

Summary of Changes
to
Procedure 200.1-6a
Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
Administrative Record (AR) Processing

Revised Version Issued as P200.1-6b

LM Procedure 200.1-6a, Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Administrative Record (AR) Processing of 4/02/07, has undergone minor revisions. The procedure has been revised to include the process for responding to AR document requests and to reflect changes in definitions and formatting. Please replace LM Procedure 200.1-6a with LM Procedure 200.1-6b.

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U.S. Department of Energy Office of Legacy Management



Procedure: 200.1-6b

Effective: 5/12/08

SUBJECT: COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) ADMINISTRATIVE RECORD (AR) PROCESSING

1. PURPOSE.

To provide instructions for maintaining and processing CERCLA ARs. This procedure applies to all Legacy Management (LM) personnel who identify, capture, review, and protect the documents used as a basis for CERCLA-related response actions.

2. CANCELLATION. Procedure 200.1-6A, Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Administrative Record (AR) Processing, dated 4/02/07

3. REFERENCES.

- a. *5 United States Code* (U.S.C.) 552, Freedom of Information Act
- b. 42 U.S.C. 103, Comprehensive Environmental Response, Compensation, and Liability
- c. *40 Code of Federal Regulations* 300.800-300.825 (Subpart I, Administrative Record for Selection of Response Action)
- d. Executive Order 12580, Superfund Implementation, January 23, 1987
- e. U.S. Department of Energy (DOE) Order 243.1, Records Management Program
- f. LM Procedure 200.2, Electronic Records

INITIATED BY: Office of Business Operations

NO. OF PAGES/ATTACHMENTS: 11 pages, 5 attachments

- g. LM Procedure 200.3, Classified, Sensitive, and Proprietary Document Handling
- h. U.S. Environmental Protection Agency (EPA), Office of Solid Waste and Emergency Response (OSWER) Directive No. 9833.3A-1, December 1990, Final Guidance on Administrative Records for Selecting CERCLA Response Actions

4. DEFINITIONS.

- a. Administrative Record (AR) -- A collection of documents that establishes the basis for the selection and performance of environmental removal and remedial actions at a closure site. An AR may contain correspondence, the remedial investigation/feasibility study, the record of decision (ROD), and public comments. An AR may consist of a public portion, which includes documents available to the public and any stakeholders, and a confidential portion, which includes documents that may be restricted from release due to the sensitive information they contain.

NOTE: If after a ROD is approved new information is received that could affect the implementation of the remedy or indicate that reassessment of the remedy is necessary, the lead agency must respond to this information and place all comments in the AR. This is necessary if comments contain significant information, the new information is not contained elsewhere in the AR, it was not possible to submit the information during the public comment period, or the new information supports the need to significantly alter the remedial action. The type of documentation required for a post-ROD change depends on the extent of the change. A minor change requires a memo or note. A significant change requires an explanation of major differences. A fundamental change requires a ROD amendment.

- b. AR Document Reviewer -- LM personnel responsible for evaluating AR documents for sensitive information and producing redacted document copies suitable for public release.
- c. AR Technician -- LM support contractor responsible for maintaining ARs and processing documents according to the requirements of CERCLA, OSWER guidance, and this procedure.
- d. CERCLA AR Database -- The database used to maintain information and images relating to the CERCLA AR collections. The publicly available portion of the database allows the public and stakeholders to search and view images of documents contained in CERCLA AR collections.
- e. Classified Information -- Records or information requiring, for national security reasons, safeguards against unauthorized disclosure.

- f. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) -- A Federal law passed in 1980 and modified in 1986 by the Superfund Amendments and Reauthorization Act (SARA). The Acts created a special tax that goes into a trust fund, commonly known as Superfund, to investigate and clean up abandoned or uncontrolled hazardous waste sites. Under the program, EPA can either: (1) pay for site cleanup when parties responsible for the contamination cannot be located or are unwilling or unable to perform the work; or (2) take legal action to force parties responsible for site contamination to clean up the site or pay back the Federal government for the cost of the cleanup.
- g. Electronic Recordkeeping System (ERKS) -- An electronic information system in which records are collected, organized, and categorized to facilitate their preservation, retrieval, use, and disposition. An ERKS ensures that the records it maintains will have sufficient authenticity and reliability to meet the agency's recordkeeping requirements. These requirements are based in statute, ensuring "adequate and proper documentation," which contributes to efficient and economical agency operations.
- h. Freedom of Information Act (FOIA) -- Law enacted in 1966 and codified as 5 U.S.C. 552. FOIA establishes the premise that any person has a right of access to Federal agency records and that those records must be made available to the public unless they are specifically exempt from public release. FOIA includes nine exemptions that allow certain information contained in records or the entire records to be withheld from public release. The Electronic Freedom of Information Act Amendments of 1996 (E-FOIA) requires Federal agencies to make records available both electronically and through public reading rooms.
- i. Information Repository -- A compilation of all information on response activities that is available to the public. While a CERCLA AR contains only those documents that form the basis for selecting a response action, an information repository contains a copy of all items made available to the public.
- j. LM Personnel -- Federal and contractor personnel associated with LM.
- k. LM Security Specialist -- LM representative who identifies the appropriate DOE program offices or security personnel to review requests for external release of unclassified controlled nuclear information (UCNI) maintained by LM.
- l. Office of Solid Waste and Emergency Response (OSWER) -- EPA office that provides policy, guidance, and direction for EPA's hazardous waste and emergency response programs. The functions of these programs include the development and enforcement of policies, standards, and regulations for solid and hazardous waste treatment, storage, and disposal; national management of Superfund; and the development of guidelines for the Emergency Preparedness, "Community Right-to-Know," and Underground Storage Tank programs.

- m. Official Use Only (OUO) -- (1) A designation identifying certain unclassified but sensitive information that may be exempt from public release under FOIA; or, (2) a security classification marking used during the period July 18, 1949, through October 22, 1951.
- n. Personally Identifiable Information (PII) -- Any information about an individual maintained by an agency, including but not limited to, education, financial transactions, medical history, and criminal or employment history and information that can be used to distinguish or trace an individual's identity, such as their name, social security number, date and place of birth, mother's maiden name, biometric records, etc., and any other personal information that is linked or linkable to an individual.
- o. Privileged Information -- Informational documents (e.g., "attorney work product") prepared as part of the legal preparation for a client, other applicable privileges, and exemptions as listed in the FOIA authorization. Privileged information may be excluded from public disclosure.
- p. Program Records Official (PRO) -- Individual who ensures that all LM records management practices are properly executed.
- q. Proprietary Information -- Information that embodies trade secrets developed at private expense outside of a cooperative research and development agreement and commercial or financial information which is privileged or confidential under FOIA, 5 U.S.C. (B) (4).
- r. Record of Decision (ROD) -- The final determination of the preferred remedial action or treatment alternative that follows consideration of public comment.
- s. Records Liaison Officer (RLO) -- Individual(s) designated by the PRO to oversee the LM records management program in cooperation with the DOE Records Officer.
- t. Redact -- To create a copy of documentary material in which access restricted information is removed so non-restricted information in the material may be made available to the public.
- u. Routine Requests -- Inquiries for information that require no administrative action, no policy decision, and no special compilation or research for a reply.
- v. Sensitive Information -- Classified or Unclassified Controlled Information (see also Unclassified Controlled Information).
- w. Superfund Amendments and Reauthorization Act (SARA) -- An amendment to CERCLA. SARA stresses the importance of permanent remedies and innovative

treatment technologies in cleaning up hazardous waste sites. It also requires Superfund actions to consider the standards and requirements found in other state and Federal environmental laws.

- x. Technical Project Representative -- Designated LM personnel who identify, collect, and review documents for CERCLA AR inclusion. The representative identifies sensitive information, including UCI, that should not be included in the CERCLA AR public portion.
- y. Unclassified Controlled Information (UCI) -- Unclassified information that may be exempt from public release under FOIA and for which disclosure, loss, misuse, alteration, or destruction may adversely affect national security, Governmental interests, or personal privacy (e.g., Unclassified Controlled Nuclear Information, Proprietary, OUO, PII).
- z. Unclassified Controlled Nuclear Information (UCNI) -- Certain unclassified Government information prohibited from unauthorized dissemination under section 148 of the Atomic Energy Act: (1) which concerns atomic energy defense programs; and (2) which pertains to the design of production facilities or utilization facilities; security measures (including security plans, procedures, and equipment) for the physical protection of production or utilization facilities; nuclear material contained in such facilities; or nuclear material in transit; the design, manufacture, or utilization of any nuclear weapon or component if the design, manufacture, or utilization of such weapon or component was contained in any information declassified or removed from the Restricted Data category by the Assistant Secretary for Defense Programs (or the head of the DOE predecessor agency) pursuant to section 142 of the Atomic Energy Act; or whose unauthorized dissemination could reasonably be expected to significantly increase the likelihood of illegal production of nuclear weapons; or theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

5. QUALITY CONTROL.

- a. The RLO responsible for work associated with this procedure shall review it annually, or as necessary, to accommodate changing conditions within LM and ensure compliance with applicable laws, regulations, and DOE requirements.
- b. LM's official record of the CERCLA AR is maintained on paper media and stored at Federal Record Centers. Any other copies – electronic or paper – are for accessibility and reproduction purposes.

6. RESPONSIBILITIES.

The following tasks are performed mainly when the AR is open or if changes to the ROD are made.

- a. The RLO is responsible for providing oversight to ensure ARs are maintained and processed according to the requirements of CERCLA, the OSWER guidance, this procedure, or as expressly written in DOE site-specific binding agreements.
- b. Technical Project Representatives are responsible for:
 - Providing LM with a list of contributors responsible for originating or identifying AR documents;
 - Reviewing AR documents and indexes as appropriate to ensure relevance, accuracy, and completeness as appropriate;
 - Identifying documents for AR inclusion and forwarding those documents to the AR Technician. Technical Project Representatives take appropriate action to protect documents submitted for AR inclusion if those documents contain sensitive information; and
 - Providing guidance to LM personnel concerning the processing of AR documents.
- c. The AR Technician is responsible for:
 - Maintaining the site ARs inherited by LM, including processing all new AR documents to the files. Occasionally, new documents (e.g., changes to the ROD) will be added to the AR;
 - Maintaining the CERCLA AR Database and current indexes of the AR contents;
 - Maintaining and protecting AR documents containing sensitive information appropriately, following DOE directive guidance;
 - Ensuring AR documents are available in the publicly available portion of the CERCLA AR Database and in public repositories to allow ease of access by the public and stakeholders; and
 - Tracking public and stakeholder requests for AR information.

- d. The AR Document Reviewer is responsible for:
 - Evaluating AR documents for sensitive information prior to release to external parties; and
 - Producing a redacted copy suitable for public release, when the document contains sensitive information.

7. TRAINING REQUIREMENTS.

LM personnel with responsibilities included in this procedure shall be cognizant of those responsibilities and shall complete the DOE Annual Security Refresher Briefing and any additional security training as appropriate.

8. DOCUMENT CONTROL.

- a. The Directives Manager shall maintain the official controlled version of this document in the LM ERKS.
- b. The Directives Manager shall place the most current version of this procedure on the LM Intranet for employee use.
- c. Printed hard copies of this document shall be considered information-only copies.

9. PROCEDURE.

Attachment A. includes expounding information relating to CERCLA history and responsibilities, while Attachment B. lists examples of documents to be included or excluded from the AR.

- a. AR Public Portion

This section provides instructions for adding information to the public portion of an AR. Attachment C. illustrates the AR Document Inclusion Process.

NOTE: Information added to the public portion or released externally must be reviewed in its entirety for sensitive information. Sensitive information shall not be released to the public or unauthorized parties. For instructions for adding information to the confidential portion of an AR, see Section 9.b., AR Confidential Portion.

- (1) The Technical Project Representative:
 - (a) Identifies or determines that a document should be included in an AR.

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- (b) Reviews the document to ensure it is complete, unmarked, legible, and signed (if appropriate). This includes ensuring:
- The document is the original or the best available copy.
 - All attachments are included and all information (i.e., references and submittal letters) cited in the document is available in the AR.
 - Any printed copy of an e-mail message to be added to an AR includes the required metadata (e.g., recipients, date sent, attachments) listed in LM Procedure 200-2, Electronic Records.
- (c) Contacts the document source to request additional information, clarification, or replacement copies, as necessary, when documents are incomplete or lacking sufficient quality for designation as a record.
- (d) Reviews the document to ensure it does not contain sensitive information that would preclude it from being included in the public portion of the AR. [If the document or a portion of the document contains sensitive information, see Section 9.b., AR Confidential Portion.]
- (e) Forwards the document to the AR Technician within 30 working days of receipt, noting any special instructions for document handling.
- (2) The AR Technician:
- (a) Date stamps the document upon receipt.
 - (b) Enters appropriate metadata (e.g., document unique identifier, description, operable unit) into the CERCLA AR Database, generates a barcode from the database system, and affixes the barcode to the document. The barcode is a unique identifier that facilitates document tracking.
 - (c) Works with the Technical Project Representative to resolve any document quality issues such as page count discrepancies or reproducibility issues.
 - (d) Updates the AR index to include the new document listing.
 - (e) Generates paper copies of the document as needed.

- (f) Scans the original document to create an electronic version for inclusion in the publicly available portion of the CERCLA AR Database. [If an electronic version of the documents is received, the AR Technician converts the file to a format compatible with the database.]
- (g) Updates the AR index and the CERCLA AR Database and makes document distribution as necessary.
- (h) Files original hardcopy records in the AR. The AR Technician also includes printouts of documents received in electronic format.

b. AR Confidential Portion

This section provides instructions for adding information to the confidential portion of an AR. Attachment D. illustrates the AR Confidential Portion Process. Refer to LM Procedure 200.3, Classified, Sensitive, and Proprietary Document Handling in the event sensitive information is identified.

- (1) The Technical Project Representative:
 - (a) Identifies or determines a document for inclusion in an AR and applies the appropriate steps [in Section 9.a. (1) above] to ensure the document is complete.
 - (b) Identifies the sensitive information in the document and takes steps to protect the information while also making other releasable information available in the public portion of the AR. Protection measures include:
 - Redacting or creating a summary of the document. Removed portions or blank pages in the redacted version should be marked: “This page (or portion) has been left blank due to sensitive information issues.” Summaries shall describe the contents of the document without disclosing the non releasable information. Redacted and summary versions are placed in the public portion of the AR while the unaltered original documents are placed in the confidential portion.
 - Filing the original document only in the confidential portion of the AR. A summary or redacted version is placed in the public portion due to the nature or quantity of sensitive information it contains.

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- (c) Forwards the original document and any redacted versions or summaries to the AR Technician within 30 working days of receipt. The Technical Project Representative includes instructions as to whether each document is to be placed into the public or confidential portion of the AR and includes any other special document handling instructions. Depending on the level of document sensitivity, the Technical Project Representative may seal the original document in an envelope or container labeled with the document title and the word “Confidential” or “Privileged.”

(2) The AR Technician:

- (a) Processes the redacted or summary document according to the steps in Section 9.a.(2) above, taking into account any special instructions from the Technical Project Representative.
- (b) Segregates and stores any original documents identified as sensitive information in the confidential portion of the AR. The confidential portion should be housed in a locked file cabinet separate from the public portion. [If the document has been sealed, the AR Technician stores the document as received.]
- (c) Updates the AR index to reflect new confidential document entries.

c. Responding to AR Document Requests

Attachment E. illustrates the AR Document Request Process.

(1) The AR Technician:

- (a) Receives an AR document request.
- (b) Enters the request into the tracking database.
- (c) Retrieves the requested document from the CERCLA AR repository.
- (d) Routes responsive documents for review.

(2) The AR Document Reviewer:

- (a) Reviews responsive AR documents for sensitive information.
- (b) Redacts the responsive documents to remove sensitive information prior to public release. The AR Document Reviewer works with the Technical Project Representative to create a document

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summary if the document contains a large quantity of non-releasable information.

(c) Transmits redacted copy or summary to the AR Technician.

(3) The AR Technician:

(a) Receives the redacted responsive documents from the AR Reviewer.

(b) Prepares and sends response package to the requester, providing the response on requested media when possible (e.g., paper copy, electronic copy, e-mail attachment).

(c) Updates and closes the action in the tracking database.

10. ATTACHMENTS.

a. Attachment A. – DOE CERCLA Responsibilities

b. Attachment B. – AR Inclusion/Exclusion

c. Attachment C. – AR Document Inclusion Flowchart

d. Attachment D. – AR Confidential Portion Process Flowchart

e. Attachment E. – AR Document Request Process

Approved: Original signed by Celinda H. Crawford 5/18/09
Director Date
Office of Business Operations

Distribution: As required

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Attachment A. – DOE CERCLA Responsibilities

a. CERCLA Background

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund, was enacted by Congress in 1980 and amended in 1986. This law creates a tax on the chemical and petroleum industries and provides Federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment.

CERCLA:

- Establishes prohibitions and requirements concerning closed and abandoned hazardous waste sites;
- Provides for liability of persons responsible for releases of hazardous waste at these sites; and
- Establishes a trust fund to provide for cleanup when no responsible party could be identified.

The law authorizes two kinds of response actions:

- Removals, where actions may be taken to address releases or threatened releases requiring response under Section 104 of the CERCLA statute; and
- Long-term remedial response actions, that permanently and significantly reduce the dangers associated with releases or threats of releases of hazardous substances that are serious, but not immediately life threatening. These actions can be conducted only at sites listed on the U.S. Environmental Protection Agency (EPA) National Priorities List.

b. The Administrative Record (AR)

The AR is the complete body of documents that forms the basis for selecting a CERCLA response action (i.e., documents considered or relied upon in selecting a remedy).

The establishment of an AR serves two primary purposes:

1. It limits the judicial review of the adequacy of a response action.
2. It acts as a vehicle for public participation in selecting a response action because the AR must be available for public inspection and comment during the appropriate comment periods.

AR documents and accompanying indexes are compiled according to provisions of EPA Office of Solid Waste and Emergency Response (OSWER) Directive No. 9833.3A-1, Final Guidance on Administrative Records for Selecting CERCLA Response Actions.

Documents included in each site's AR are a subset of information included in the record files for the site. Attachment B. – AR Inclusion/Exclusion provides more detail on what files typically are included in and excluded from an AR.

According to OSWER Directive No. 9833.3A-1, certain documents are not physically included in this AR but are included for reference. Among these documents are chain-of-custody forms and sampling data, such as laboratory analytical results. The sampling data are summarized in the reports included in the AR. Typically, the sampling data and related chain-of-custody forms are retained by the contractors who published the reports.

Documents contained in the AR are identified with unique numbers to aid in document tracking and retrieval. The index for each AR typically should be updated about once each quarter. As the updates are issued, the AR is inventoried against the new index to ensure its completeness.

c. Public Repositories

DOE must make a copy of the CERCLA AR available to the public. Public repositories can include:

- Public reading room locations
- Regional EPA offices
- Authorized state agency offices
- Web-based access to electronic copies

d. AR Confidential Portion

An AR may consist of a public portion, which includes documents available to the public and stakeholders, and a confidential portion, which includes documents that may be restricted from release due to the sensitive information they contain.

The confidential portion may include privileged documents, such as documents subject to attorney-client, attorney work product, or deliberative process privileges, and confidential documents, such as those containing confidential business information.

When a document is stored in the confidential portion of an AR, records personnel create a summary of the non-releasable information. The summary is included in the public portion of the AR, while the document containing sensitive information is placed in the confidential portion. All documents contained in the confidential portion must be listed in an index available to the public.

e. Information Repository

DOE is typically required to compile an Information Repository housing all information available to the public concerning response activities. Unlike an AR, the Information Repository is not limited to just those documents that form the basis for selecting response actions.

The Information Repository typically contains many of the documents also contained in the facility's AR. The Information Repository may contain additional information, such as press releases, of interest to the public.

The Information Repository includes a wide variety of information about the site, including fact sheets, reports on site activities, documentation of site sampling results, and general information about the CERCLA program. In many cases, sites have chosen to merge the AR and Information Repository into one public offering.

Attachment B. – AR Inclusion/Exclusion

The Administrative Record (AR) typically includes relevant factual information, guidance documents, public notices, decision documents, enforcement orders, and an index of the documents in the AR.

All documents in the AR – in both the public and confidential portion – are listed in the AR index.

a. Inclusion Examples

Factual Information:

- Verified sampling data
- Quality control and quality assurance documentation
- Chain of custody forms
- Site inspection reports
- Preliminary assessment and site evaluation reports
- Agency for Toxic Substances and Disease Registry (ATSDR) health assessments
- Documents supporting the determination of imminent and substantial endangerment
- Public health evaluations
- Technical and engineering evaluations
- Approved work plans for remedial investigation/feasibility study
- State government documentation of applicable or relevant and appropriate requirements
- Remedial Investigation/Feasibility Study reports

Guidance Documents:

- Guidance on conducting remedial investigations and feasibility studies
- Guidance on determining applicable or relevant and appropriate requirements, guidance on risk/exposure assessments
- Engineering handbooks

- Articles from technical journals
- Memoranda on the application of a specific regulation to a site
- Memoranda on off-site disposal capacity

Public Notices/Communications:

- Notice of AR availability
- Community relations plan
- Proposed plan for remedial action
- Notices of public comment periods
- Public comments and information received by the lead agency
- Responses to significant comments

Decision Documents:

- Action memoranda
- Records of decision

Enforcement Orders:

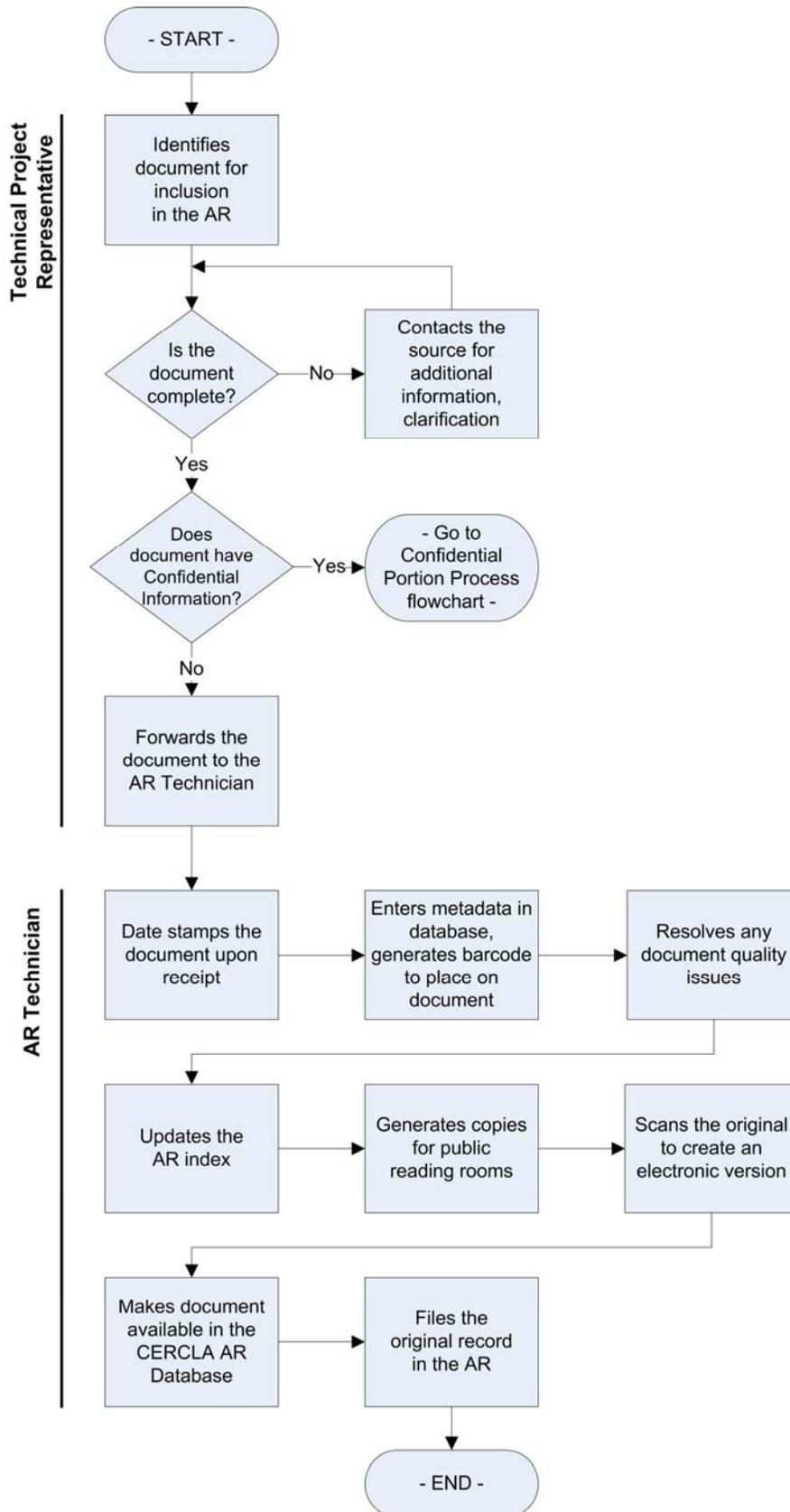
- Administrative orders
- Consent decrees

b. Exclusions

Documents are not included in the AR if they do not form a basis for the selection of the response action. Exclusions may include draft documents, internal memoranda, and day-to-day staff notes. These documents, however, may be included in a facility's Information Repository.

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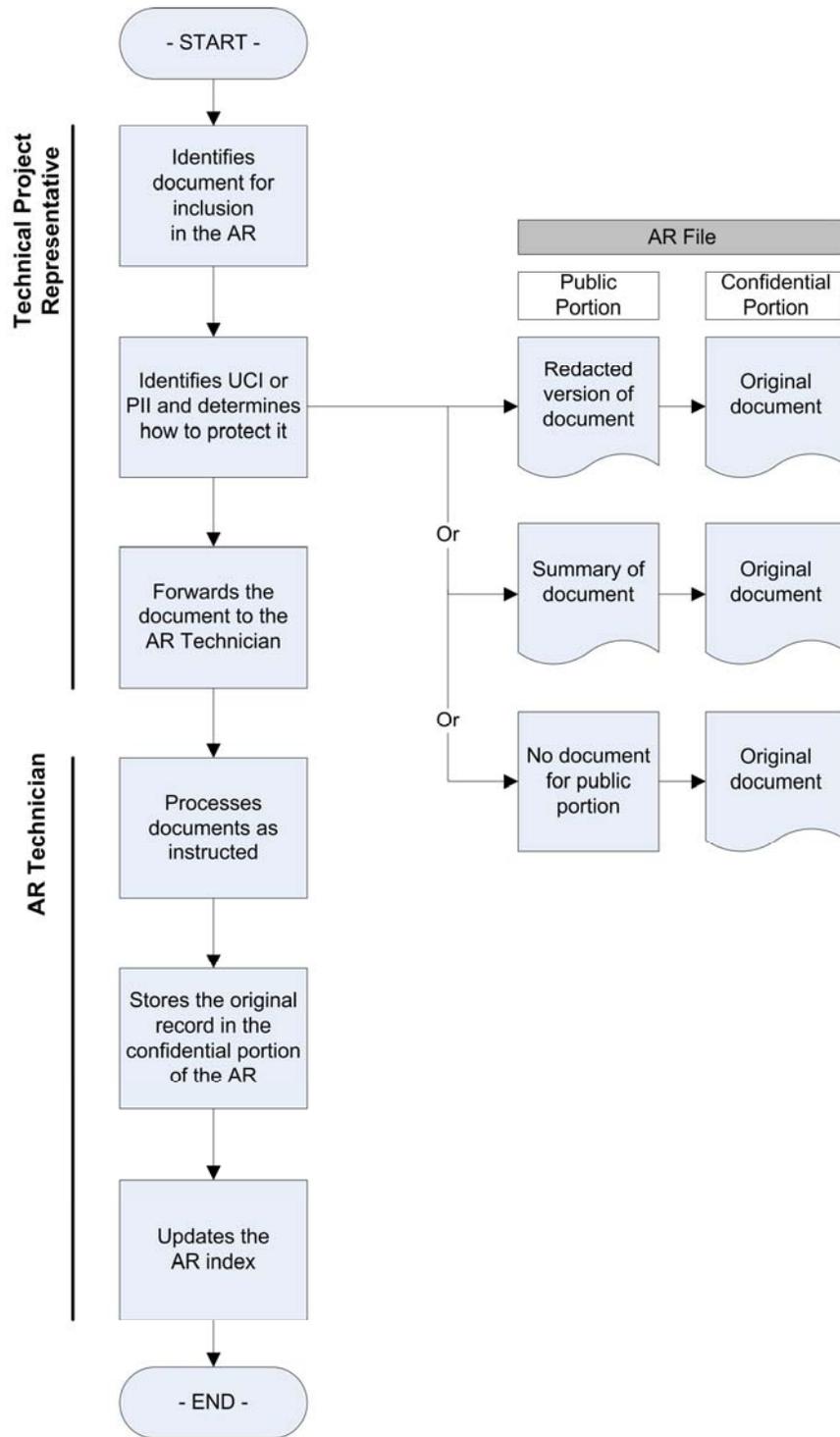
Attachment C. – AR Document Inclusion Flowchart



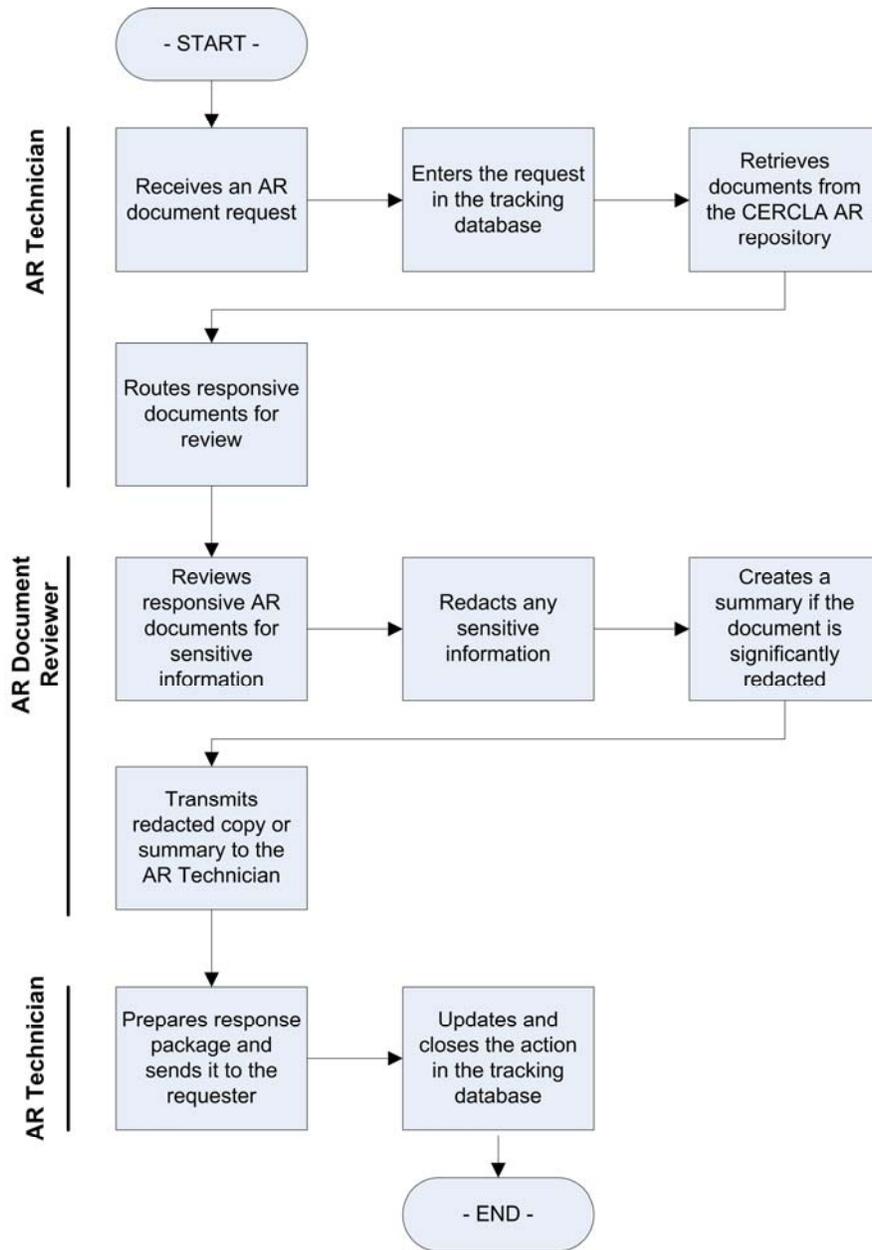
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Attachment D. – AR Confidential Portion Process Flowchart

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Attachment E. – AR Document Process



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