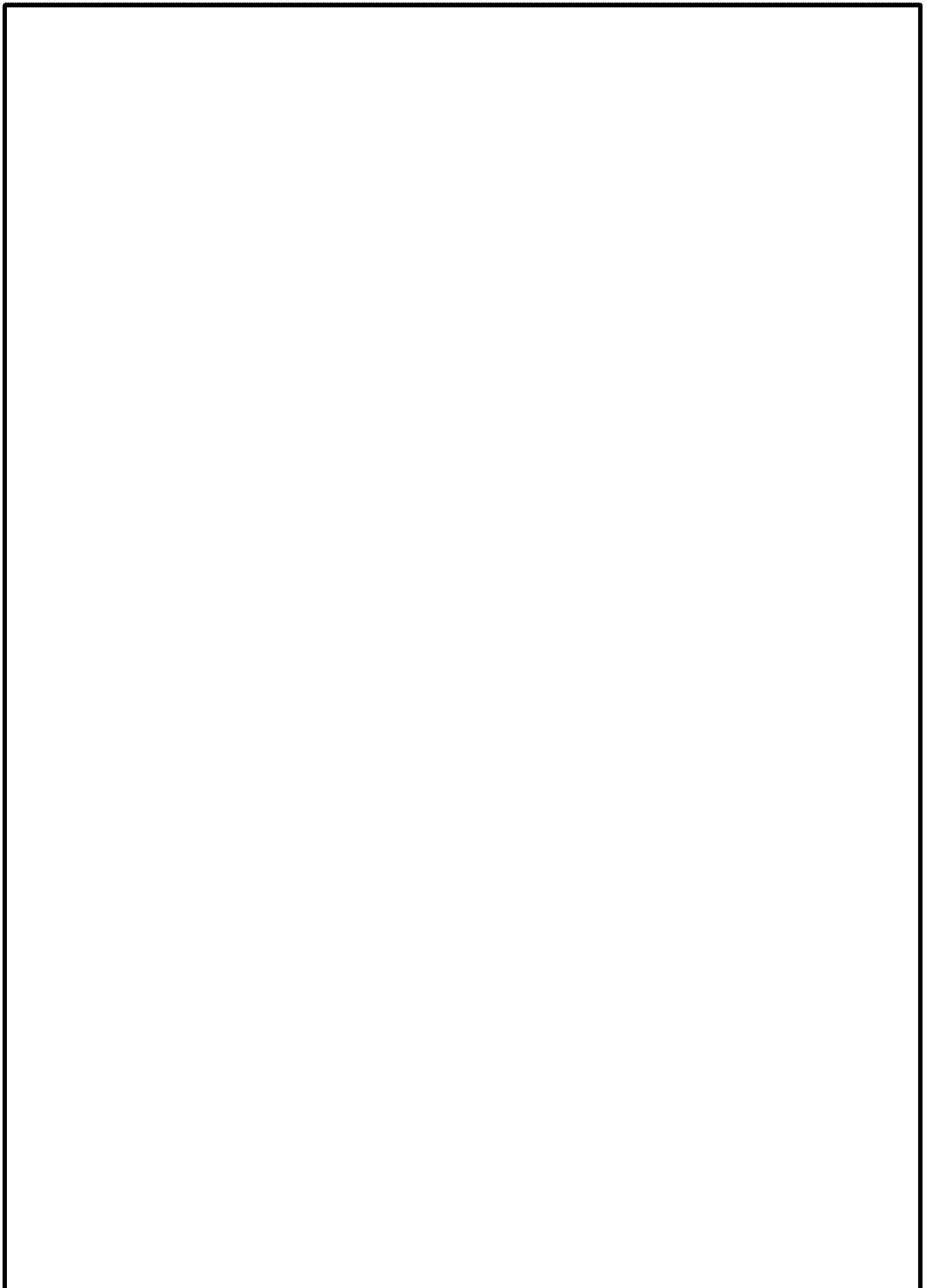


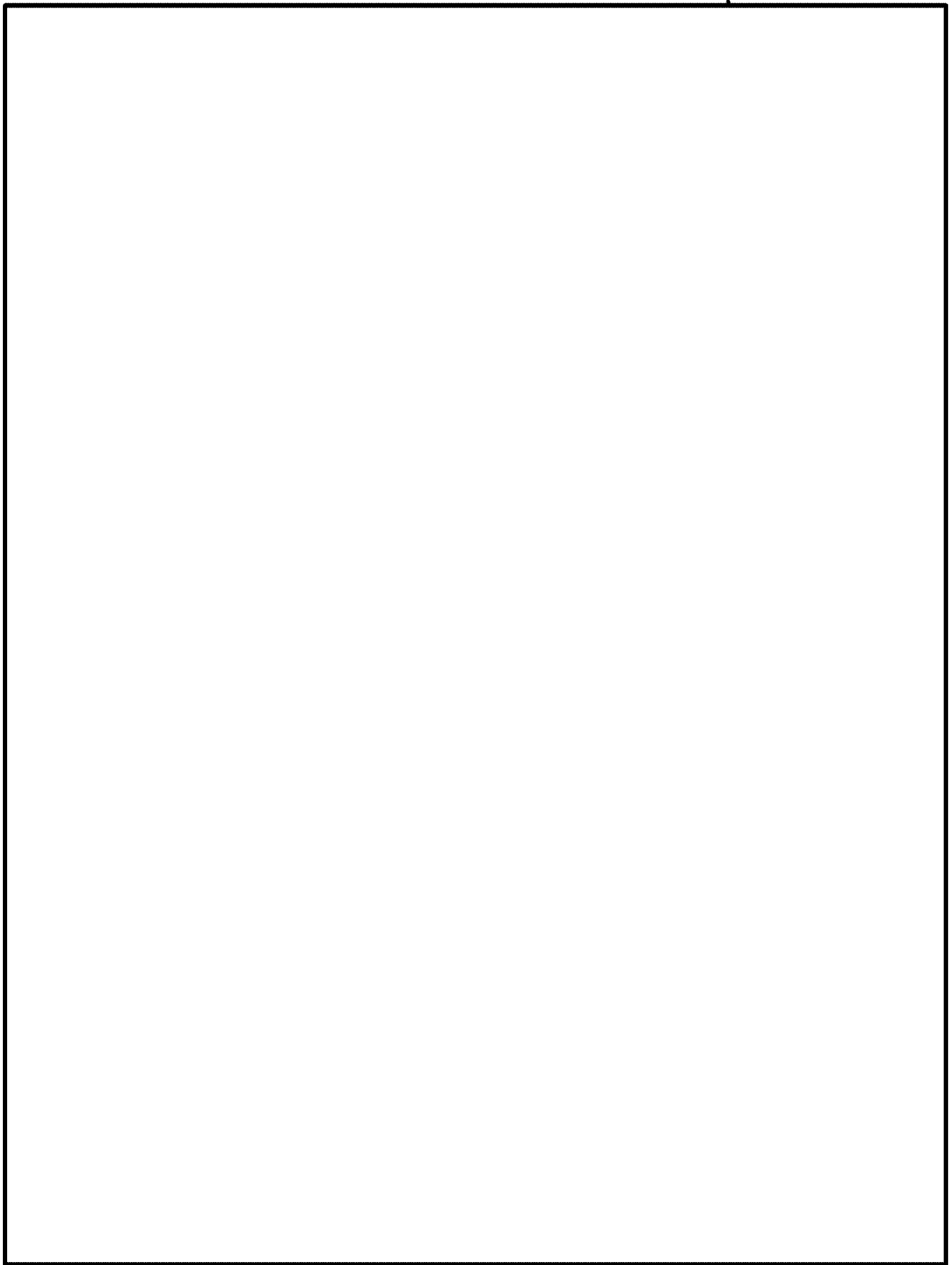






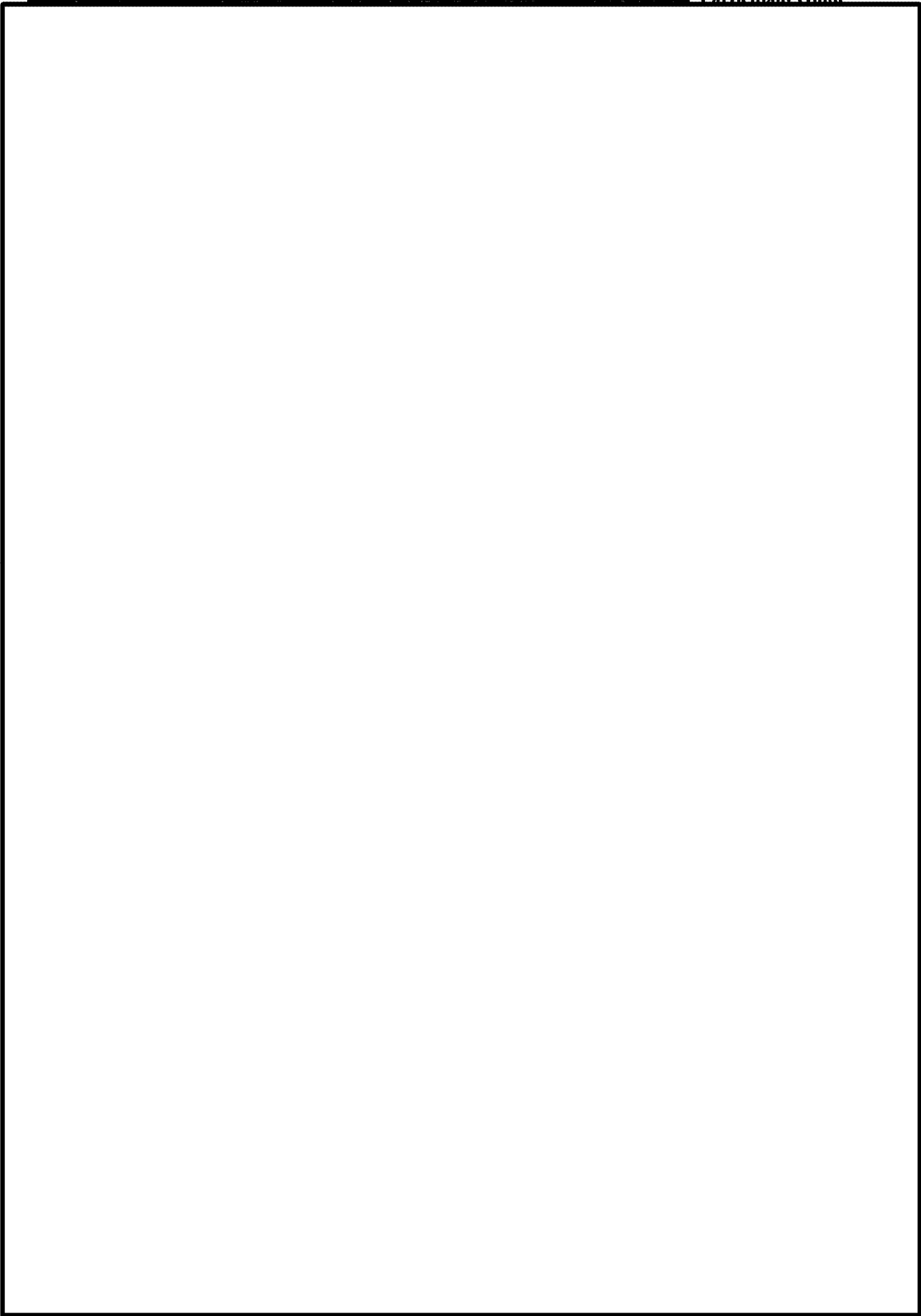


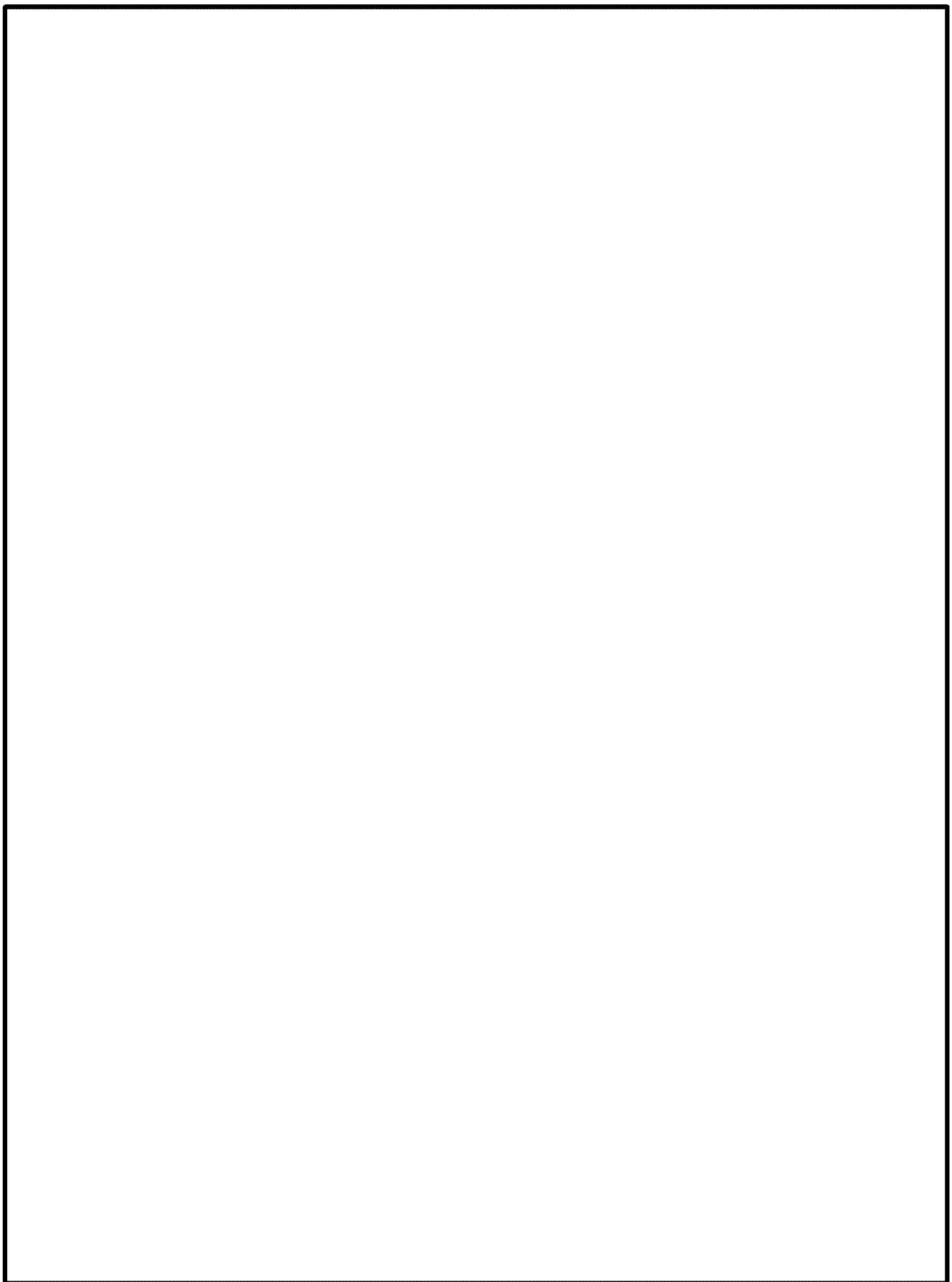


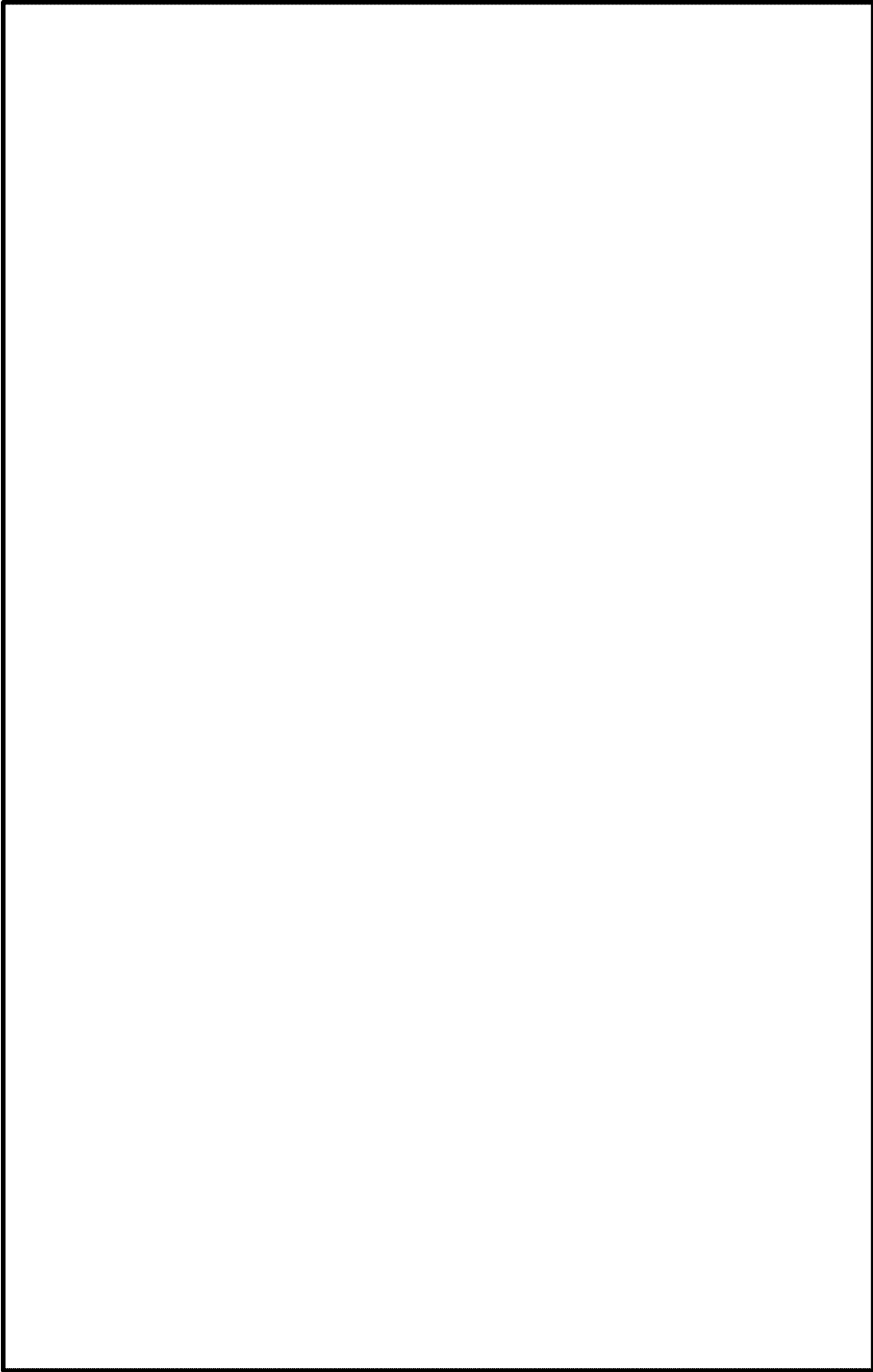


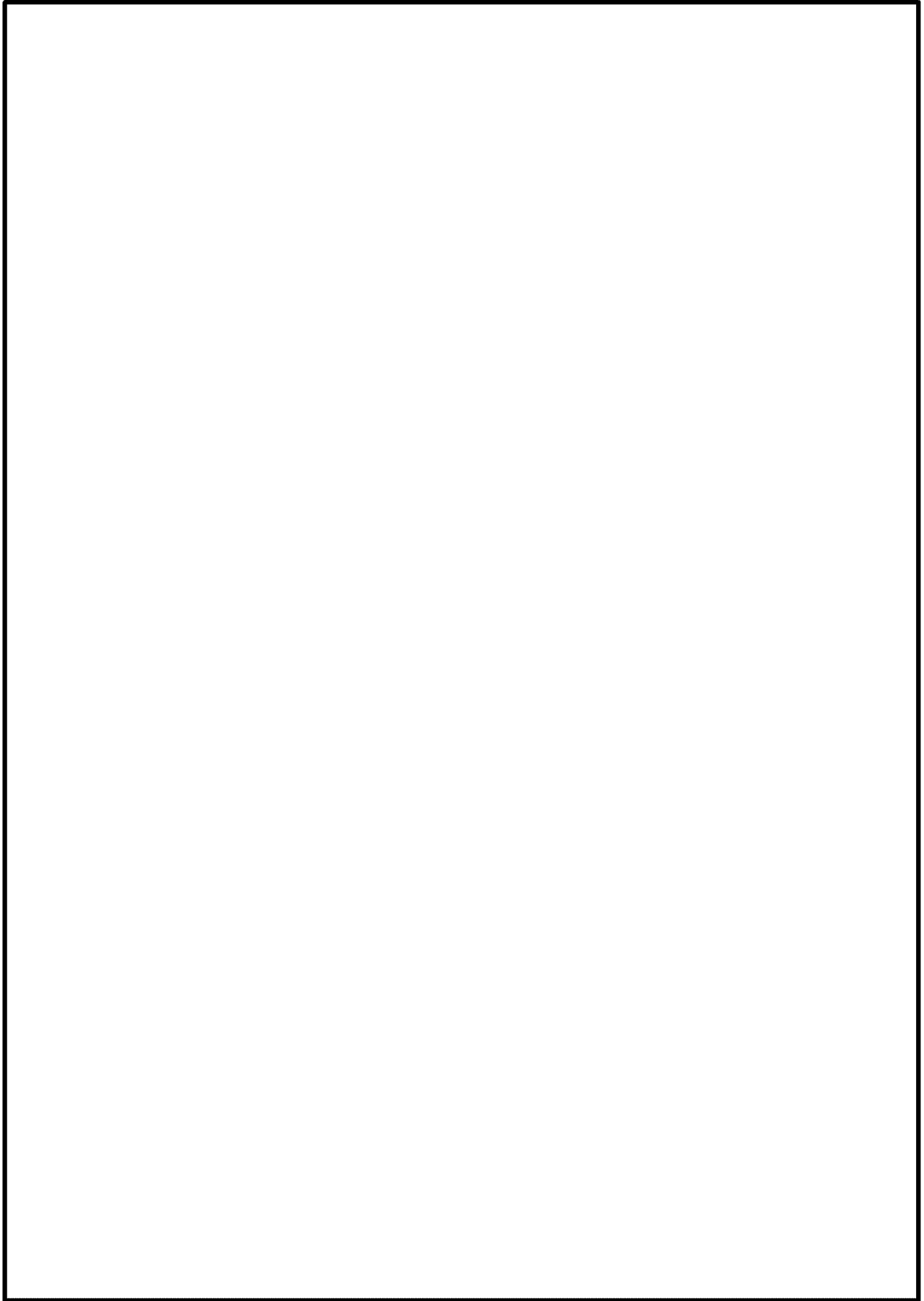


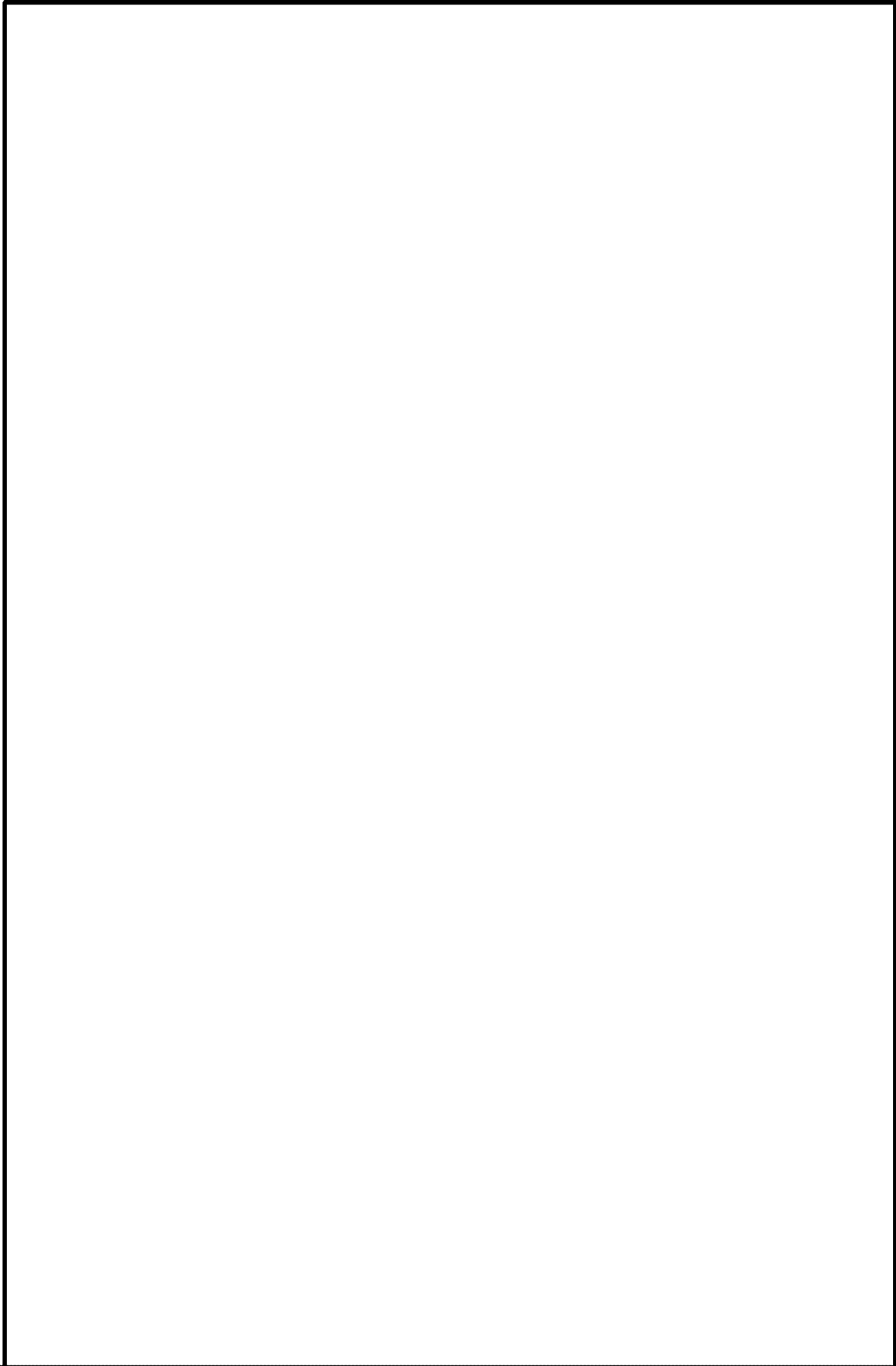




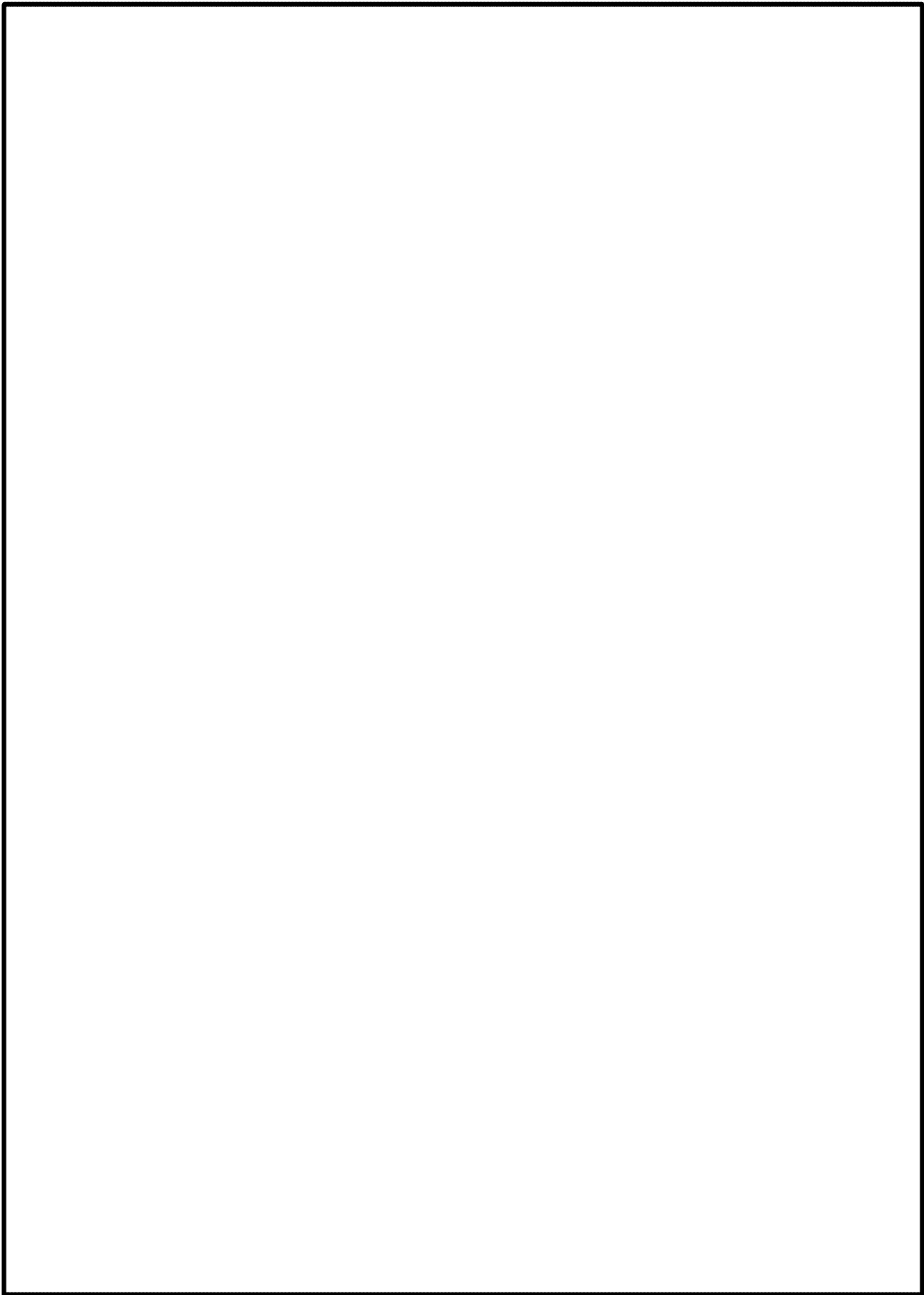


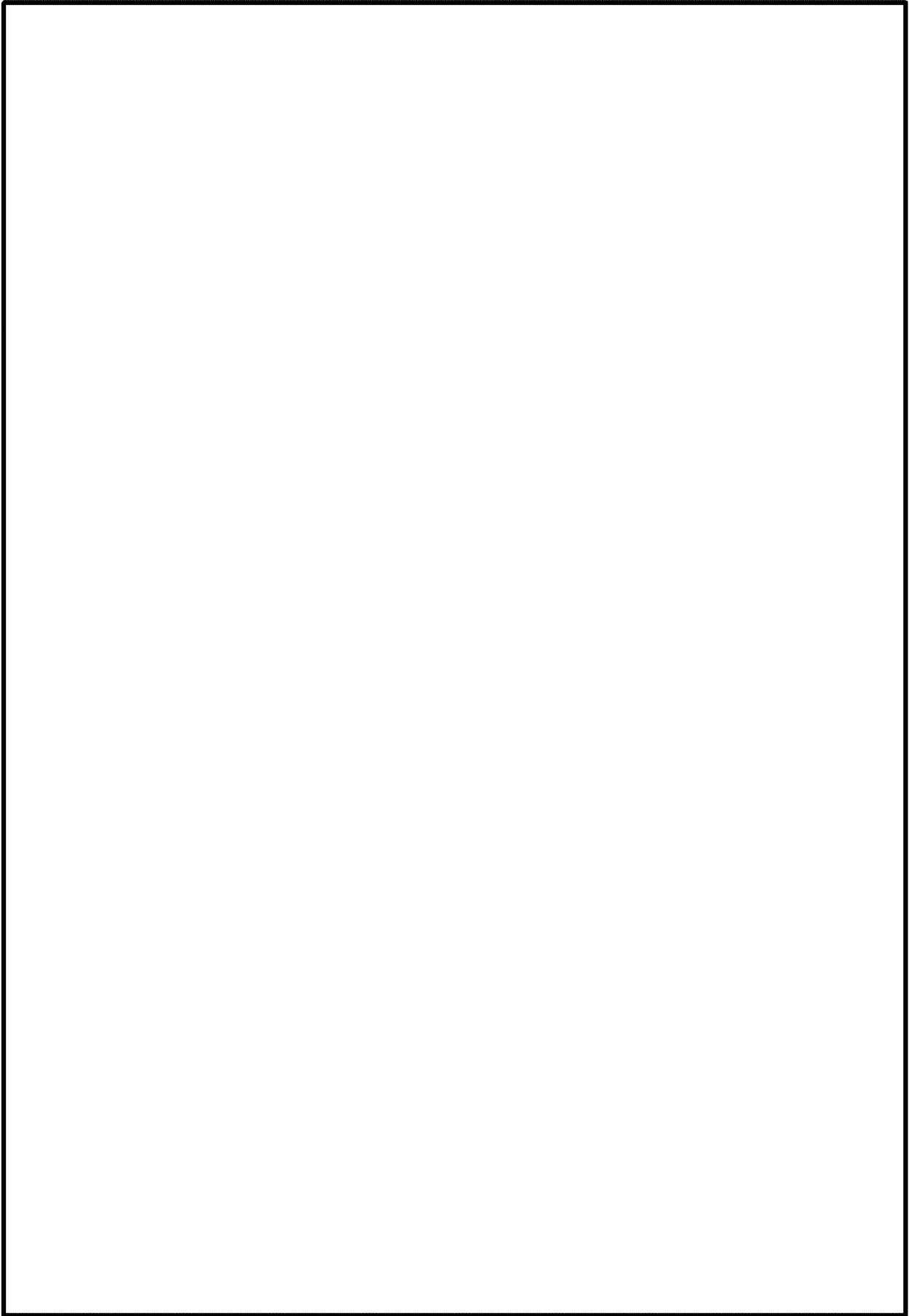




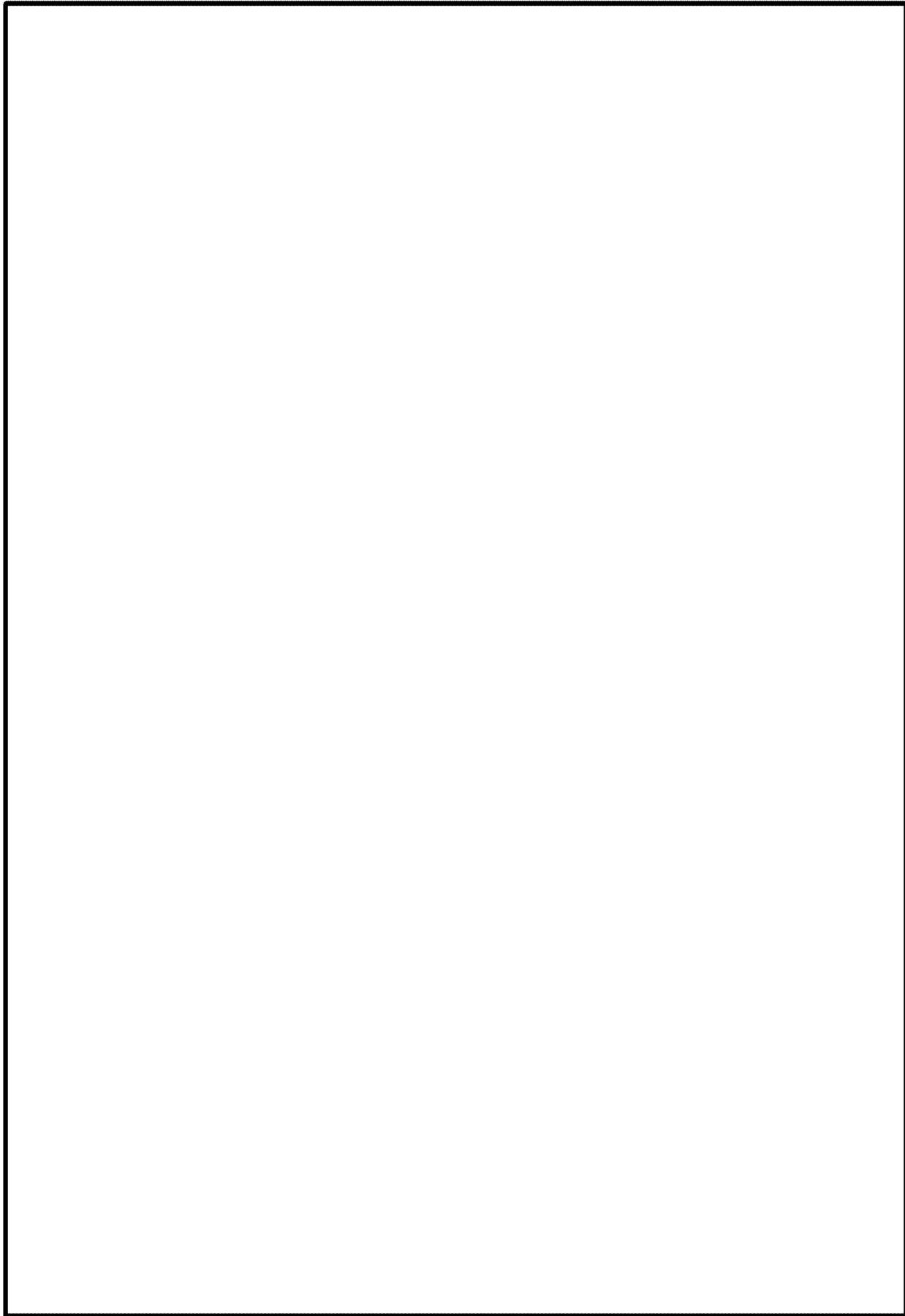


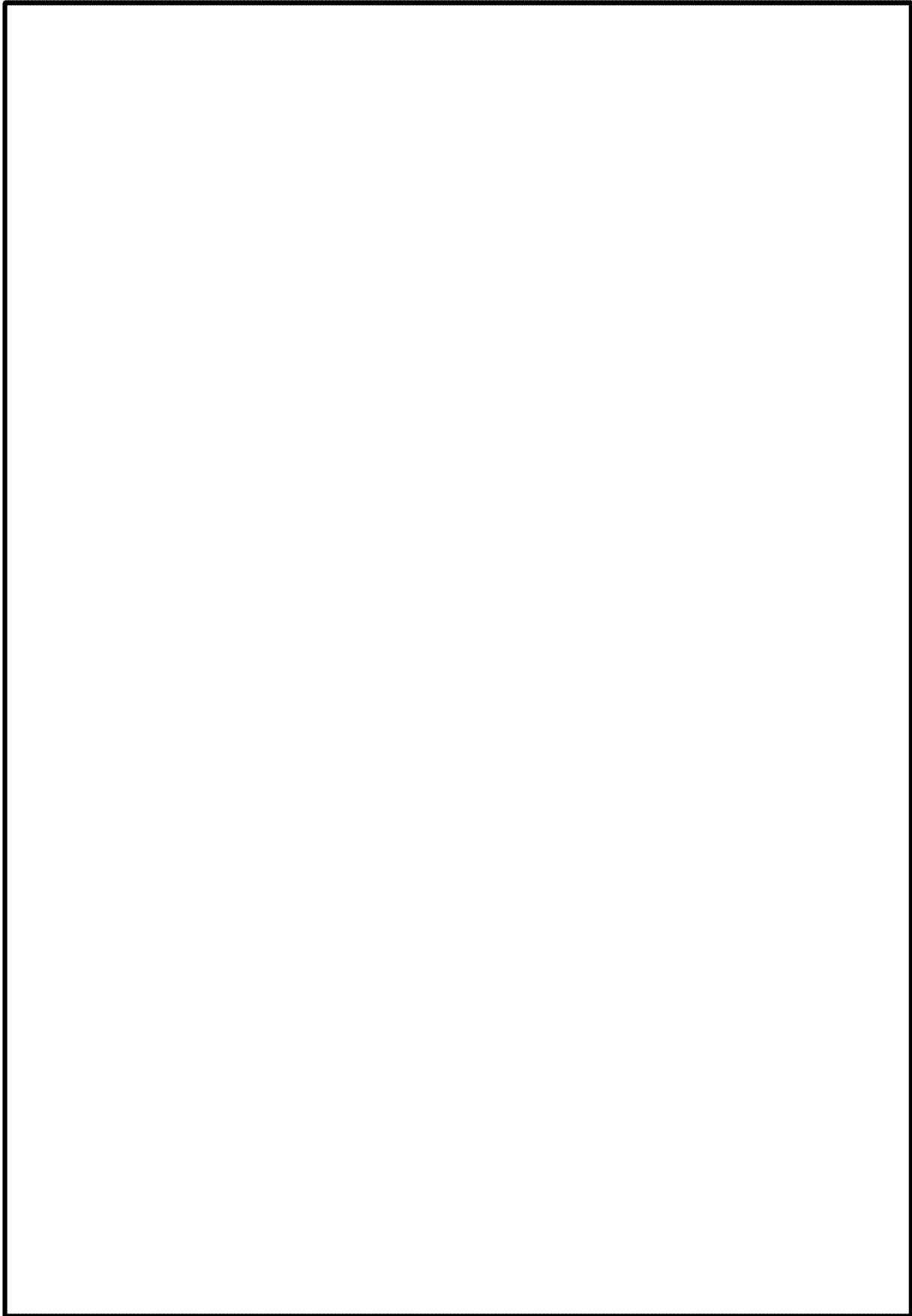


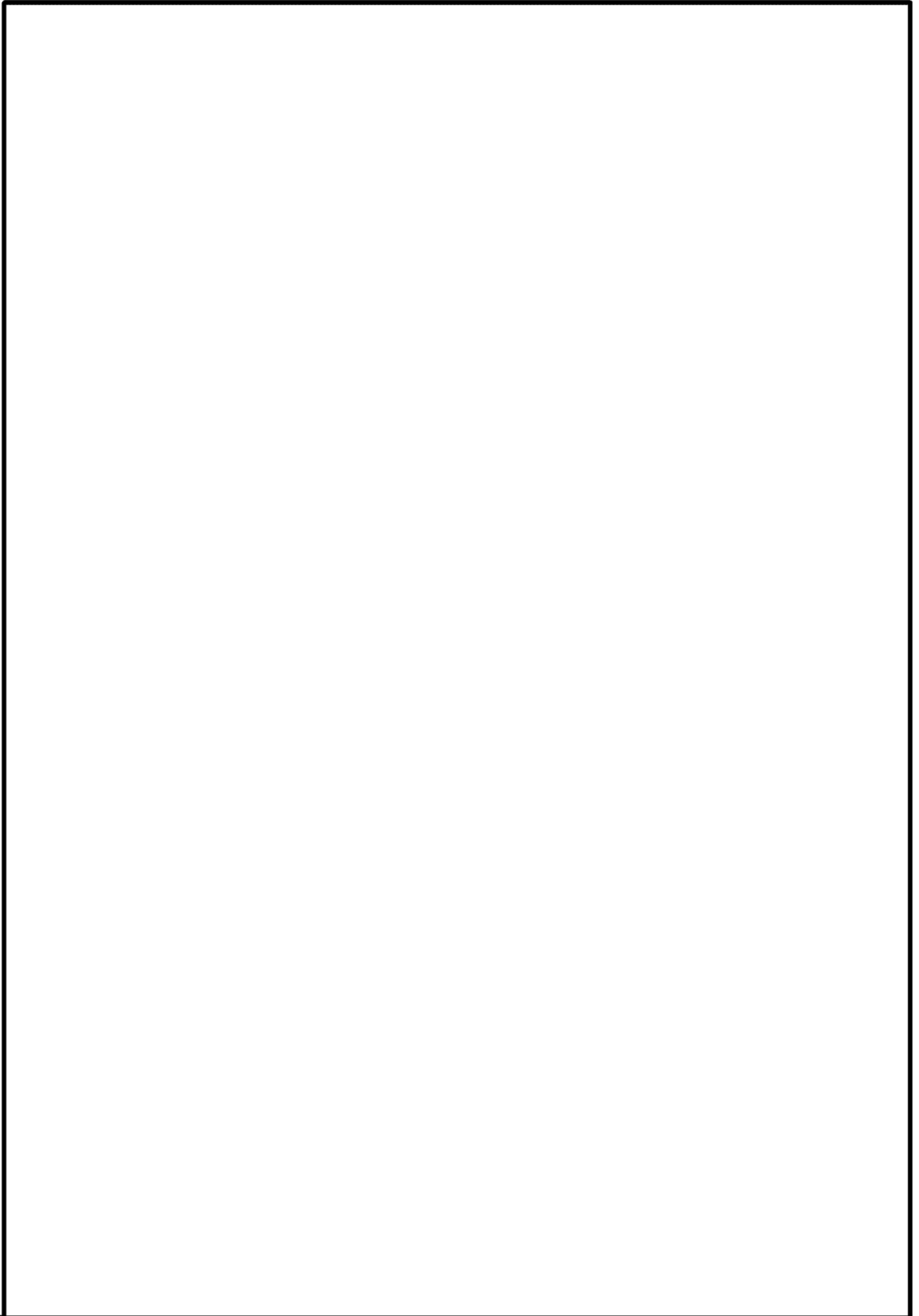


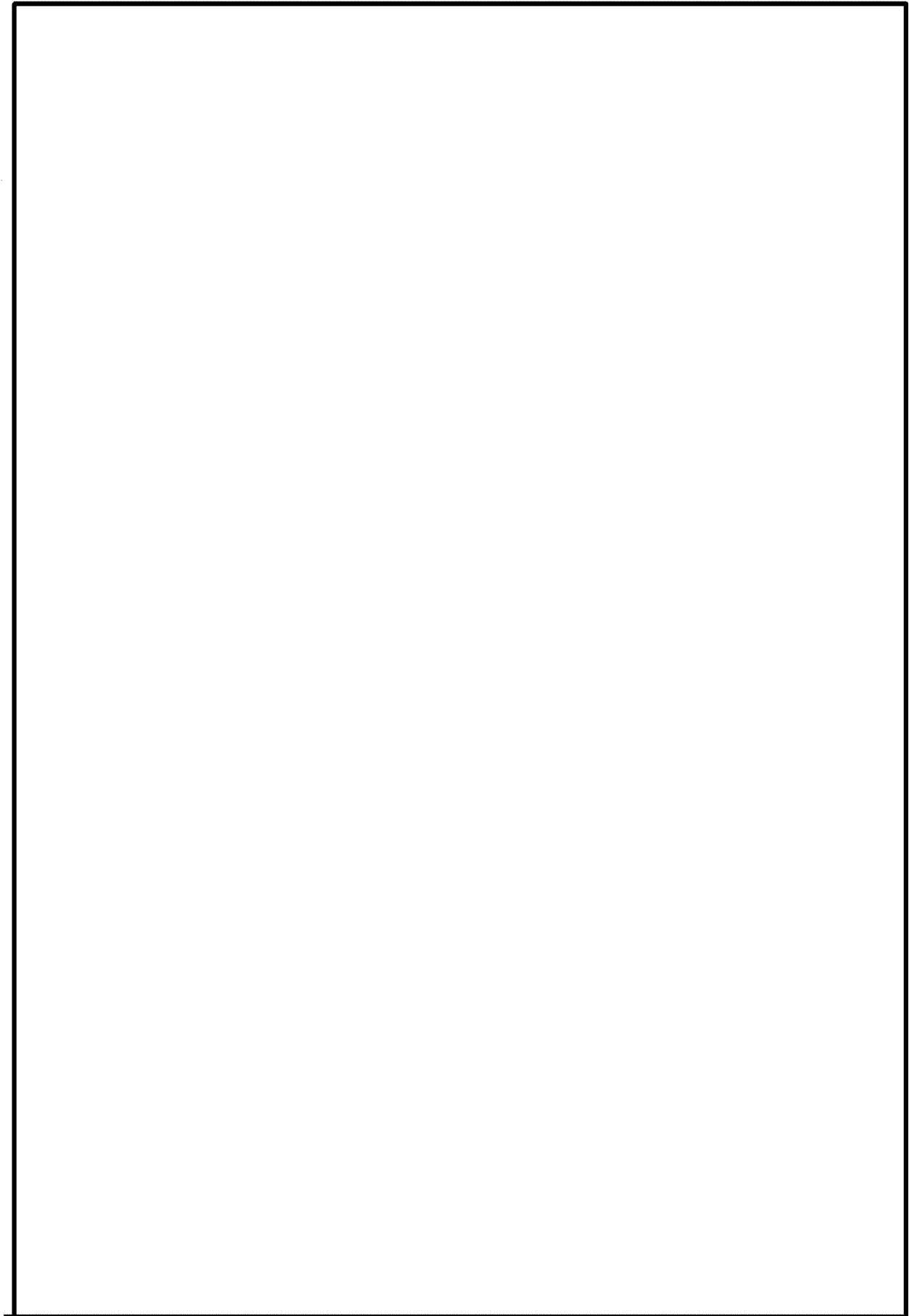


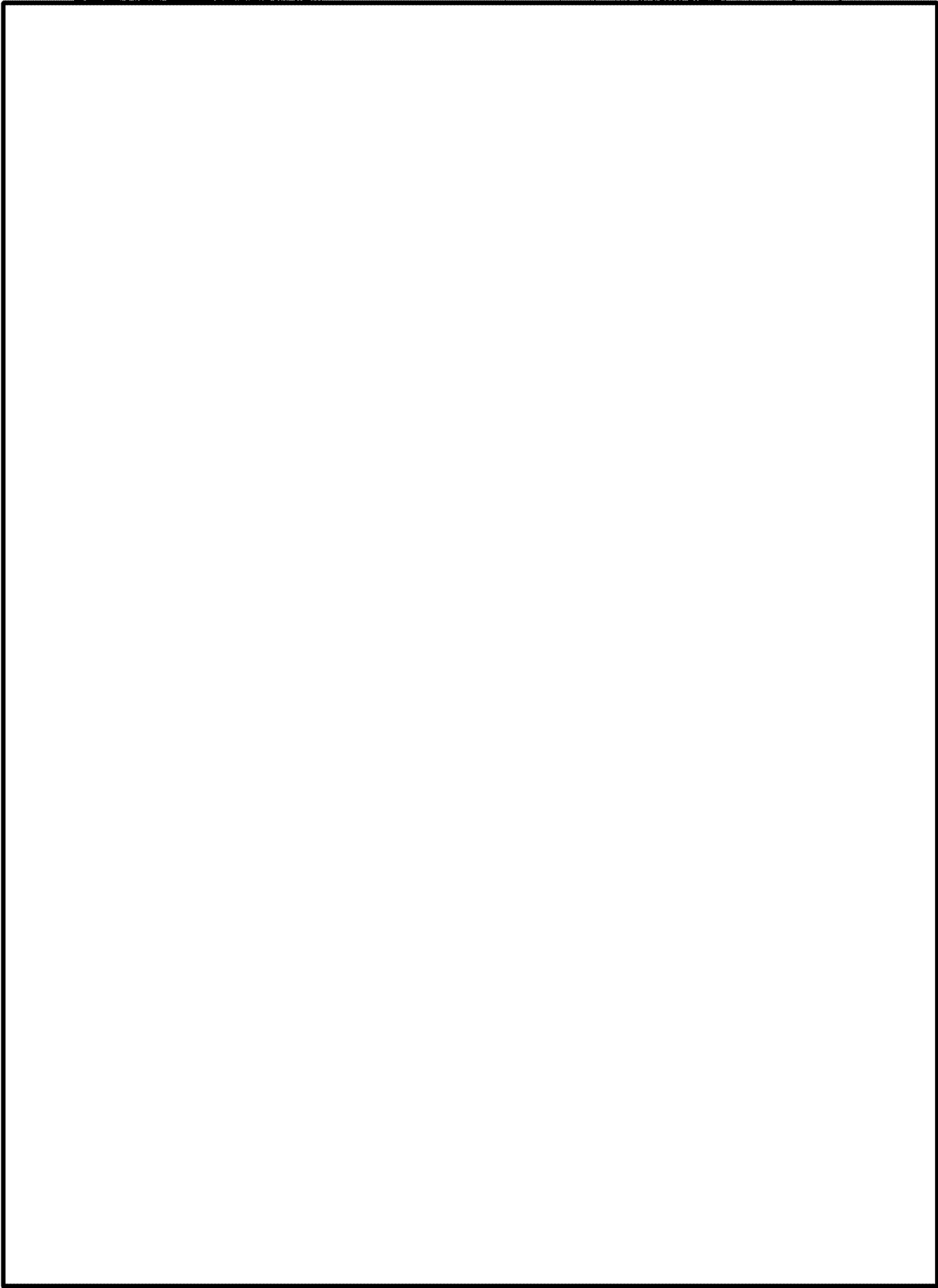


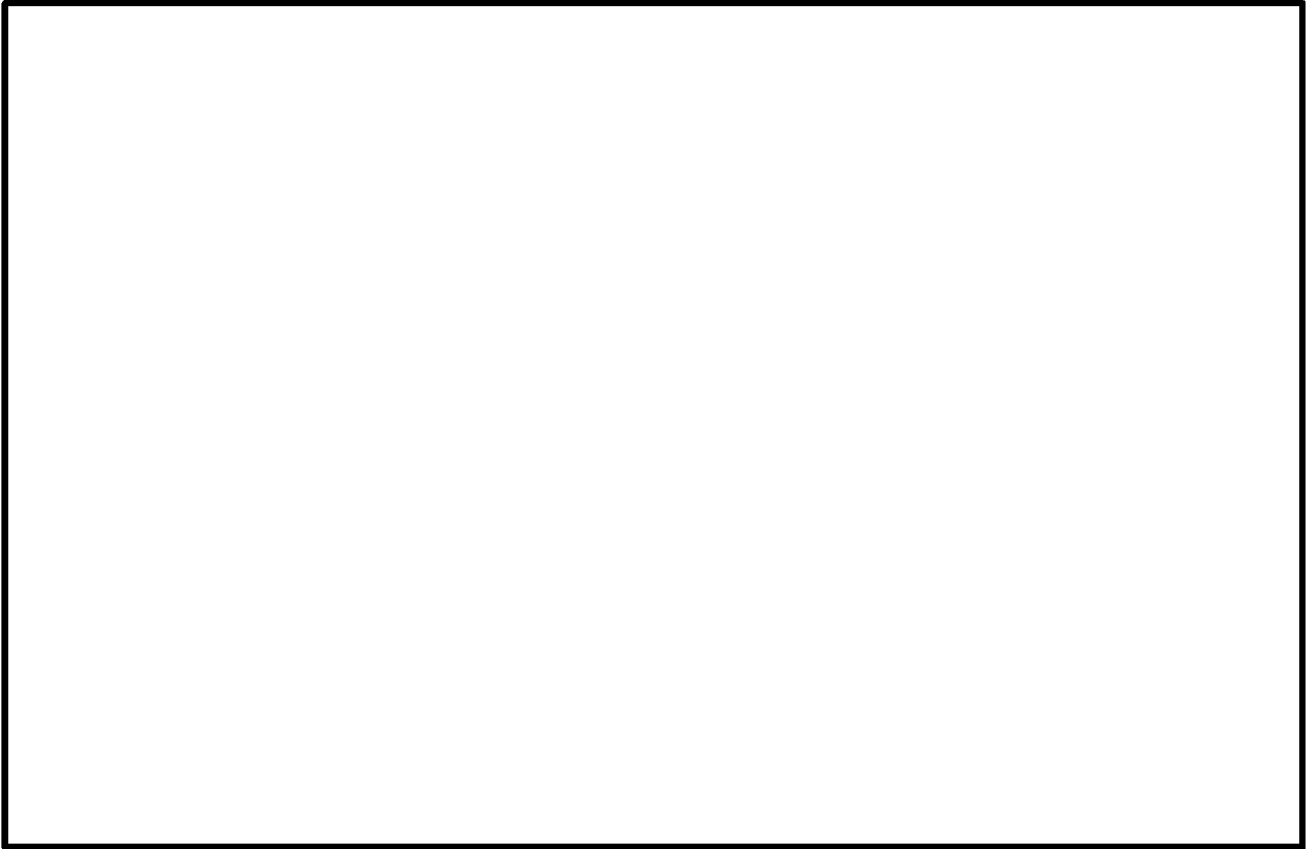


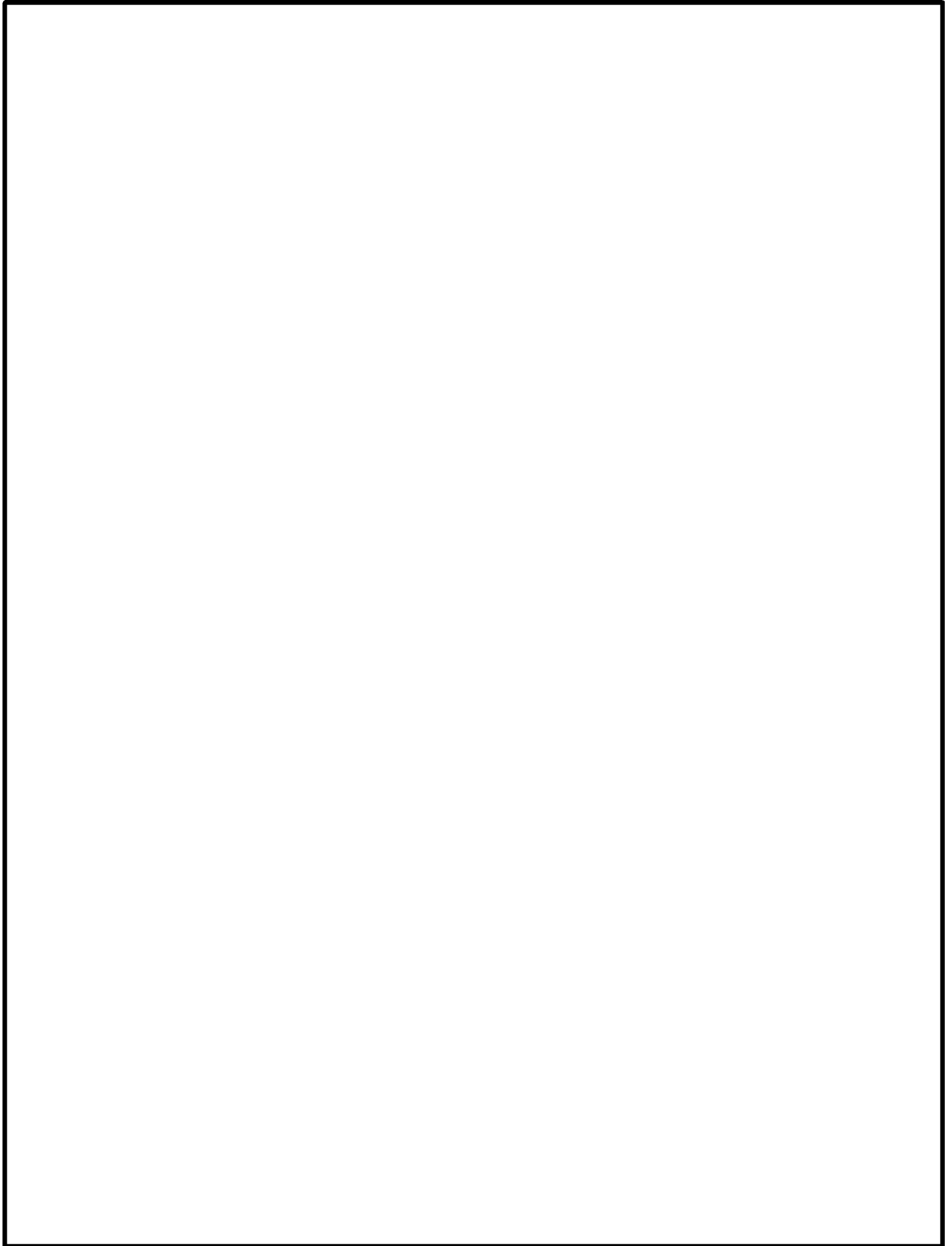


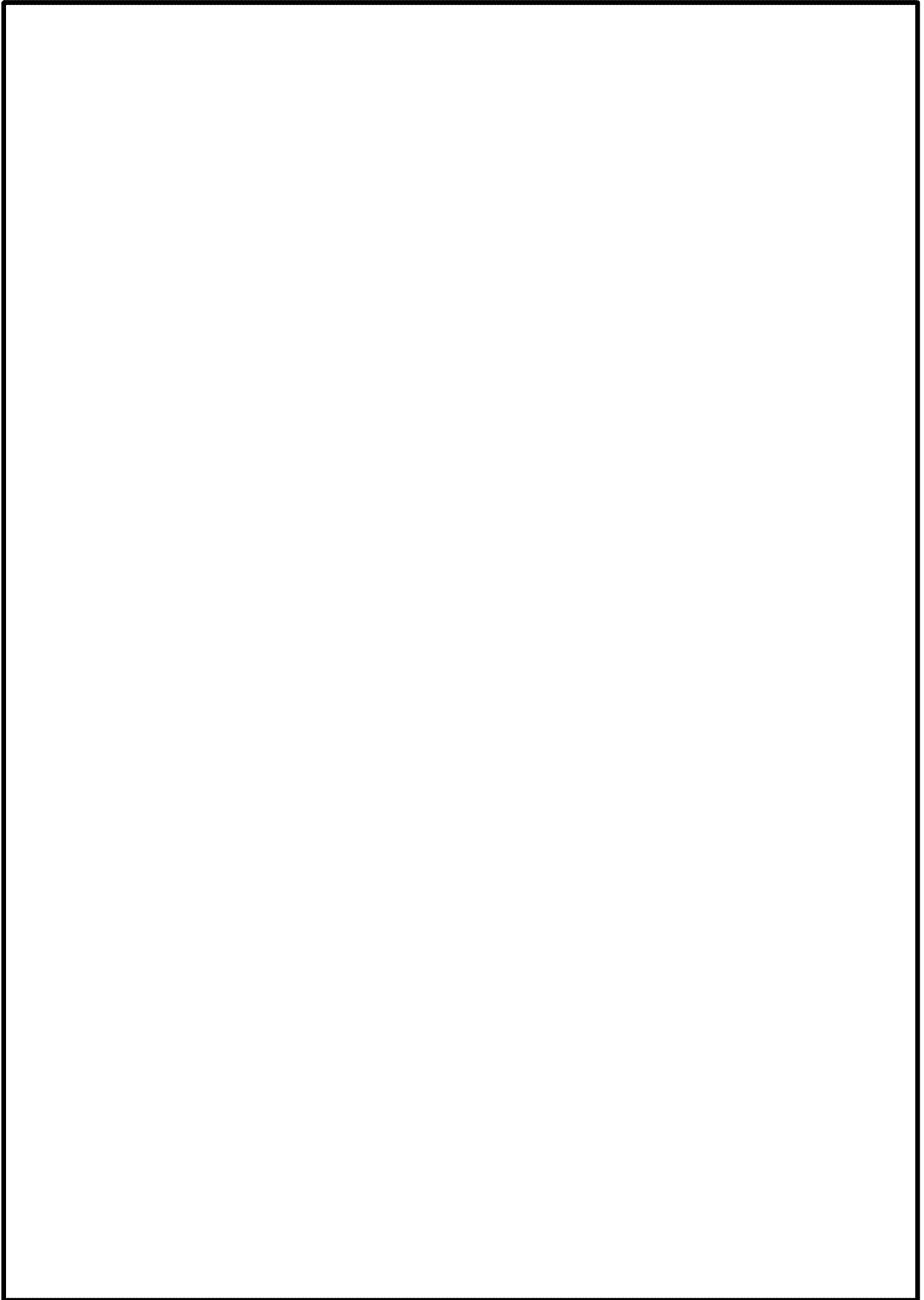




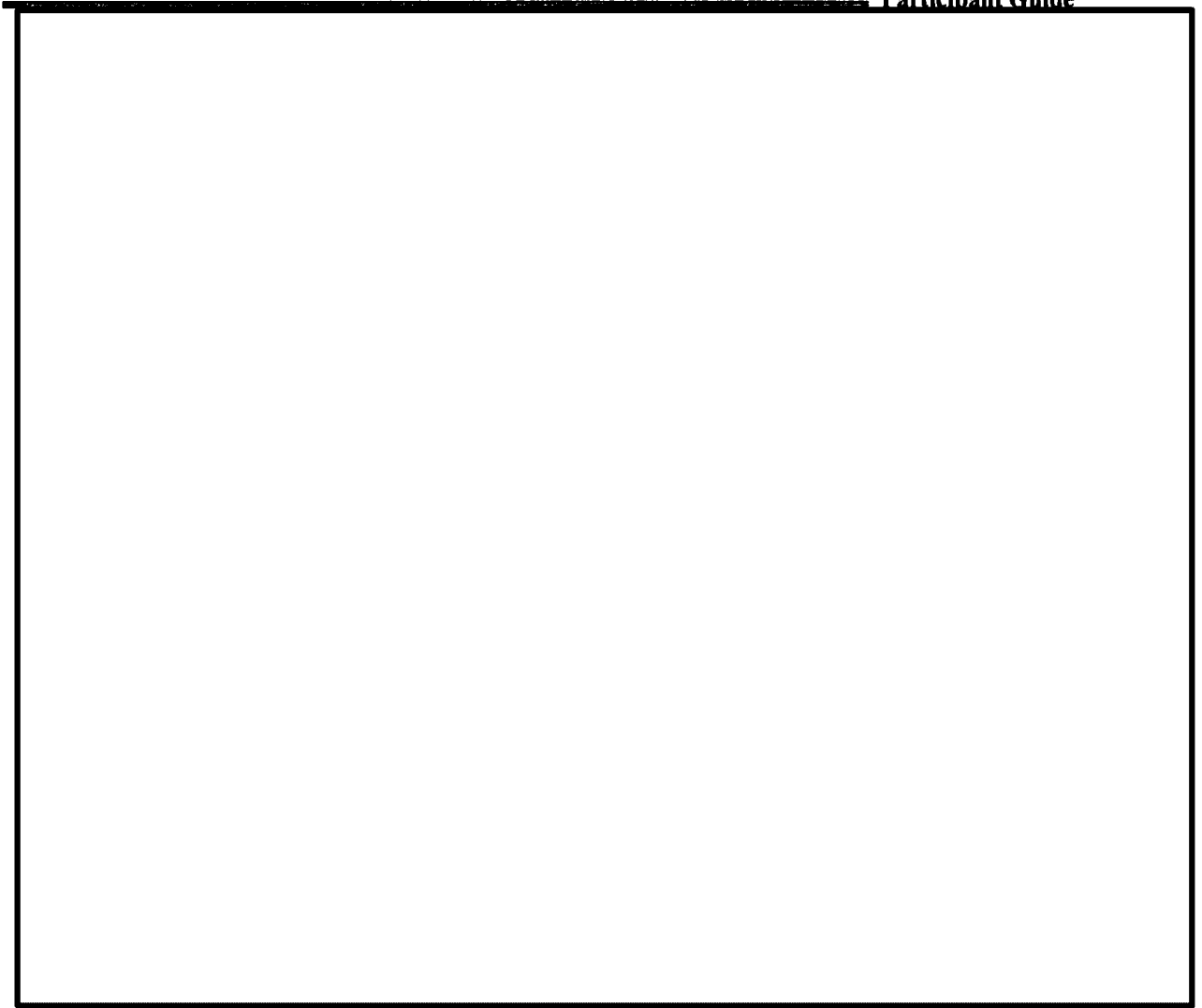


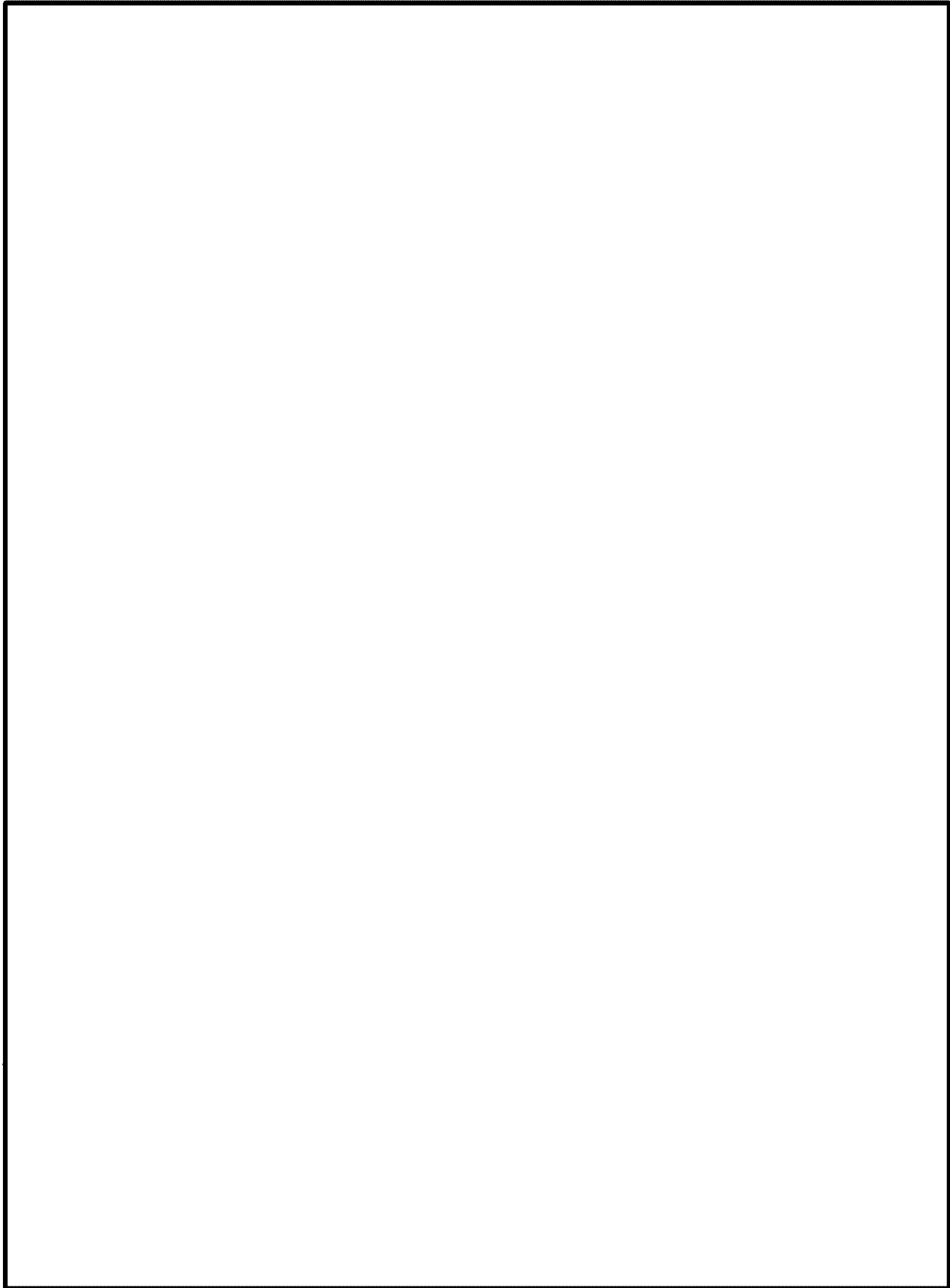


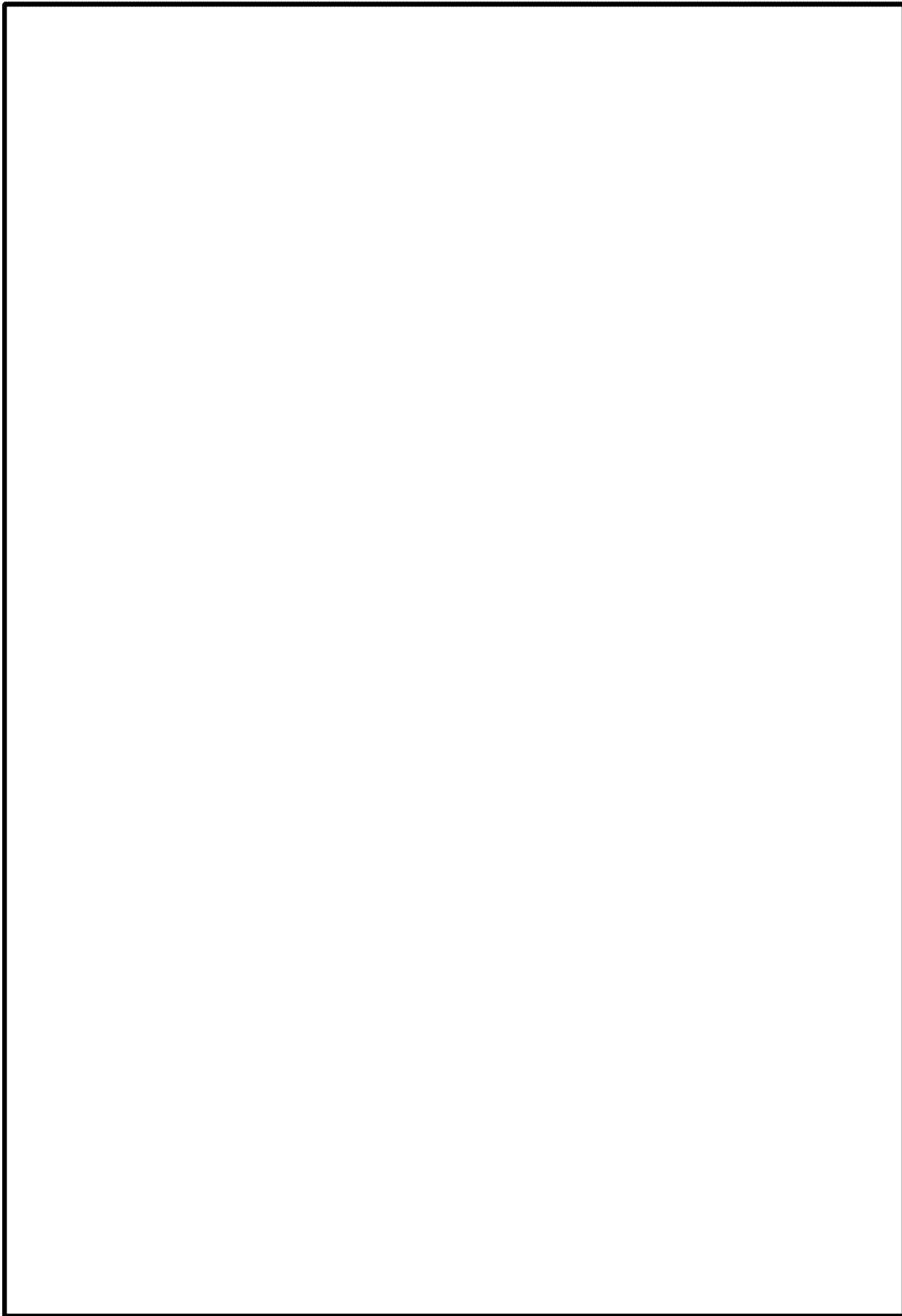


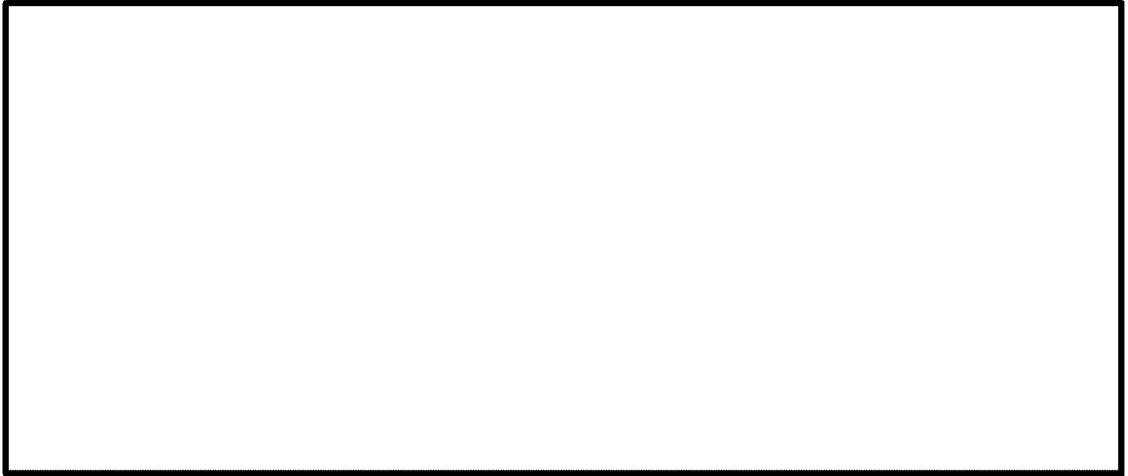


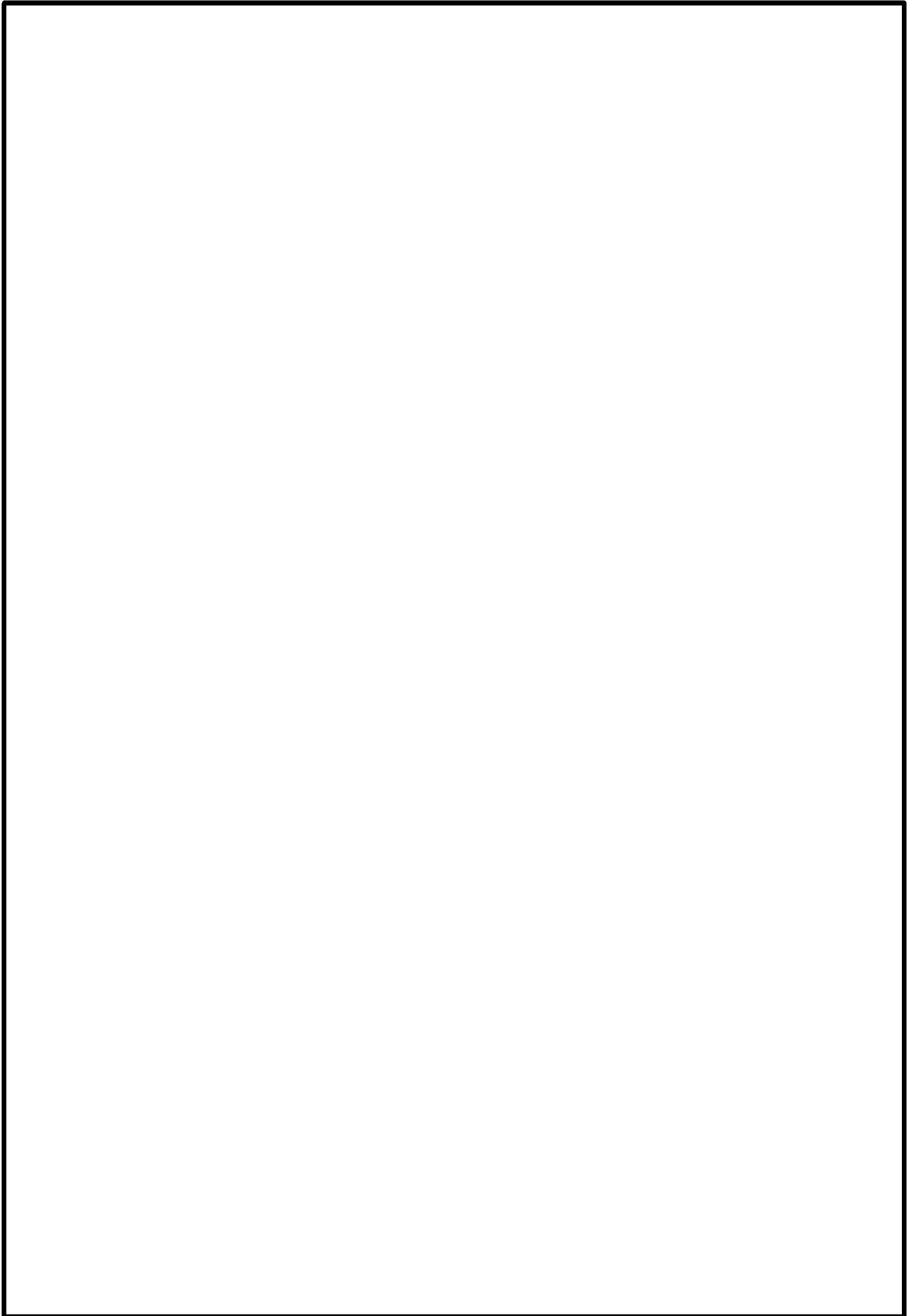


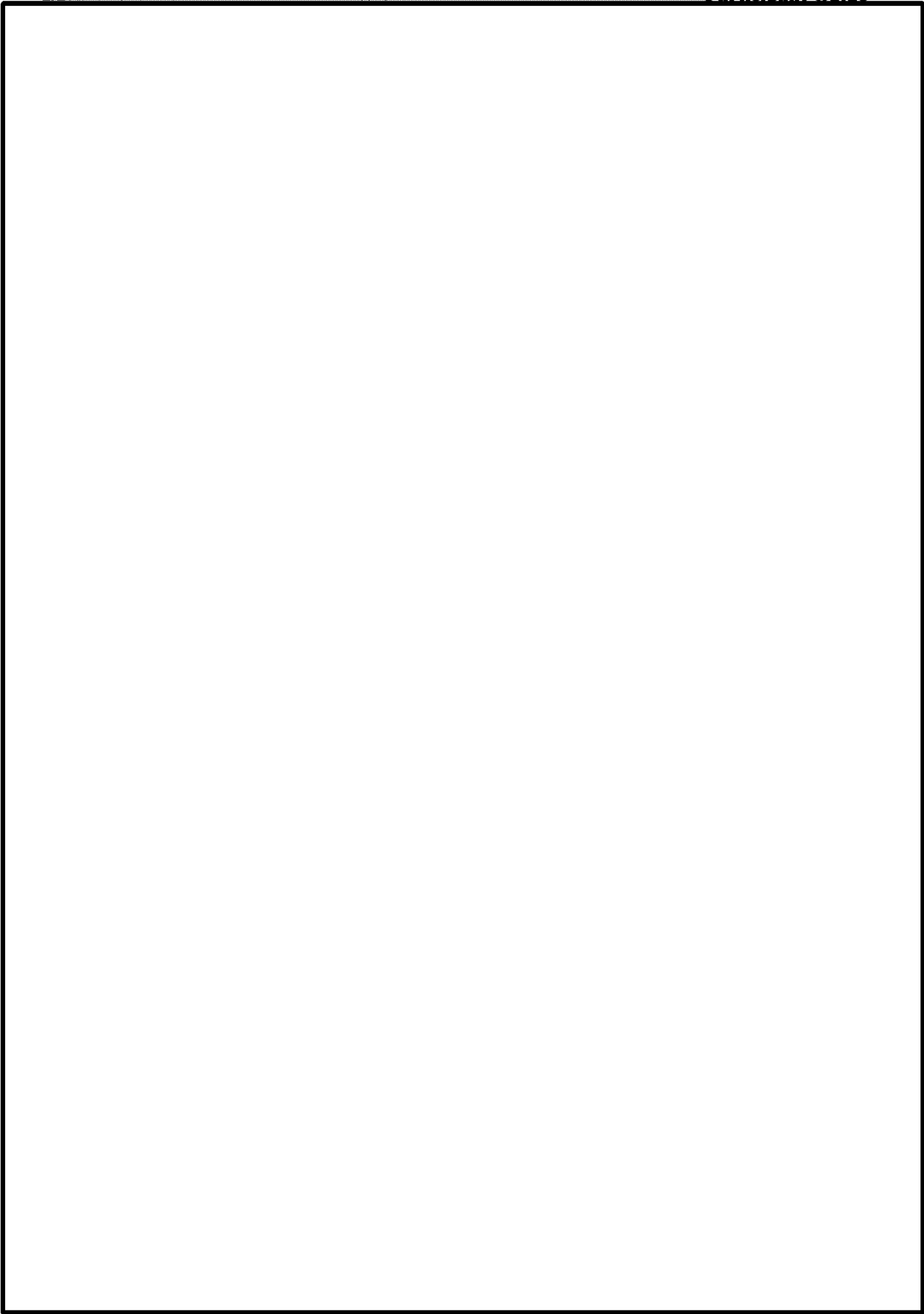








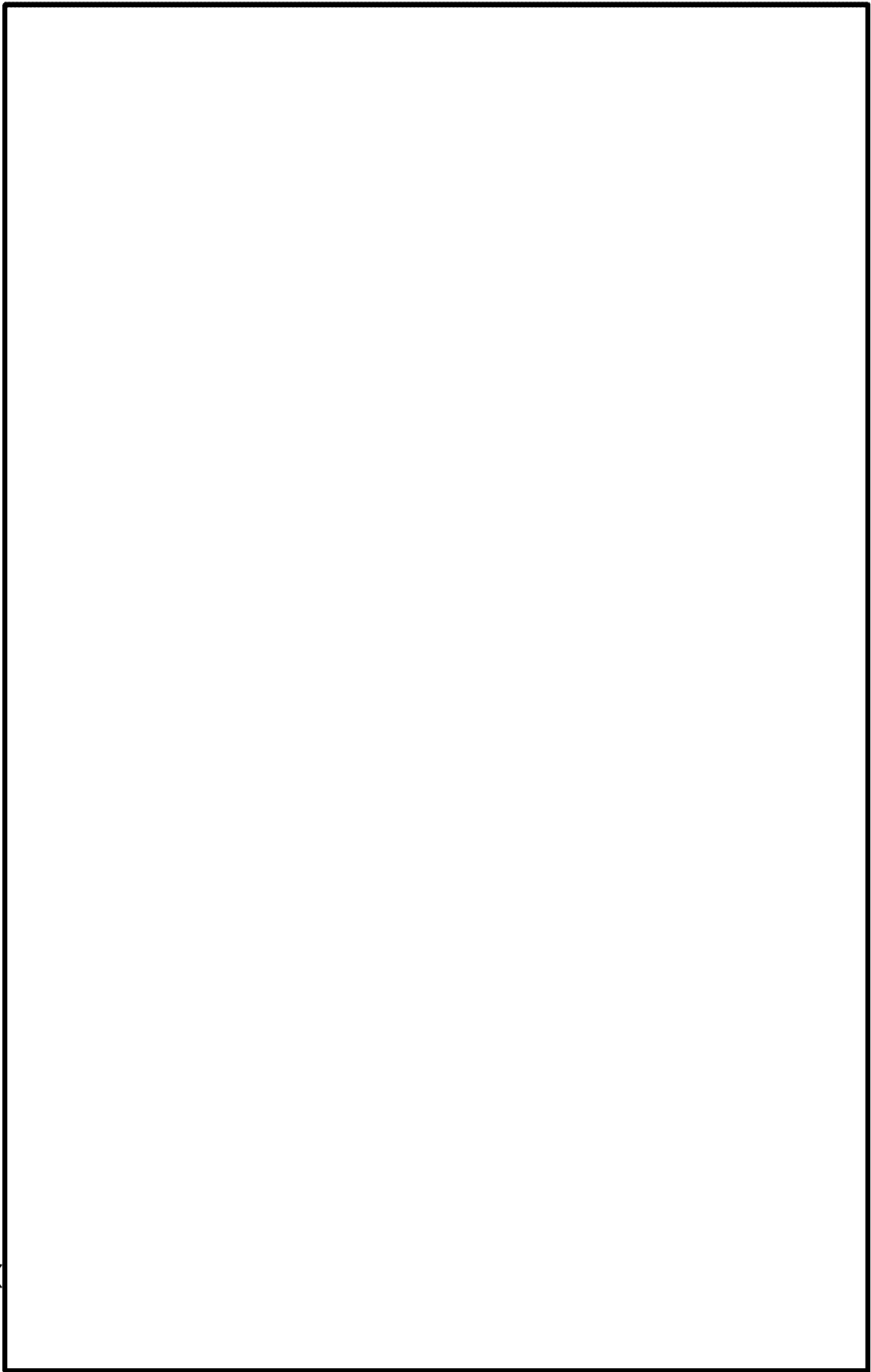


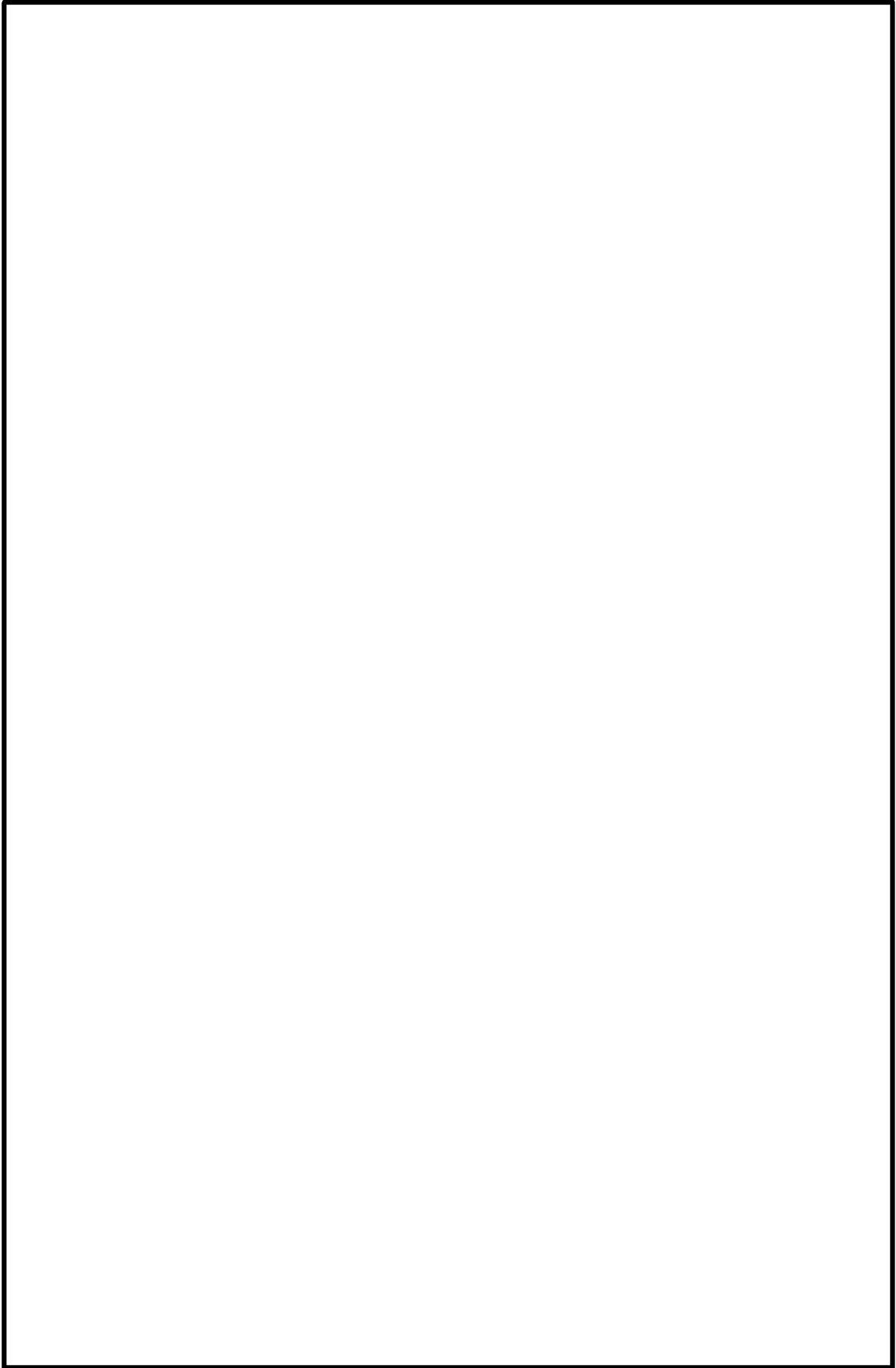


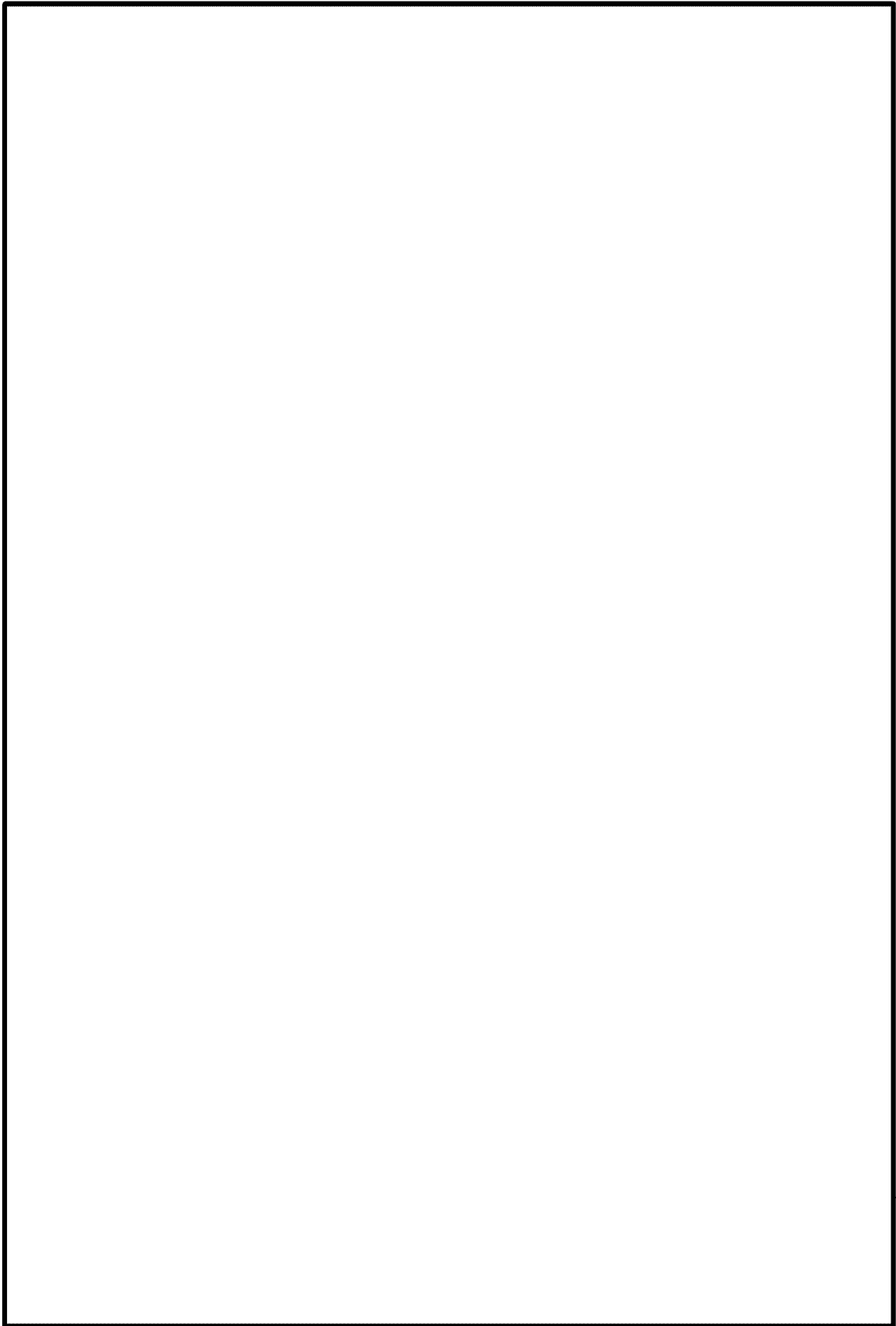


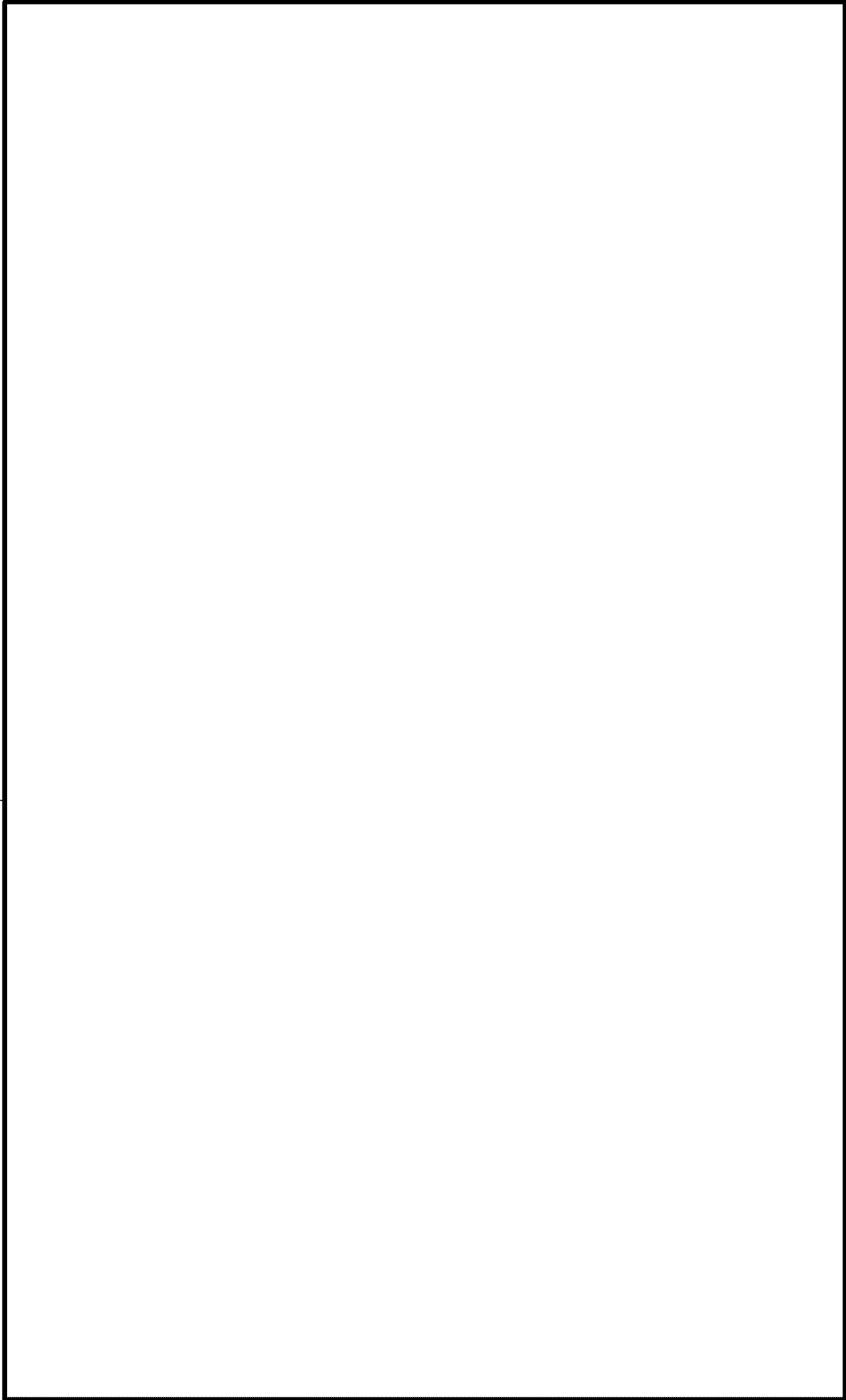




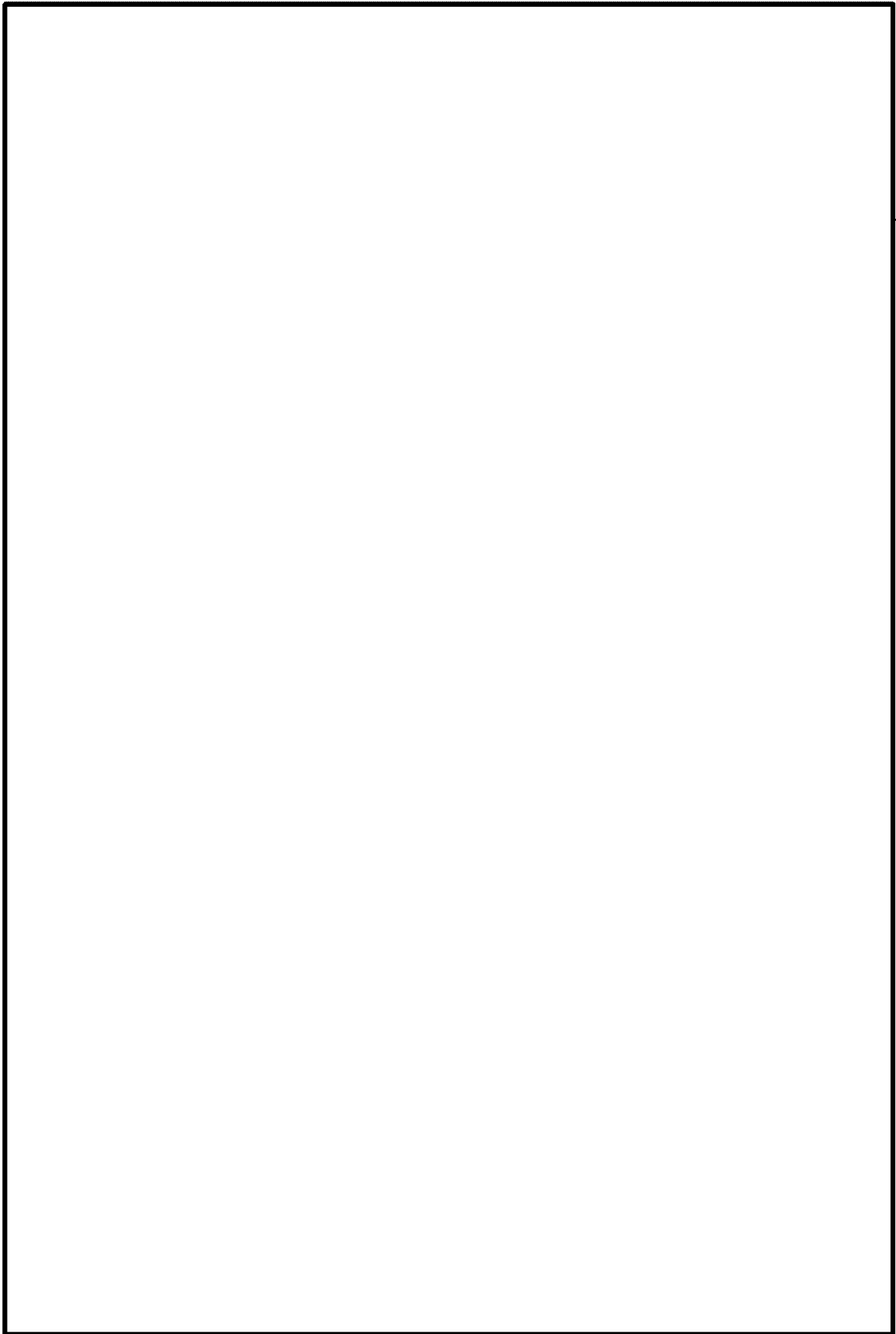




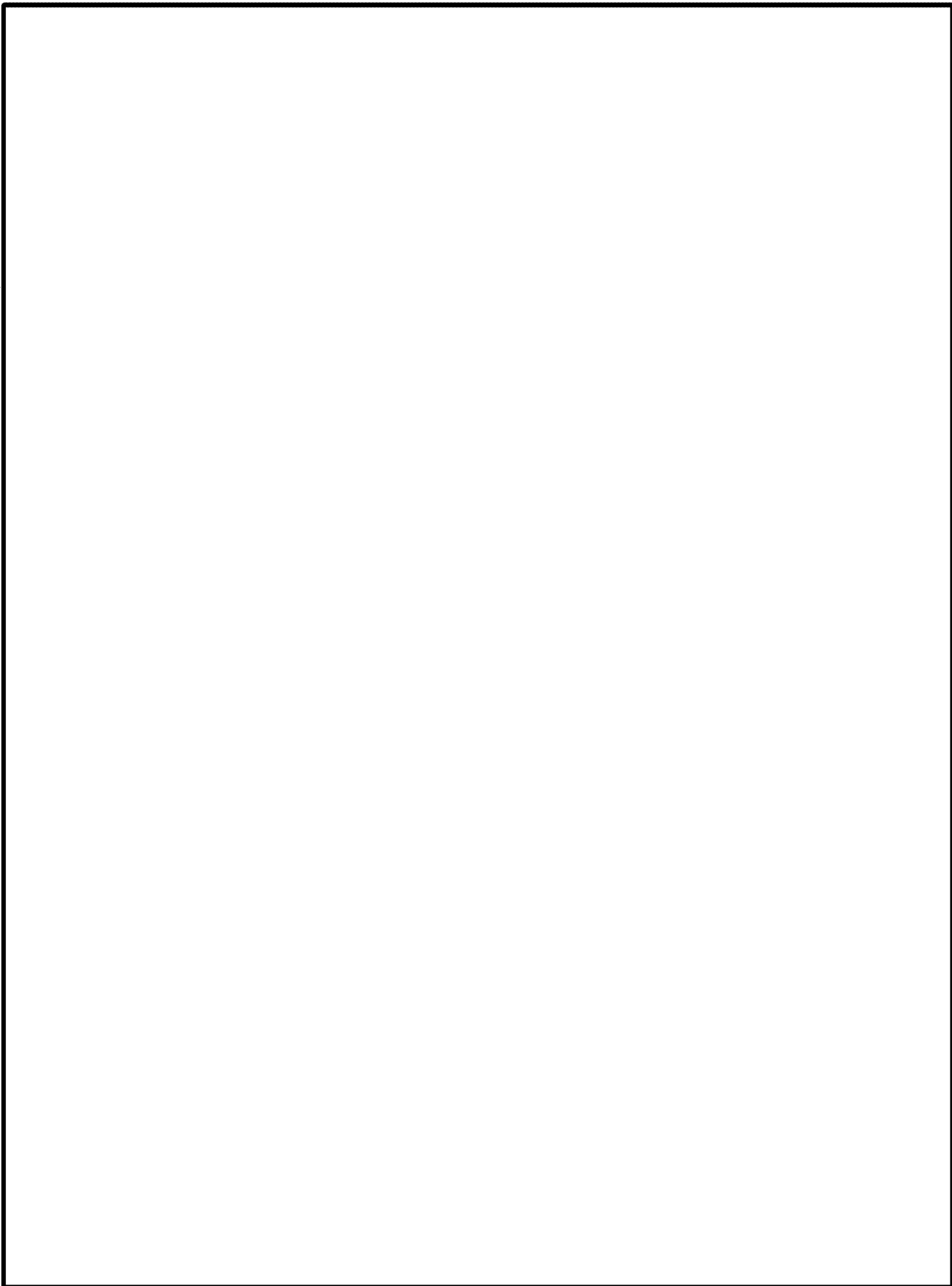




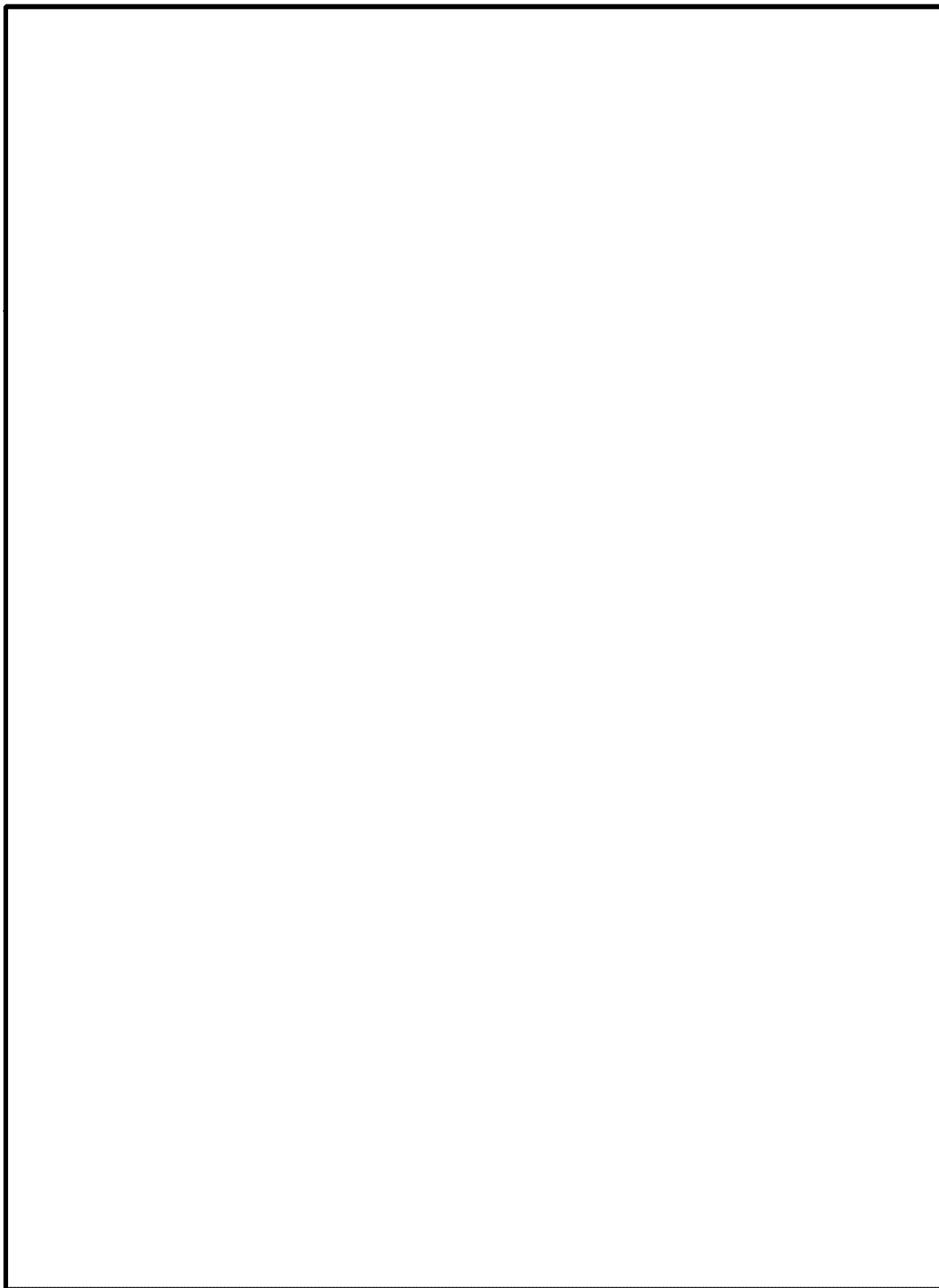


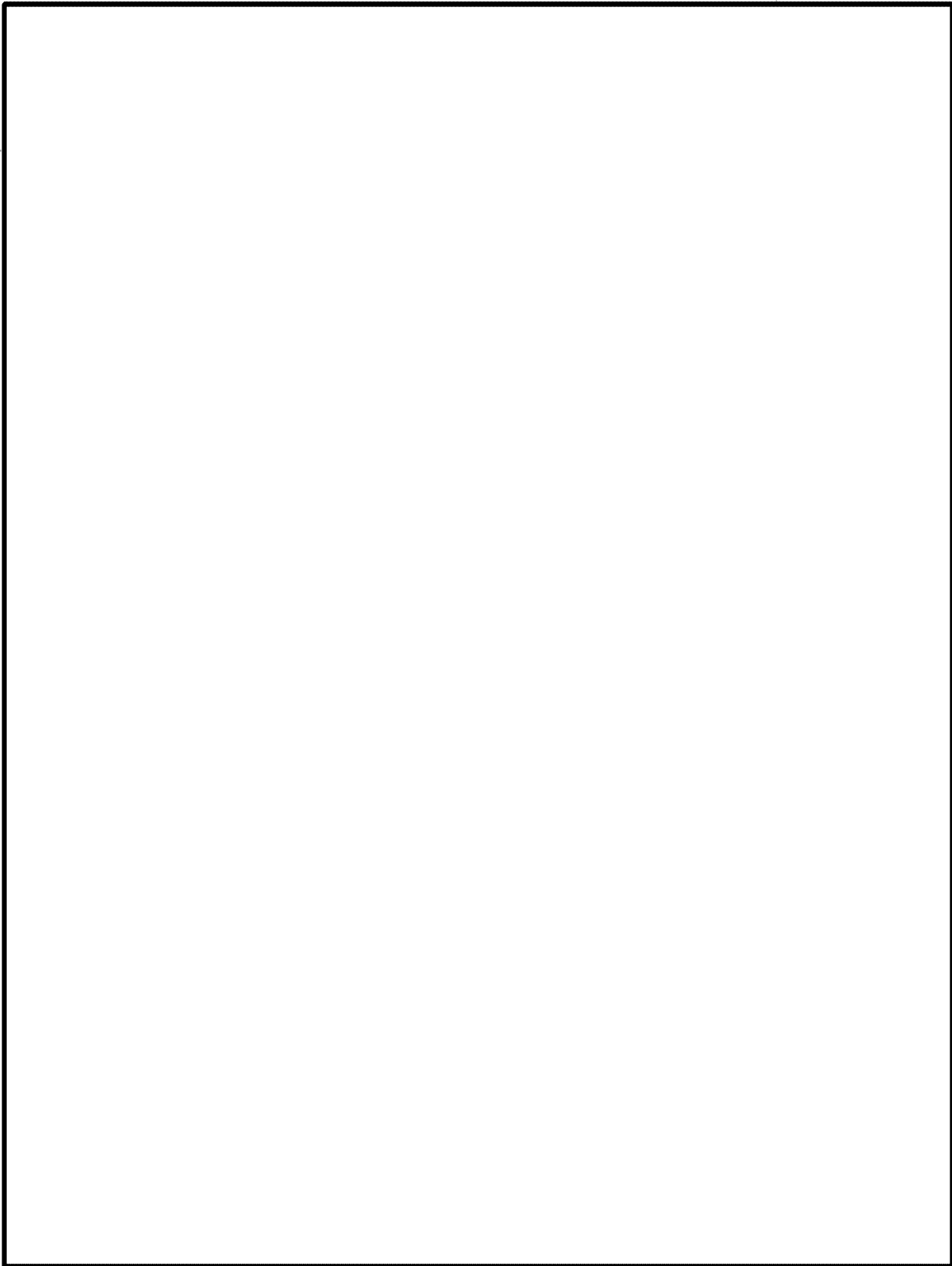


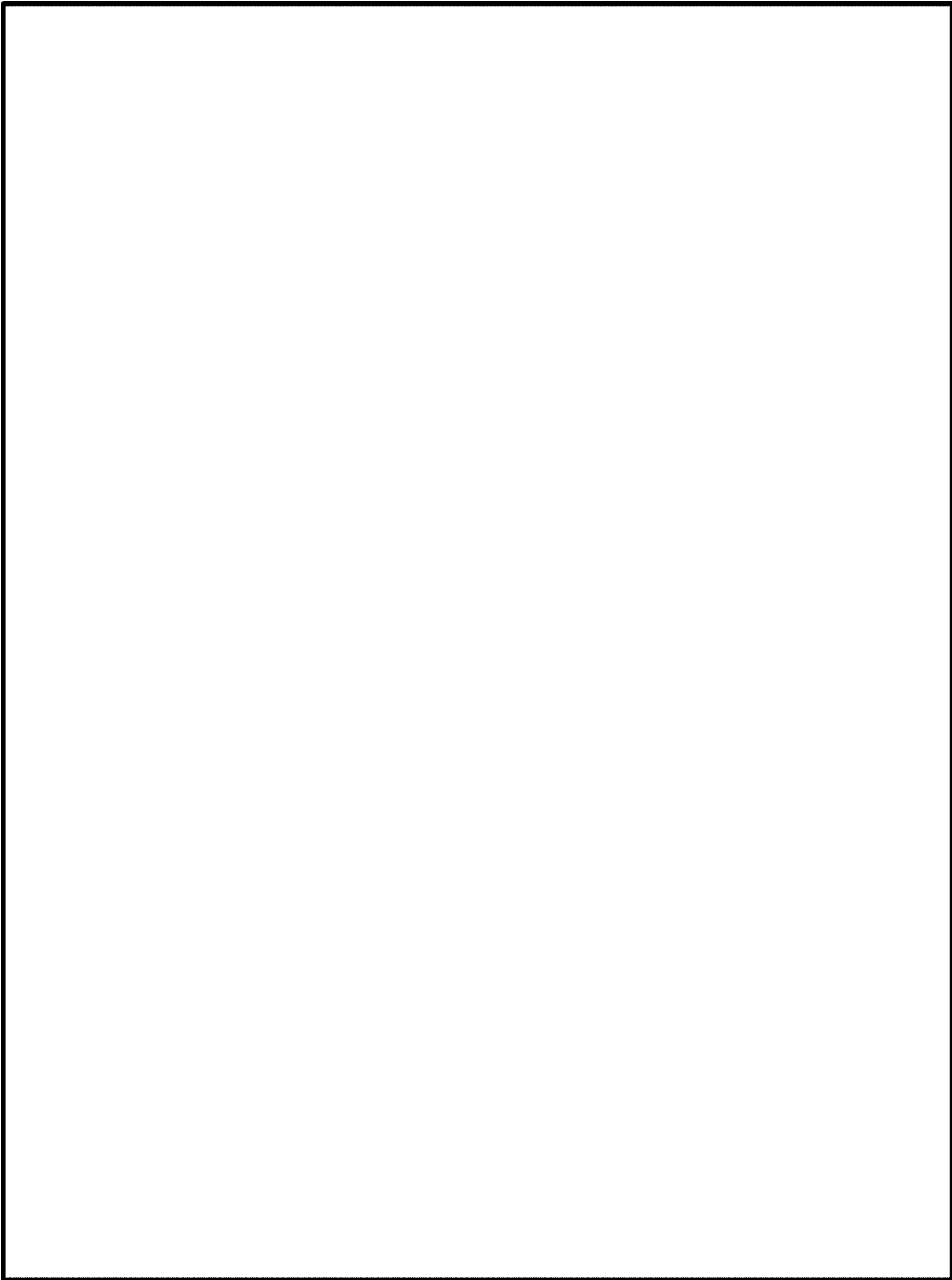


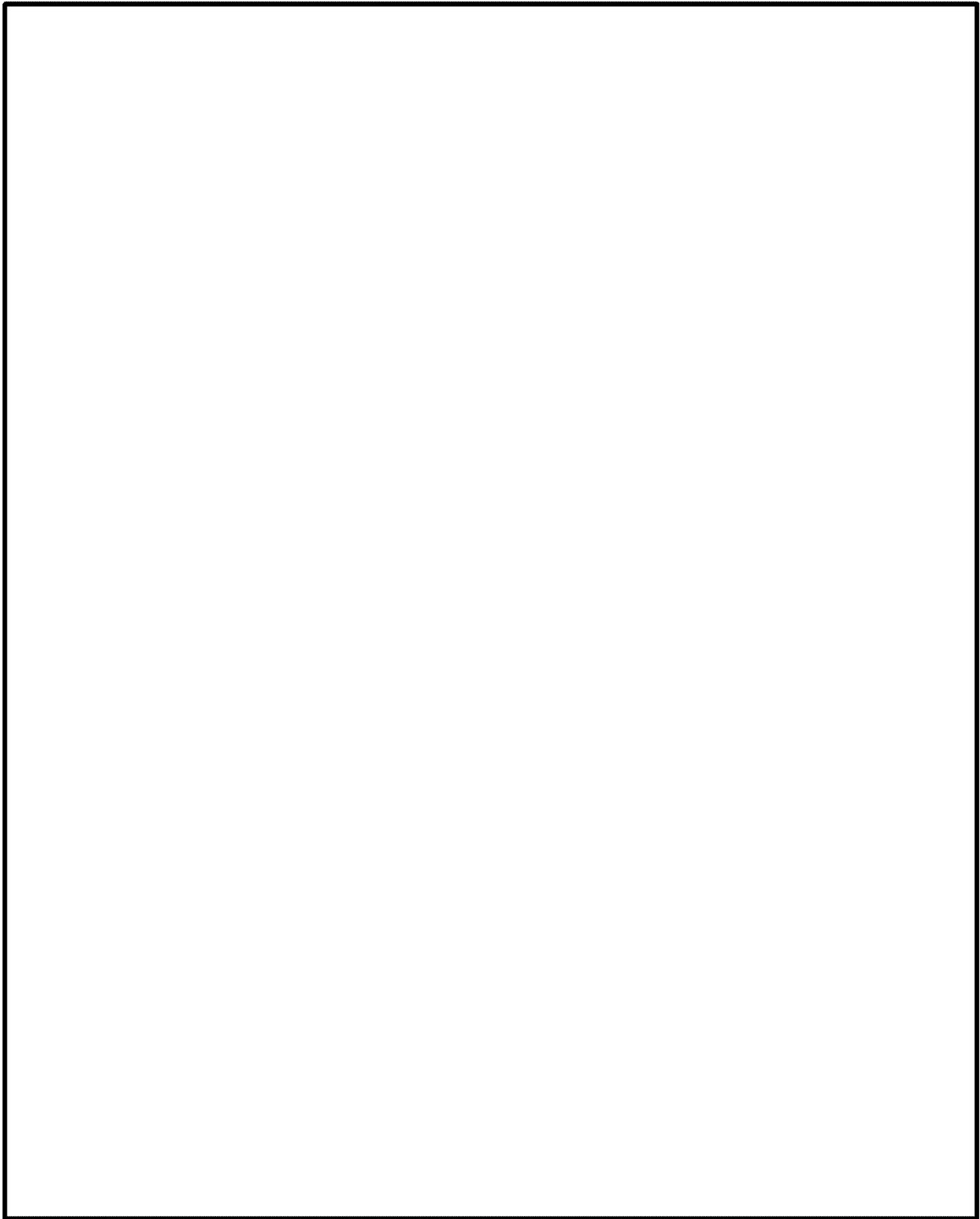




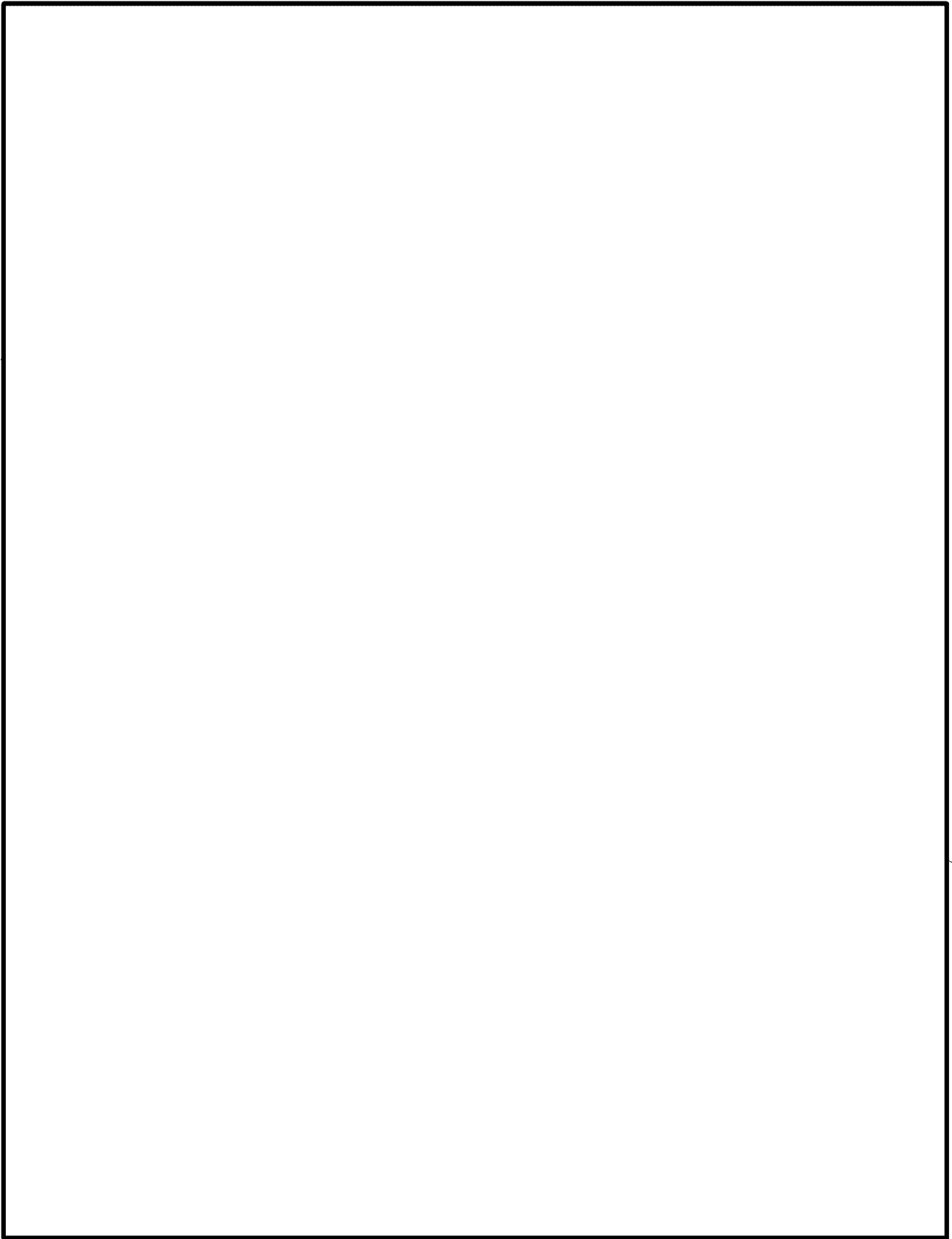


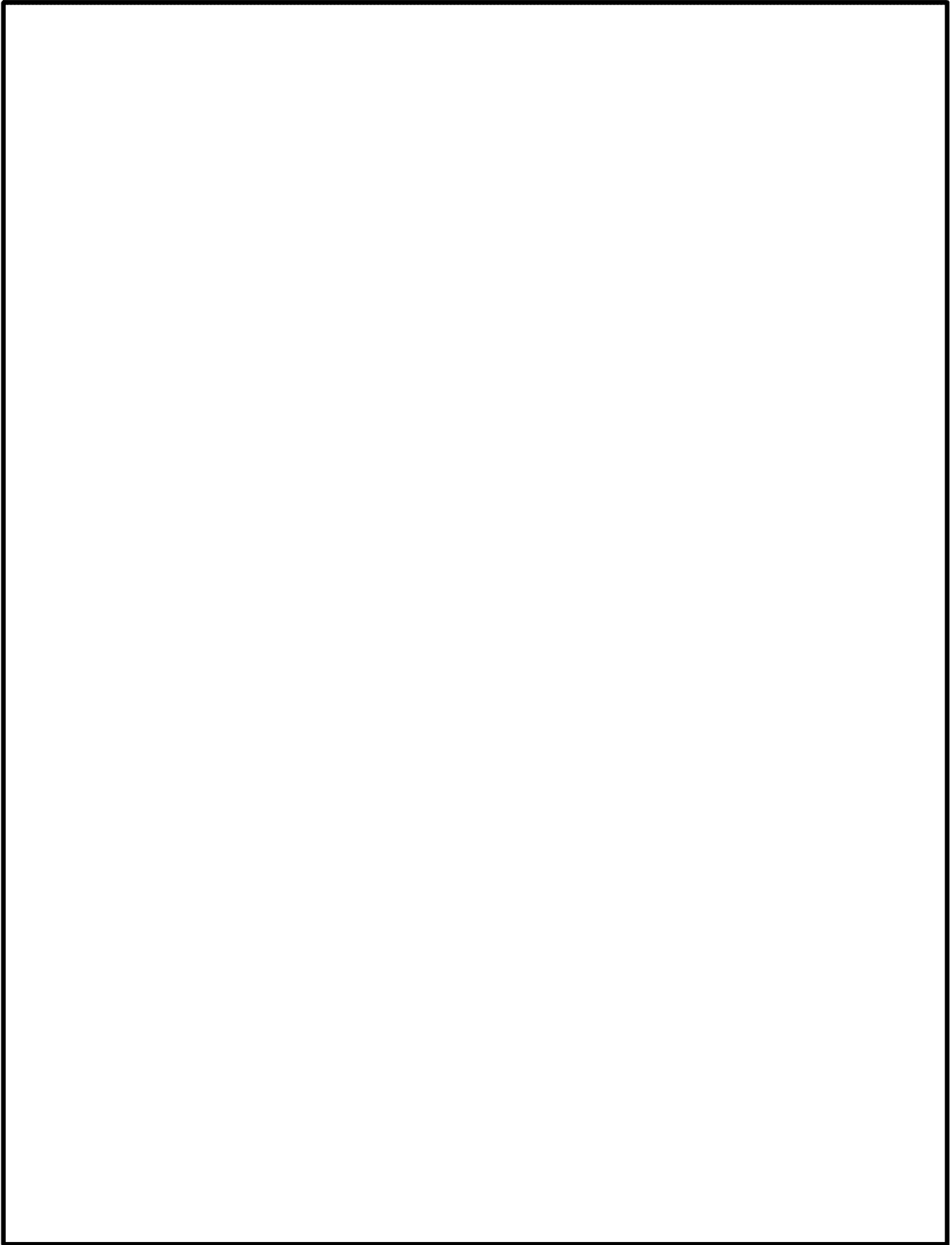






Out-of-Scope







# U.S. Citizenship and Immigration Services

## *BASIC*

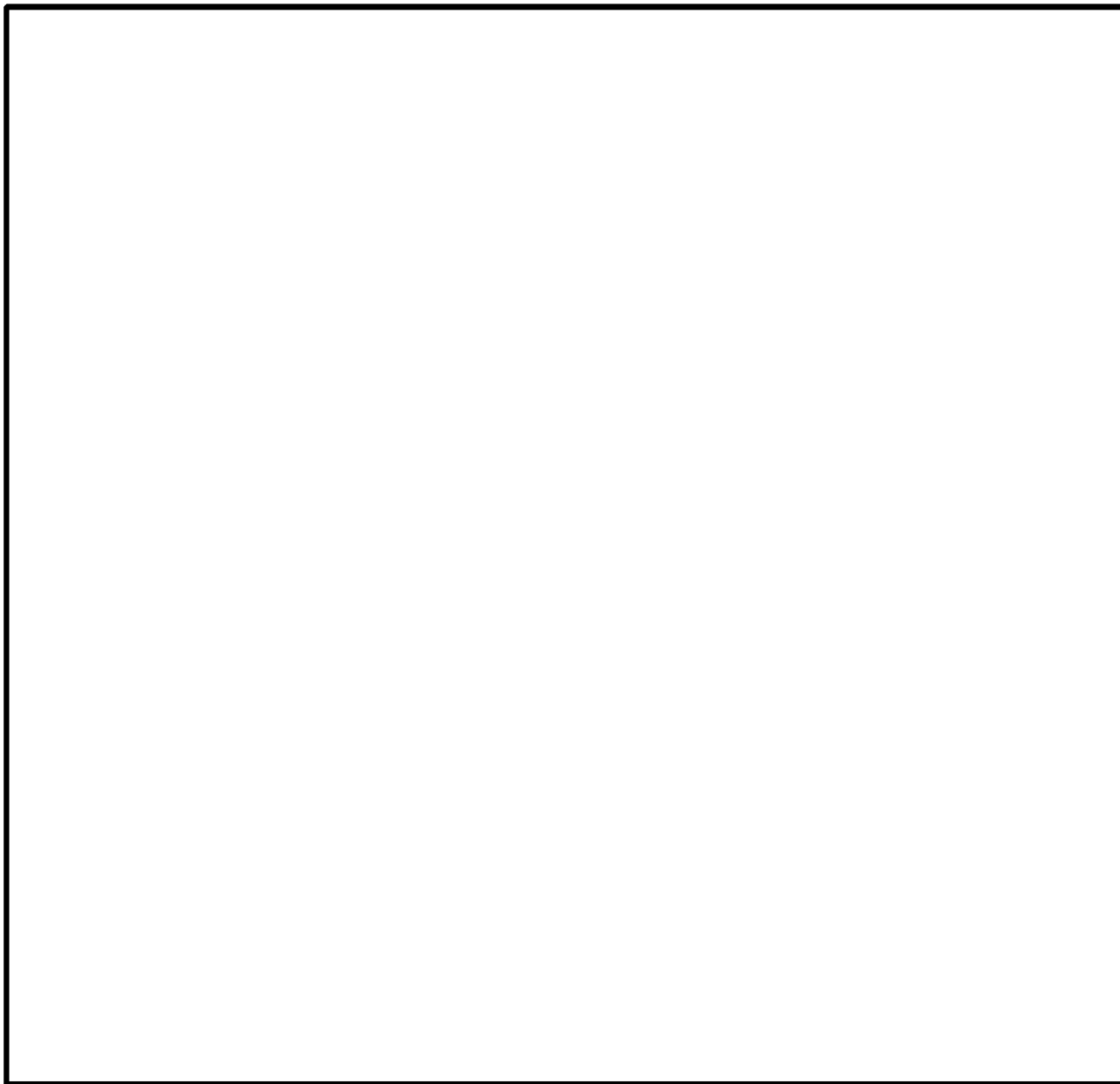
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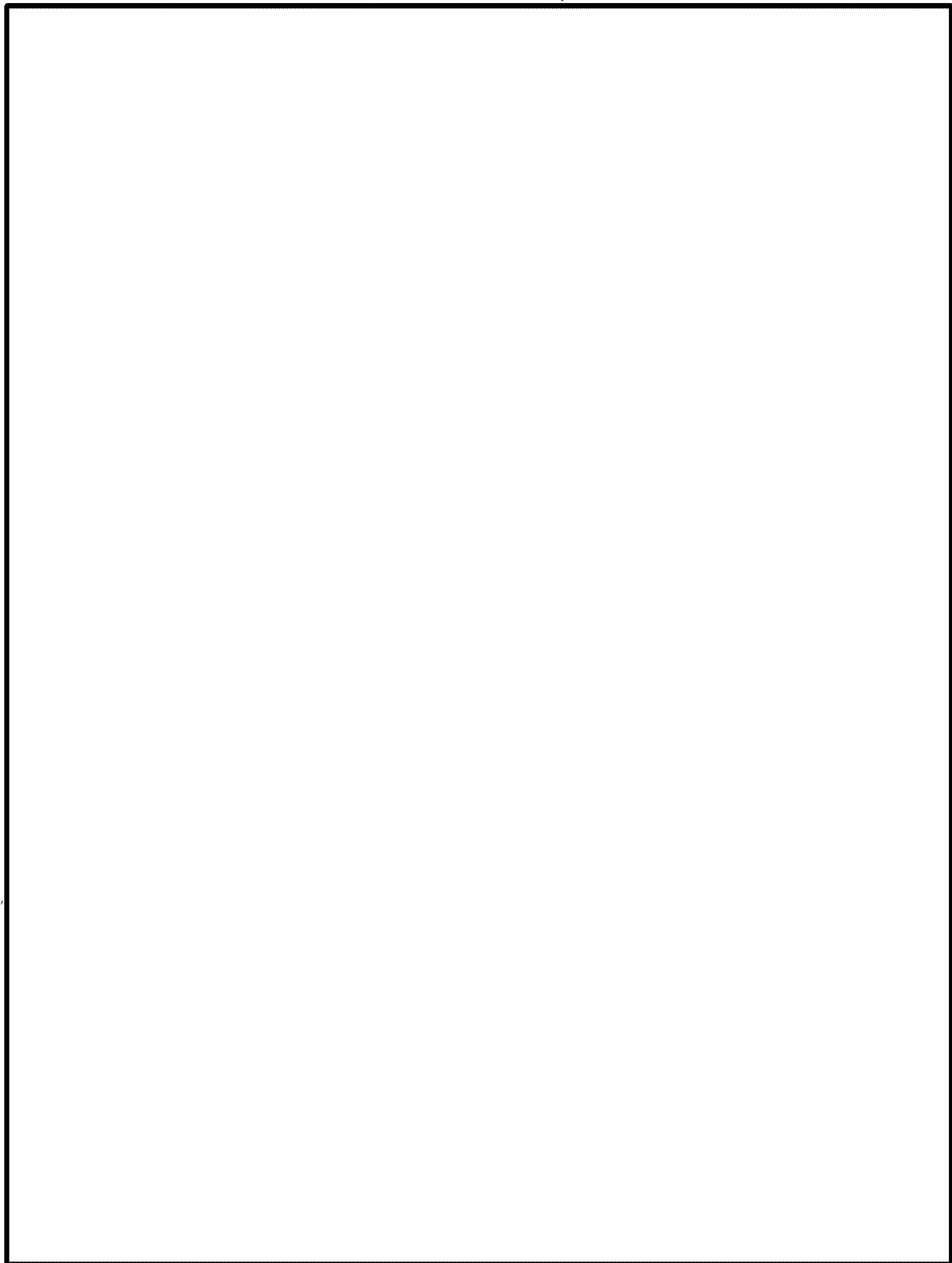
### COURSE 220

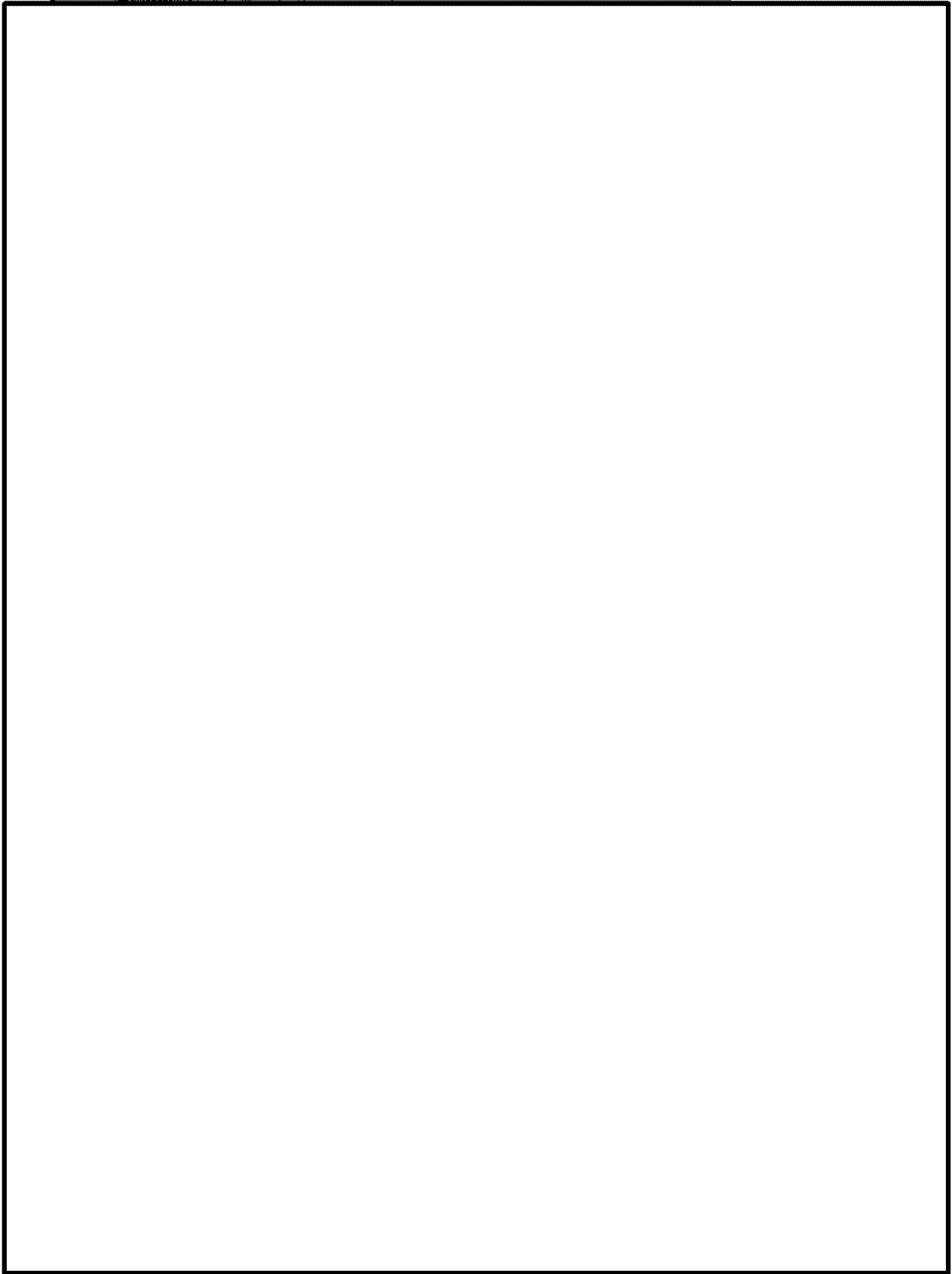
### PARTICIPANT GUIDE

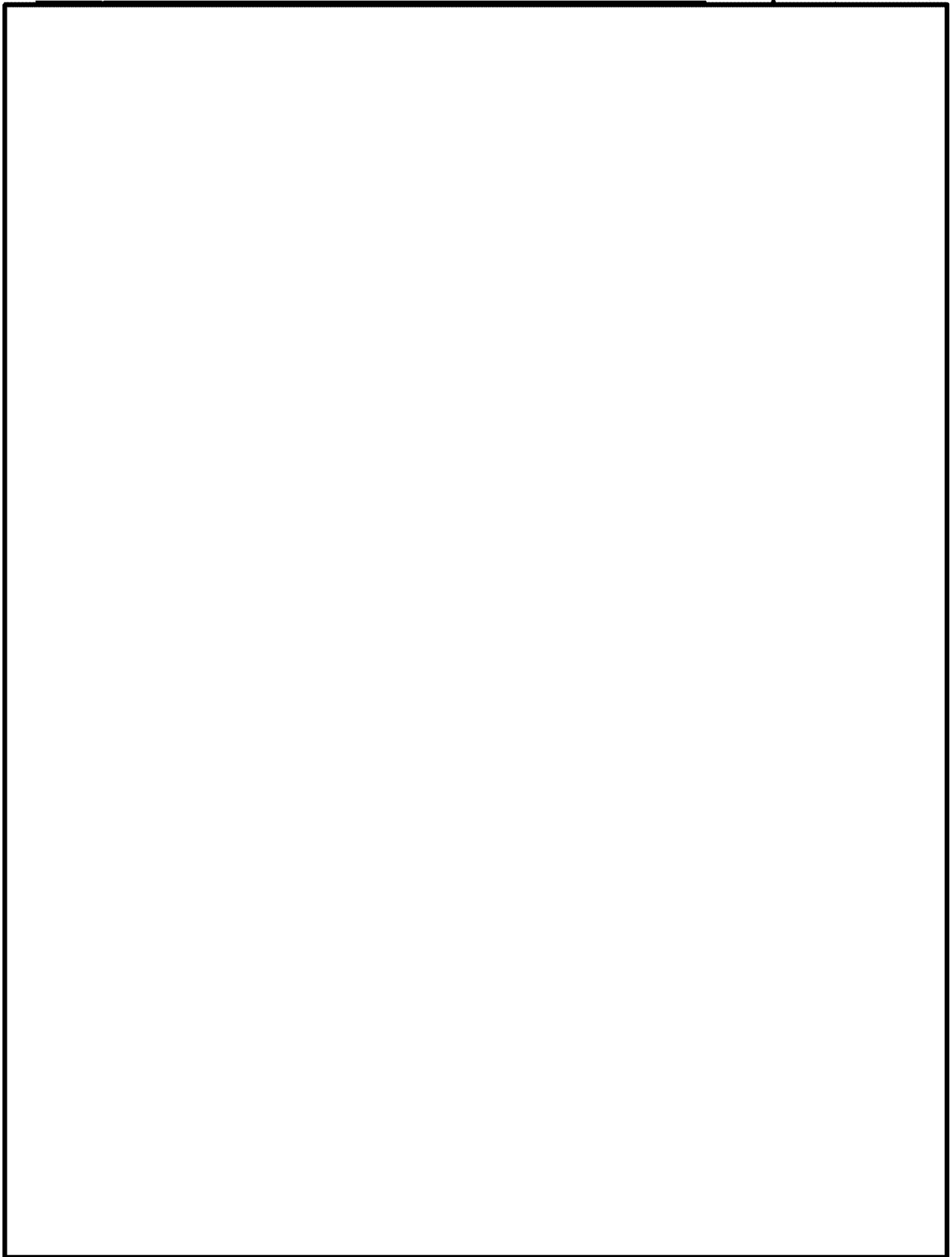


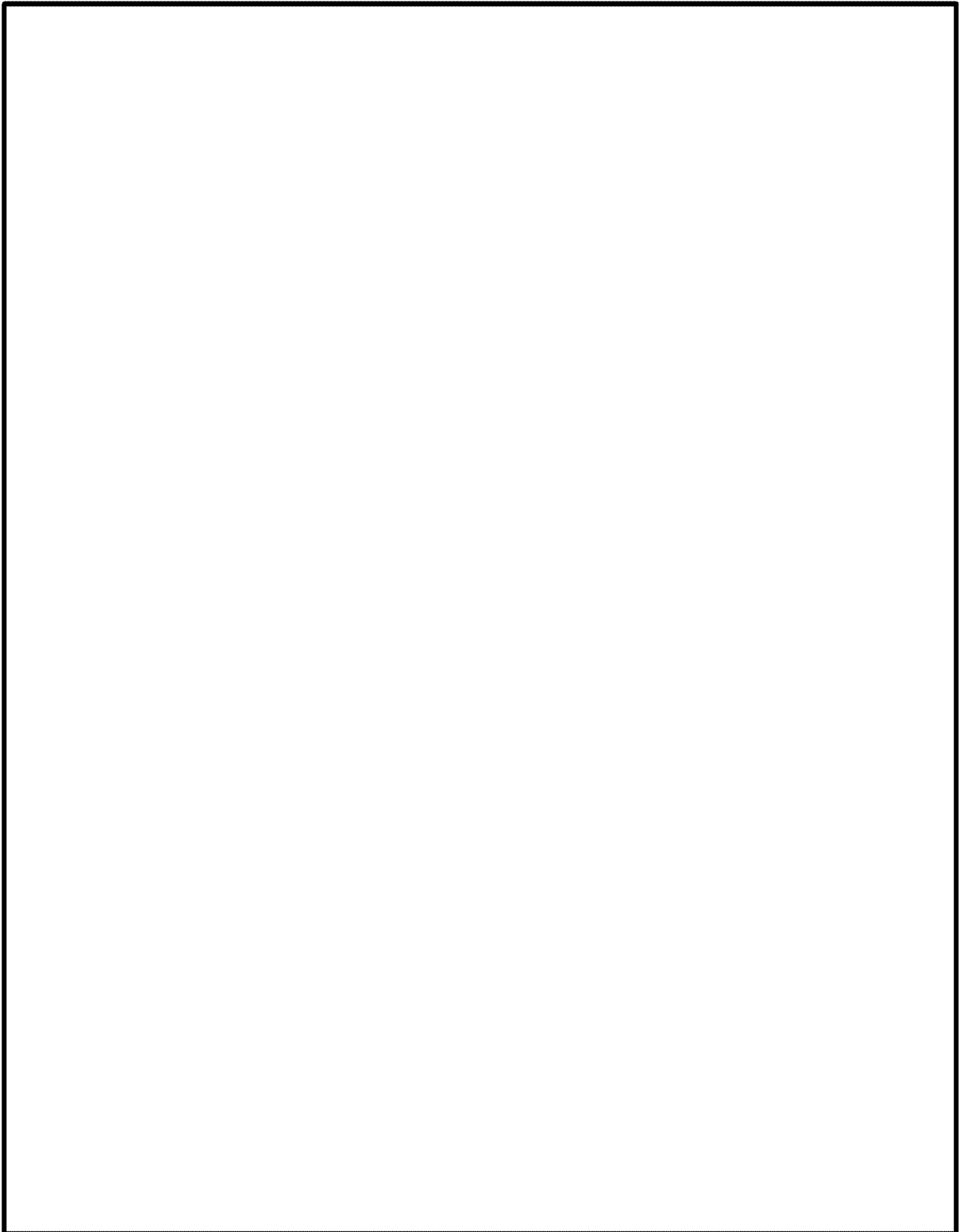


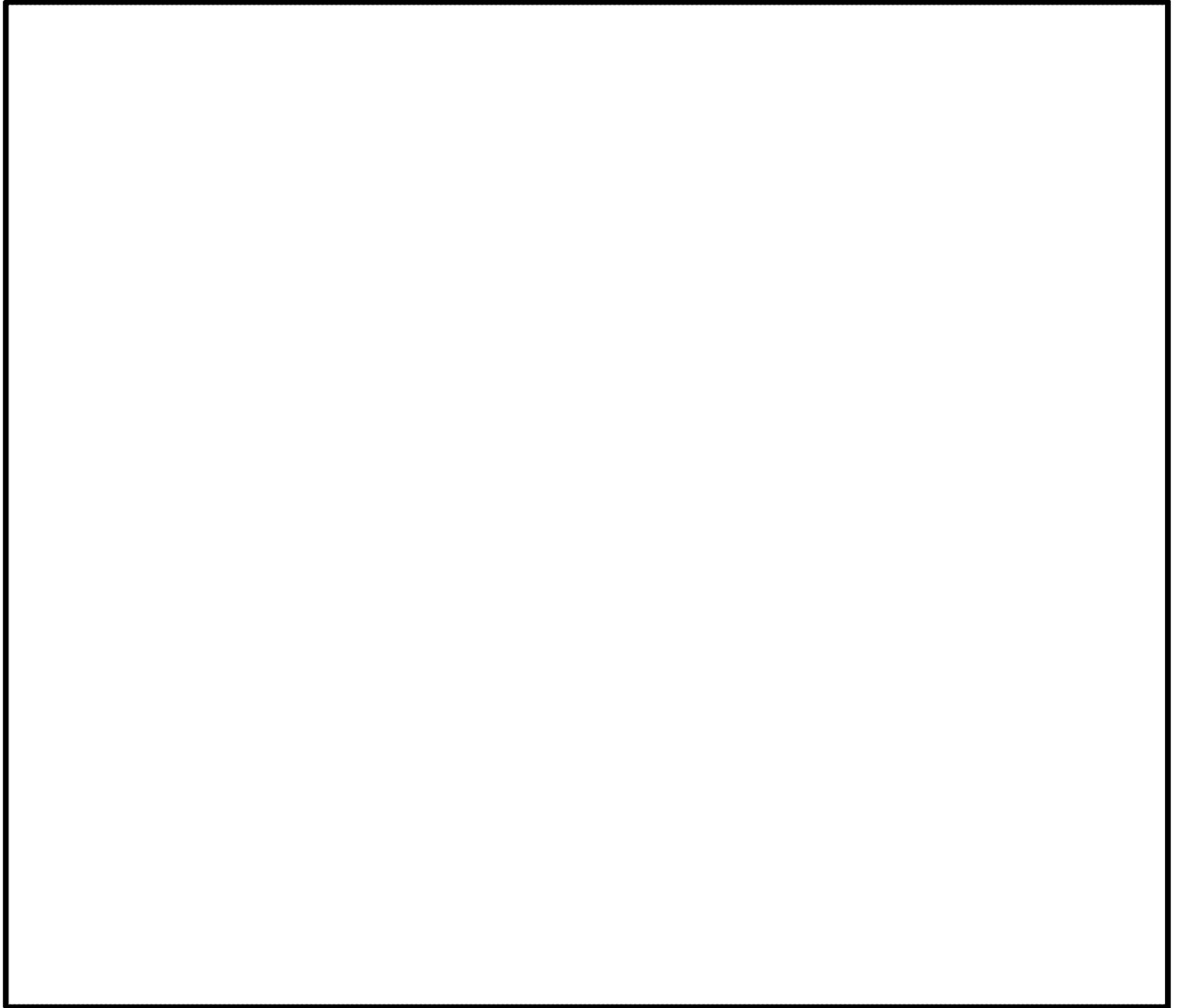


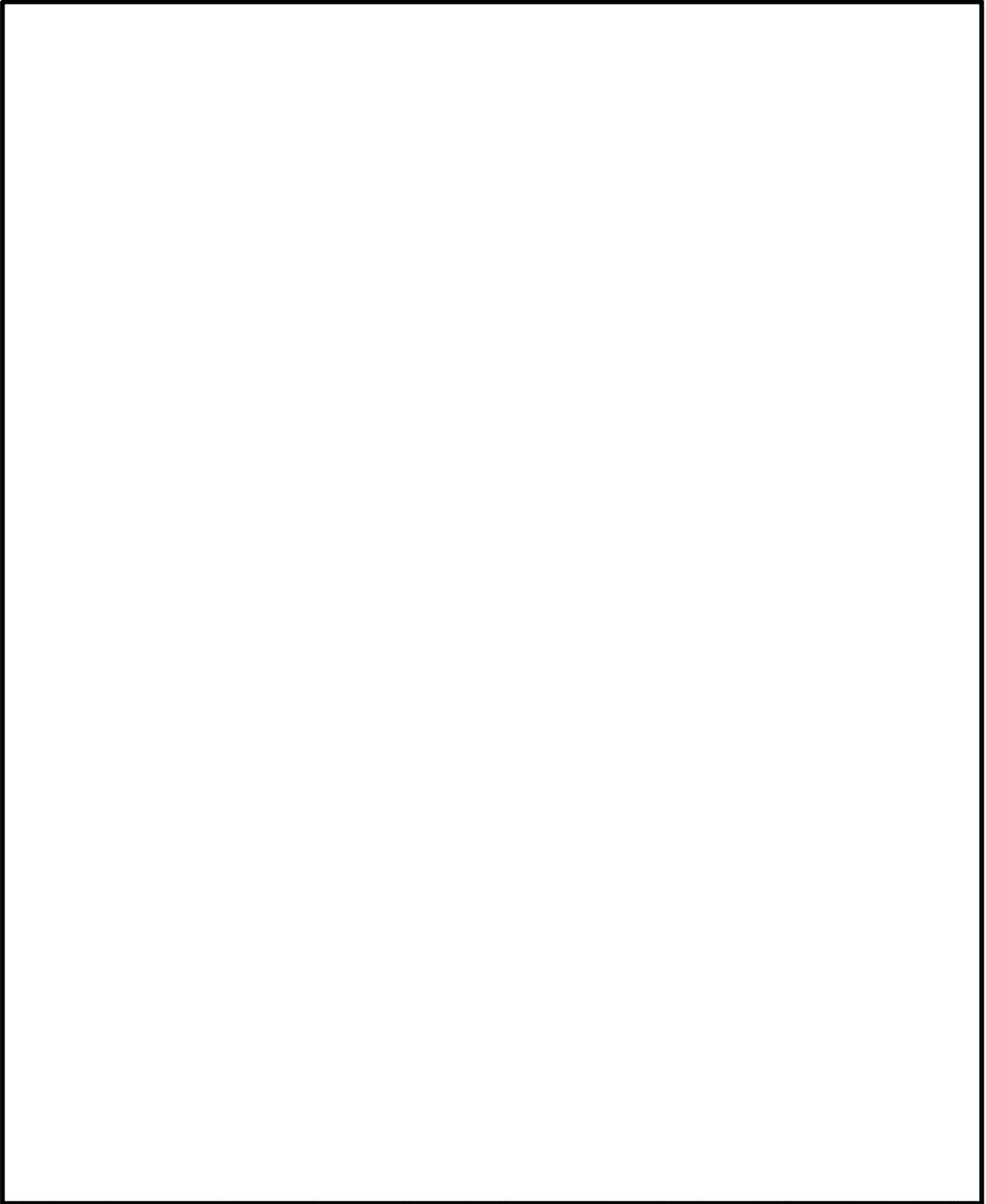


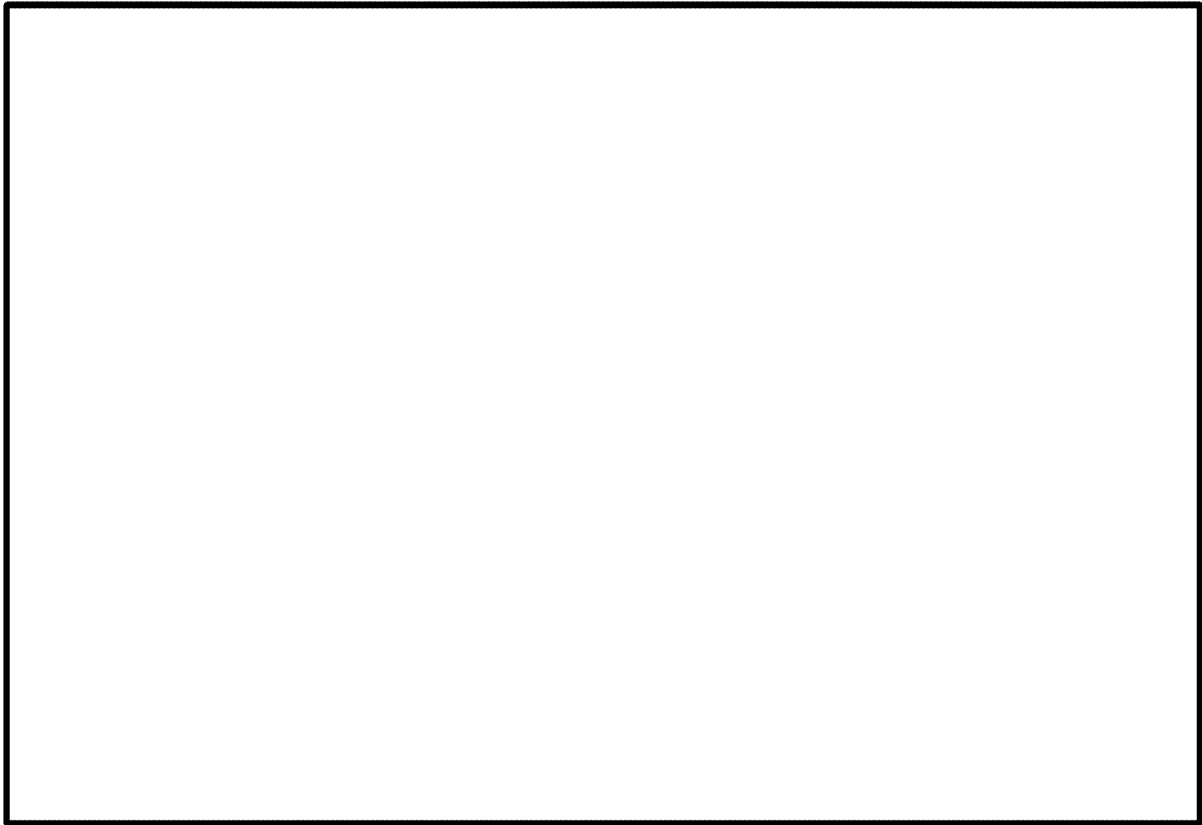




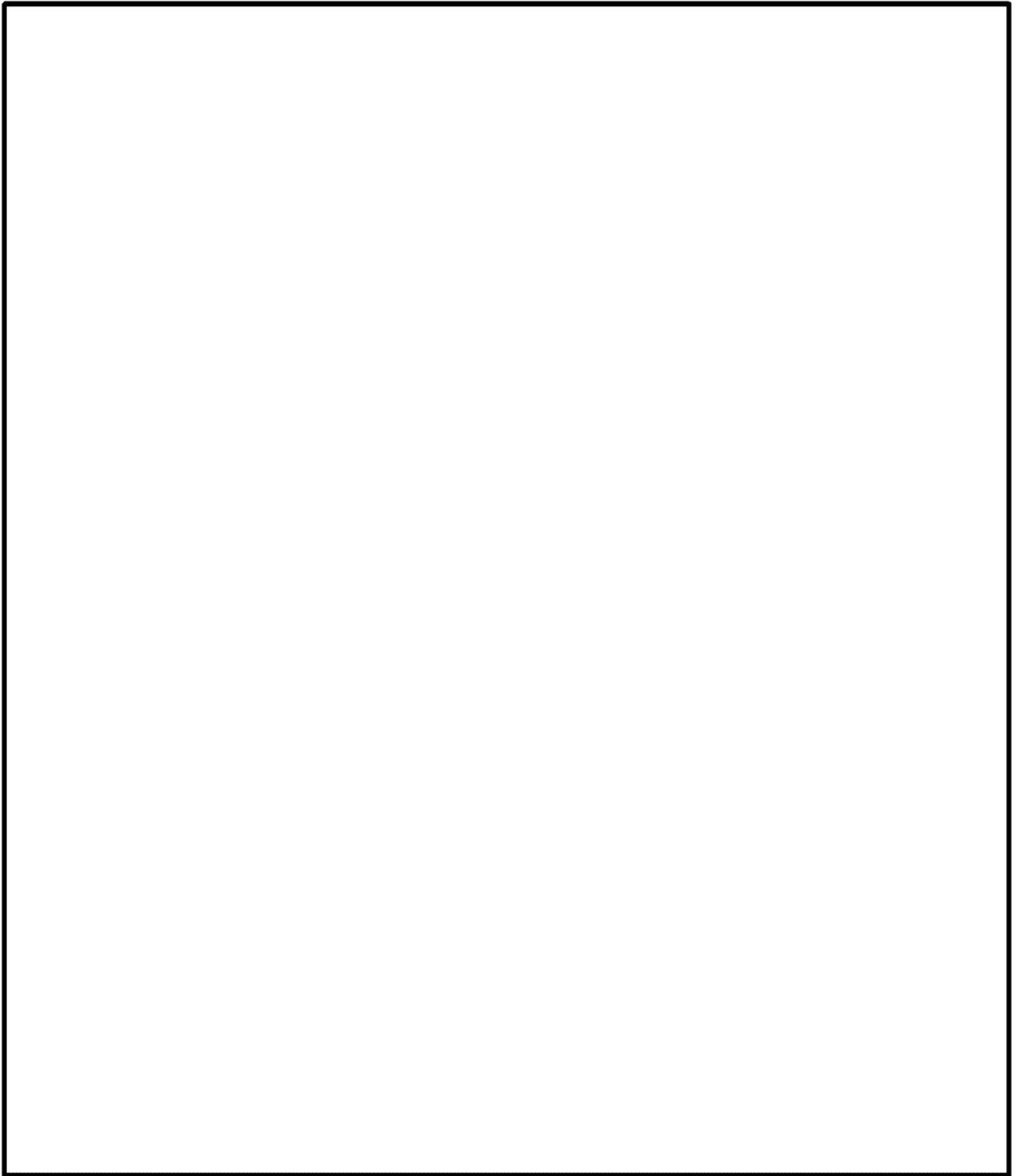








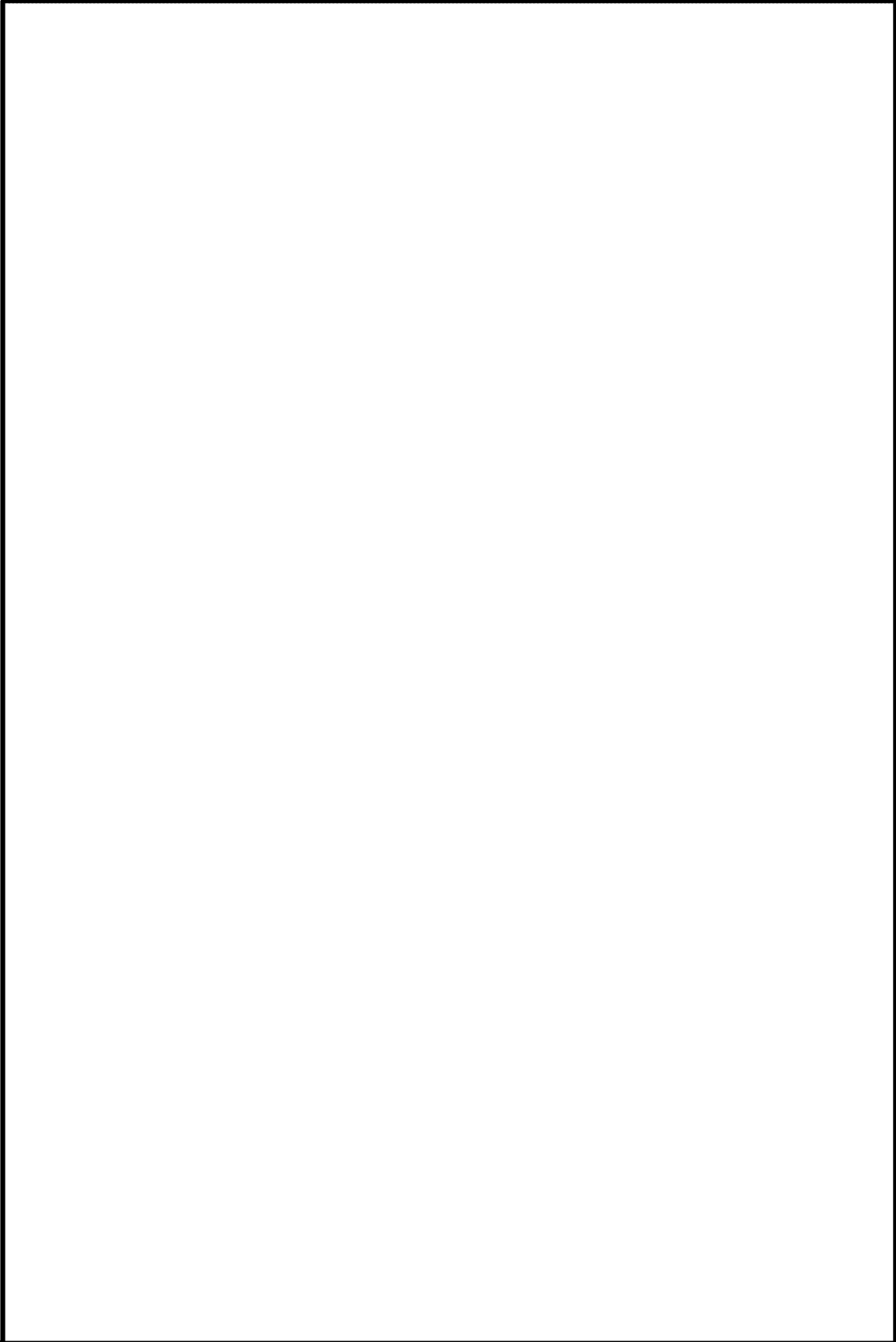


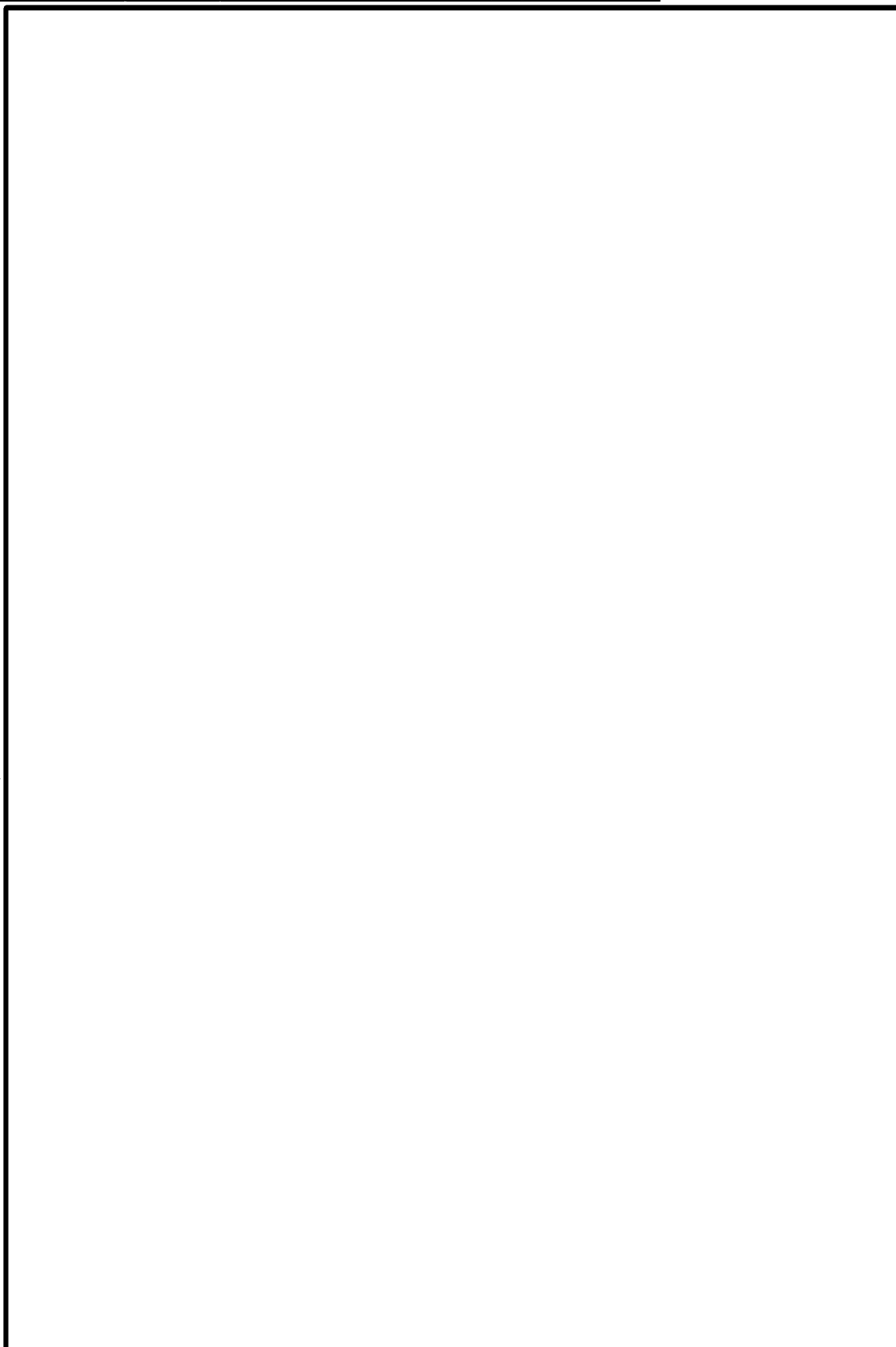


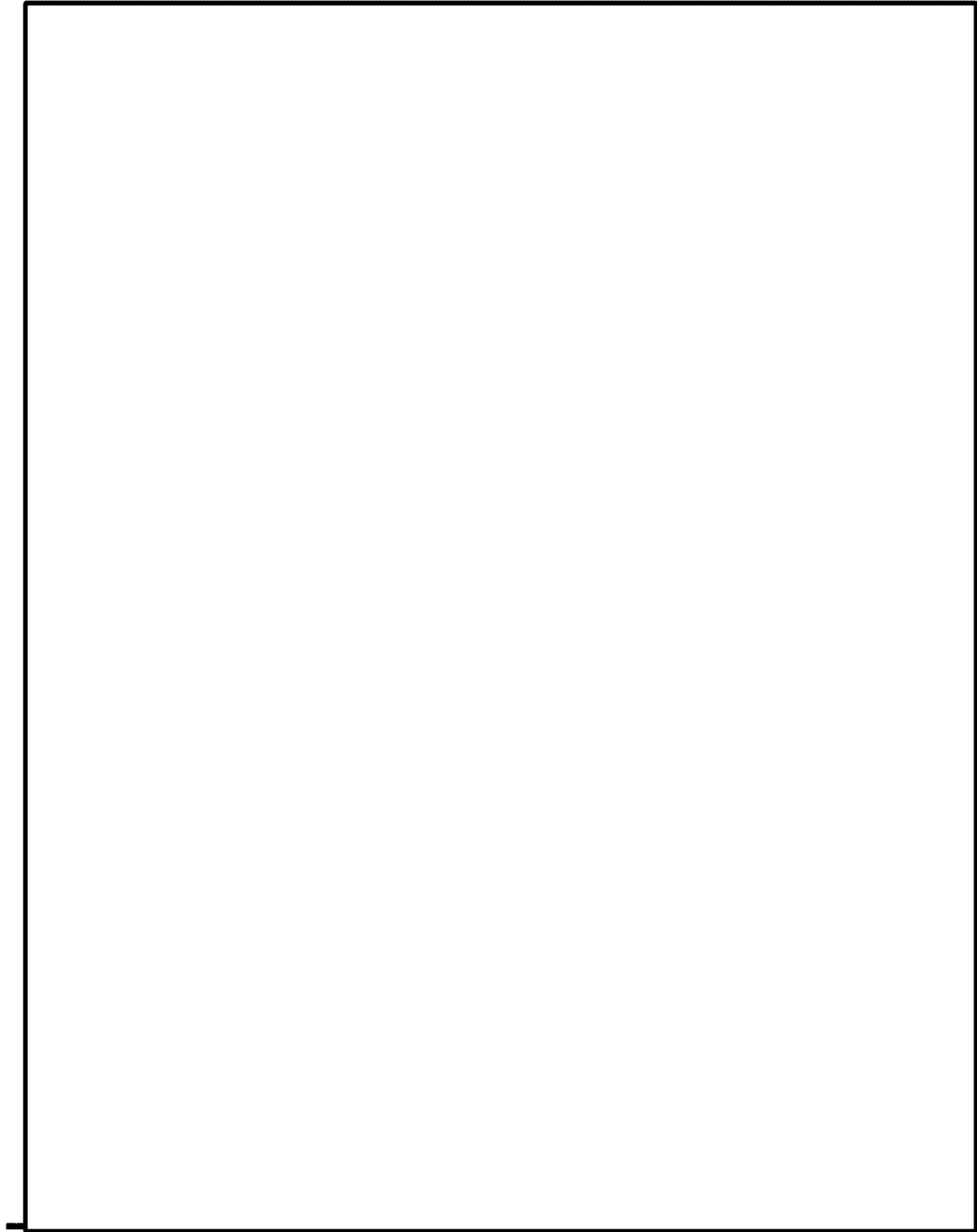


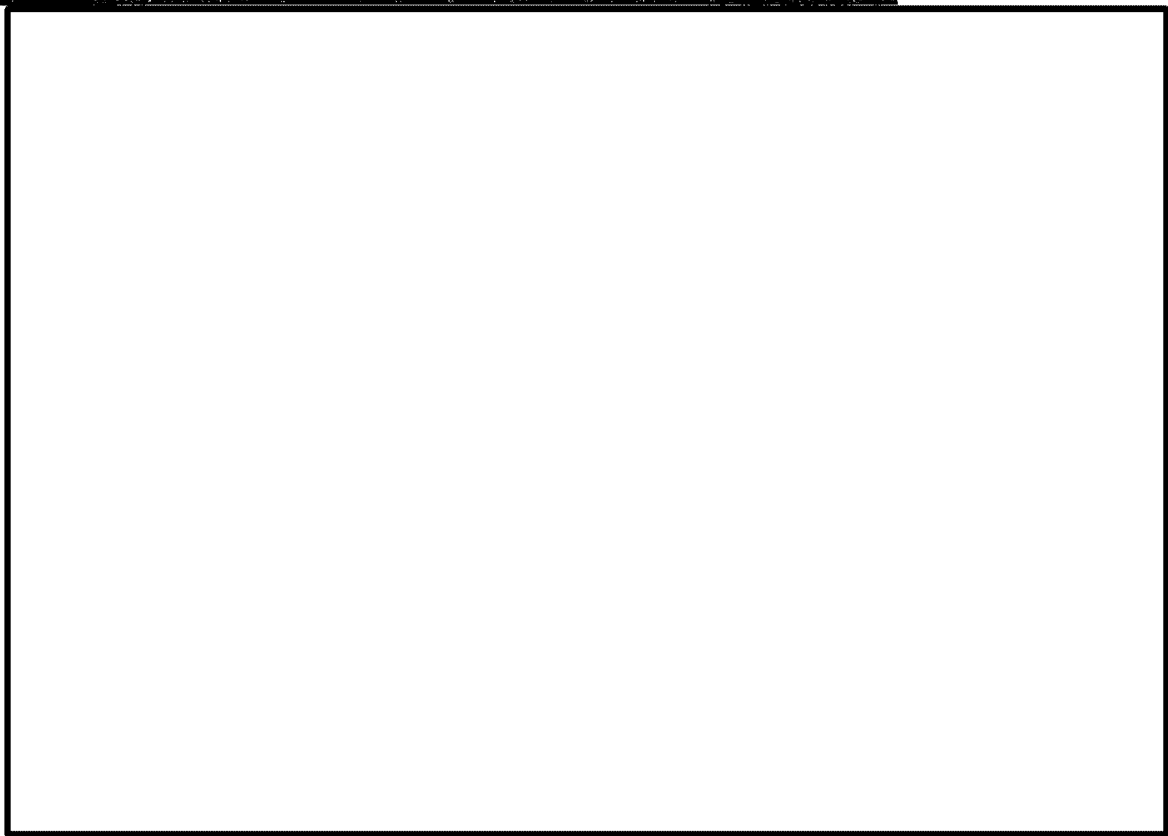




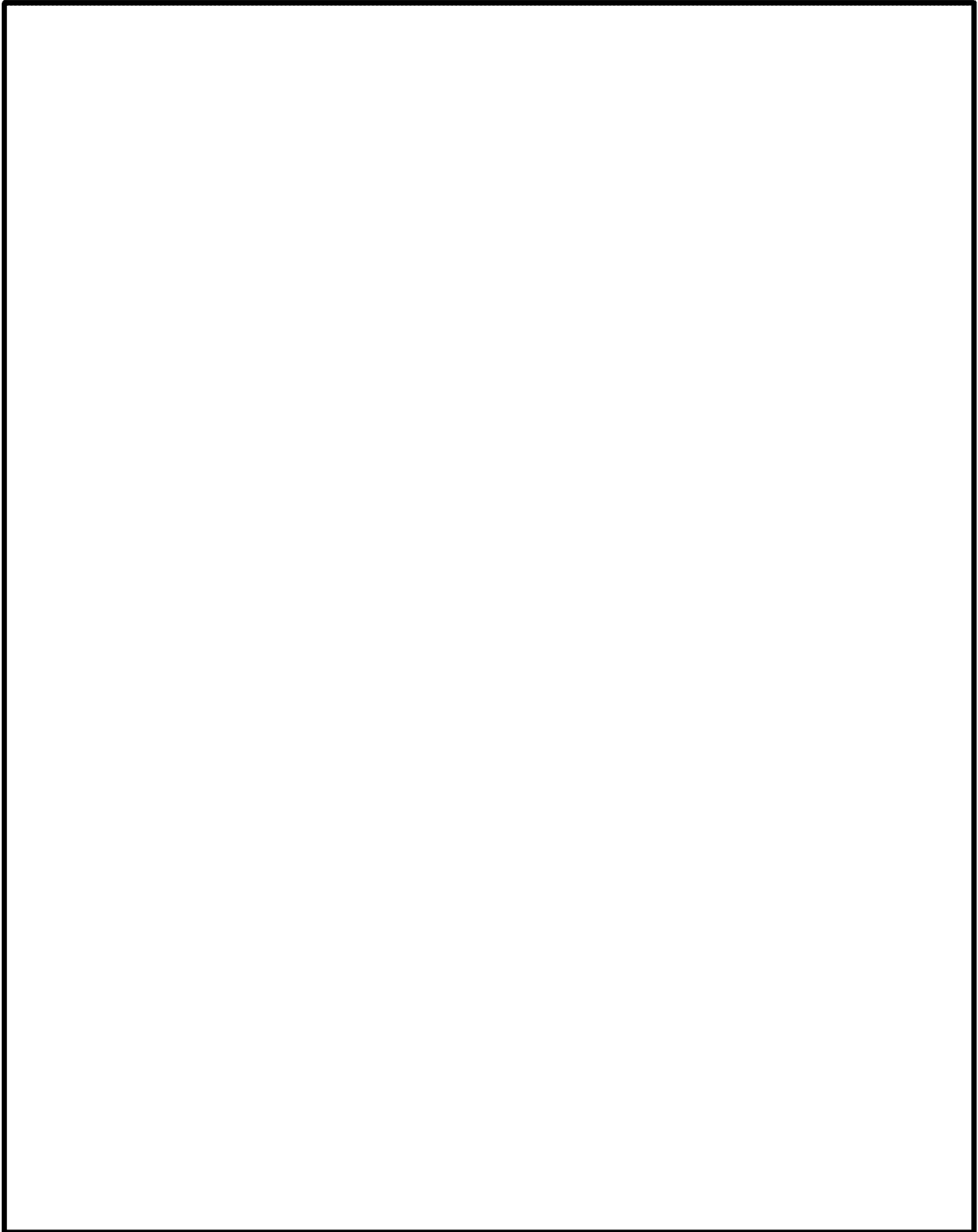












## 6. Admissibility

The alien must be not be inadmissible under INA §212(a). See INA 245(a).

### A) Affidavit of Support (Public Charge under INA §212(a)(4))

Unless the alien qualifies for an exception, an Affidavit of Support (Form I-864 or Form I-864EZ) must be filed on behalf of any alien who seeks adjustment of status on the basis of:

- an immediate relative or family-based visa petition (Form I-130, I-129F, or I-600) or
- an employment-based visa petition (Form I-140) if a qualifying relative either filed the Form I-140 as the employer or owns at least 5% of the equity of the for-profit firm that filed the I-140.

Specific details concerning when a Form I-864 is required, when it is not required, and what evidence must be submitted with a Form I-864 is found in 8 CFR part 213a and chapter 20.5 of the Adjudicators Field Manual.

If an Affidavit of Support is required, but no Form I-864 is filed (or the Form I-864 that is filed does not satisfy the requirements of section 213A), then the alien is inadmissible under Section 212(a)(4)(C) or Section 212(a)(4)(D) of the INA, family-based or employment-based immigration, respectively.

Accompanying spouses and children also need to submit Form I-864s. Each spouse or child must submit a photocopy of the principal's I-864, but they do not need to submit a photocopy of the supporting documentation. A spouse or child is considered to be "accompanying" a principal immigrant if they apply for an immigrant visa or adjustment of status either at the same time as the principal immigrant or within 6 months after the date the principal immigrant acquires LPR status.

Following-to-join spouses and children (those who apply for an immigrant visa or adjustment of status 6 months or more after the principal immigrant) require a new Form I-864 at the

time they immigrate or adjust status.

The Affidavit of Support is not a separate application. It is supporting documentation for an adjustment of status application. Correspondence regarding insufficient Affidavits of Support should be sent to the adjustment applicant and his/her legal representative, but not to the sponsor.

1. Purpose of the Affidavit of Support.
  - a. To show that the applicant for adjustment of status have adequate means of financial support and that he or she will not likely become a public charge
  - b. This Affidavit of Support (I-864) is a contract between a sponsor and the U.S. government
  - c. Sponsor must show that he/she have enough income and/or assets to maintain the intending immigrant and the rest of sponsor's household at 125 percent of the Federal Poverty Guidelines
  - d. By signing the Affidavit of Support, the sponsor is agreeing to use his/her resources to support the intending immigrant named in this form, if it becomes necessary
  - e. Submission of the I-864 may make the sponsored immigrant ineligible for certain Federal, State, or local means-tested public benefits because an agency that provides means-tested public benefits will consider the **sponsor's** resources and assets as available to the sponsored immigrant in determining his or her eligibility for the program
  - f. If the immigrant sponsored in the affidavit of support does receive one of the designated Federal, State or local means-tested public benefits, the agency providing the benefit may request the sponsor to repay the cost of those benefits.
  - g. That agency can sue the sponsor if the cost of the benefits provided is not repaid.

2. Exceptions to Who Needs an Affidavit of Support
  - a. Any intending immigrant who has earned or can be credited with 40 qualifying quarters (credits) of work in the United States under the Social Security Act.
  - b. Any intending immigrant who will, upon admission, acquire U.S. citizenship under section 320 of the INA, as amended by the Child Citizenship Act of 2000 (CCA)
  - c. Self-petitioning widow/ers who have an approved Petition for Amerasian, Widow(er), or Special Immigrant, Form I-360; and
  - d. Self-petitioning battered spouses and children who have an approved Petition for Amerasian, Widow(er), or Special Immigrant, Form I-360
  - e. NOTE: If applicant qualifies for one of the exemptions listed above, an I-864W, Intending Immigrant's I-864 Exemption is required instead of Form I-864
  
3. Who Completes and Signs the I-864?
  - a. A sponsor completes and signs Form I-864
  - b. A sponsor is required to be at least 18 years old and domiciled in the United States, or its territories or possessions
  - c. The petitioning sponsor must sign and complete Form I-864, even if a joint sponsor also submits an I-864 to meet the income requirement
  
4. What Are the Income Requirements?
  - a. To qualify as a sponsor, the sponsor must demonstrate that his or her income is at least 125 percent of the current Federal poverty guideline for his or her household size.
  - b. The Federal poverty line, for purposes of this form, is updated annually and can be found on Form I-864P, Poverty Guidelines (copy in Forms Folder)

- c. If sponsor is on active duty in the U.S. Armed Forces, including the Army, Navy, Air Force, Marines or Coast Guard, and is sponsoring spouse or minor child, sponsor only need to have an income of 100 percent of the Federal poverty line for sponsor's household size. This provision does not apply to joint or substitute sponsors
5. How Does A Sponsor Count Household Size?
- a. Sponsor's household size includes sponsor and the following individuals, no matter where they live: any spouse, any dependent children under the age of 21, any other dependents listed on sponsor's most recent Federal income tax return, all persons being sponsored in the affidavit of support, and any immigrants previously sponsored with a Form I-864 or Form I-864EZ affidavit of support whom sponsor is still obligated to support
  - b. If necessary to meet the income requirements to be a sponsor, a sponsor may include additional relatives (adult children, parents, or siblings) as part of the household size as long as they have the same principle residence as sponsor and promise to use their income and resources in support of the intending immigrant(s)

6. What If A Sponsor Cannot Meet the Income Requirements?

If a sponsor's income alone is not sufficient to meet the requirement for sponsor's household size, the intending immigrant will be ineligible for an immigrant visa or adjustment of status, unless the requirement can be met using any combination of the following:

- a. Income from any relatives or dependents living in sponsor's household or dependents listed on sponsor's most recent Federal tax return who signed a Form I-864A;
- b. Income from the intending immigrant, if that income will continue from the same source after immigration, and if the intending immigrant is currently living in sponsor's residence. If the intending immigrant is sponsor's spouse, his or her income can be counted regardless of current residence, but it must continue from the same source after he or she becomes a lawful permanent resident.
- c. The value of sponsor's assets, the assets of any household member who has signed a Form I-864A, or the assets of the intending immigrant;
- d. A joint sponsor whose income and/or assets equal at least 125 percent of the Poverty Guidelines.

7. How Can Relatives and Dependents Help A Sponsor Meet the Income Requirements?
  - a. A sponsor may use the income of his or her spouse and/or any other relatives living in sponsor's residence if they are willing to be jointly responsible with sponsor for the intending immigrant(s)
  - b. If sponsor has any unrelated dependents listed on his or her income tax return sponsor may include their income regardless of where they reside
  - c. The income of such household members and dependents can be used to help sponsor meet the income requirements if they complete and sign Form I-864A, Contract Between Sponsor and Household Member, and if they are at least 18 years of age when they sign the form
  
8. Does Receipt of Means-Tested Public Benefits Disqualify A Sponsor From Being A Sponsor?
  - a. Receipt of means-tested public benefits does not disqualify anyone from being a sponsor
  - b. Means-tested public benefits cannot be accepted as income for the purposes of meeting the income requirement
  
9. How Can A Sponsor Use Assets to Qualify?

Assets may supplement income if the consular or immigration officer is convinced that the monetary value of the asset could reasonably be made available to support the sponsored immigrant and converted to cash within one year without undue harm to the sponsor or his or her family members. Sponsor may not include an automobile unless sponsor shows that sponsor own at least one working automobile that sponsor have not included.

- a. Documentation of assets establishing location, ownership, date of acquisition and value
- b. Evidence of any liens or liabilities against these assets
- c. In order to qualify based on the value of sponsor's assets, the total value of assets must equal at least five times the difference between sponsor's total household income and the current poverty guidelines for sponsor's household size

- d. If the sponsor is a U.S. citizen and sponsoring his or her spouse or minor child, the total value of sponsor's assets must only be equal to at least three times the difference
- e. If the intending immigrant is an alien orphan who will be adopted in the United States after the alien orphan acquires permanent residence, and who will, as a result, acquire citizenship under section 320 of the Act, the total value of sponsor's assets need only equal the difference

10. What Is A Joint Sponsor?

- a. If the person who is seeking the immigration of one or more of his or her relatives cannot meet the income requirements, a "joint sponsor" who can meet the requirements may submit a Form I-864 to sponsor all or some of the family members
- b. A joint sponsor must be person, and may not be a corporation, organization, or other entity. A joint sponsor can be any U.S. citizen, U.S. national, or lawful permanent resident who is at least 18 years old, domiciled in the U.S., or its territories or possessions
- c. Willing to be held jointly liable with the petitioner for the support of the intending immigrant
- d. A joint sponsor does not have to be related to the petitioning sponsor or the intending immigrant
- e. There may be no more than two joint sponsors
- f. Even if one or more I-864s are submitted for an intending immigrant, the petitioning sponsor remains legally accountable for the financial support of the sponsored alien along with the joint sponsor(s)

11. What Is a Substitute Sponsor?

- a. A substitute sponsor is a sponsor who is completing a Form I-864 on behalf of an intending immigrant whose original I-130 petitioner has died before the intending immigrant obtained permanent residence, if the Form I-130 is approved, or a pre-death approval is reinstated, under either INA 204(l) or 8 CFR 205.1.
- b. The substitute sponsor must be related to the intending immigrant in one of the following ways:
  - i. spouse

- ii. parent
  - iii. mother-in-law or father-in-law
  - iv. sibling
  - v. child (at least 18 years of age)
  - vi. son or daughter
  - vii. son-in-law or daughter-in-law
  - viii. brother-in-law or sister-in-law
  - ix. grandparent
  - x. grandchild
  - xi. legal guardian
- c. The substitute sponsor must also be a U.S. citizen or lawful permanent resident
  - d. A substitute sponsor must indicate that he or she is related to the intending immigrant in one of the ways listed above and include evidence proving that relationship
  - e. The beneficiary must file the I-864 along with a written statement explaining the reasons why the Form I-130 visa petition should be reinstated, having been revoked following the petitioner's death
  - f. The beneficiary must also include a copy of the Form I-130 approval notice

12. How Long Does A Sponsor's Obligation Continue?

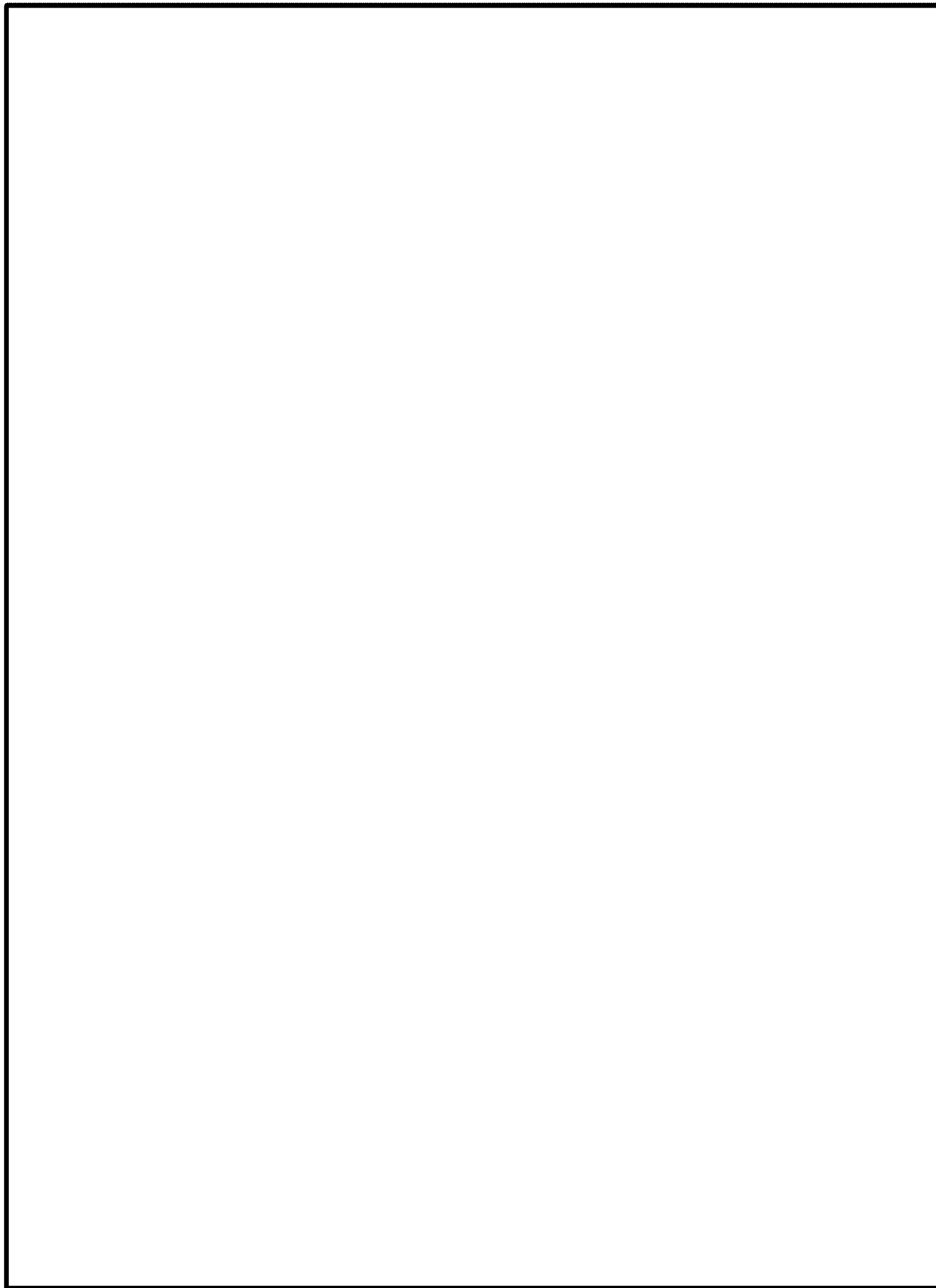
- a. Sponsor's obligation to support the immigrant(s) sponsored in the affidavit of support will continue until the sponsored immigrant becomes a U.S. citizen, or can be credited with 40 qualifying quarters of work in the United States
- b. Forty (40) qualifying quarters of work generally equate to ten years of work

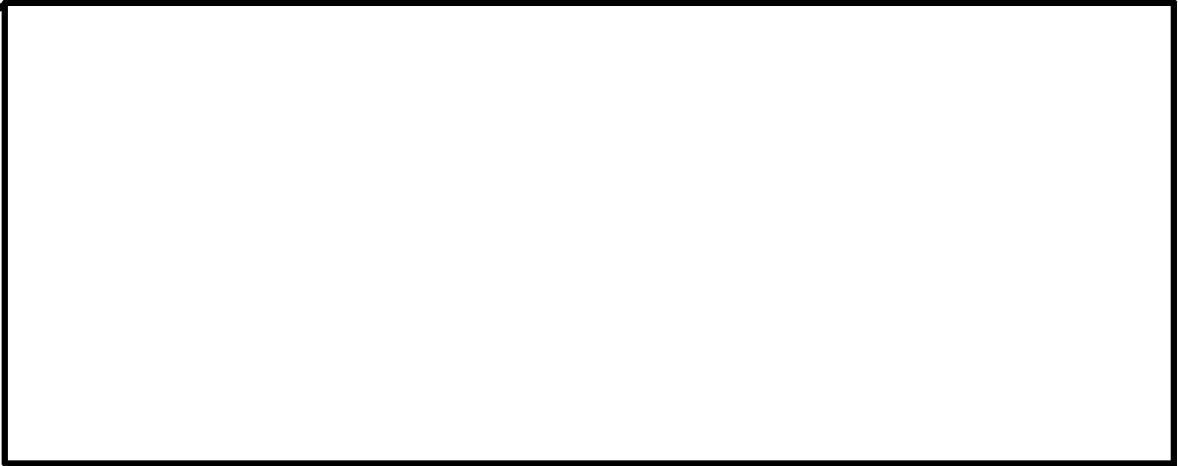


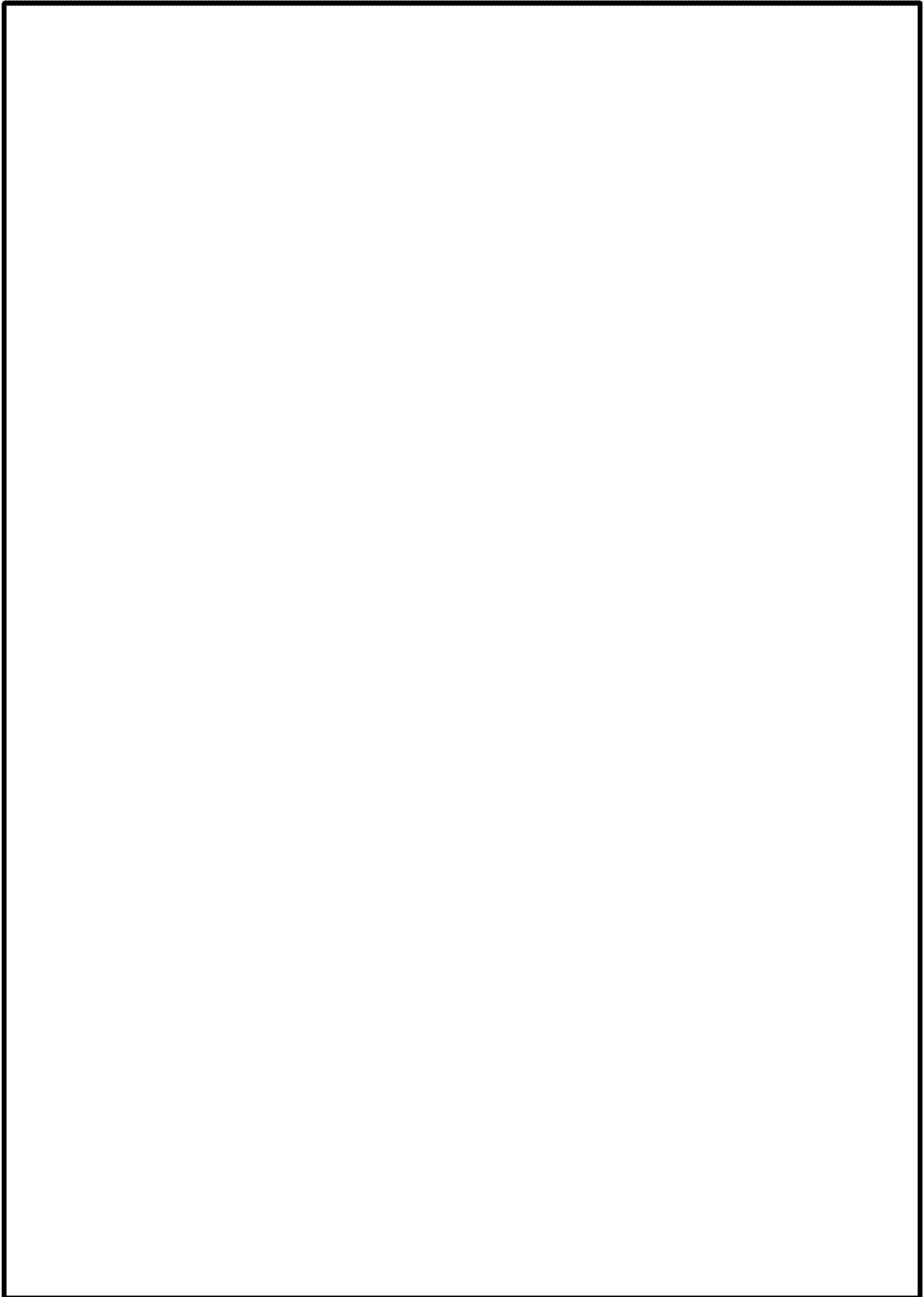
- c. The obligation ends if the sponsor or sponsored immigrant dies or if the sponsored immigrant ceases to be a lawful permanent resident and departs the United States
  - d. Divorce does not end the sponsorship obligation
13. Does A Sponsor Have to Submit a Separate Affidavit for Each Family Member?
- a. Sponsor must submit a Form I-864 affidavit of support for each intending immigrant he or she is sponsoring
  - b. Sponsor may submit photocopies if sponsor is sponsoring more than one intending immigrant listed on the same affidavit of support. Often a spouse or minor children obtain visas or adjust status as dependents of a relative based on the same visa petition. If sponsor is sponsoring such dependents, sponsor only need to provide a photocopy of the original Form I-864, as long as these dependents are immigrating at the same time as the principal immigrant or within six months of the time he or she immigrates to the United States. Sponsor does not need to provide copies of the supporting documents for each of the photocopied Forms I-864.
  - c. Separate affidavits of support are required for intending immigrants for whom different Form I-130 family-based petitions are filed. For instance, if you are sponsoring both parents, each will need an original affidavit of support and accompanying documentation since sponsor was required to submit separate Form I-130 visa petitions for each parent.
  - d. To be valid, Form I-864 and all supporting documentation must be submitted within one year of when the sponsor signs the I-864
14. Does A Sponsor Have to Report A Change of Address?
- a. Federal law requires that every sponsor report every change of address to the USCIS within 30 days of the change
  - b. Sponsor should complete and submit Form I-865, Sponsor's Change of Address, to the Service Center having jurisdiction over sponsor's new address only when the address sponsor indicated on the original I-864 has changed
  - c. The above requirement does not relieve a sponsor who is a lawful permanent resident from submitting Form AR-11 within ten days of a change of address

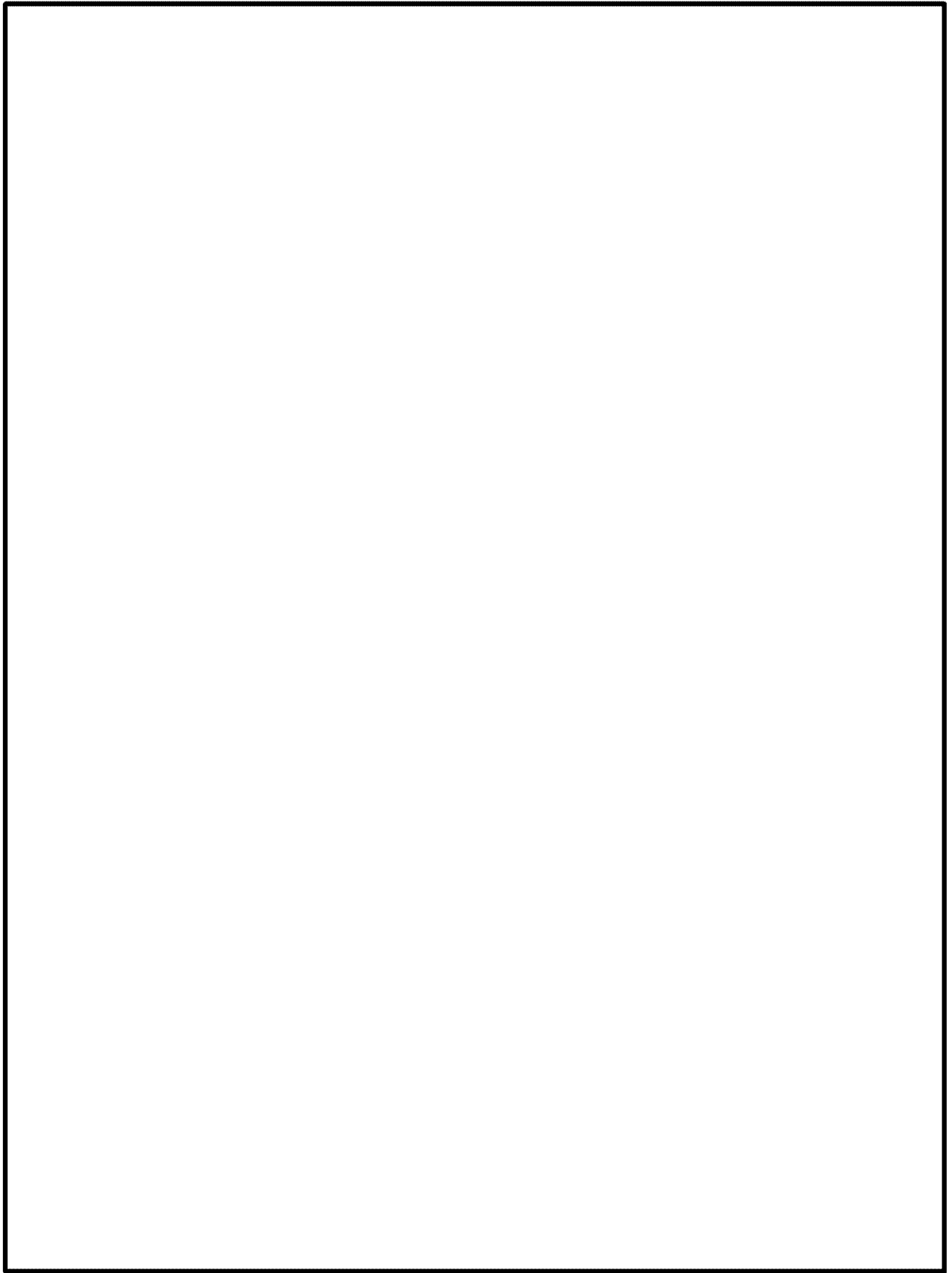
15. Is There A Filing Fee?
  - a. USCIS does not charge a fee for the I-864
  - b. Department of State does charge a fee when the Affidavit of Support is reviewed domestically. This does not apply when the Affidavit of Support is filed abroad
  
16. What Must A Sponsor Submit Along With the I-864?
  - a. Proof of U.S. citizen, national or lawful permanent resident status
  - b. Proof of current employment or self-employment
  - c. A photocopy or an Internal Revenue Service (request made on IRS Form 4506-T) issued transcript of sponsor's complete Federal income tax return for most recent tax year or a statement and/or evidence describing why not required to file
  - d. W-2s and/or 1099 forms
  
17. Other types of Affidavits of Support
  - a. I-864A, Contract Between Sponsor and Household Member
    - i. Is an attachment to Form I-864
    - ii. A household member is promising to make his or her income and/or assets available to sponsor to help support the sponsored immigrant(s). A "household member" is a relative who has the same principal residence as the sponsor and is related to the sponsor as a spouse, adult child, parent, or sibling. Can also be a relative or other person whom the sponsor has lawfully claimed as a dependent on the sponsor's most recent Federal income tax return even if that person does not live at the same residence as the sponsor. The intending immigrant, in certain circumstances can be a household member.
    - iii. Must be submitted simultaneously with Form I-864
    - iv. The combined signing of this form constitutes an agreement that the household member is responsible along with the sponsor for the support of the individual(s) named in the form

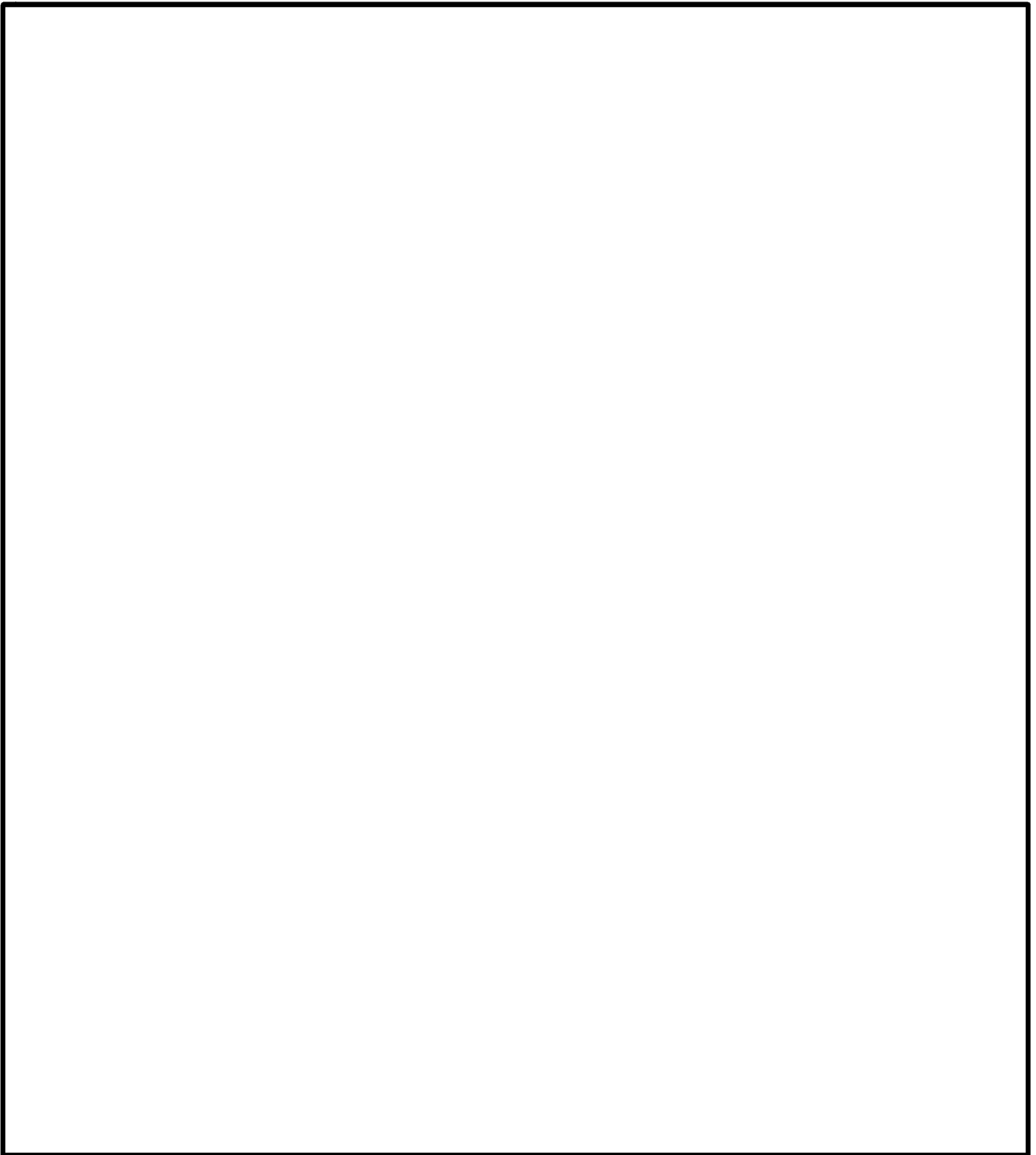
- v. Form I-864A may only be used when a sponsor's income and assets do not meet the income requirements of Form I-864 and the qualifying household member chooses to combine his or her resources with the income and/or assets of a sponsor to meet the poverty guidelines requirements
  - vi. The obligations of the household member under this contract terminate when the obligations of the sponsor under the Affidavit of Support terminate
- b. I-864EZ, Affidavit of Support Under Section 213A of the Act
- i. Is a shorter version of Form I-864
  - ii. Use this form if all the following conditions apply: sponsor is the person who filed or is filing the Form I-130, the relative being sponsored is the only person listed on the I-130, and the income sponsor is using to qualify is based entirely on sponsor salary or pension and is shown on one or more Forms W-2 provided by sponsor's employer(e) or former employer(s)
- c. I-864W, Intending Immigrant's Affidavit of Support Exemption
- a. An intending immigrant who has or can be credited with 40 quarters of work.
  - b. An intending immigrant who will, upon admission, acquire U.S. citizenship under section 320 of the Act, as amended by the Child Citizenship Act of 2000 (CAA); and
  - c. A self-petitioning widow(er) or qualifying battered spouse or child



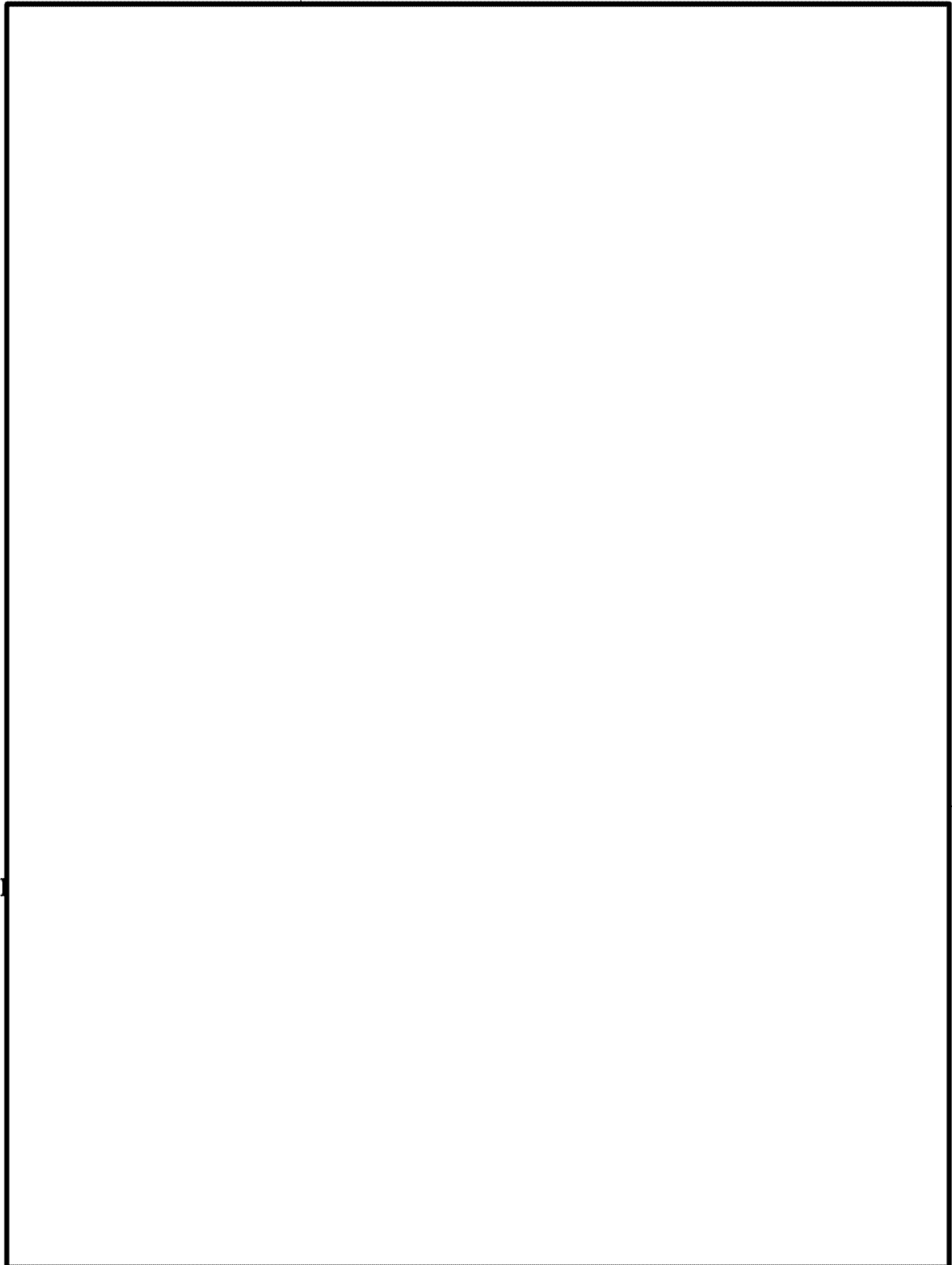


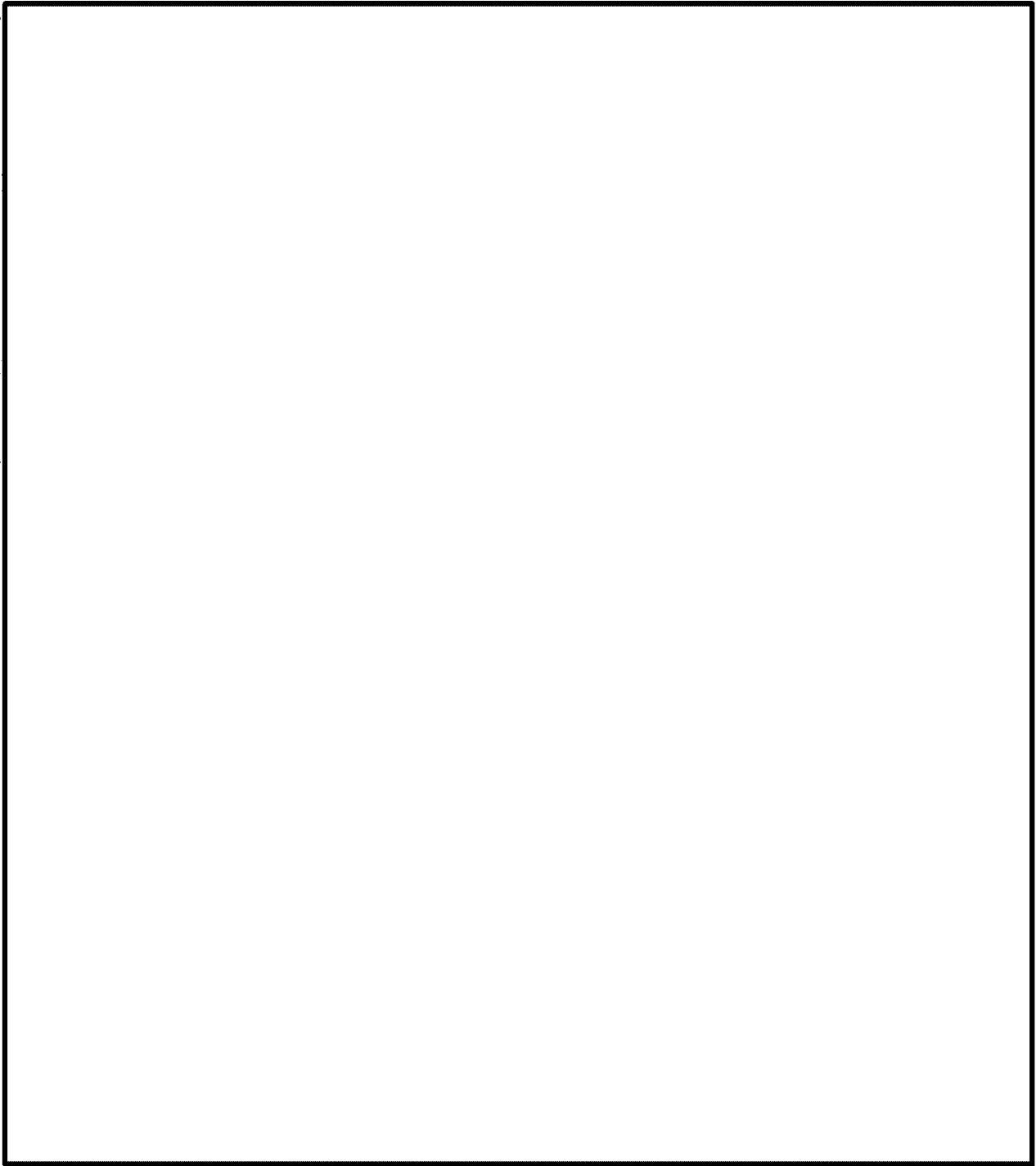


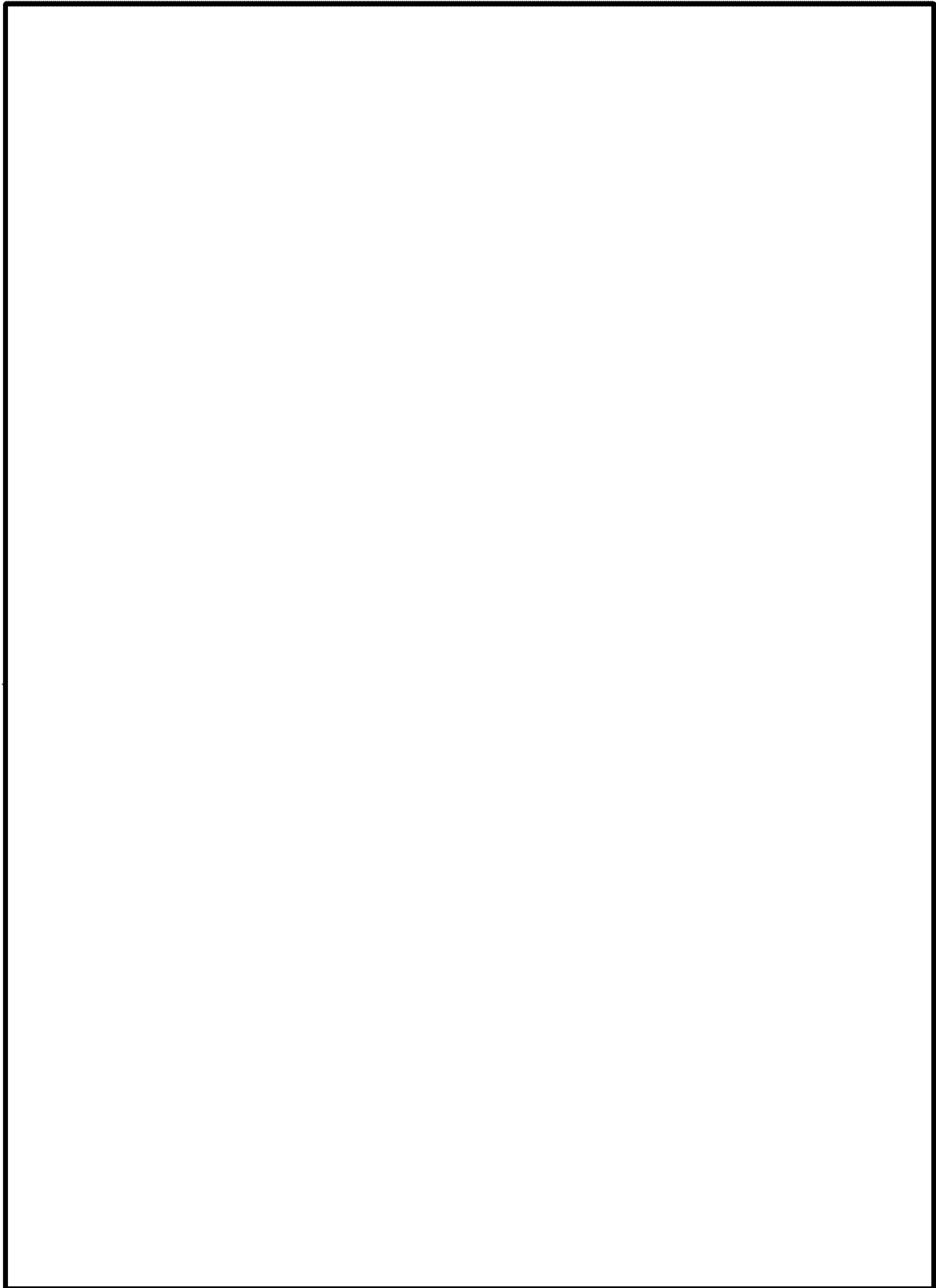


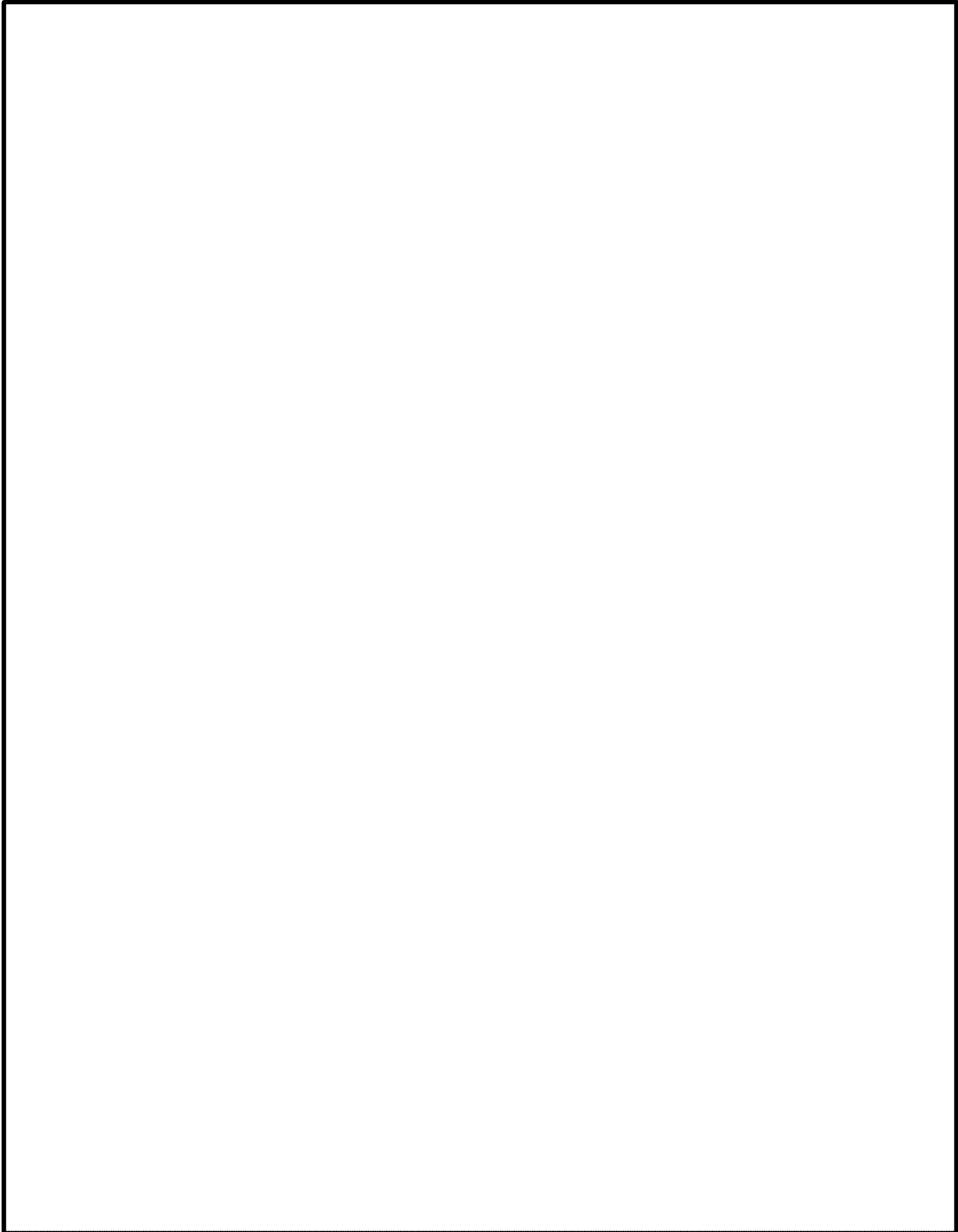


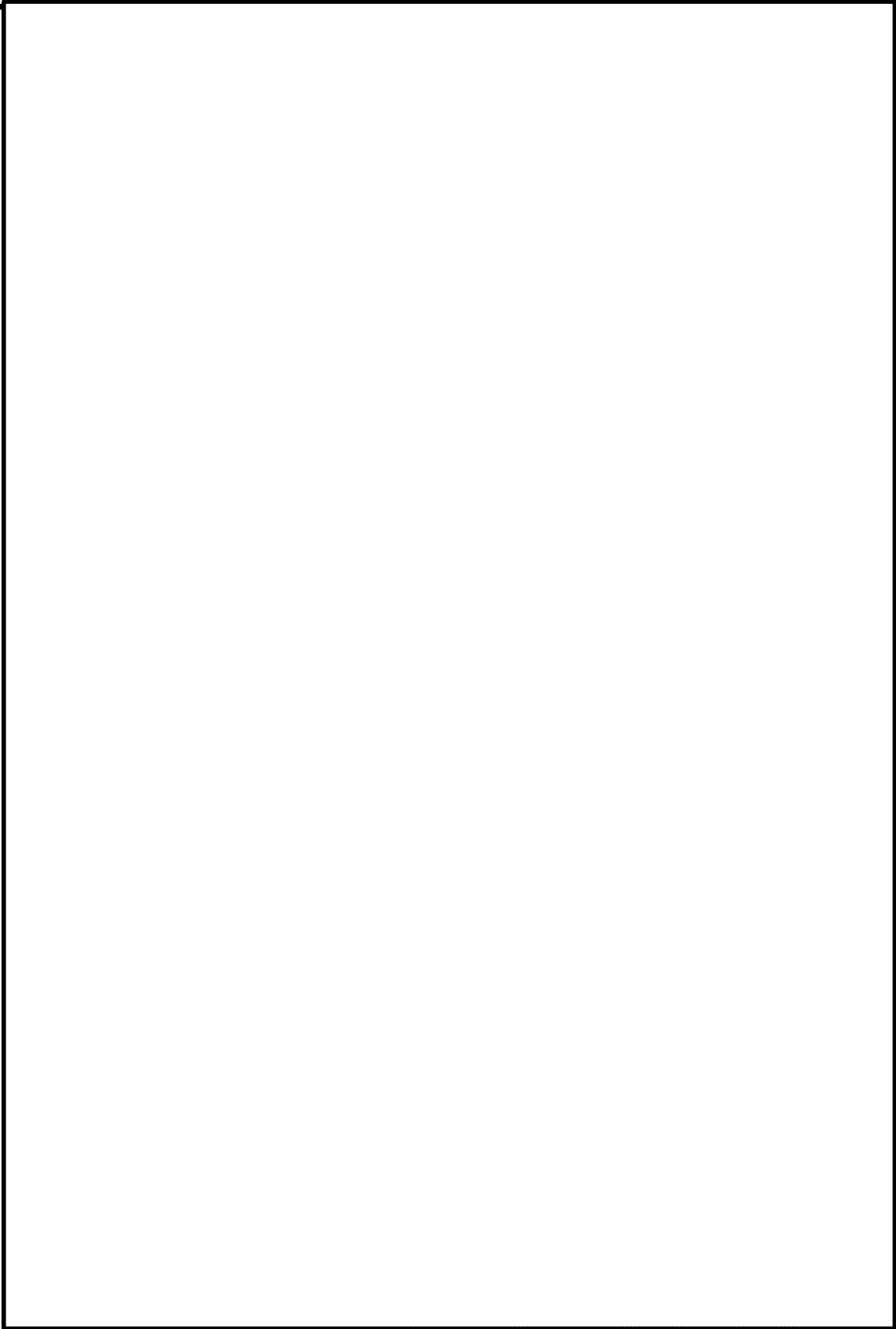


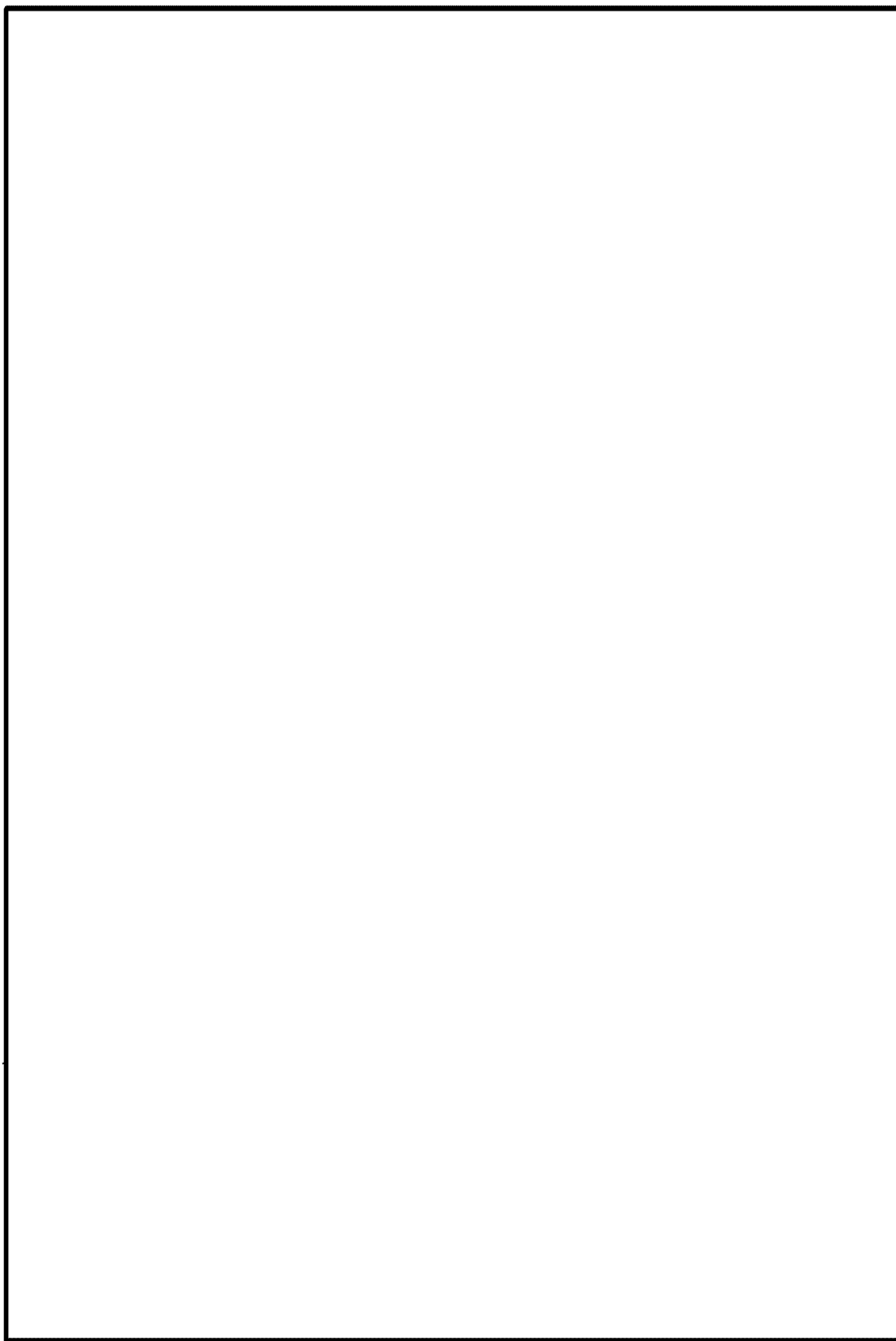


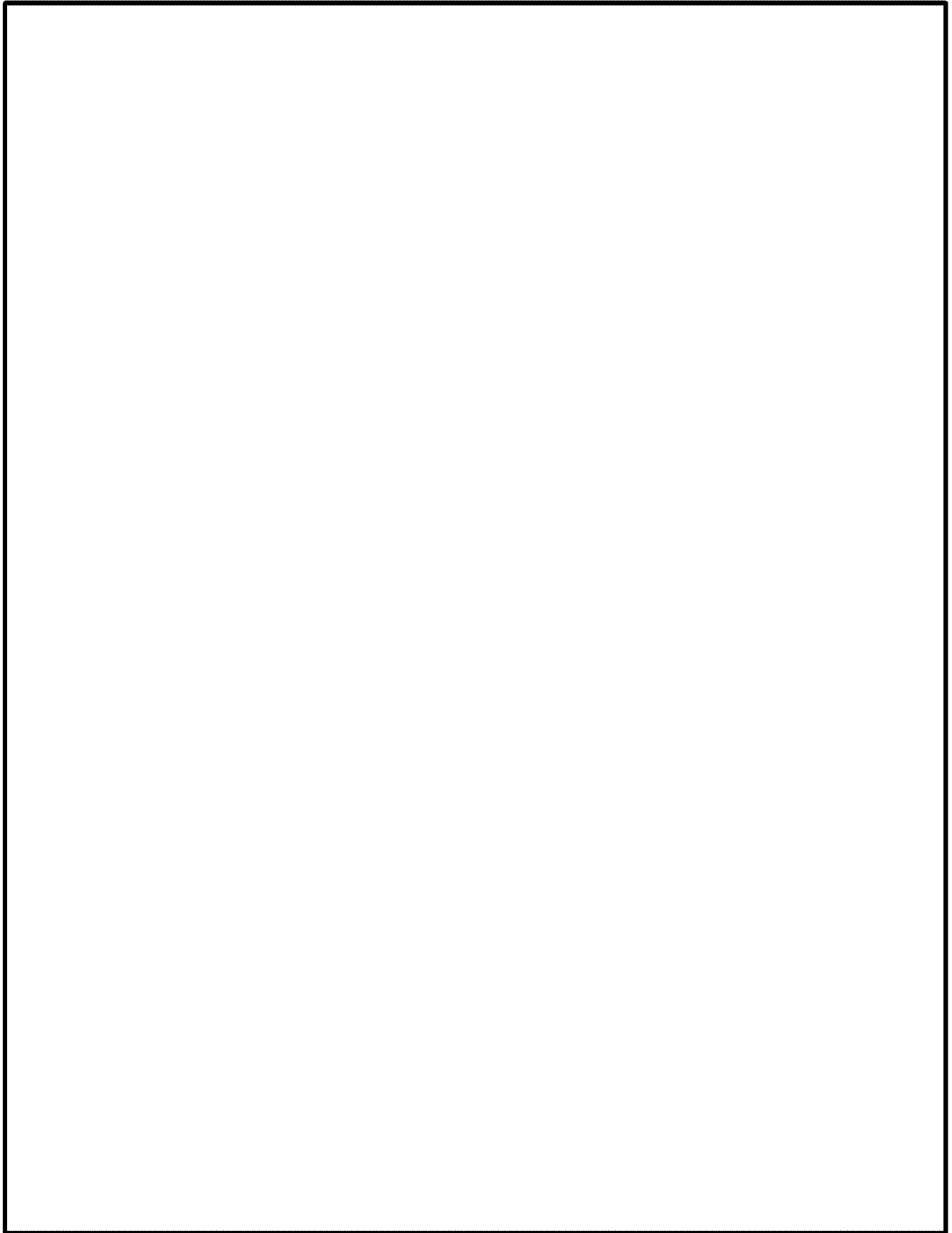


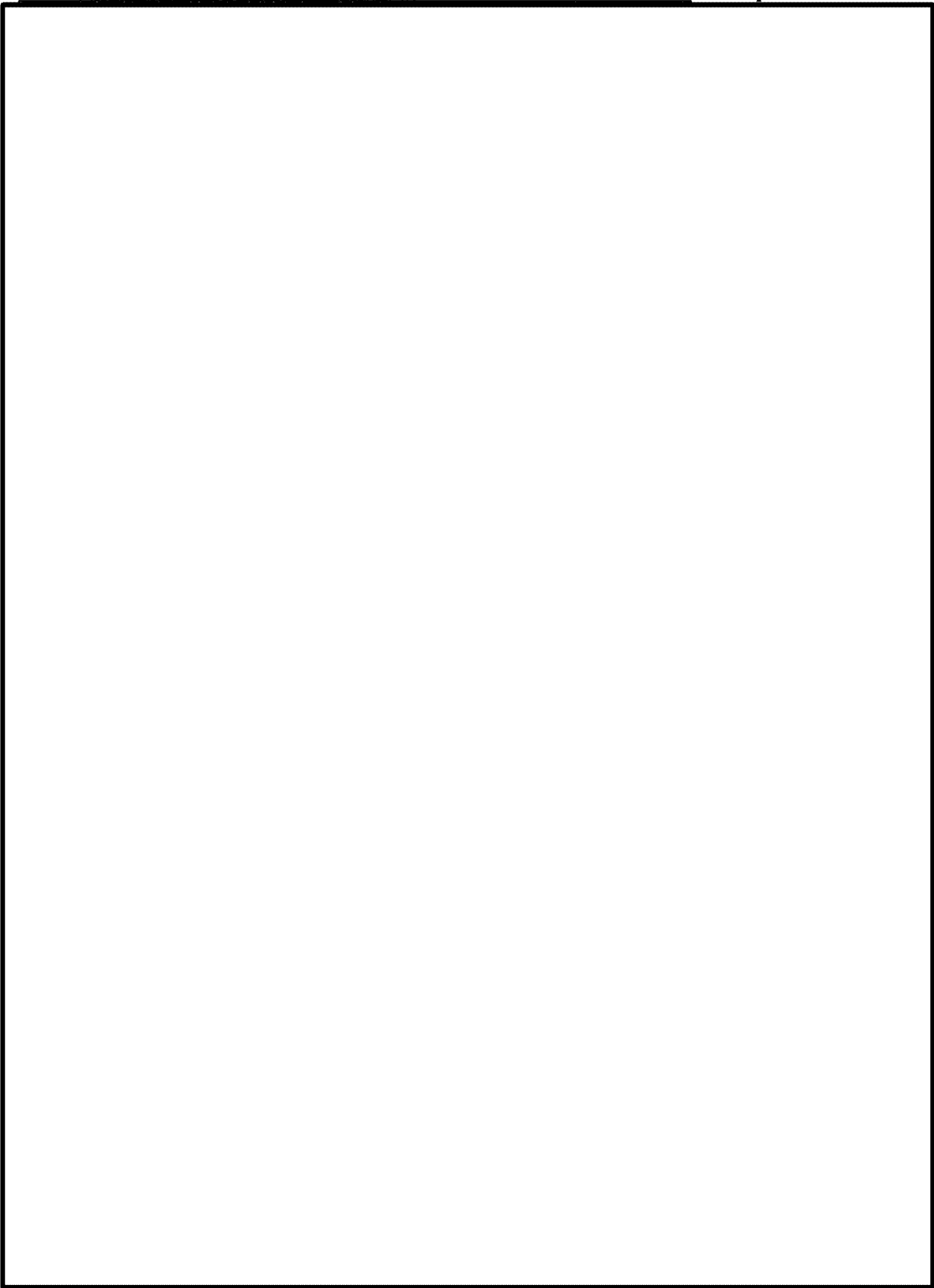




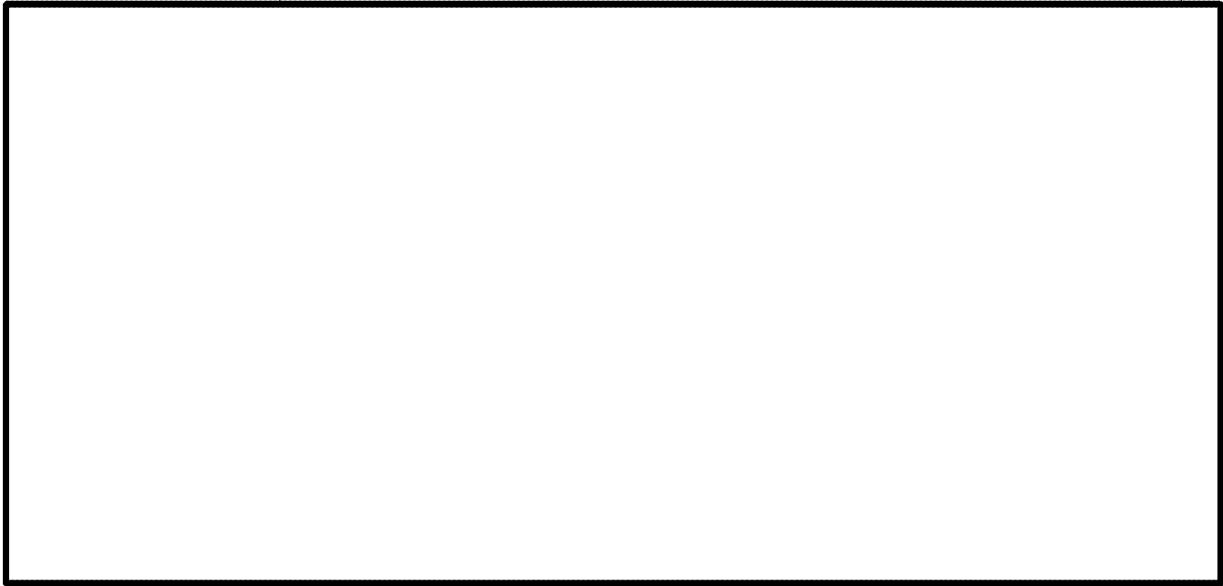


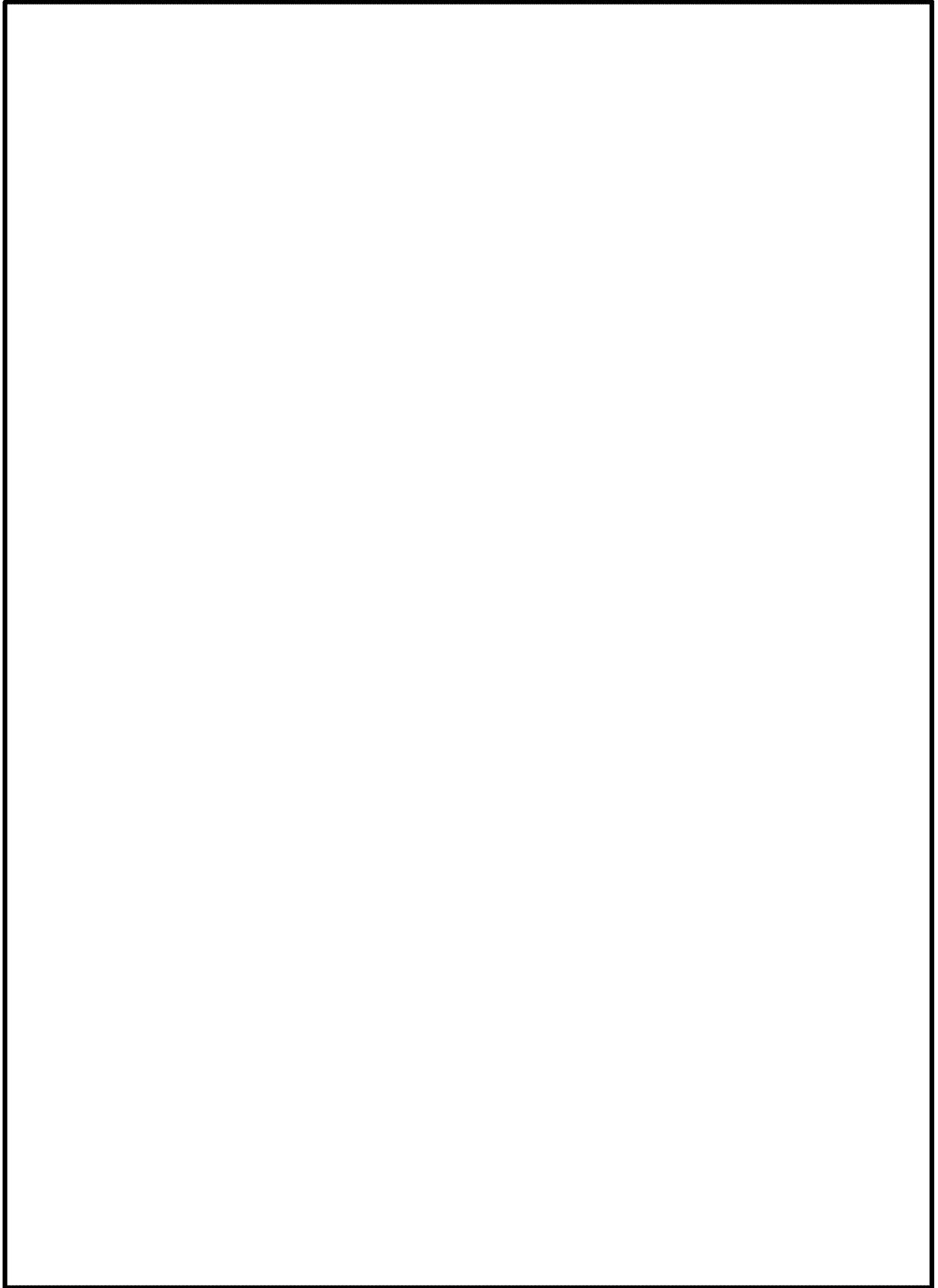


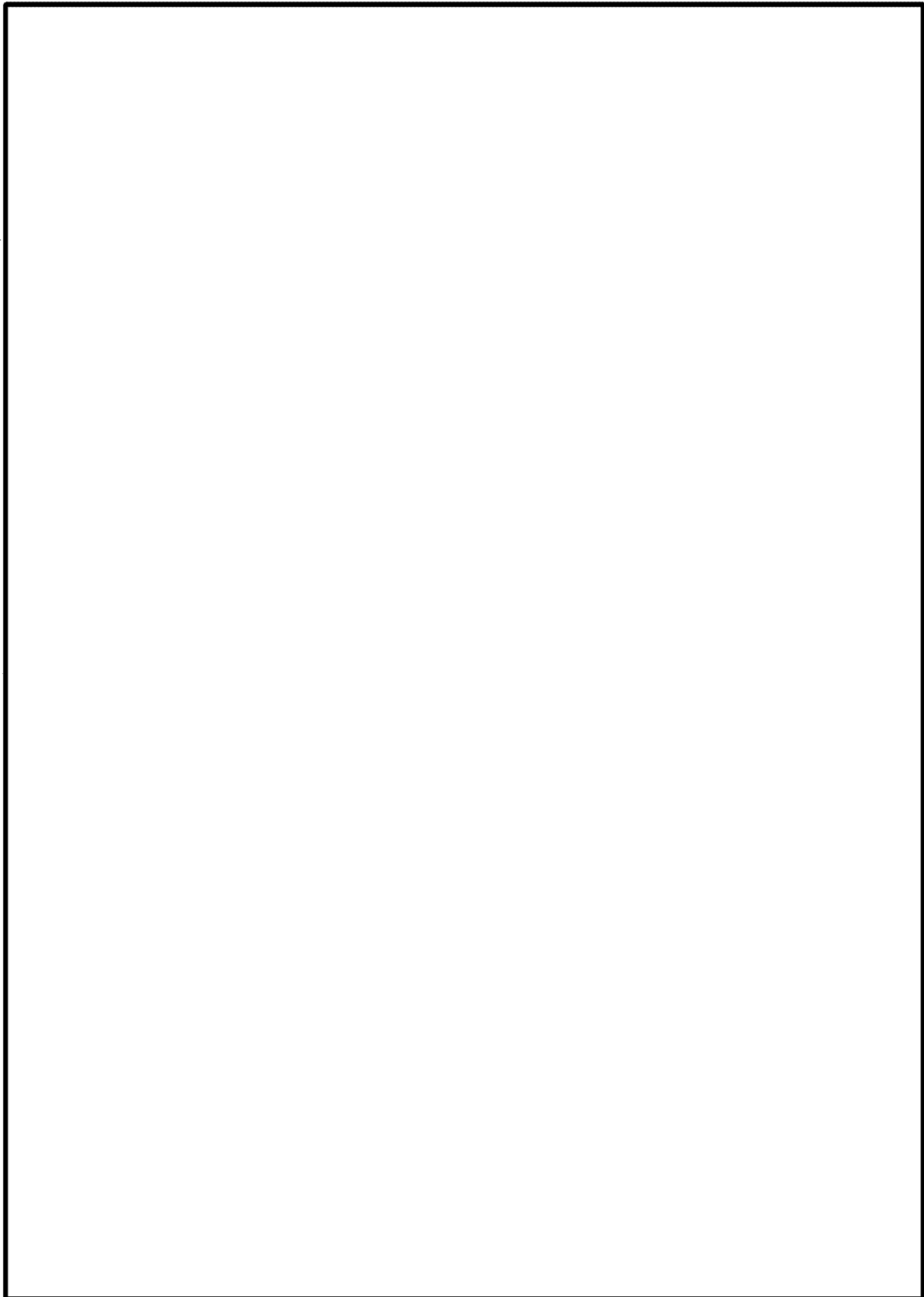


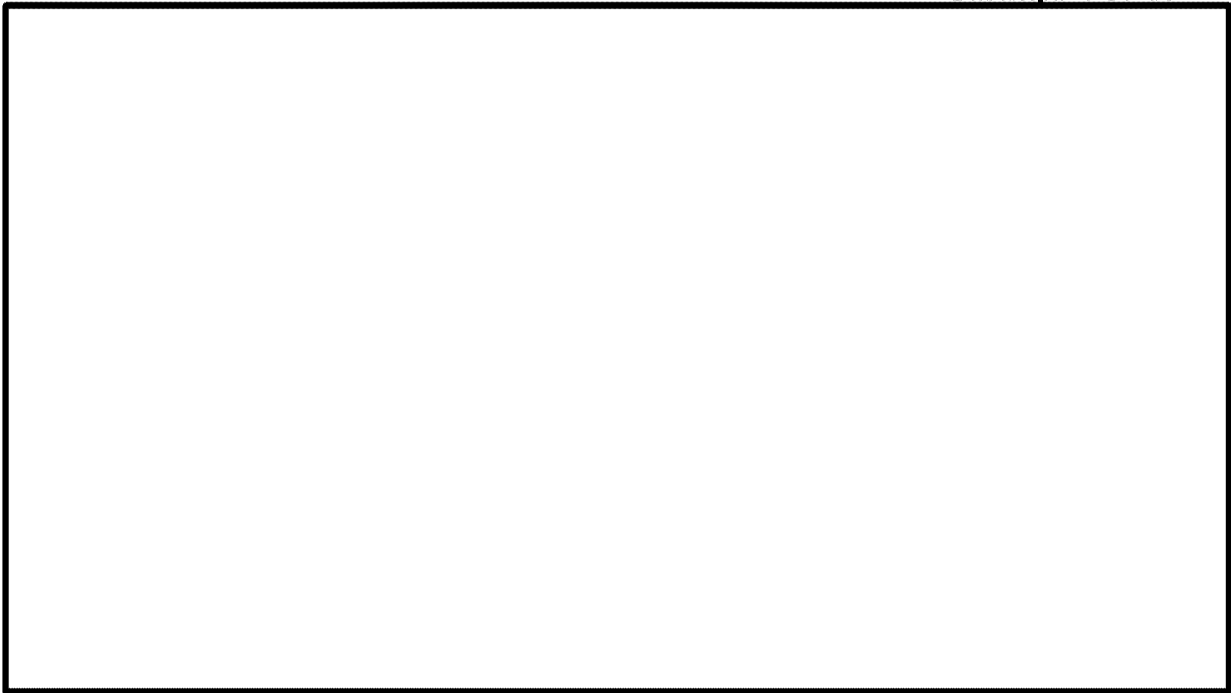


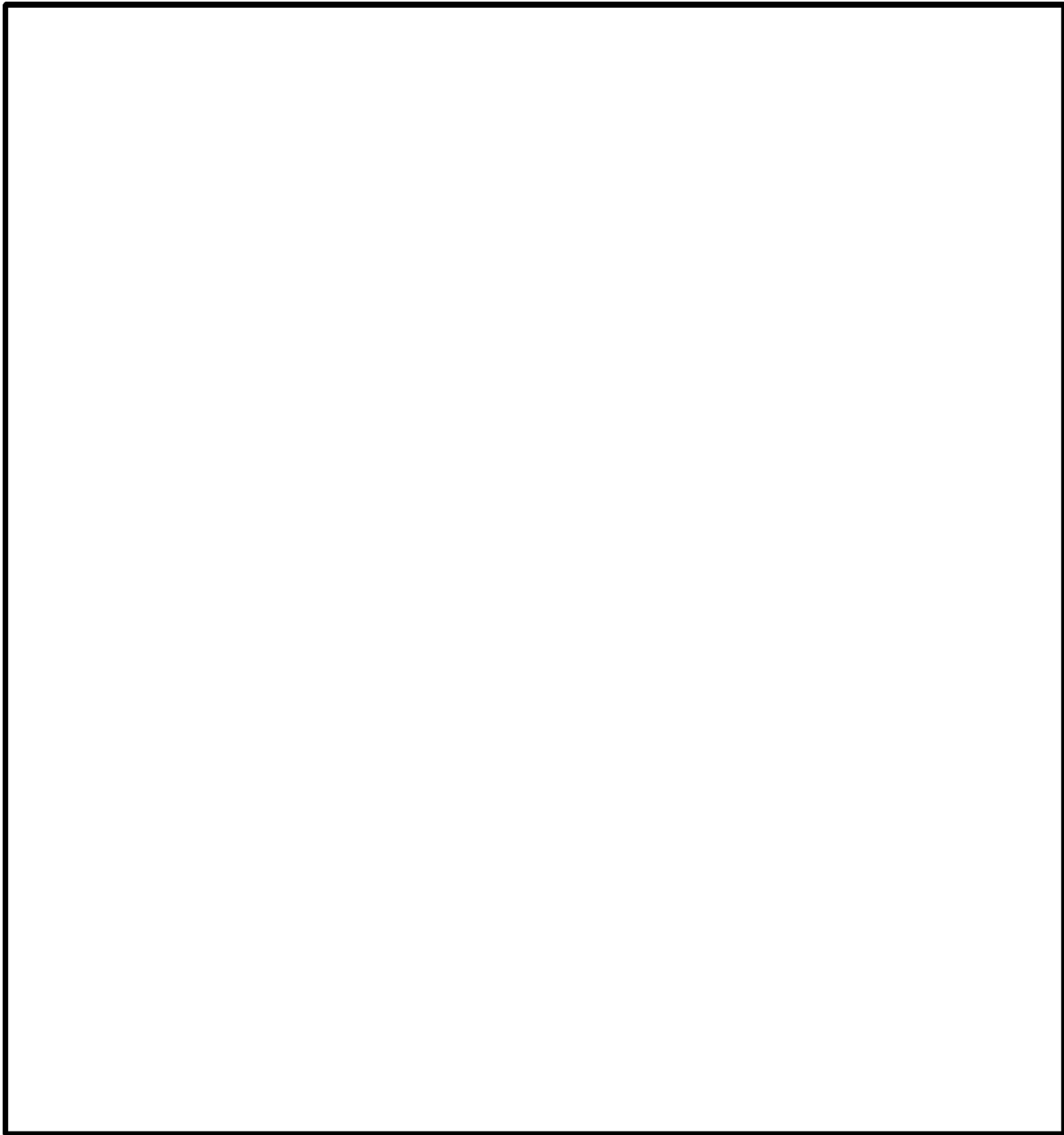


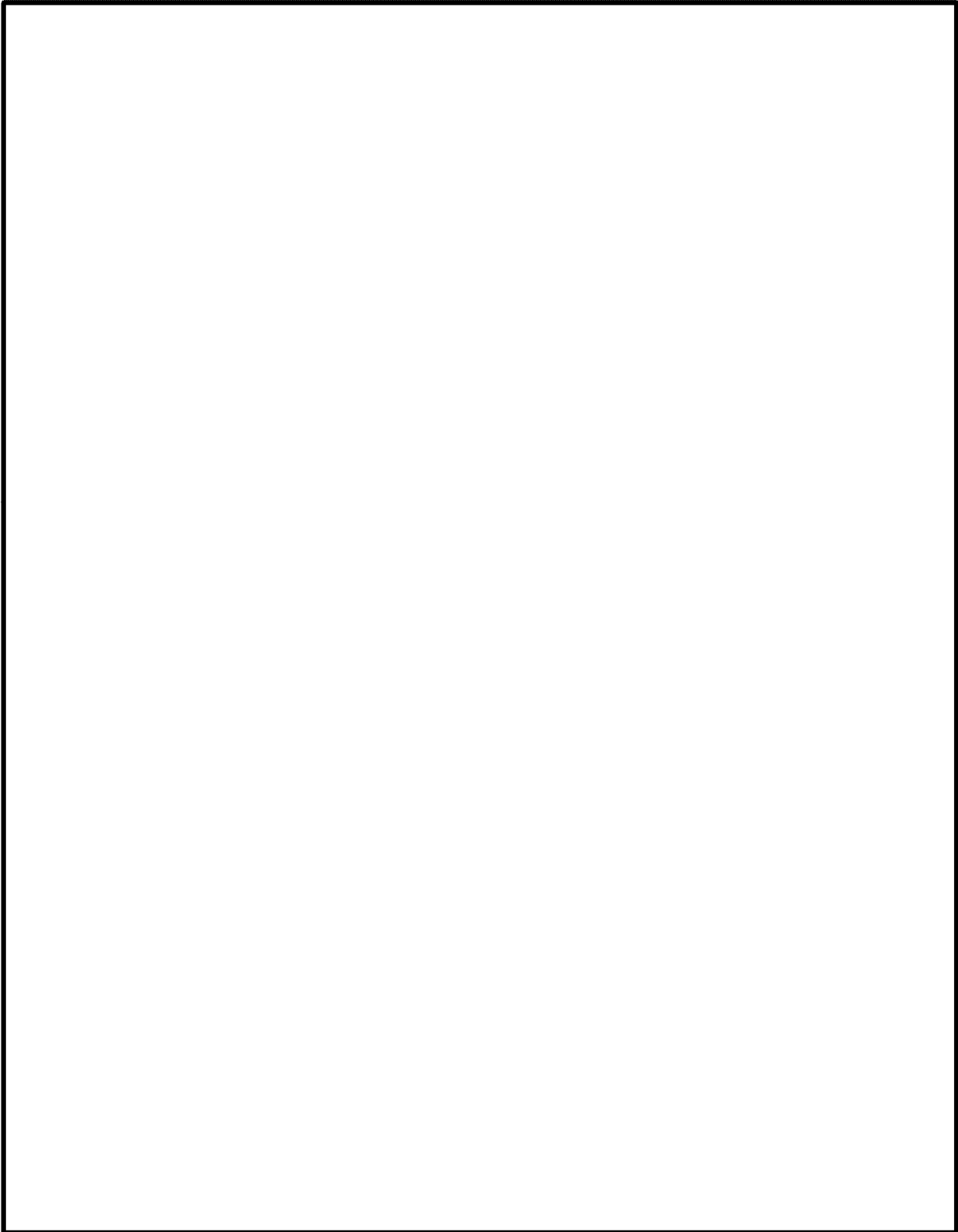


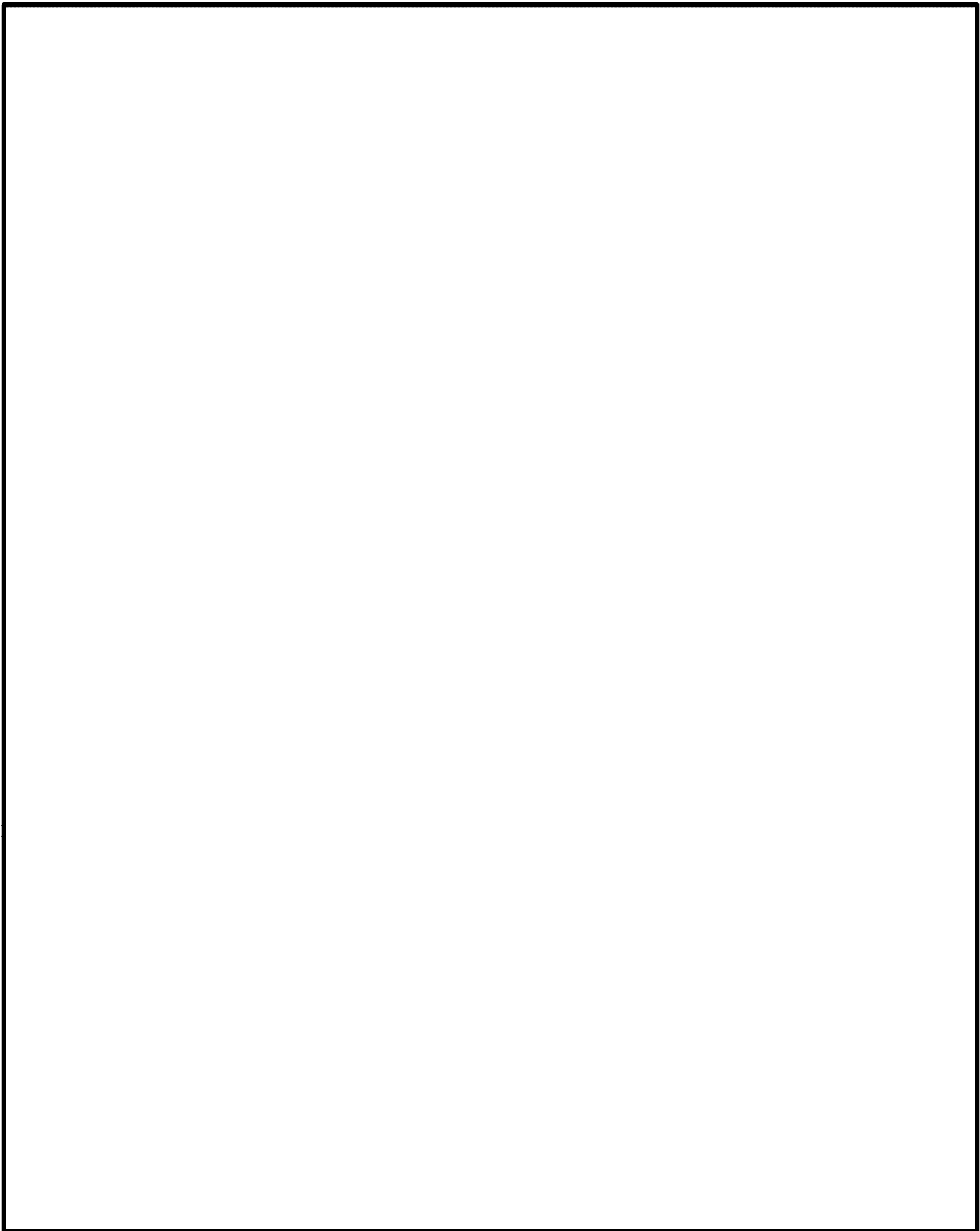


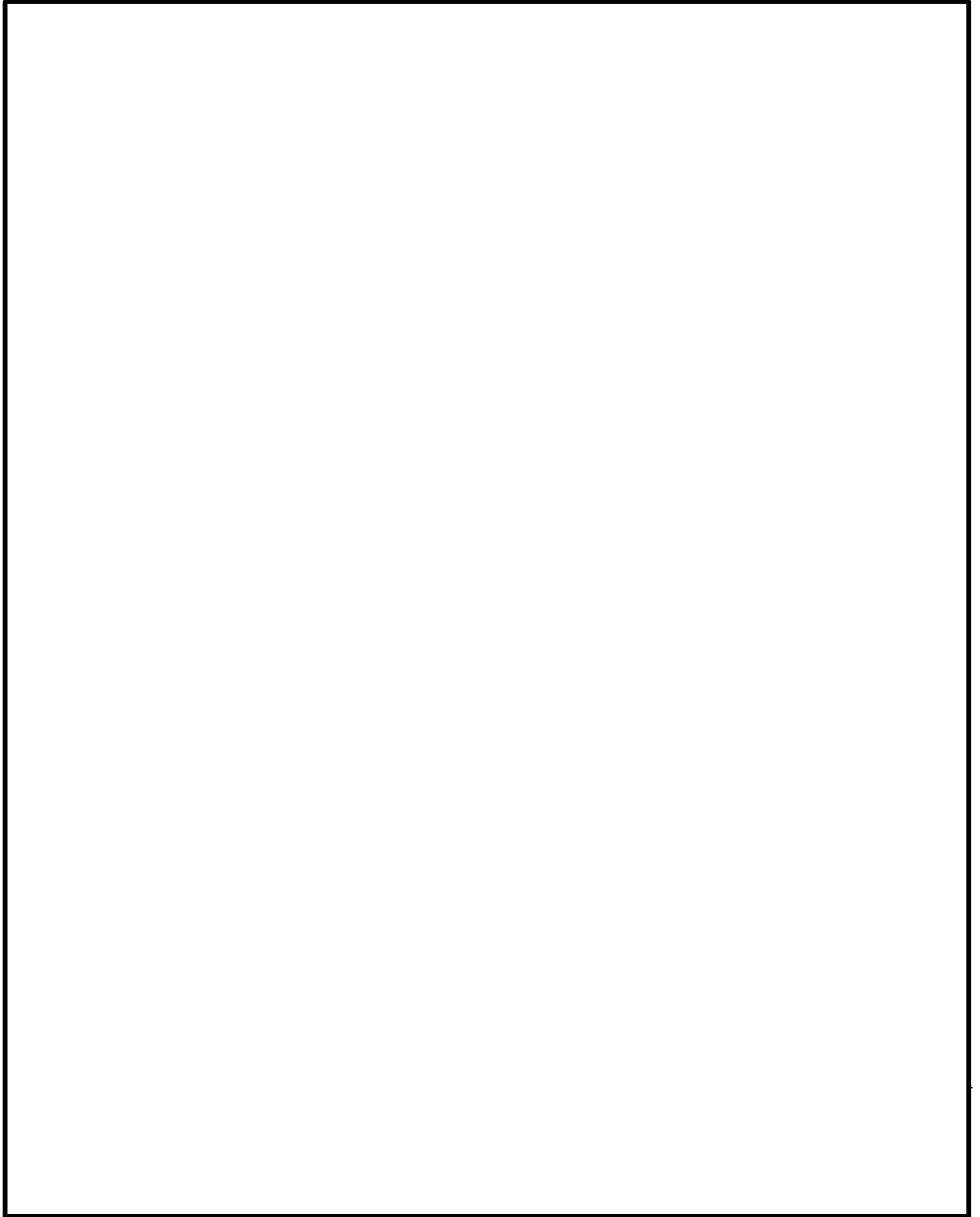




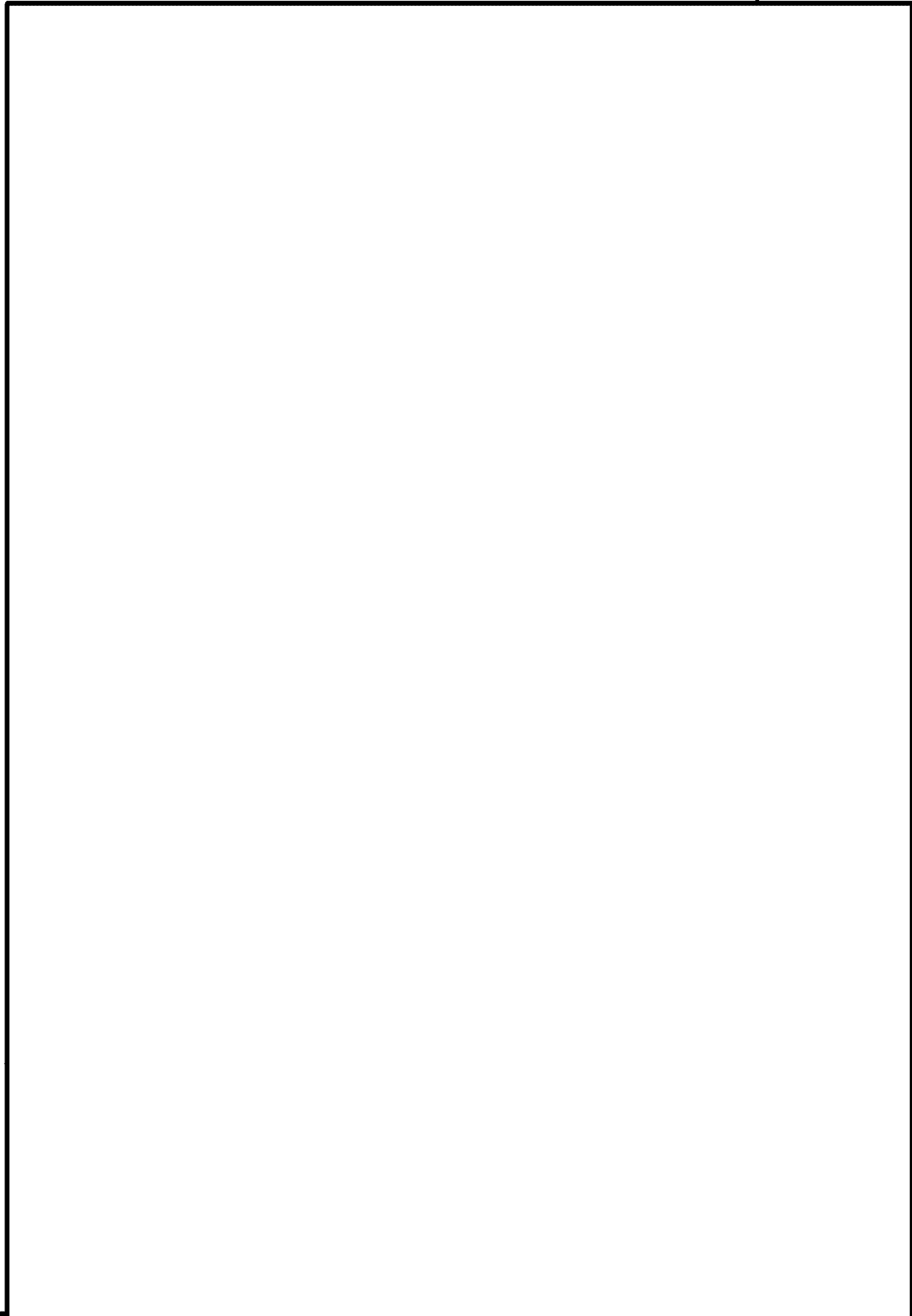


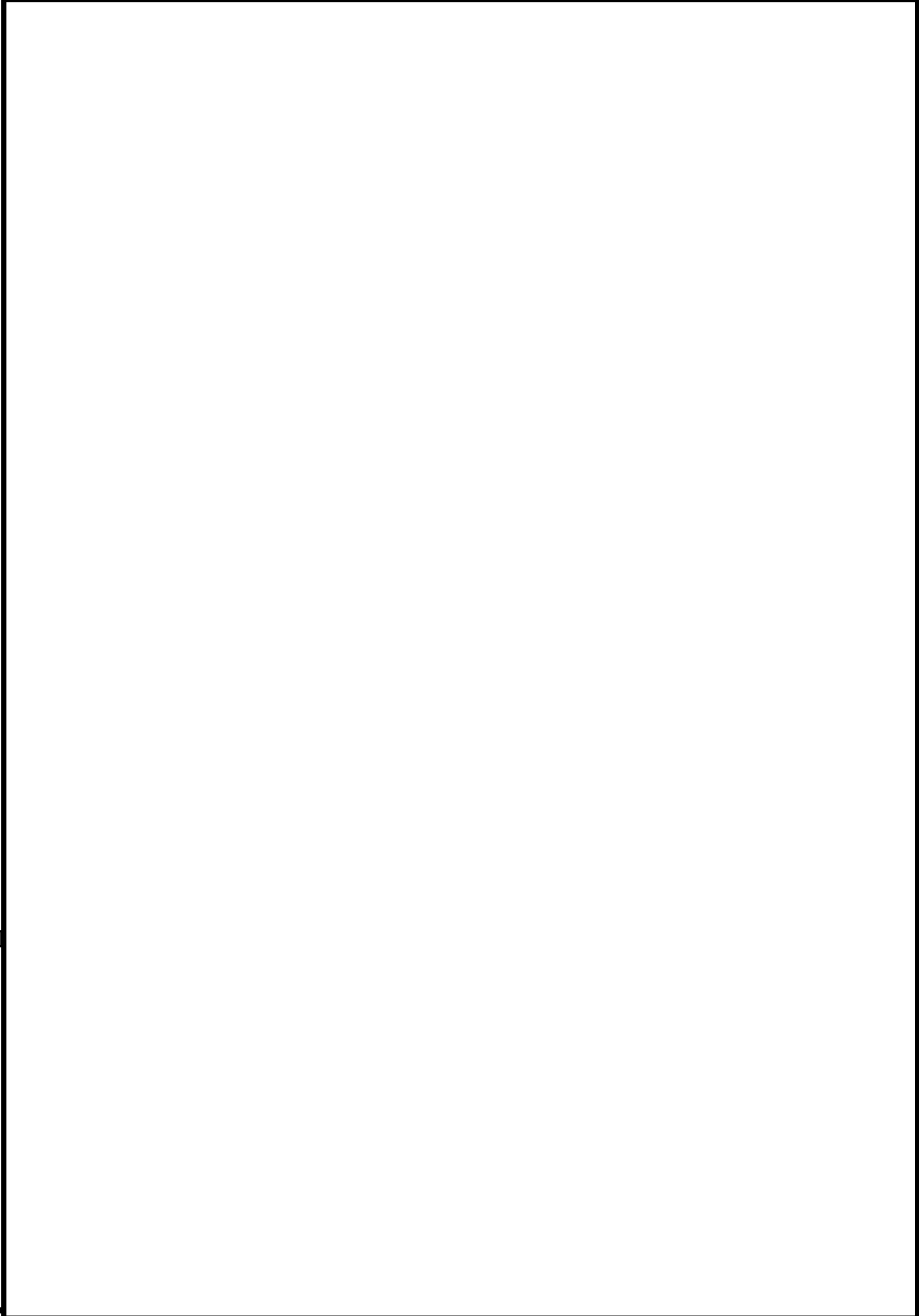


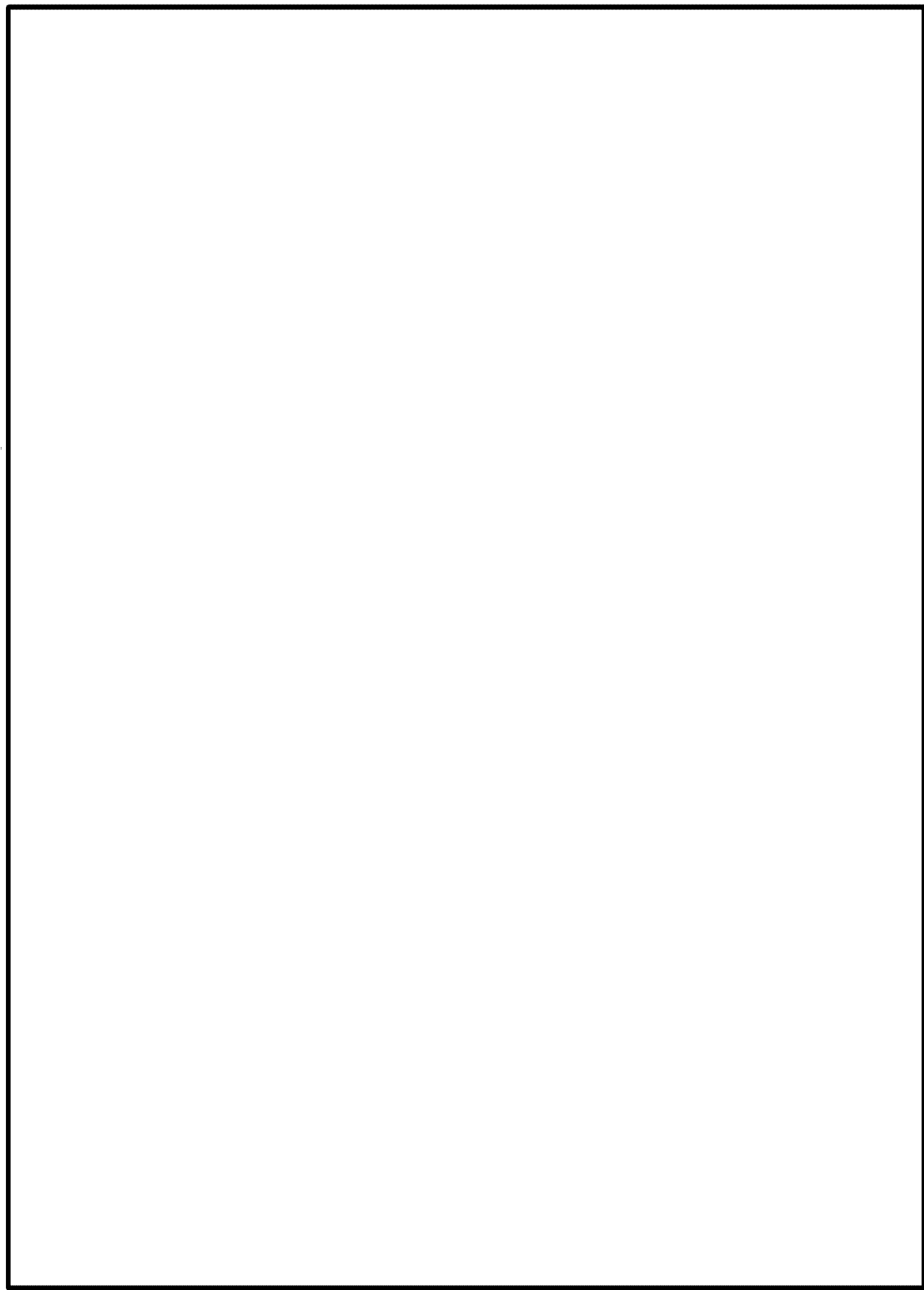


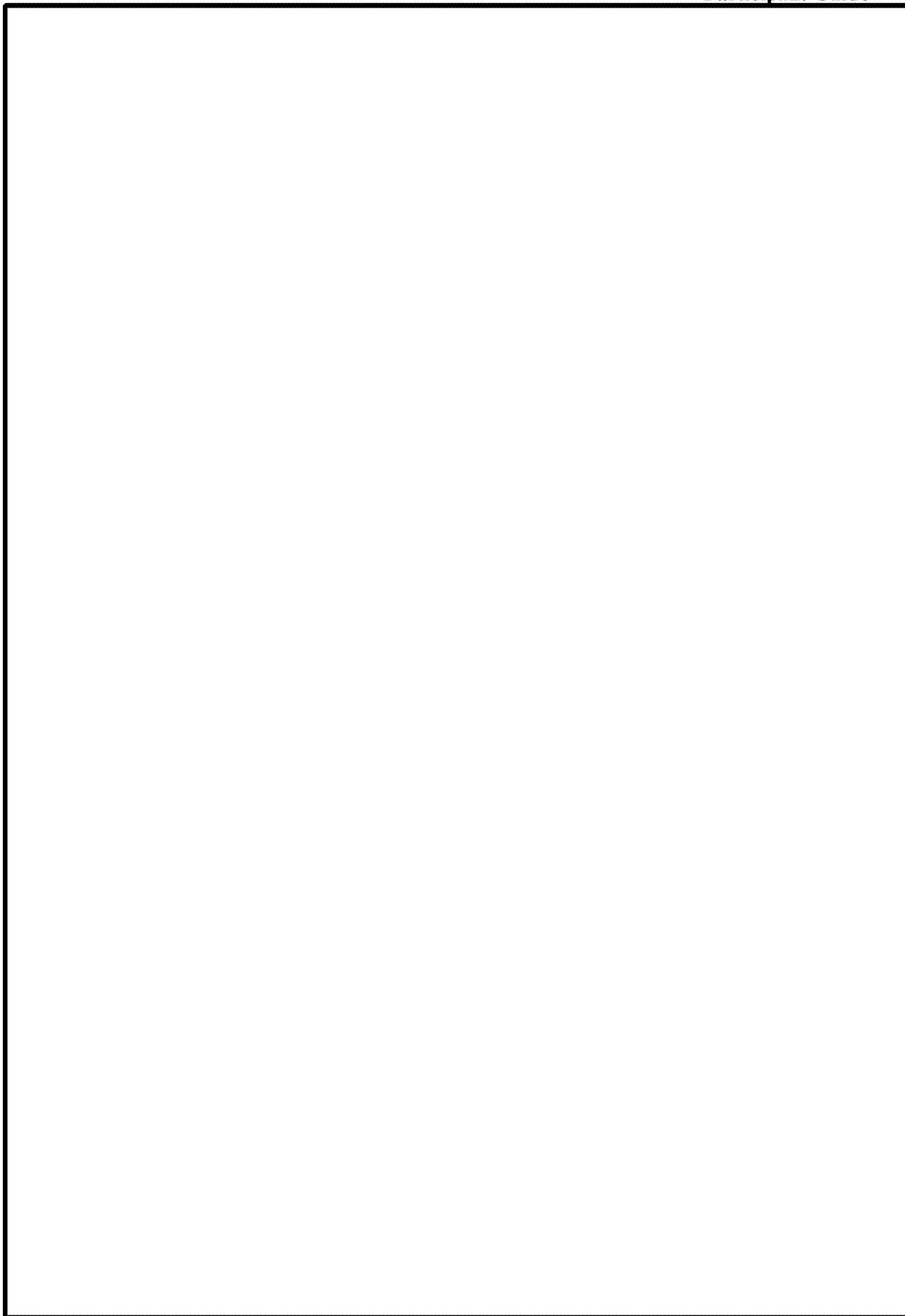


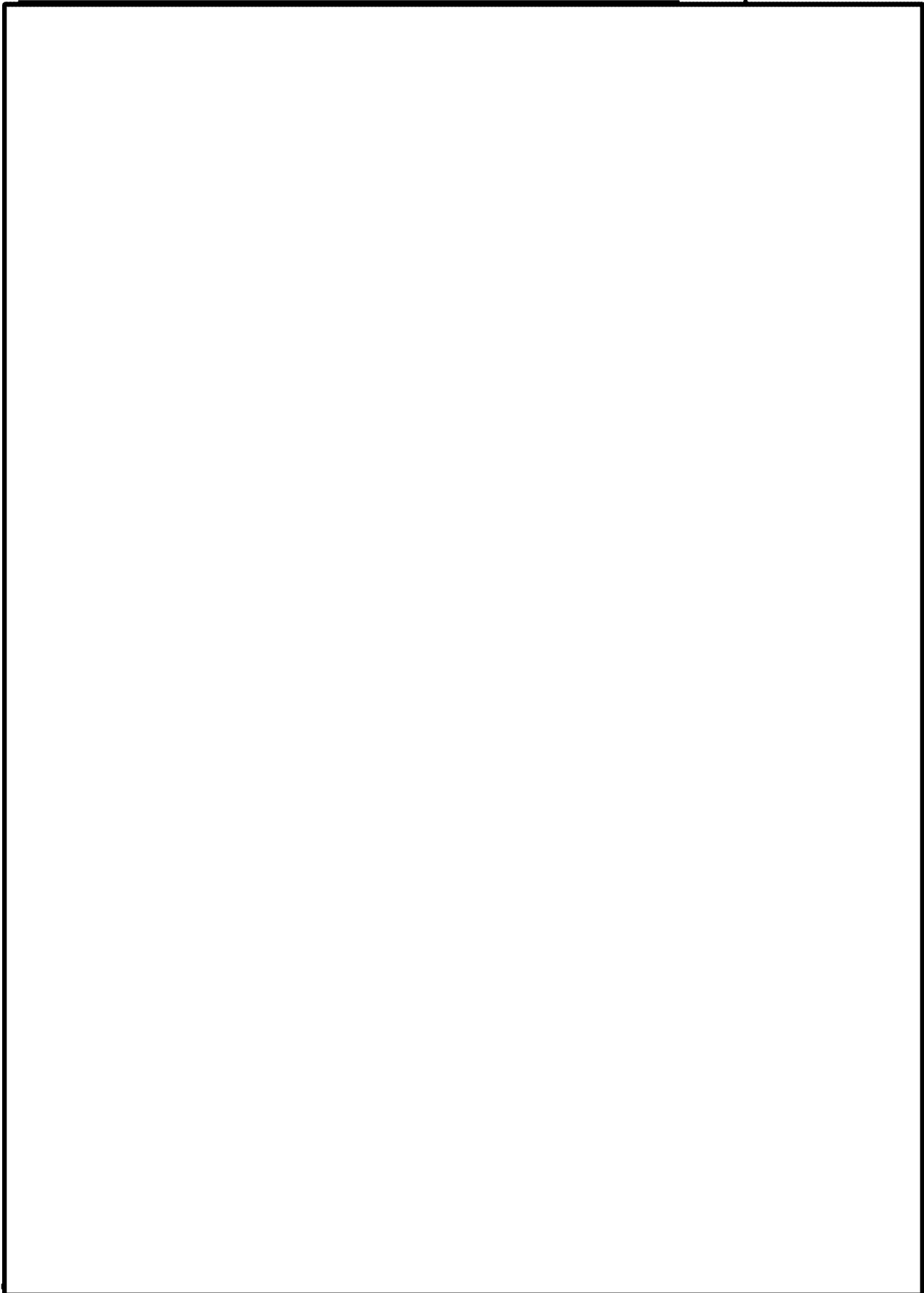


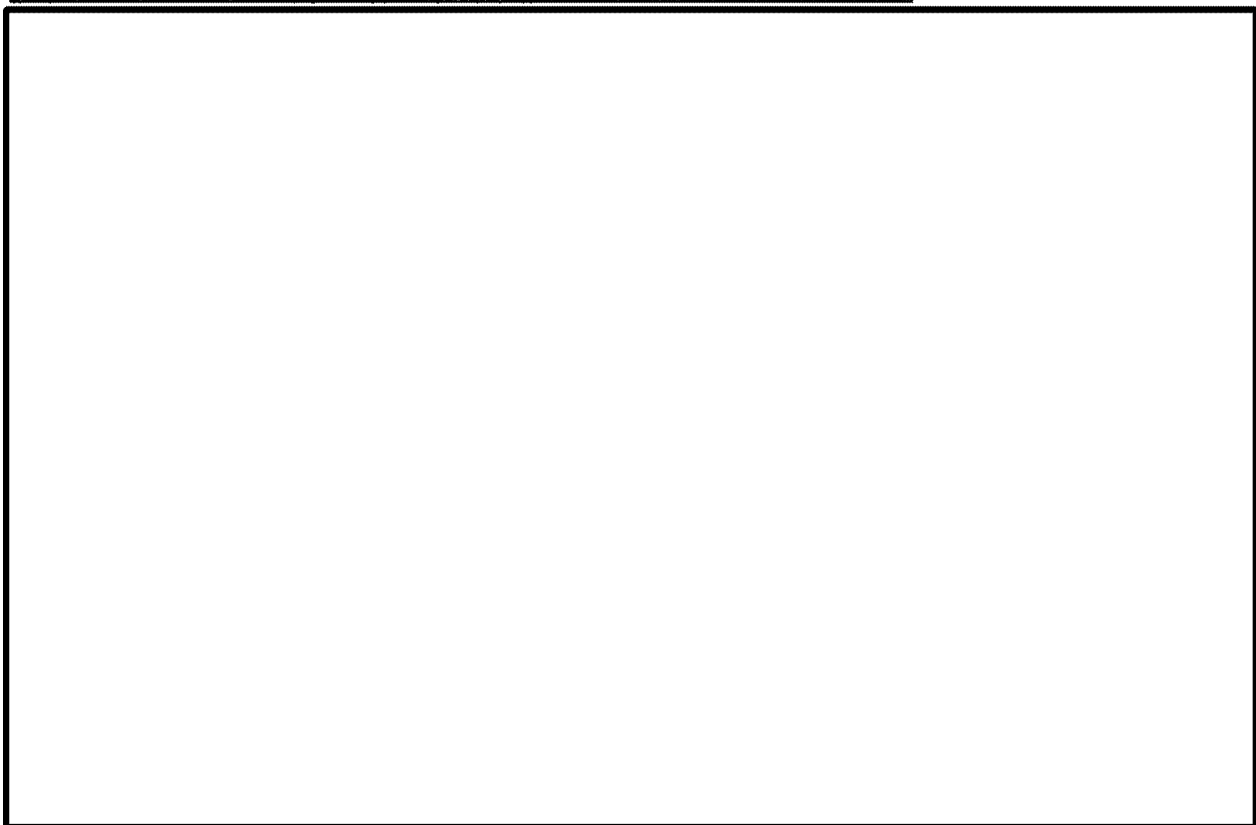


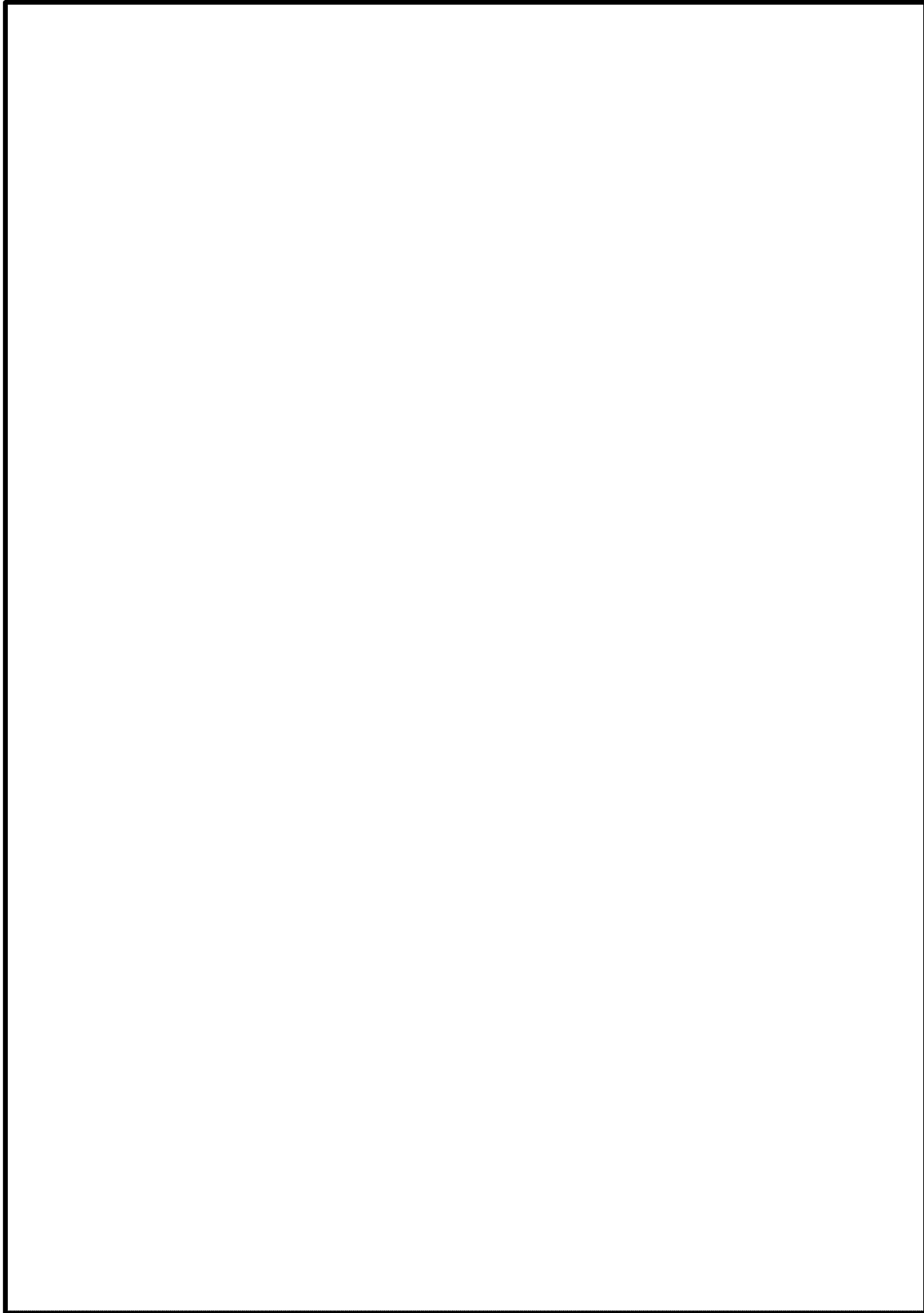


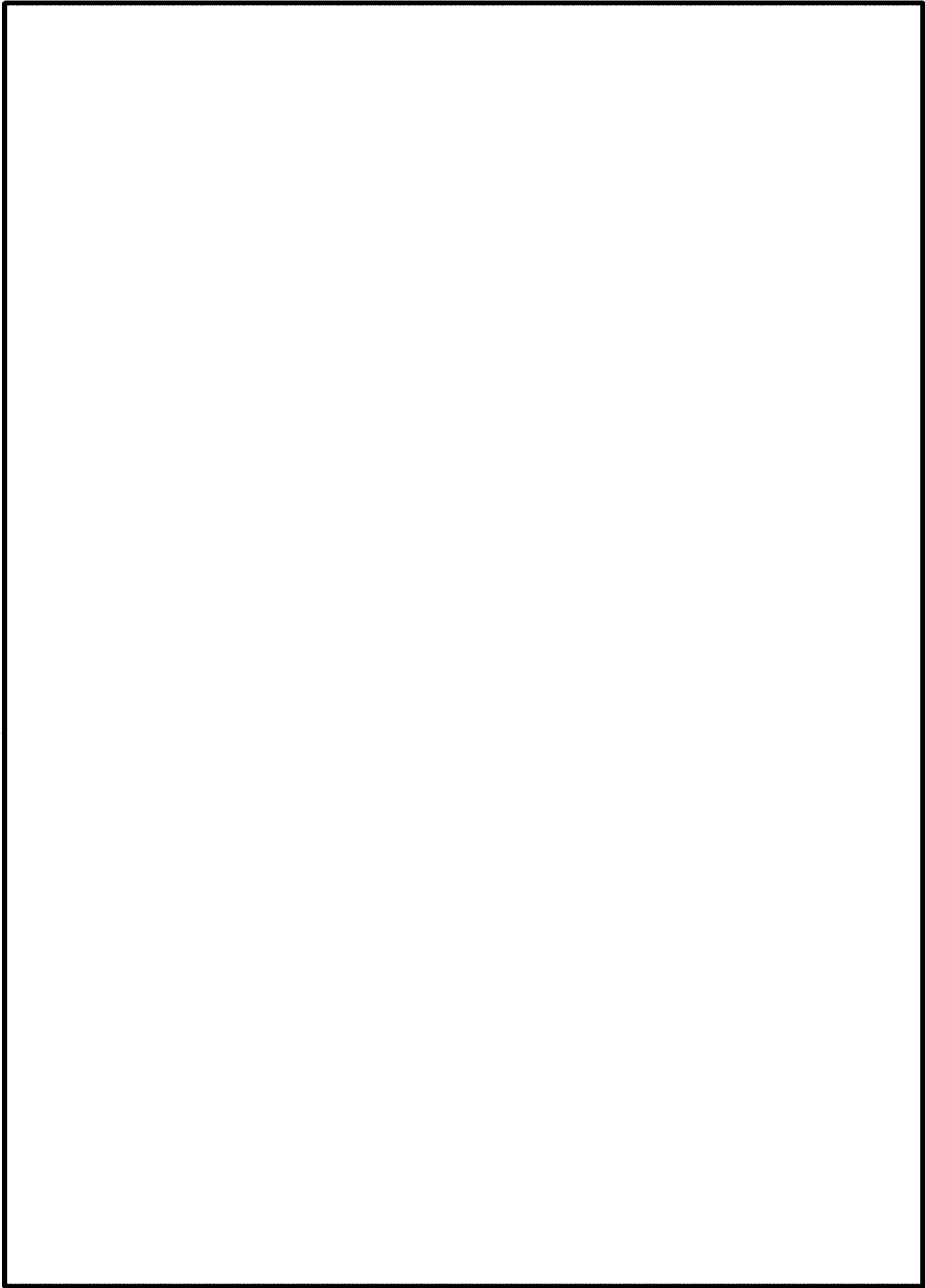




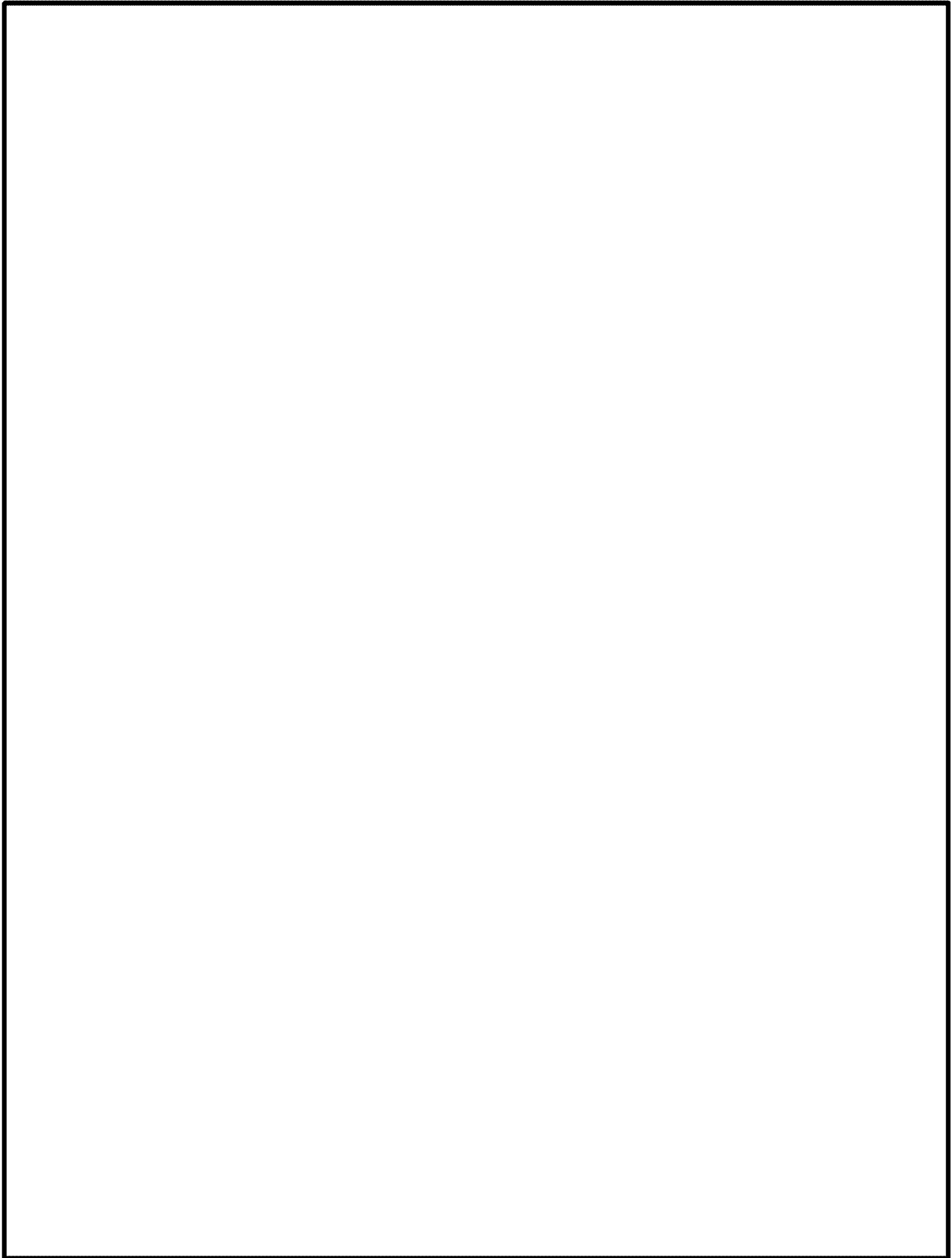


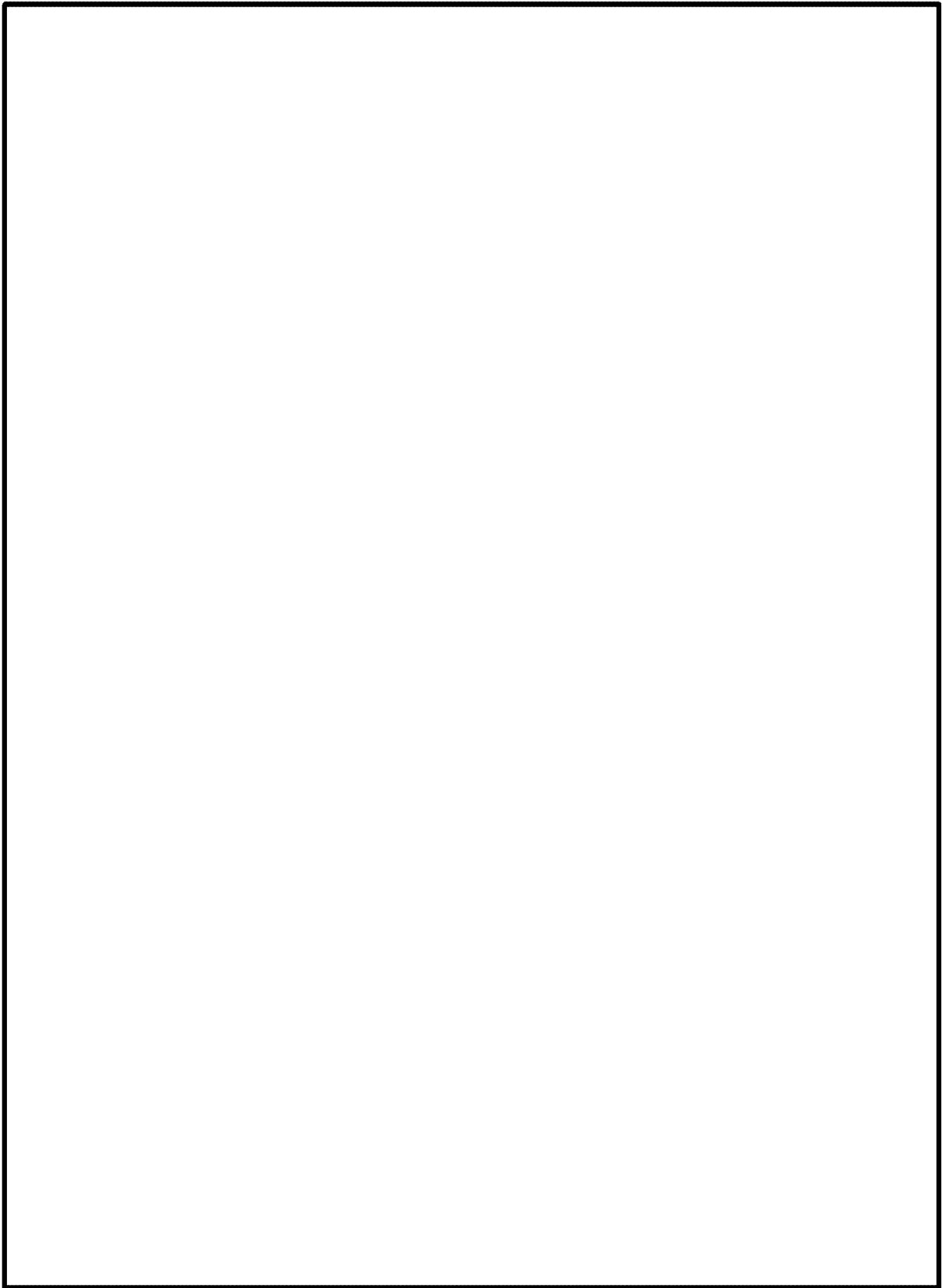


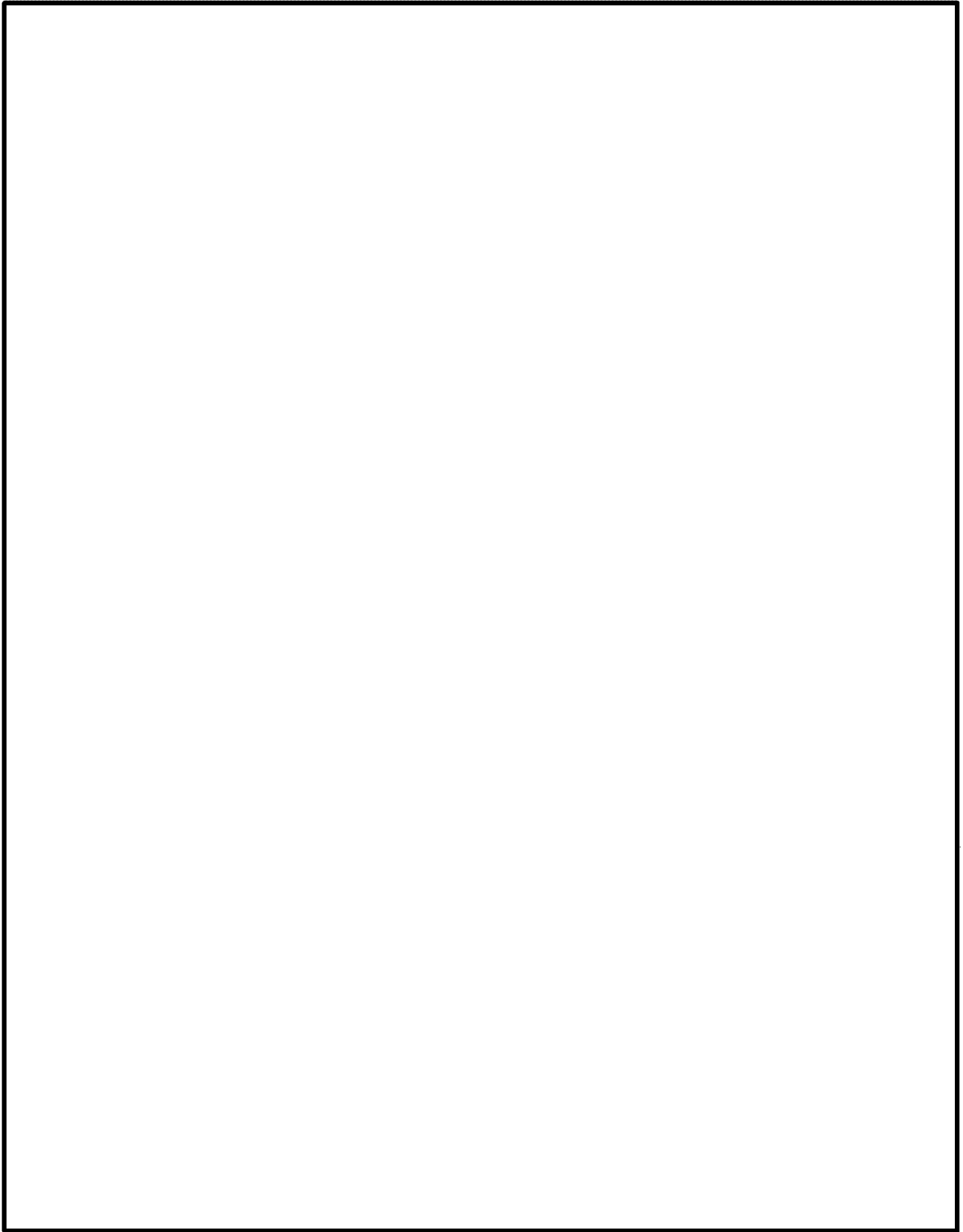




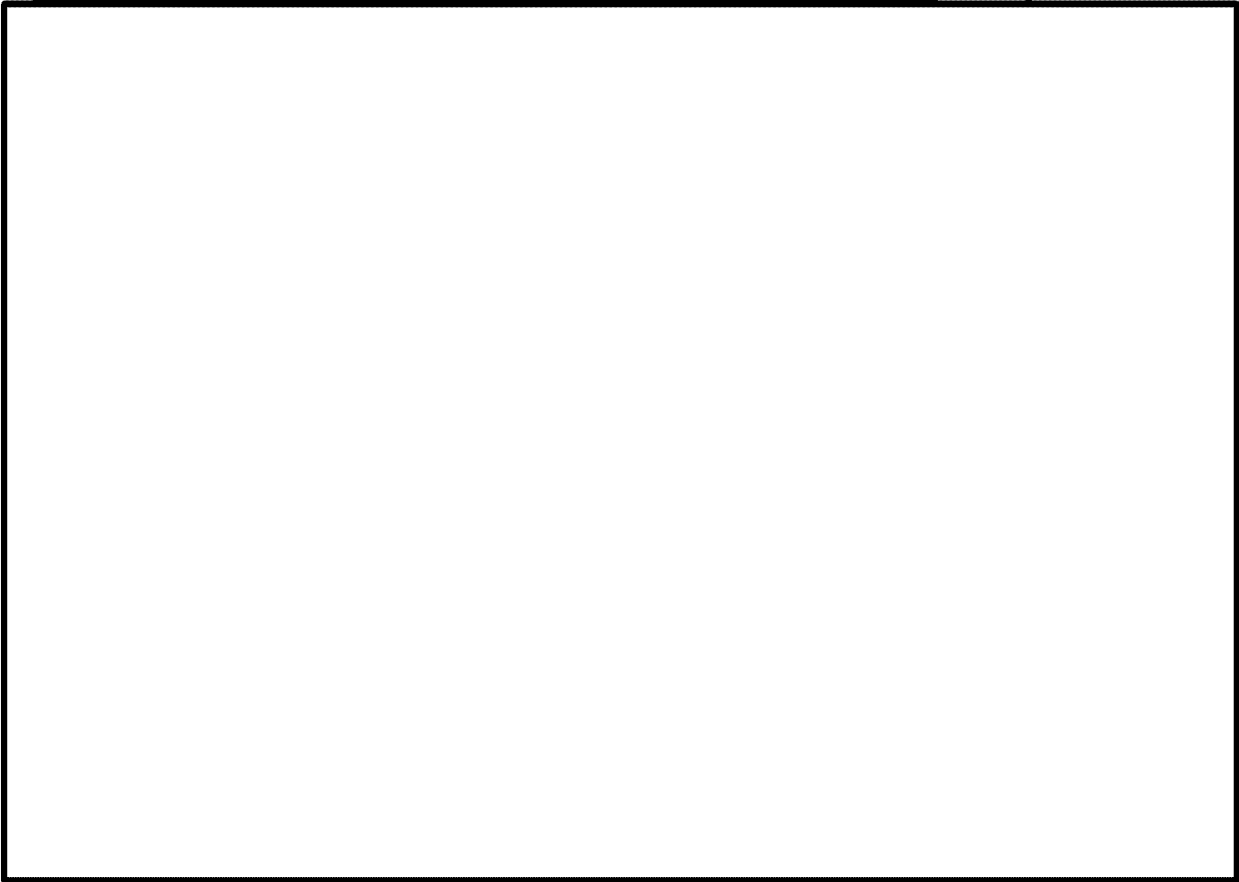


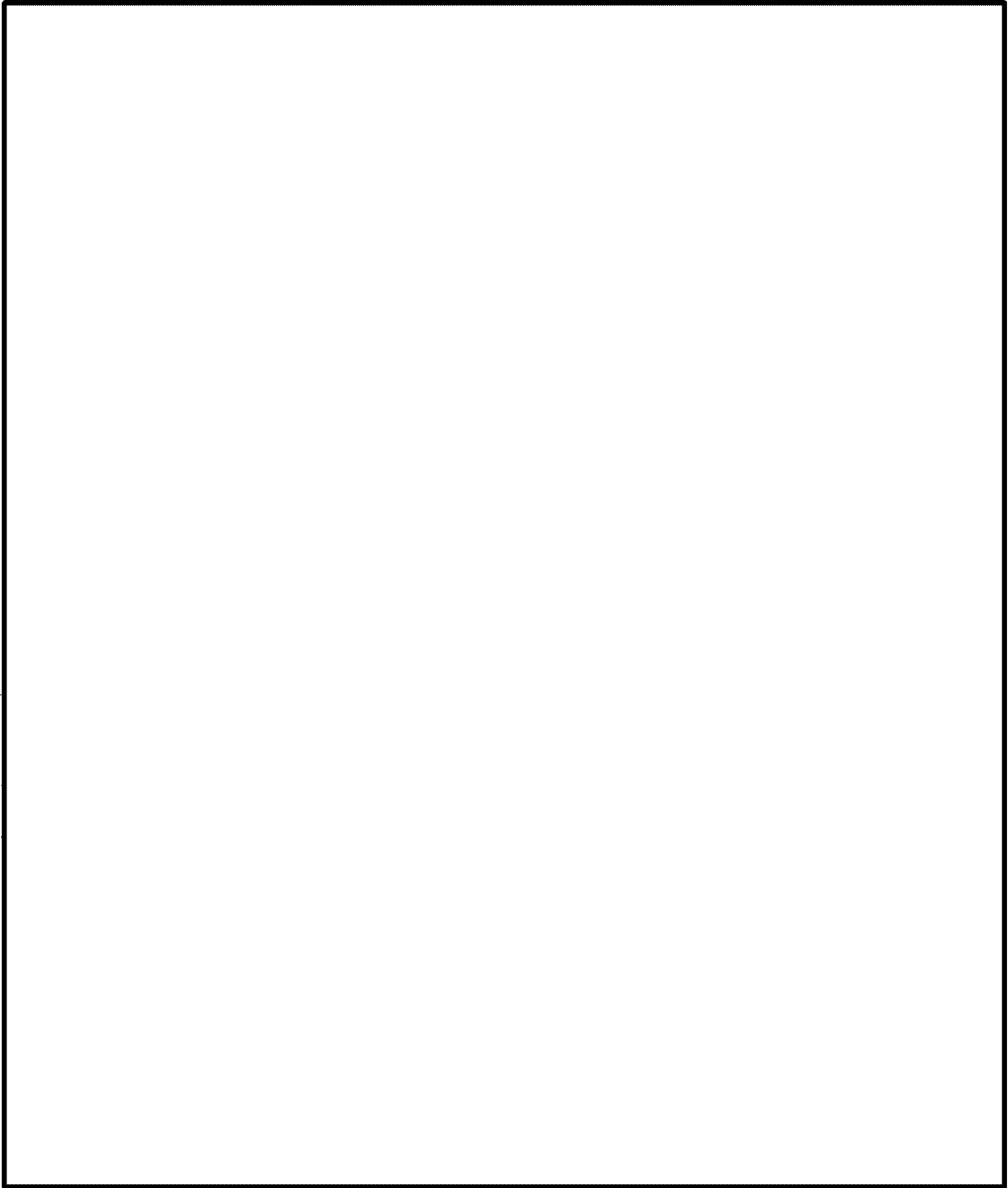


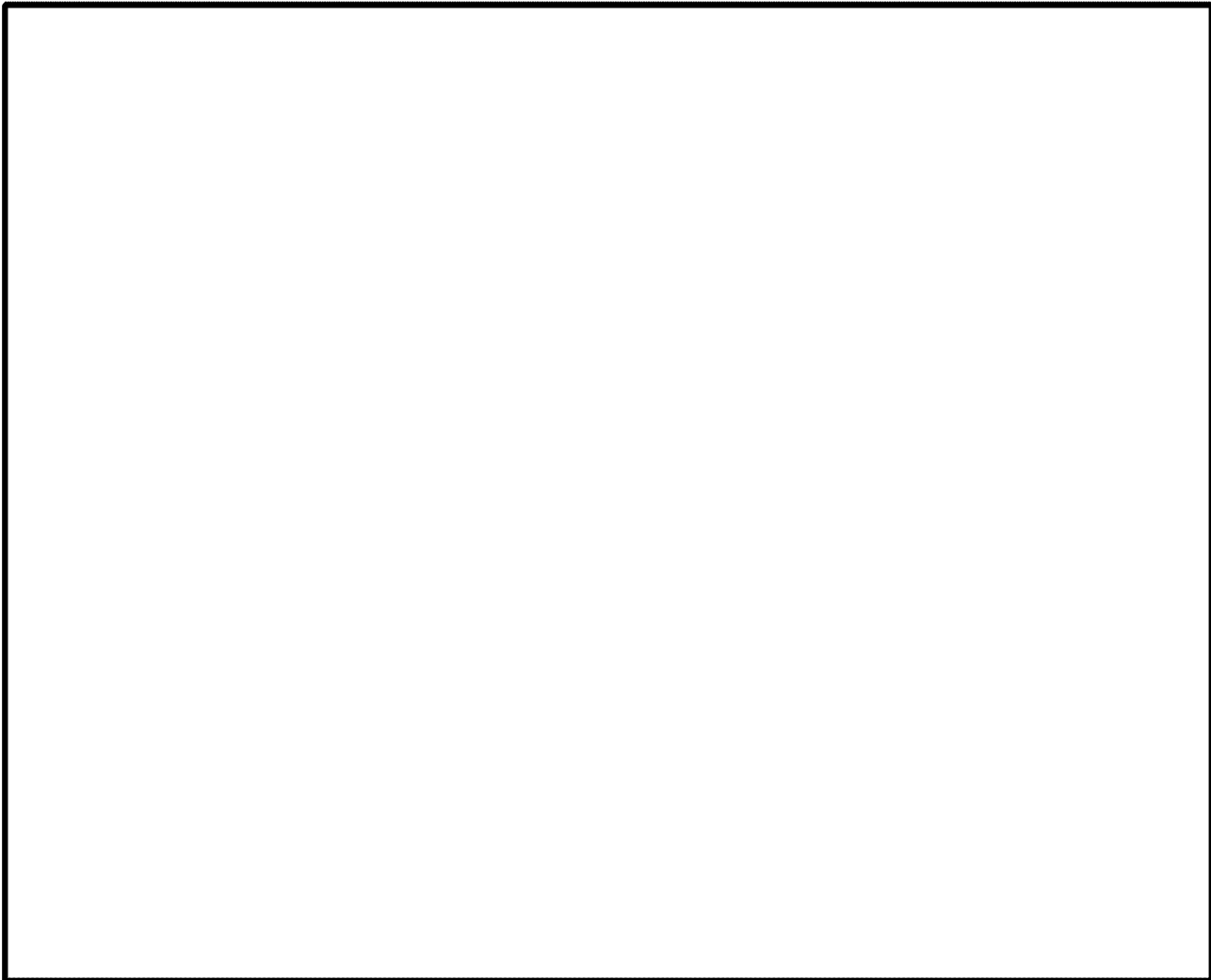












# **U.S. Citizenship and Immigration Services**



## **Field Operations Standard Operating Procedure Manual for Processing Form I-485 Application to Register Permanent Residence or Adjust Status**

**Version 3.0**

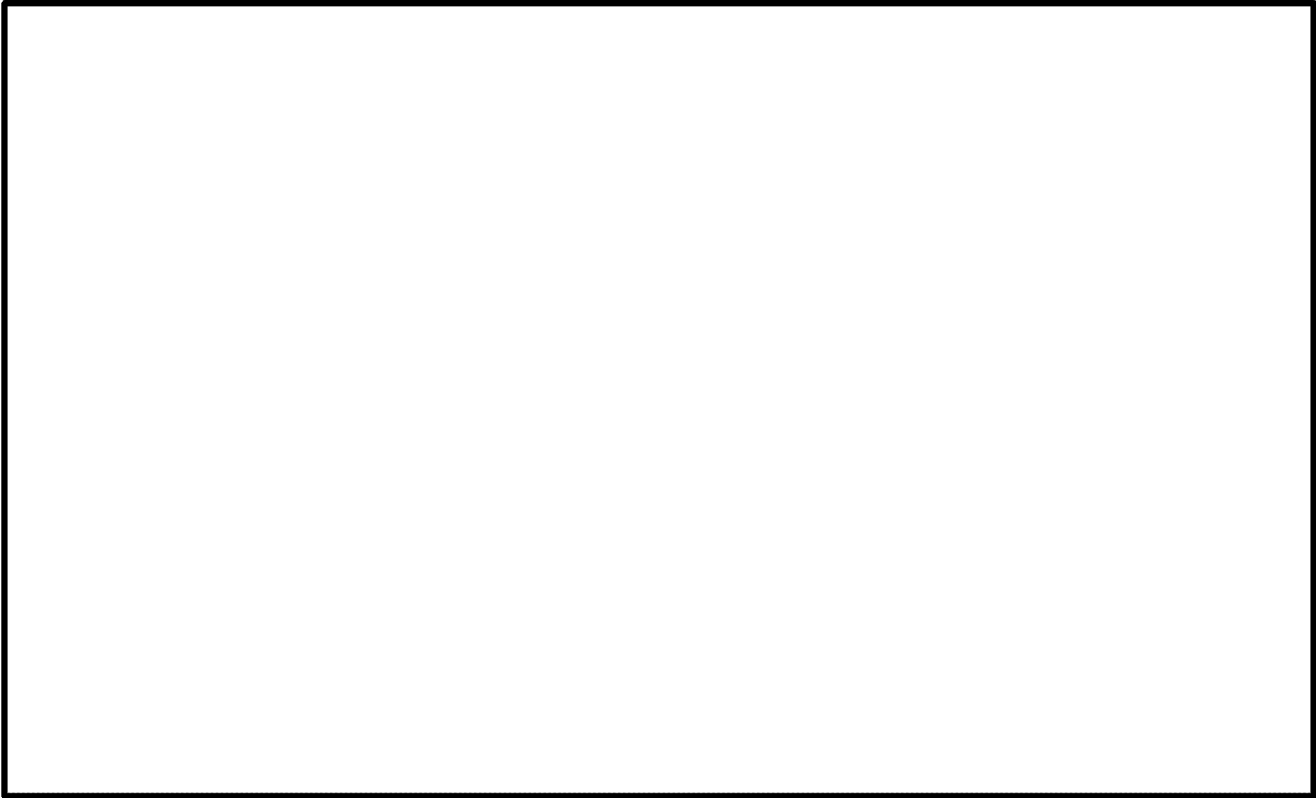
**January 2, 2013**

**U.S. Citizenship and Immigration Services  
Field Operations Directorate  
111 Massachusetts Avenue, NW Second Floor  
Washington, D.C. 20529-2030**



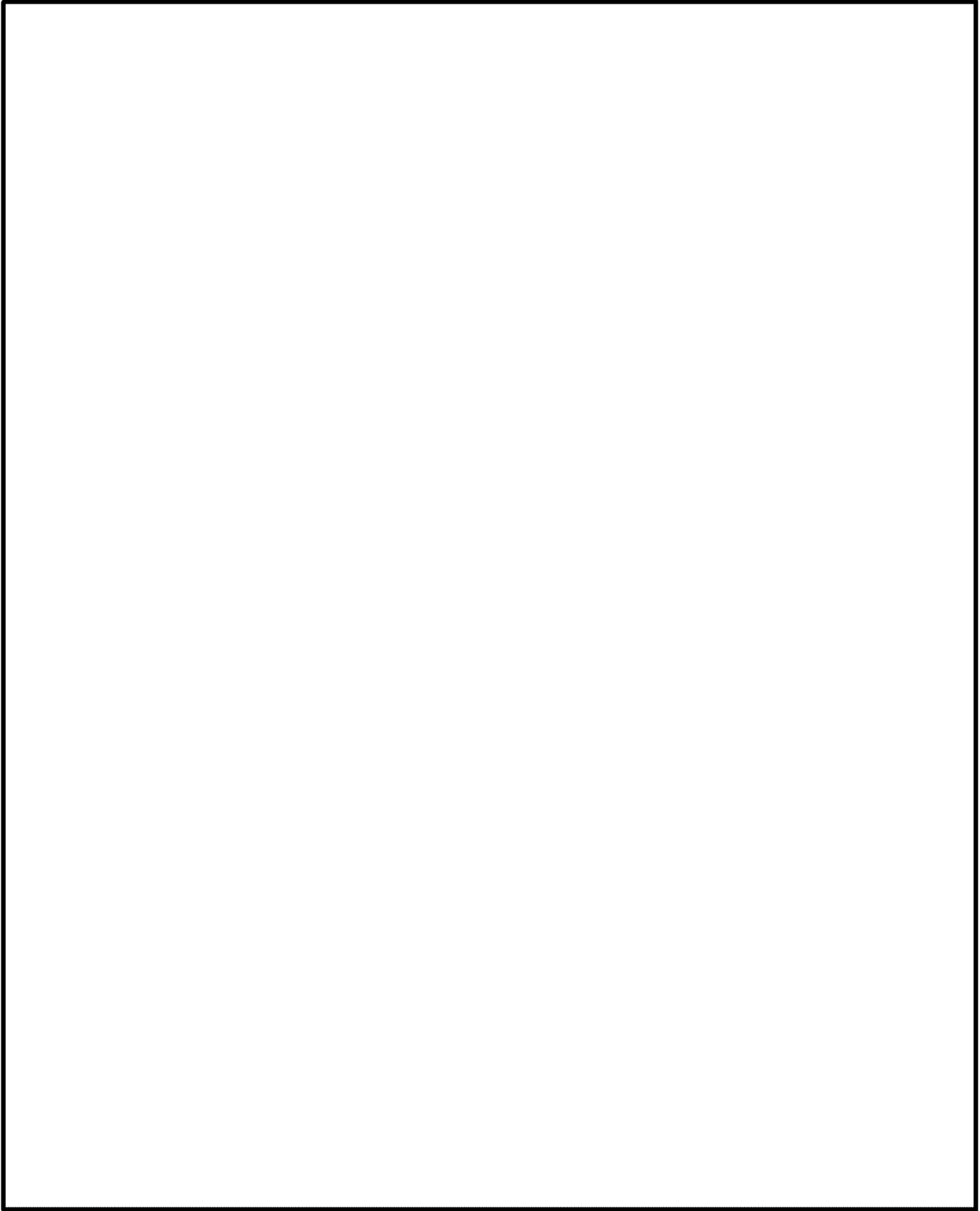


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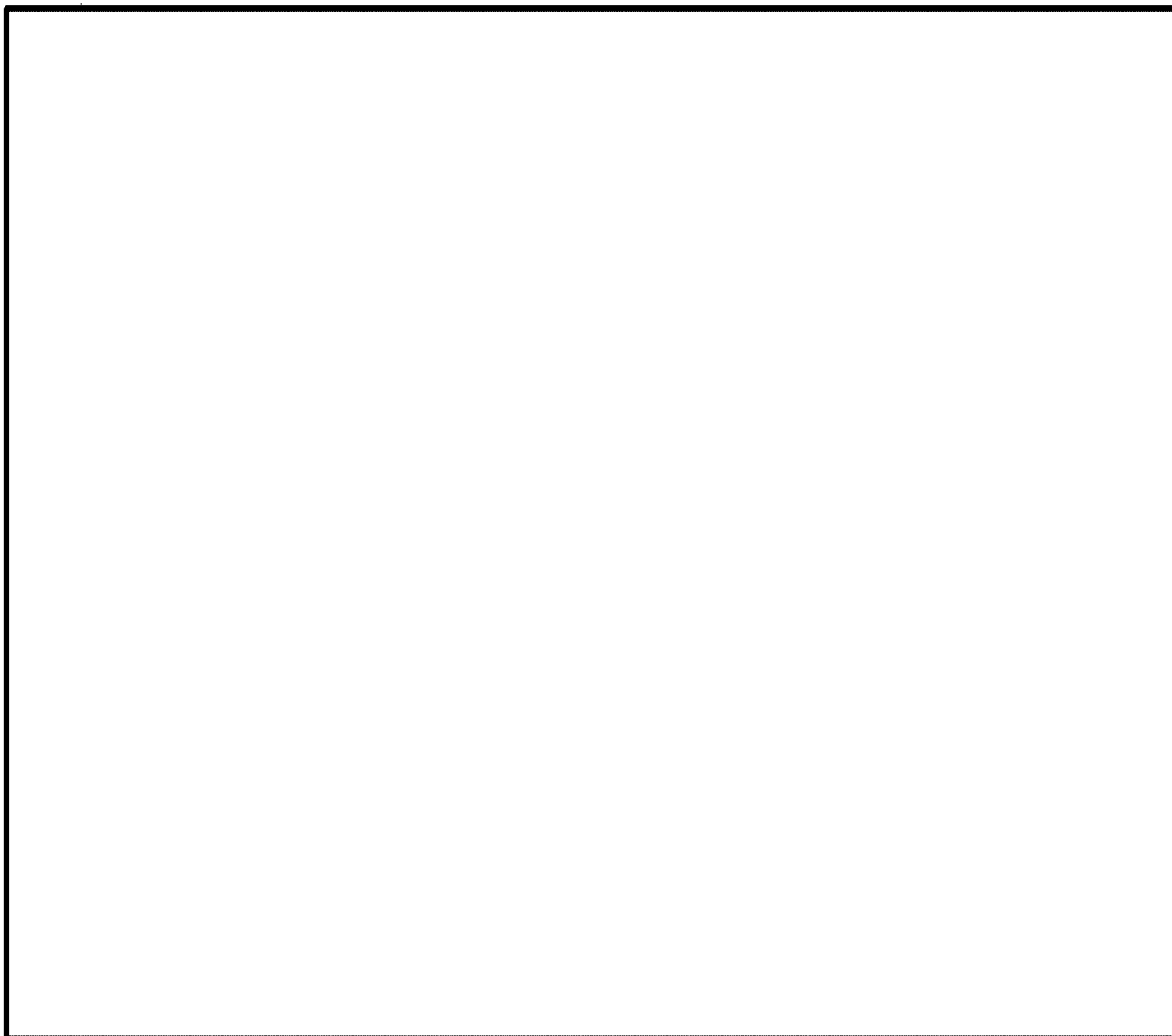
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**Introduction to the USCIS I-485 SOP, Version 3.0**



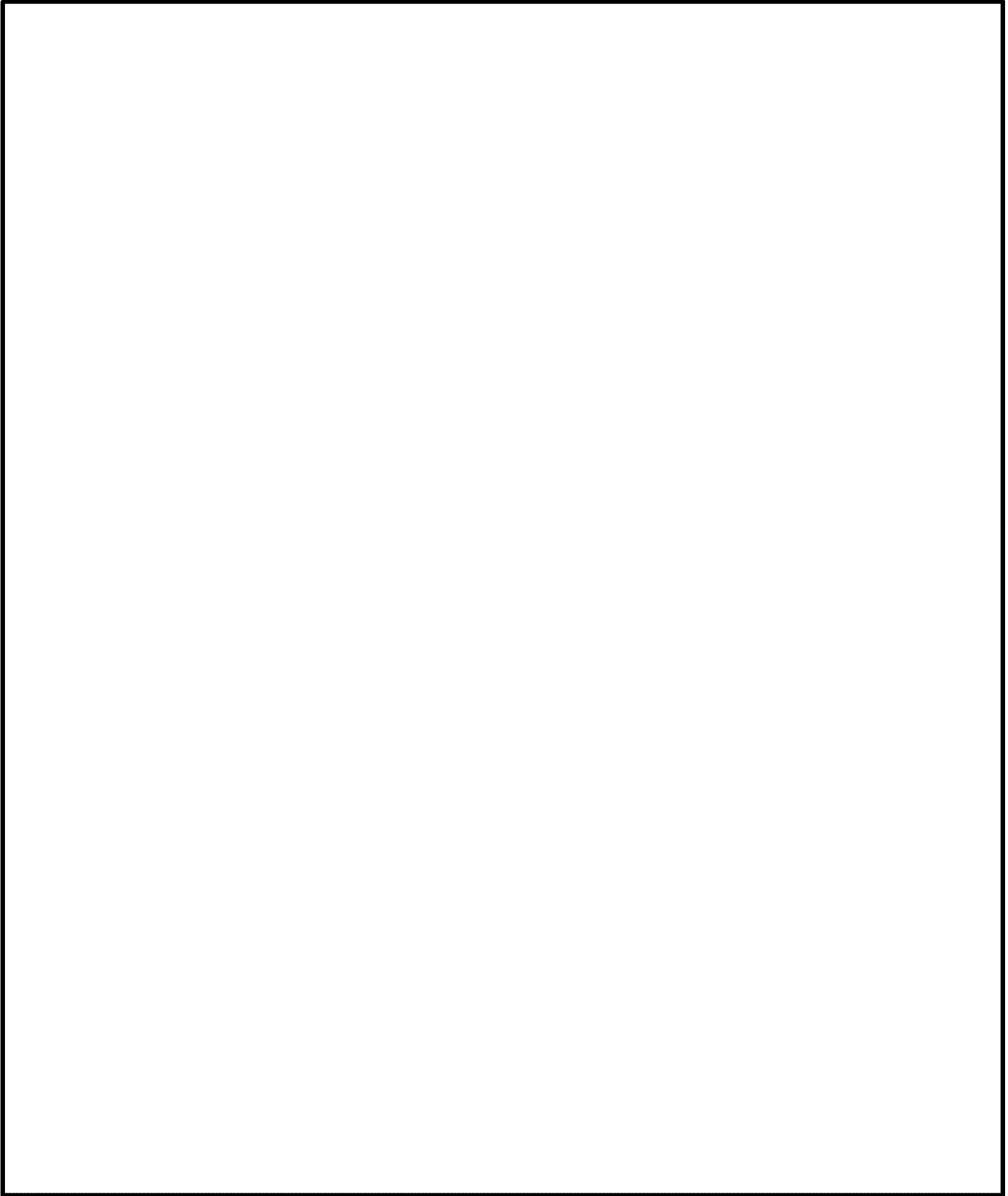
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**Purpose of the I-485 SOP**

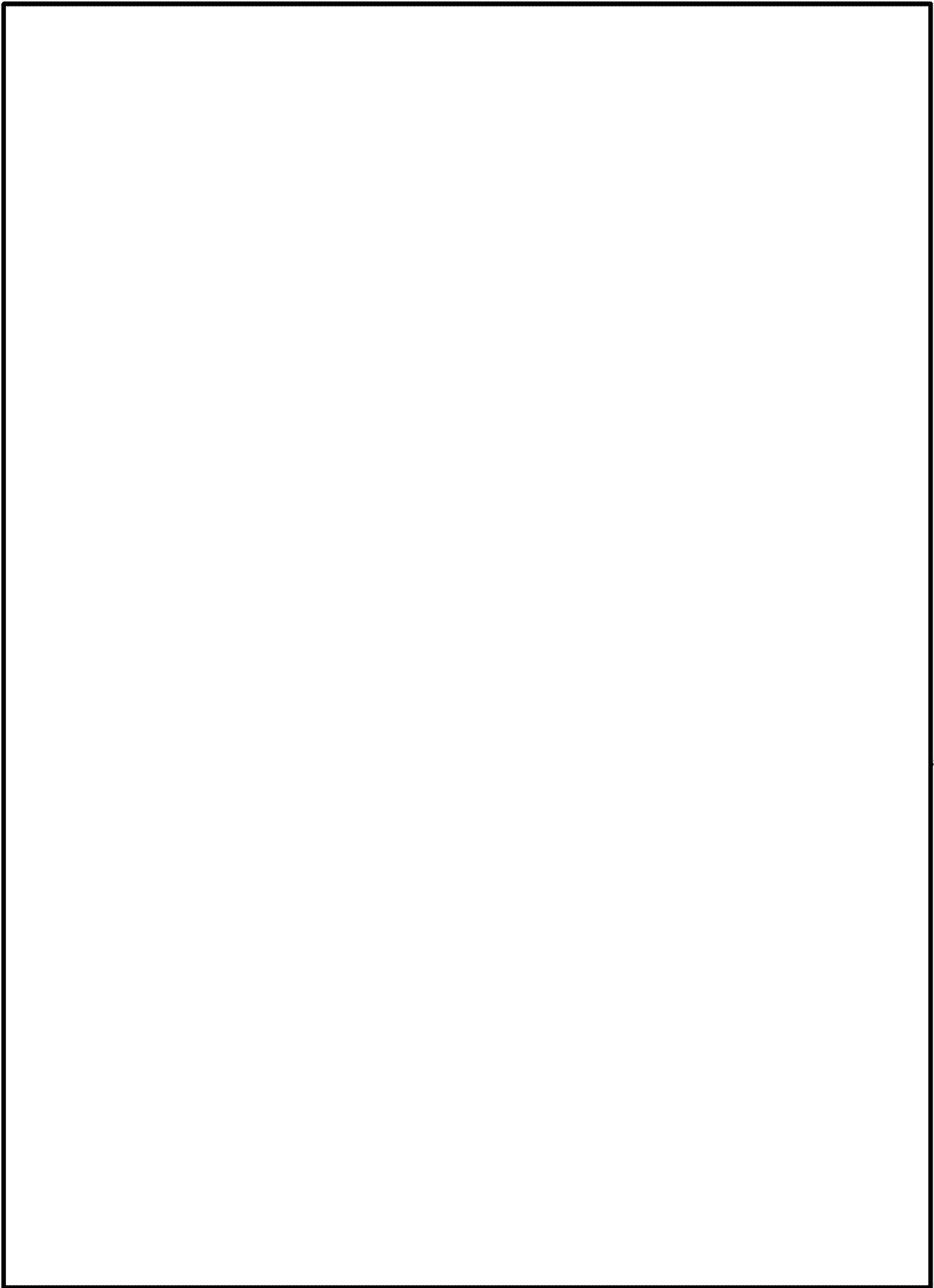


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**Stage 1: Receiving I-485 Applications at the Lockbox**



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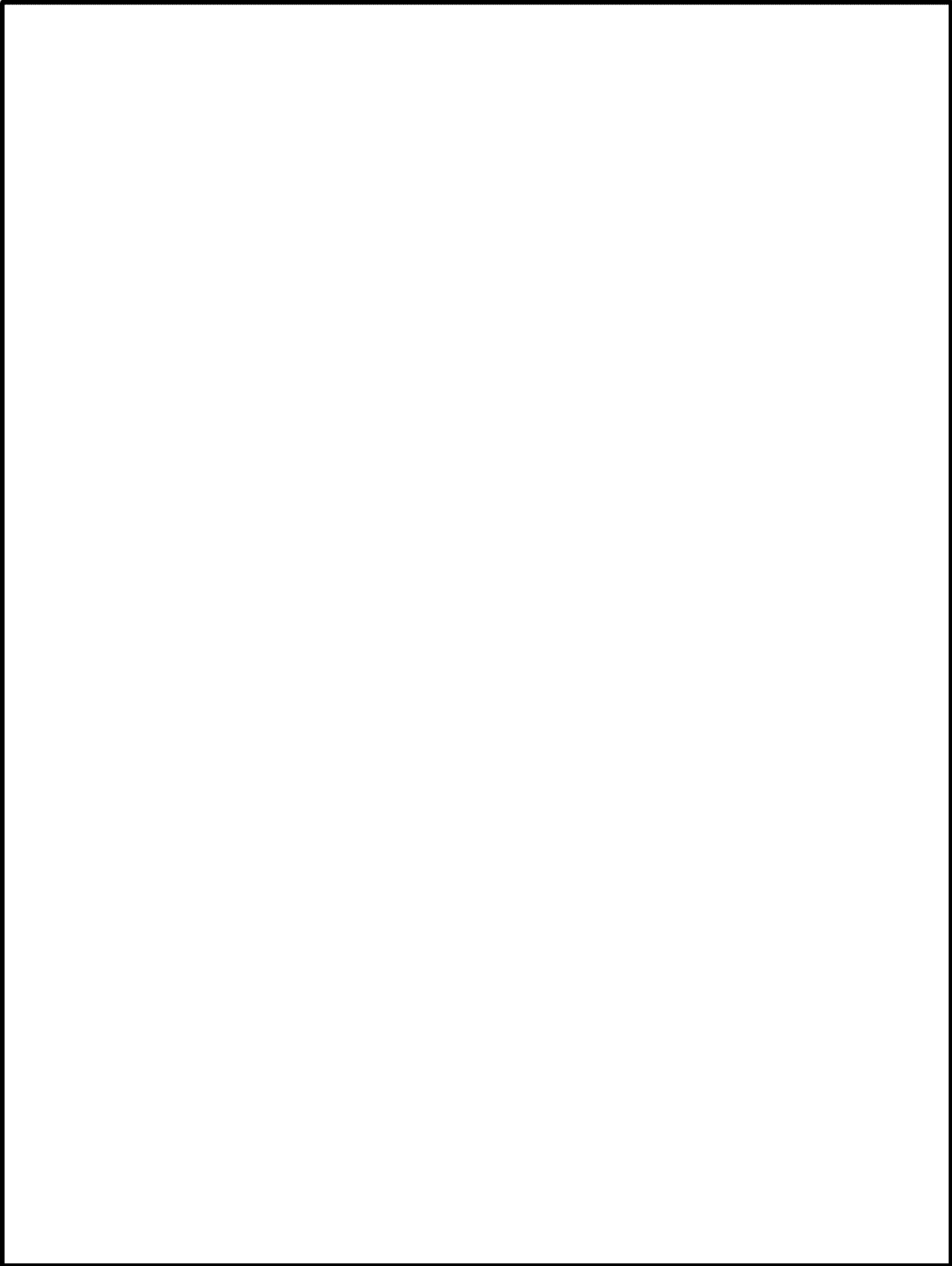
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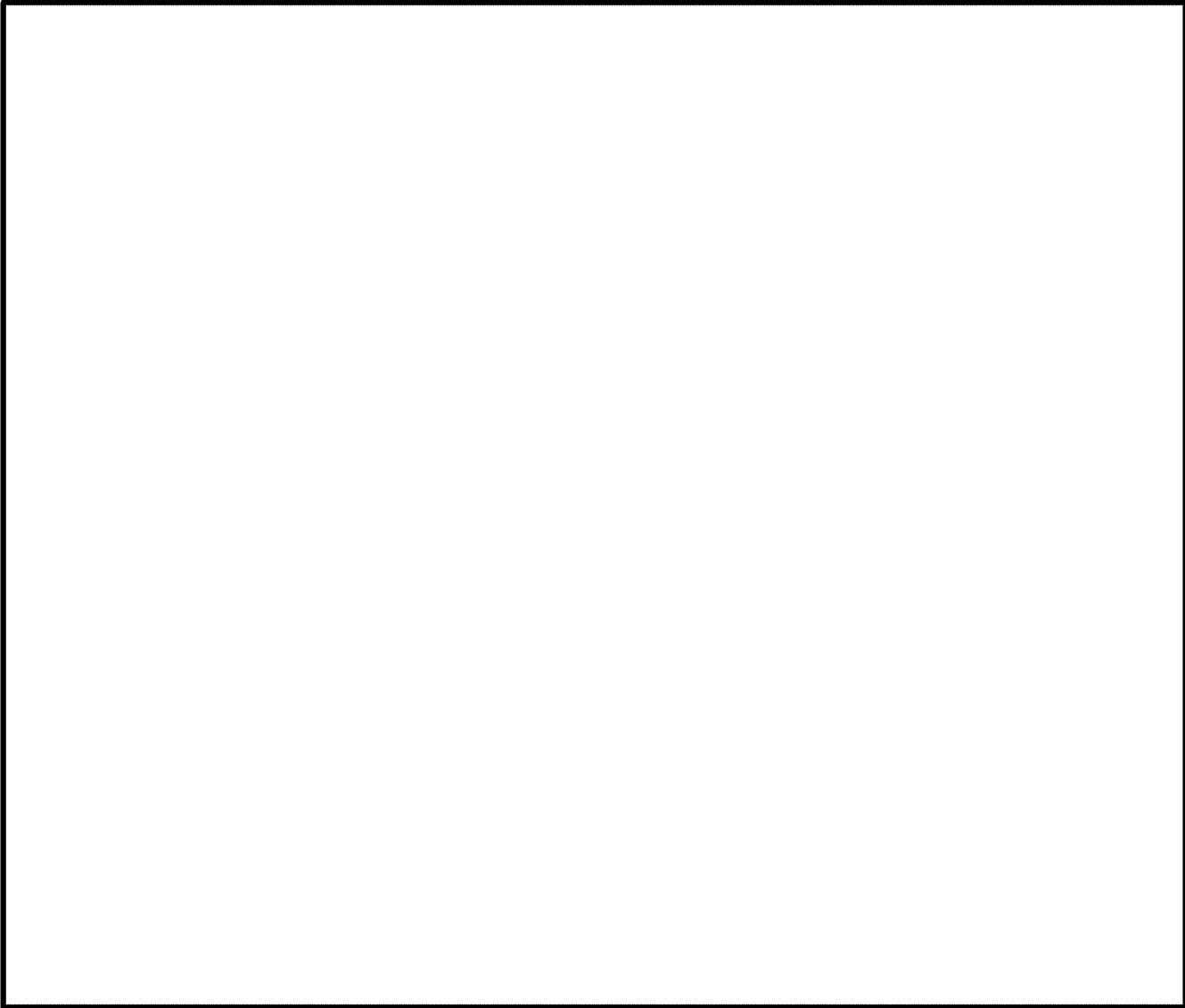
**Stage 2: Initial Processing at the National Benefits Center (NBC)**



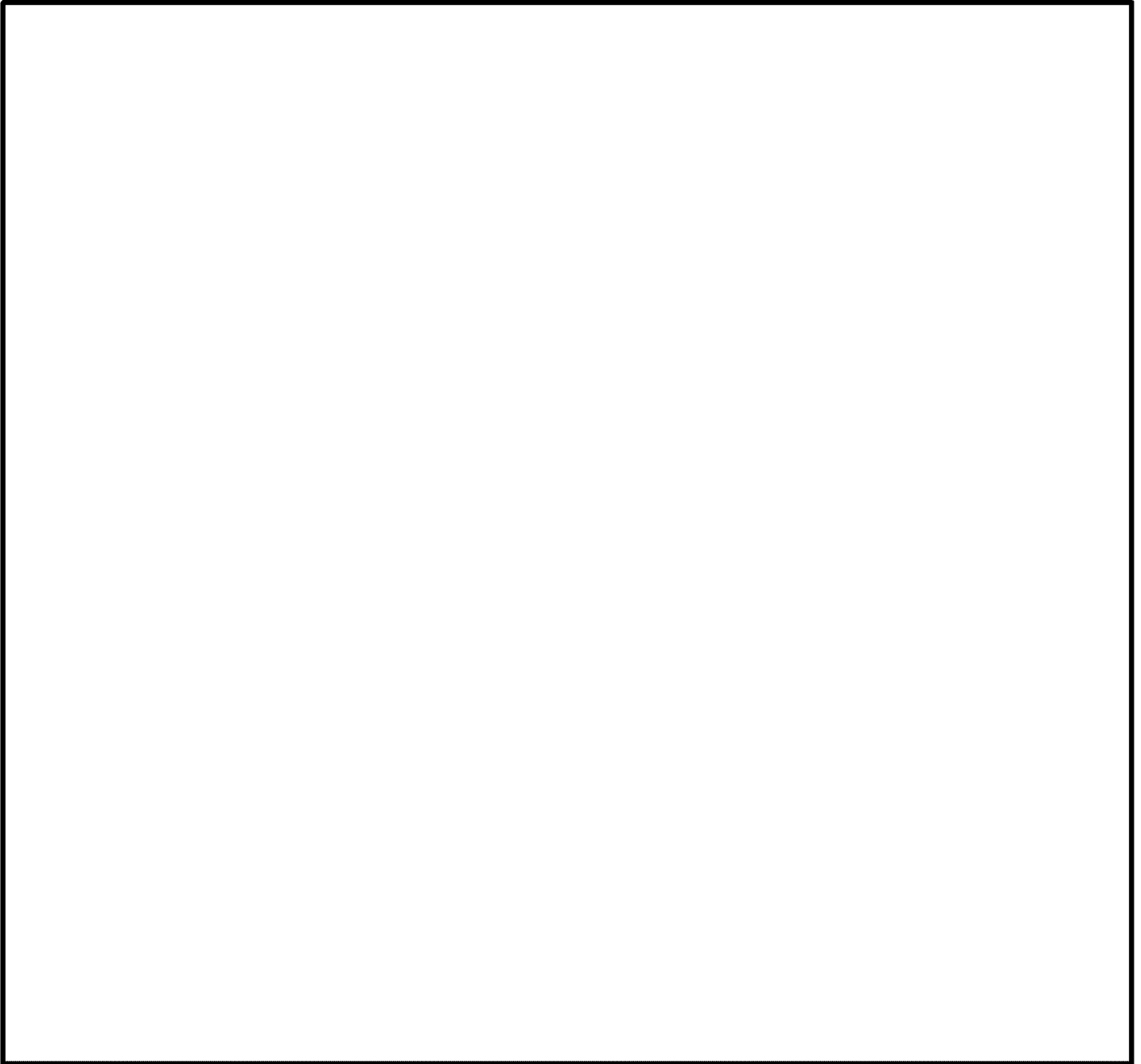




- I-864 Affidavit of support, if applicable, see Domestic Operations Memorandum dated October 23, 2008, entitled "I-864 Affidavit of Support, Review Completed at the National Benefits Center"
  - I-864EZ
  - I-864W
  - Current federal taxes
  - I-864A for a household member
  - Substitute sponsor for a deceased petitioner
  - Employment verification of sponsor
- Employment letter, if adjustment is based on employment

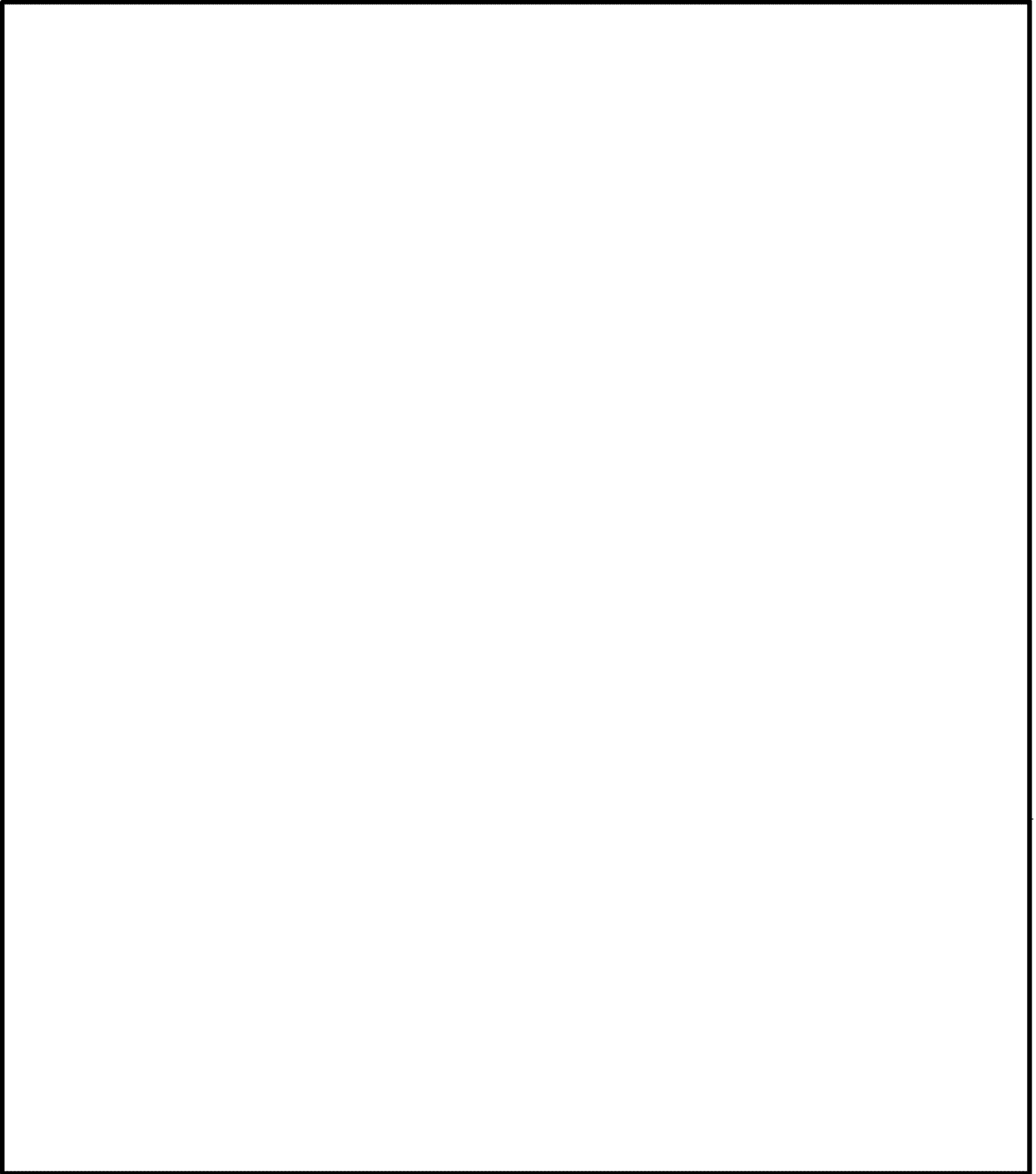


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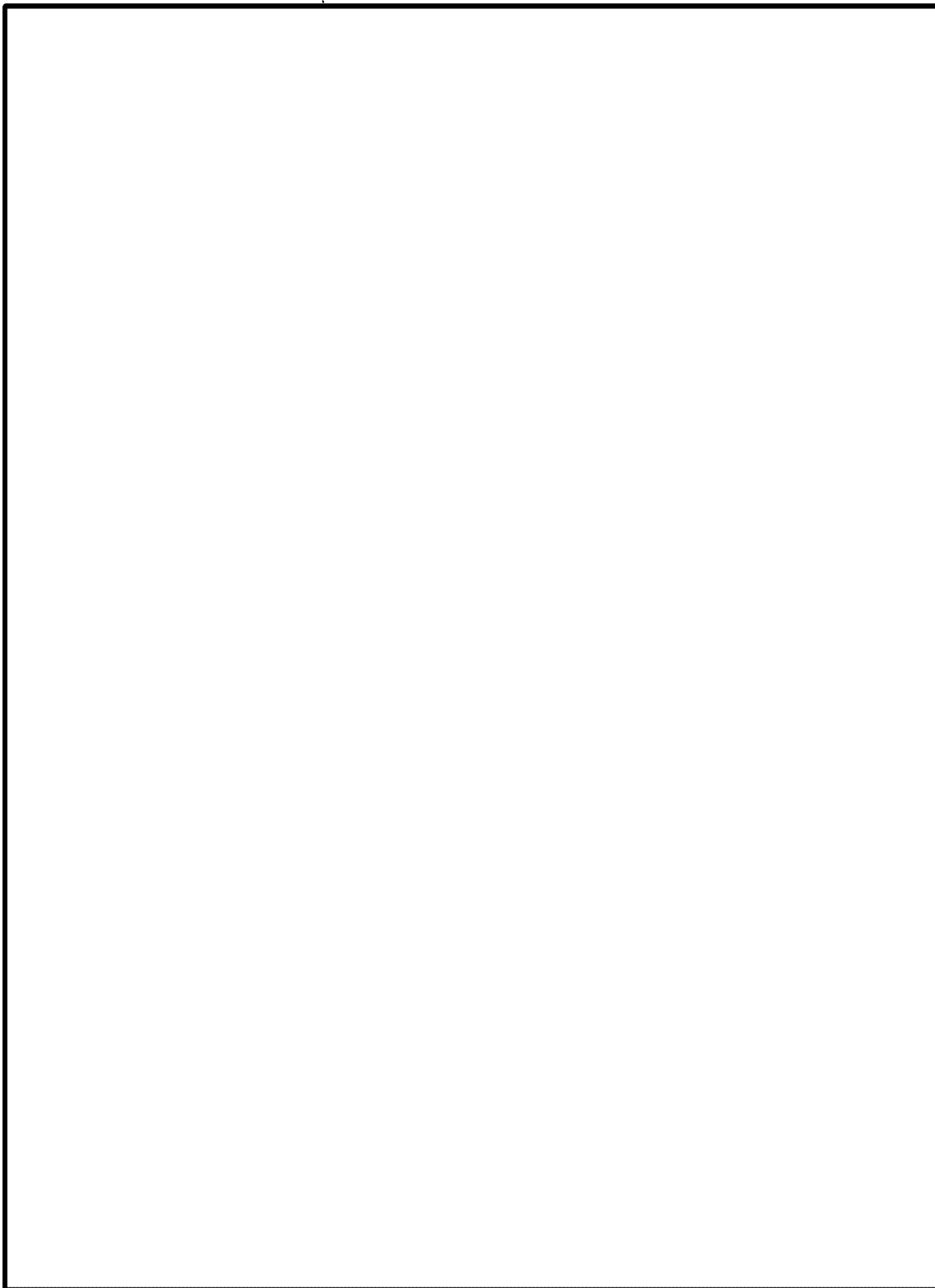


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**Stage 3: The case is made "Interview Ready" at NBC**



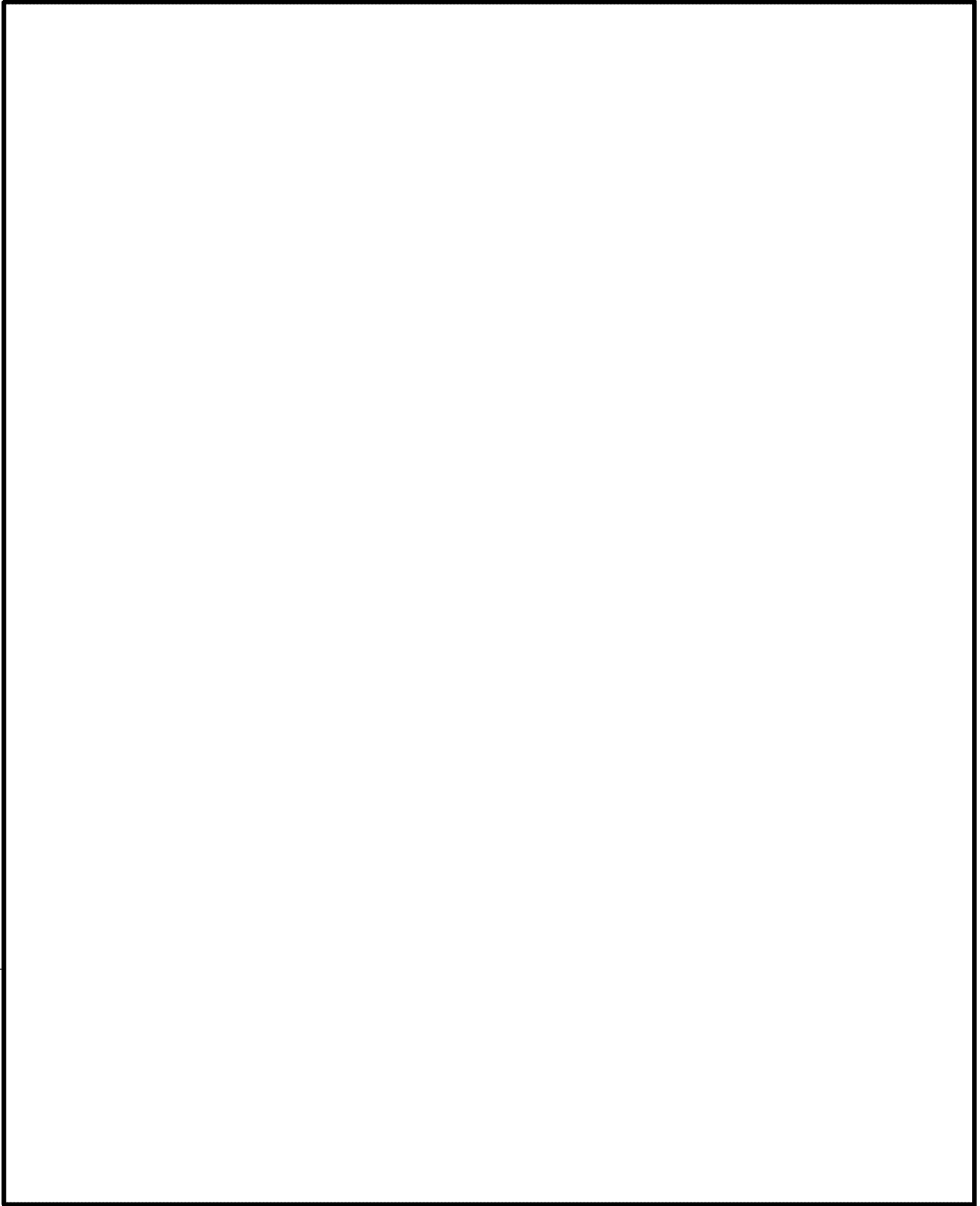
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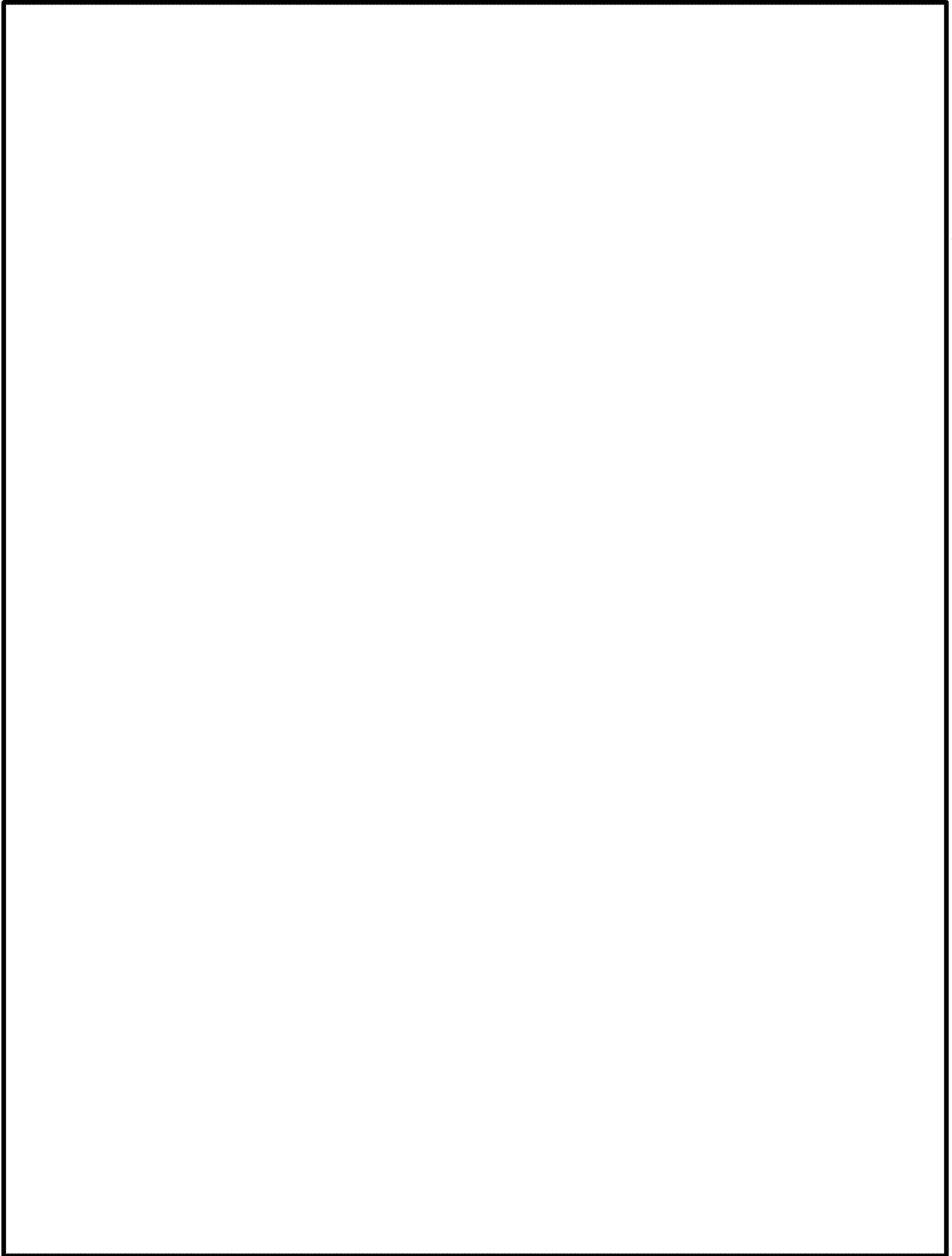
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Out-of-Scope

## **Stage 4: Interview Scheduling**



**Stage 5: Pre-Interview Processing at the Field Offices**



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date.

**Stage 5C Interview Notices Generated and Mailed by Field Offices**

