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Continuity of Operations (COOP) in the Executive Branch: Background and Issues for Congress

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Summary

In the wake of the September 2001 terrorist attacks, subsequent biological weapon incidents, and occasional warnings of potential terrorist incursions, policymakers have given renewed attention to continuity of operations (COOP) issues. COOP planning is a segment of federal government contingency planning that refers to the internal effort of an organization, such as a branch of government, department, or office, to assure that the capability exists to continue essential operations in the aftermath of a comprehensive array of potential operational interruptions. It is related to continuity of government (COG) planning. COG plans are designed to ensure survival of a constitutional form of government and the continuity of essential federal functions. This report does not discuss COG planning beyond any direct relationship to COOP planning.

Government-wide, COOP planning is critical because much of the recovery from an incident, which might include the maintenance of civil authority, and infrastructure repair, among other recovery activities, presumes the existence of an ongoing, functional government to fund, support, and oversee actions taken. In the executive branch, COOP planning can be viewed as a continuation of basic emergency preparedness planning, and a bridge between that planning and efforts to maintain continuity of government in the event of a significant disruption to government activity or institutions. Because the number and types of potential interruptions are unknown, effective COOP planning must provide, in advance of an incident, a variety of means to assure contingent operations.

This report discusses the background of COOP planning, discusses elements of an effective COOP plan, and reviews the current policies governing COOP planning in the executive branch. The final two sections address issues and policy questions, including, among other matters, the status of agency preparedness, maintaining COOP preparedness, congressional committee oversight of COOP activity, and funding for contingency planning.

This report is one of several CRS products related to government contingency planning, and will be updated as events warrant. COOP planning in Congress is addressed in CRS Report RL31594, *Congressional Continuity of Operations (COOP): An Overview of Concepts and Challenges*. CRS Report RL31739, *Federal Agency Emergency Preparedness and Dismissal of Employees*, discusses pre-COOP activities relating to the safeguarding of federal personnel and evacuation of federal buildings. For a more comprehensive analysis of COG, see CRS Report RS21089, *Continuity of Government: Current Federal Arrangements and the Future*.

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Continuity of Operations (COOP) in the Executive Branch: Background and Issues for Congress

Introduction

In the wake of the September 2001 terrorist attacks, subsequent biological weapon incidents,[1] and occasional warnings of potential terrorist incursions, policymakers have given renewed attention to continuity of operations (COOP) issues. COOP planning is a segment of federal government contingency planning linked to continuity of government (COG). Taken together, COOP and COG are designed to ensure survival of a constitutional form of government and the continuity of essential federal functions. In the executive branch, COG planning efforts focused on preserving the line of presidential succession, by safeguarding officials who would succeed the President.[2]

COOP planning refers to the internal effort of an organization, such as a branch of government, department, or office, to assure that the capability exists to continue essential operations in response to a comprehensive array of potential operational interruptions. While much of the renewed impetus for COOP planning focuses on responding to potential attack, operational interruptions that could necessitate the activation of a COOP might also include routine building renovation or maintenance; mechanical failure of heating or other building systems; fire; and inclement weather or other acts of nature. Other events which may interrupt government activity include failure of information technology (IT) and telecommunications installations due to malfunction or cyber attack.[3]

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[1] Dan Eggen, "FBI Told of 2003 Ricin Letter After 6 Days," *Washington Post*, Feb. 5, 2004, p. A9.

[2] Another term that is sometimes used to describe COG activities is enduring constitutional government (ECG). The terms appear to describe similar activities described in presidential national security documents described in footnote 11. This report does not discuss ECG or COG planning beyond any direct relationship to COOP planning. For a more comprehensive analysis of COG, see CRS Report RS21089, *Continuity of Government: Current Federal Arrangements and the Future*, by Harold C. Relyea.

[3] A cyber attack is an incursion on a range of IT facilities, and can range from simply penetrating a system and examining it for the challenge, thrill, or interest, to entering a system for revenge, to steal information, extort money, cause deliberate localized harm to computers, or damage to a much larger infrastructure, such as telecommunications facilities. See CRS Report RL31787, *Information Warfare and Cyberwar: Capabilities and Related Policy Issues*, by Clay Wilson.

Government-wide, COOP planning is critical because much of the response to an incident might include the maintenance of civil authority and infrastructure repair, among other recovery activities. It presumes the existence of an ongoing, functional government to fund, support, and oversee recovery efforts. In the executive branch, COOP planning can be viewed as a continuation of basic emergency preparedness planning, including evacuation planning,[4] and serves as a bridge between that planning and efforts to maintain continuity of government in the event of a significant disruption to government activity or institutions.[5] In the aftermath of an incident, initial efforts typically focus on safeguarding personnel and securing the incident scene. Subsequently, attention focuses on reestablishing critical agency operations according to a COOP plan. Because the number and types of potential interruptions are unknown, effective COOP planning must provide, in advance of an incident, a variety of means to assure contingent operations.

Arrangements for the contingent operation of the executive branch in the event of a national emergency, catastrophe, or other operational interruption are specified in law, policy, and agency plans. These sources identify a number of matters that agency COOP planners must incorporate into their planning. In practice, the specialized nature of the various agencies of the executive branch results in COOP planning that is highly decentralized, with each agency developing specific plans[6] appropriate for maintaining its operations in an emergency. COOP planning is also driven in part by growth and change of mission critical needs, personnel, and information systems within an agency.

The next section of this report discusses the background of COOP planning, elements of an effective COOP plan, and reviews the current policies governing COOP planning in the executive branch. The final two sections address issues and policy questions, including matters of the status of agency preparedness, maintaining COOP preparedness, congressional committee oversight of COOP activity, and funding for contingency planning.

Background

Continuity of operations planning grows out of efforts established during the Cold War to preserve the continuity of government in the event of a nuclear attack on the United States. At the time, executive branch COG planning focused on preserving the line of presidential succession, by safeguarding officials who would succeed the President. Also, COG plans reportedly included locating and evacuating the officials in the line of succession,[7] along with the other senior leaders of cabinet

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[4] See CRS Report RL31739, *Federal Agency Emergency Preparedness and Dismissal of Employees*, by L. Elaine Halchin.

[5] When an incident occurs, COOP or COG plans may be activated independently or in concert, depending on the type and severity of the event.

[6] Although elements of COOP plans are available for some agencies, full plans detailing all potential responses are not public information, given their sensitive, contingent status.

[7] Under the Presidential Succession Act of 1947, as amended (61 Stat. 380, 3 U.S.C. 19), (continued...)

departments, and leaders of the independent agencies, such as the Federal Reserve. In the event of an imminent nuclear attack, the plans called for the relocation of these individuals to secure, alternative operational facilities outside of the District of Columbia.[8]

As COG plans evolved, it was recognized by emergency planners that it would be necessary to support the country's senior leadership and to carry out critical functions in the aftermath of an attack, regardless of the need to evacuate and relocate government officials. Consequently, COOP planning became a unifying element that integrated support functions in situations where the lack of such basic support elements as personnel, alternative operational facilities, or records, posed the potential threat of serious disruption to agency operations and the ability of the government to carry out its constitutional and statutory duties.

In the period following the end of the Cold War, attention to contingency planning reportedly decreased in response to the perception of diminished risk of widespread interruption to government operations as a result of an intercontinental nuclear attack. In the aftermath of the September 11, 2001, attacks on the World Trade Center and the Pentagon, federal government facilities in Washington, DC, were evacuated. The government resumed normal operations on September 12. As a result of that experience, some federal agency leaders recognized that if they were prevented from reentering their facilities for longer periods of time, existing contingency plans, based on Cold War era assumptions that included a period of warning before an attack, were inadequate protection in a threat environment

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[7] (...continued)
the current line of presidential succession passes from the President to the Vice President, Speaker of the House of Representatives, President Pro Tempore of the Senate, Secretaries of State, the Treasury, and Defense, the Attorney General, and the secretaries of the Interior, Agriculture, Commerce, Labor, Health and Human Services, Housing and Urban Development, Transportation, Energy, Education, and Veterans Affairs. Legislation pending before the 108th Congress (S. 148, introduced by Sen. DeWine, and H.R. 1354, introduced by Rep. Tom Davis), would include the Secretary of Homeland Security in the line of succession. For more information on presidential succession, see CRS Report RL31761, *Presidential and Vice Presidential Succession: Overview and Current Legislation*, by Thomas H. Neale.

[8] See Edward Zuckerman, *The Day After World War III*, (New York: Viking, 1984), pp. 44-66, 211-238; Ted Gup, "The Doomsday Plan," *Time*, Aug. 10, 1992, pp. 32-39; and Bruce G. Blair, John E. Pike and Stephen I. Schwartz, "Emergency Command Posts and the Continuity of Government," in Stephen I. Schwartz, *Atomic Audit: The Costs and Consequences of U.S. Nuclear Weapons since 1940* (Washington: Brookings Institution Press, 1998), pp. 210-214.

Similar contingency plans were reportedly developed for Congress and the Supreme Court. See Ibid.; Ted Gup, "The Last Resort," *Washington Post Magazine*, May 31, 1992, pp. 11, 13-15, 24-27; Kenneth J. Cooper, "Hill Leaders 'Regret' Reports on Bomb Shelter Site," *Washington Post*, May 30, 1992, pp. A1. For an overview of congressional COOP planning, see CRS Report RL31594, *Congressional Continuity of Operations (COOP): An Overview of Concepts and Challenges*, by R. Eric Petersen and Jeffrey W. Seifert.

characterized by potential sudden, localized terrorist attacks that could include the use of weapons of mass destruction.[9]

Some observers suggest that the current changing threat environment is characterized by the potential for no-notice emergencies, including localized acts of nature, accidents, and military or terrorist attack-related incidents. This has increased the need for COOP capabilities and plans that enable agencies to continue their essential functions across a broad spectrum of emergencies. In addition to the perception of a heightened threat of attack, the reliance of executive branch agencies on complex technology systems has led some observers to describe COOP planning as "good business practice"that supports the fundamental missions of agencies as accountable and reliable public institutions. Taken together, these threats to routine operational capacity have emphasized the importance of COOP programs that ensure continuity of essential government functions across the executive branch.

COOP Planning Authority

COOP planning is carried out under the authority of security classified presidential national security directives, and publicly available executive orders. The current documents governing contingency planning activity include Presidential Decision Directive (PDD) 67, *Enduring Constitutional Government and Continuity of Government Operations*; Executive Order (E.O.) 12656, *Assignment of Emergency Preparedness Responsibilities*; and E.O. 13286, *Amendment of Executive Orders, and Other Actions, in Connection With the Transfer of Certain Functions to the Secretary of Homeland Security*. Federal Preparedness Circulars (FPC), documents produced by the Federal Emergency Management Agency (FEMA),[10] provide guidance for preparing and exercising COOP plans.

Presidential Decision Directive 67. PDD 67 was issued by the Clinton Administration on October 21, 1998.[11] The directive reportedly requires federal

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[9] See Dipka Bhambhani, "Crisis Proves a Need for Disaster Planning," *Government Computer News*, Sept. 24, 2001, p.1; Dana Milbank, "Worst-Case Scenarios: The U.S. Has None; Constitutional Crisis, Chaos Foreseen if Top Leaders Killed," *Washington Post*, Dec. 10, 2001 p. A1; and Sue Anne Pressley and Start S. Hsu, "A 2-Front War on Terror at Home," *Washington Post*, Mar. 16, 2003, p. A1.

[10] Section 503 (1) of the Homeland Security Act of 2002 (P.L. 107-296) transferred the Federal Emergency Management Agency, together with its responsibilities, assets, and liabilities to the Emergency Preparedness and Response Directorate of the new Department of Homeland Security (DHS). The transfer was effective Mar. 1, 2003. For more information regarding the transfer, see CRS Report RL31670, *Transfer of FEMA to the Department of Homeland Security: Issues for Congressional Oversight*, by Keith Bea.

[11] PDD 67 replaced President George H. W. Bush's National Security Directive (NSD) 69, "Enduring Constitutional Government" issued June 2, 1992, which in turn succeeded NSD 37 "Enduring Constitutional Government" issued Apr. 18, 1990. National Security Decision Directives (NSDD) 47 "Emergency Mobilization Preparedness," issued July 22, 1982, and NSDD 55, "Enduring National Leadership," issued Sept. 14, 1982, by President Ronald Reagan, included consideration of continued government operations planning. See

(continued...)

agencies to develop COOP plans for essential operations. FEMA's Federal Preparedness Circular (FPC) 65[12] identifies PDD-67 as the authority establishing FEMA as the "as the lead agency for federal executive branch COOP." In response to the presidential directive, some federal agencies reportedly formed task forces of representatives who were familiar with agency operations and contingency planning to develop COOP plans. The plans reportedly identify those requirements necessary to support the primary function of an agency, such as emergency communications, establishing a chain of command, and delegation of authority. The full text of the PDD 67 is security classified, and no official summary or other information about the directive has been released.[13]

Executive Order 12656. E.O. 12656, *Assignment of Emergency Preparedness Responsibilities* was issued November 18, 1988 by President Ronald Reagan.[14] It assigns national security emergency preparedness responsibilities to federal departments and agencies. E.O. 12656 defines a national security emergency as "any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or seriously threatens the national security of the United States.[15] Although the order does not explicitly refer to continuity of operations, it specifies preparedness functions and activities to include the development of policies, plans, procedures, and readiness measures that

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[11] (...continued)
Christopher Simpson, *National Security Directives of the Reagan and Bush Administrations: The Declassified History of U.S. Political and Military Policy, 1981-1991* (Boulder, CO: Westview Press), pp. 59, 71, 102-104, and 158-178. Earlier national security directives relating to continuity of government include Presidential Directive (PD) 58, "Continuity of Government,"issued June 30, 1980, by President Jimmy Carter; two National Security Decision Memoranda (NSDM) issued by President Richard Nixon, NSDM 201, "Contingency Planning," issued Jan. 5, 1973, and NSDM 8, "Crisis Anticipation and Management," issued Mar. 21, 1969, and two National Security Acton Memoranda (NSAM) issued by President John F. Kennedy, NSAM 166, "Report on Emergency Plans and Continuity of the Government," issued June 25, 1962, and NSAM 127, "Emergency Planning for Continuity of Government," issued Feb. 14, 1962. The initial national security document establishing continuity programs appears to be NSC 5521, "NSC Relocation Plan," issued some time in 1955, by President Dwight D. Eisenhower.

[12] Department of Homeland Security, Federal Emergency Management Agency, Office of National Security Coordination, Federal Preparedness Circular 65, "Federal Executive Branch Continuity of Operations (COOP)," June 15, 2004, available at [http://www.fema.gov/onsc/docs/fpc_65.pdf], visited Nov. 8, 2004.

[13] Information regarding PDD 67 was obtained from the Federation of American Scientists (FAS) Intelligence Resources Program, which provides declassified materials and summaries of some current national security documents through the Internet. The FAS summary for PDD 67 is available at [http://www.fas.org/irp/offdocs/pdd/pdd-67.htm], visited Nov. 8, 2004.

[14] 53 FR 47491; Nov. 23, 1988.

[15] While the order defines "national security emergency" broadly, subsequent language excludes "those natural disasters, technological emergencies, or other emergencies, the alleviation of which is normally the responsibility of individuals, the private sector, volunteer organizations, State and local governments, and Federal departments and agencies unless such situations also constitute a national security emergency."

enhance the ability of the United States government to mobilize for, respond to, and recover from a national security emergency.

Under the order, agencies are required to have capabilities to meet essential defense and civilian needs in the event of a national security emergency. This capability is to be developed according to a three step planning process which encompasses identification of functions that would have to be performed by an agency during a national security emergency; the development of plans for performing those functions; and development and maintenance of the capability to execute those plans.

E.O. 12656 designates the National Security Council (NSC) as the principal forum for consideration of national security emergency preparedness policy. The order also requires the director of FEMA to "serve as an advisor to the National Security Council on issues of national security emergency preparedness, including mobilization preparedness, civil defense, continuity of government, technological disasters, and other issues, as appropriate." FEMA is also required to assist in the implementation of preparedness policies by coordinating with the other federal departments and agencies and with state and local governments.

Section 201 of the order charges the head of each federal agency to

- be prepared to respond adequately to all national security emergencies;
- consider national security emergency preparedness factors in the conduct of regular agency functions;
- appoint a senior policy official as emergency coordinator, with responsibility for developing and maintaining a multi-year, national security emergency preparedness plan for the agency;
- design preparedness measures to permit a rapid and effective transition from routine to emergency operations;
- base national security emergency preparedness measures on the use of existing authorities, organizations, resources, and systems, to the maximum extent practicable;
- identify areas where additional legal authorities may be needed to assist management and, consistent with applicable executive orders, take appropriate measures toward acquiring those authorities;
- make policy recommendations to the NSC regarding national security emergency preparedness activities and functions of the federal government;
- coordinate with state and local government agencies and private sector organizations, when appropriate;

- assist state, local, and private sector entities in developing plans for providing services that are essential to a national response;

- cooperate in compiling, evaluating, and exchanging relevant data related to all aspects of national security emergency preparedness;

- develop programs regarding congressional relations and public information that could be used during national security emergencies;

- ensure a capability to provide, during a national security emergency, information concerning official government documents[16] to the official or agency designated to maintain the *Federal Register* in an emergency;

- develop and conduct training and education programs that incorporate emergency preparedness and civil defense information necessary to ensure an effective national response;

- ensure that plans consider the consequences for essential services provided by state and local governments, and by the private sector, if the disbursement of federal funds is disrupted; and

- consult and coordinate with the director of FEMA to ensure that agency emergency preparedness activities and plans are consistent with NSC guidelines and policies.

Section 202 of E.O. 12656 requires the head of each federal department and agency to "ensure the continuity of essential functions in any national security emergency by providing for: succession to office and emergency delegation of authority in accordance with applicable law; safekeeping of essential resources, facilities, and records; and establishment of emergency operating capabilities." Whenever possible, the order based emergency planning on extensions of the regular missions of the departments and agencies. Subsequent sections require each department to carry out specific contingency planning activities in its areas of policy responsibility.[17]

A revision of the policy direction specified in E.O. 12656 is reportedly under consideration. The format of the policy statement (a presidential executive order or

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[16] These documents include Acts of Congress, presidential proclamations, executive orders, regulations, and notices of other actions.

[17] For example, Section 301(1) requires the Department of Agriculture to "develop plans to provide for the continuation of agricultural production, food processing, storage, and distribution through the wholesale level in national security emergencies, and to provide for the domestic distribution of seed, feed, fertilizer, and farm equipment to agricultural producers." Section 801(1) requires the Department of Health and Human Services to "develop national plans and programs to mobilize the health industry and health resources for the provision of health, mental health, and medical services in national security emergencies."

homeland security directive, or department issued guidance), or date for the promulgation of those materials has been set.

Executive Order 13286. E.O. 13286, *Amendment of Executive Orders, and Other Actions, in Connection With the Transfer of Certain Functions to the Secretary of Homeland Security*, was issued by President George W. Bush on February 28, 2003.[18] The order specifies the transfer of authorities to the Secretary of Homeland Security in a variety of policy areas, including those preparedness responsibilities assigned to the Director of FEMA in E.O. 12656. E.O. 13286 requires that the Director of FEMA and the heads of departments and agencies must ensure that their preparedness plans and activities are "consistent with current presidential guidelines and policies." Under E.O. 12656, NSC was responsible for establishing guidelines and policies. The Homeland Security Council was created under the Homeland Security Act of 2002.[19] While NSC retains national security responsibilities, It appears that day-to-day executive branch COOP activities are primarily overseen by the Homeland Security Council.

Role of the Department of Homeland Security and FEMA. According to Federal Preparedness Circular 65, PDD 67 established the Federal Emergency Management Agency (FEMA) as the lead agency for Federal Executive Branch COOP. Following enactment of the Homeland Security Act, and promulgation of E.O. 13286, this authority was transferred to the Department of Homeland Security (DHS) on March 1, 2003, and then delegated to the Emergency Preparedness and Response Directorate (FEMA). FEMA's Office of National Security Coordination has been designated by DHS as the lead agent for the federal executive branch COOP program. Included in this responsibility is the requirement to formulate guidance and establish common standards for agencies to use in developing viable, executable COOP plans; facilitate interagency coordination as appropriate; and oversee and assess the status of COOP capabilities of federal executive branch agencies. Toward those ends, FEMA issued FPC 65 to provide guidance to federal executive branch departments and agencies for use in developing their COOP plans. The circular addresses COOP planning objectives, including

- ensuring the performance of an agency's essential functions and operations during a COOP event;
- reducing loss of life;
- executing, as required, successful succession to office in the event a disruption renders agency leadership unable, unavailable, or incapable of assuming and performing their authorities and responsibilities of office;
- reducing or mitigating disruptions to operations;

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[18] 68 FR 10619, Mar. 5, 2003.

[19] P.L. 107-296, Nov. 25, 2002, 6 U.S.C. 101.

- ensuring that agencies have alternate facilities from which to continue to perform essential functions during a COOP event;

- protecting essential facilities, equipment, vital records, and other assets;

- achieving a timely and orderly recovery from an emergency and reconstitution of normal operations that allows resumption of essential functions for both internal and external clients; and

- ensuring and validating COOP readiness through a dynamic, integrated test, training, and exercise program to support the implementation of COOP plans.

COOP Plan Elements

Although the specific details of a COOP plan will vary by agency, FEMA guidance suggests that executive branch COOP planners incorporate several common components in their COOP planning. These components include the ability to maintain any plan at a high level of readiness which could be capable of implementation both with and without warning of an interruption of routine operations. FEMA suggests that COOP plans should be operational no later than 12 hours after activation, and that such plans provide for sustained agency operations for up to 30 days. To the extent that such facilities are available, COOP planners are advised to take maximum advantage of existing agency field infrastructures. FEMA recommends that agencies develop and maintain their COOP capabilities using a multi-year strategy and program management plan. The plan could outline the process the agency will follow to designate essential functions and resources, define short and long-term COOP goals and objectives, forecast budgetary requirements, anticipate and address issues and potential obstacles, and establish planning milestones. FEMA guidance recommends that COOP plans, when implemented, should provide for continued performance of an organization's essential functions under all circumstances by

- delineating essential functions and activities, agency interdependencies, and the resources needed to perform them;

- establishing orders of succession to key agency positions;

- providing for the identification and preparation of alternate operating facilities for continuity operations;

- establishing a decision process for determining actions in implementing COOP plans and procedures;

- providing procedures for the notification and relocation of COOP personnel to one or more alternate operating facilities;

- providing procedures for conducting operations and administration at alternate operating facilities;

- providing for operational capability at the COOP site as soon as possible with minimal disruption to operations, within 12 hours of activation;

- establishing reliable processes and procedures to acquire resources necessary to continue essential functions for up to 30 days;

- providing for the ability to coordinate activities with non-COOP personnel; and

- providing for the reconstitution of agency capabilities, and transition from continuity operations to normal operations.

The sensitive nature of contingency planning, and the specialized nature of government agencies are factors in the lack of publicly available, detailed agency-by-agency information regarding the extent of COOP planning. In the winter of 2001-2002, however, President George W. Bush issued several executive orders providing for an order of succession in the executive departments and the Environmental Protection Agency.[20] In addition, some agencies within departments have also established leadership succession contingencies as part of their COOP planning.[21]

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[20] E.O. 13241, "Providing an Order of Succession Within the Department of Agriculture," Dec. 18, 2001, 66 FR 66258; E.O. 13242, "Providing an Order of Succession Within the Department of Commerce," Dec. 18, 2001, 66 FR 66260; E.O. 13243, "Providing an Order of Succession Within the Department of Housing and Urban Development," Dec. 18, 2001, 66 FR 66262; E.O. 13244, "Providing an Order of Succession Within the Department of the Interior," Dec. 18, 2001, 66 FR 66267; E.O. 13245, "Providing an Order of Succession Within the Department of Labor," Dec. 18, 2001, 66 FR 66268; E.O. 13246, "Providing an Order of Succession Within the Department of the Treasury," Dec. 18, 2001, 66 FR 66270; E.O. 13247, "Providing an Order of Succession Within the Department of Veterans Affairs," Dec. 18, 2001, 66 FR 66271; E.O. 13250, "Providing an Order of Succession Within the Department of Health and Human Services," Dec. 28, 2001, 67 FR 1597; E.O. 13250, "Providing an Order of Succession Within the Department of Health and Human Services," Dec. 28, 2001, 67 FR 1597; E.O. 13251, "Providing an Order of Succession Within the Department of State," Dec. 28, 2001, 67 FR 1599; and E.O. 13261, "Providing an Order of Succession in the Environmental Protection Agency and Amending Certain Orders on Succession," Mar. 19, 2002, 67 FR 13243. There does not appear to be a similar executive order specifying succession in the Department of Homeland Security.

[21] See United States, Department of Energy, National Nuclear Security Administration, NAP-2, "Establishment of Line of Succession for the Administrator, National Nuclear Security Administration," May 21, 2002. Available on the Internet at [http://www.nnsa.doe.gov/docs/NAP-2.htm]. Also, United States, Department of Transportation, Federal Highway Administration, FHWA Order M 1100.1a, *FHWA Delegations and Organization Manual*, Part I, Chapter 2, "Order of Succession," Sept. 30, 2002.

COOP Plan Training Testing and Exercise

Observers of emergency preparedness planning and training suggest that COOP planning is most effective if it is incorporated into the daily operations of an organization, and when contingency plans are regularly exercised to identify areas of vulnerability. Toward that end, the Department of Homeland Security sponsored Forward Challenge '04 (FC04), a full-scale, interagency COOP exercise in the Spring of 2004. The exercise was designed to involve all federal executive branch departments and agencies.[22] The goals of the exercise included the

- execution of alert and notification procedures;
- establishment of operational capability at agency alternate facilities;
- implementation of agency succession plans and delegations of authority;
- testing of interoperable communications capabilities; and
- testing of procedures to receive process, analyze and disseminate information from internal agency assets and from external entities.

An after action report issued by FEMA in August 2004 concluded that the executive branch demonstrated its capability to alert and notify departments and agencies in the National Capital Region of a COOP event. FEMA found that the exercise improved overall readiness, increased awareness by senior leadership of succession plans and their responsibilities, and prepared departments and agencies to provide essential services in the event of an emergency or disaster, regardless of

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[22] Executive branch agencies participating in FC04 included Department of Agriculture; Department of Commerce; Department of Education; Department of Defense; Department of Energy; Department of Homeland Security (Headquarters); Department of Housing and Urban Development; Department of Health and Human Services; Department of the Interior; Department of Labor; Department of Justice; Department of State; Department of Transportation; Department of the Treasury; Department of Veterans Affairs; Agency for International Development; Central Intelligence Agency, Director of Central Intelligence; United States Coast Guard; Environmental Protection Agency; Equal Employment Opportunity Commission; Federal Communications Commission; Federal Deposit Insurance Corporation; Federal Energy Regulatory Commission; Federal Reserve Board; Federal Trade Commission; General Services Administration; Homeland Security Council/National Security Council; United States Holocaust Memorial Museum; United States Marshal Service; National Aeronautics and Space Administration (Headquarters); National Archives and Records Administration; National Communications System Directorate; National Science Foundation; National Transportation Safety Board; Nuclear Regulatory Commission; Office of Personnel Management; Office of Science and Technology Policy, Executive Office of the President; Peace Corps; Pension Benefit Guaranty Corporation; United States Postal Service; United States Secret Service; Securities and Exchange Commission; Selective Service System; Small Business Administration; Social Security Administration; and Tennessee Valley Authority. The Administrative Office of the United States Courts, an agency of the judicial branch, also participated.

cause.[23] Specific details of the exercise and areas of agency improvement are not public information.

Issues

Policy questions and issues will likely arise as Congress examines the status of COOP planning within the executive branch of the federal government and the implications of that planning for overall agency emergency preparedness. Some of the issues regarding COOP planning include

General COOP Preparedness. A report issued by the Government Accountability Office (GAO; formerly named the General Accounting Office) found that some agencies had created COOP plans that did not include all of the elements of a viable plan as defined by FPC 65. Consequently, GAO concluded that agency efforts to provide services during an emergency could be impaired. Moreover, GAO found that FEMA

- does not provide specific criteria through FPC 65 for identifying essential functions, or address interdependencies between agencies;
- did not review the essential functions identified in its assessments of COOP planning, or follow up with agencies to determine whether they addressed previously identified weaknesses; and
- did not conduct tests or exercises that could confirm that the identified essential functions were correct.

The GAO report was issued before Forward Challenge 04 took place, and the issuance of an update FPC 65. Efforts by FEMA and the Homeland Security Council to provide guidance regarding the specification of essential functions are ongoing. Until those actions are completed, and improved oversight of COOP activities is established, however, GAO's conclusion that agencies are likely to continue to base their COOP planning on ill defined assumptions that could limit the effectiveness of resulting plans,[24] might still be salient.

Issue Immediacy. As the memory of dramatic interruptions such as the September 11 attacks and anthrax incidents fade, attention to administrative operations like COOP planning may receive lower priority attention from agency planners. Emergency preparedness observers note that the success of contingency planning is dependent on current planning and regular drills, simulations, or other testing. Prior to the attacks, executive branch COOP management by NSC and FEMA and guidance for other executive branch agencies were all in place, and that guidance included requirements for agency-wide staff education, as well as the

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[23] Department of Homeland Security, Federal Emergency Management Agency, *Exercise Forward Challenge '04: Interagency After Action Report* (Washington: 2004), pp. iii, 1, 31.

[24] U.S. Government Accountability Office, *Continuity of Operations: Improved Planning Needed to Ensure Delivery of Essential Government Services*, GAO Report GAO-04-160, Feb. 27, 2004.

testing and drilling of COOP plans. Nevertheless, on September 11, 2001, some federal employees reportedly were unaware of these plans, and some agencies found they had no way of accounting for, or communicating with, evacuated staff.

Congressional Committee Jurisdiction. Government operations in the executive branch are generally overseen by the House Committee on Government Reform and the Senate Committee on Governmental Affairs. In the House committee's oversight plan for the 108th Congress, the committee's chairman, Representative Tom Davis of Virginia, indicated that the committee might "work with essential government agencies to make sure they have contingency plans in place in case of a major disruption."[25] In a March 29, 2004 press release, the chairman indicated that the committee would hold an oversight hearing on the GAO report.[26] In addition, the Select Committee on Homeland Security appears to have both oversight and legislative responsibility regarding the Department of Homeland Security during the 108th Congress (This jurisdiction is not exclusive, and referral of legislation relating to the department is decided on a case by case basis.). The transfer of FEMA to the new department may give the select committee some role in overseeing the guidance and implementation of COOP planning. Finally, the specialized nature of various agencies' missions may also lead to COOP oversight being carried out by the authorizing committees most familiar with specific agency operations.

Budgetary Issues. The current budgetary environment is characterized by limited resources, coupled with increased demand for a variety of homeland security protective measures, including executive branch COOP planning. A possible consequence of the acquisition of technology, infrastructure, and supplies to be held in reserve for use in an emergency, is the likelihood that such an allocation might reduce resources available for routine operations. To the extent that COOP facilities and infrastructure are integrated into daily agency operations, this matter might be less salient. On the other hand, COOP activities are not directly addressed in the agency budgeting and congressional appropriations processes. Consequently, there is a possibility that budgetary decisions for COOP planning might not cover minimally necessary resources.

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[25] U.S. Congress, House, Committee on Government Reform, *Oversight Plans for All House Committees, with Accompanying Recommendations*, H.Rept. 108-52, 108th Cong., 1st sess. (Washington: GPO, 2003), pp 117-118, available at [http://reform.house.gov/UploadedFiles/Oversight%20Plans%20for%20All%20House%20Committees.pdf], visited Apr. 7, 2004.

Tom Davis, Chairman, House Committee on Government Reform, "Committee on Government Reform Oversight Plan, 108th Congress," undated, pp. 3-4. The document is available at [http://reform.house.gov/UploadedFiles/108th%20Oversight%20Plan.pdf].

[26] House Committee on Government Reform,"Government Reform Committee to Review Government's Continuity of Operations Planning: GAO Tells Chairman Davis: Not One Major Federal Agency Has Shown it Has a Comprehensive Plan for Continuing Operations in an Emergency," Press Release, Mar 29, 2004, available at [http://reform.house.gov/GovReform/News/DocumentSingle.aspx?DocumentID=2968], visited Mar. 30, 2004.

Policy Questions

Executive branch COOP planning raise several questions related to underlying policy matters. Some of these question include the following:

- How are COOP plans maintained? Where are they physically, and what provisions are in place for accessing plans in the event of an interruption?

- Government-wide, what is the current general level of preparedness to carry out COOP plans?

- What plans do departments and agencies of the executive, branch have in place to ensure that they can continue to carry out their constitutional and statutory duties in the event of an incident that could potentially disrupt those operations for undetermined periods of time? Which agencies have established effective COOP programs? How have those plans been implemented or exercised and practiced?

- How have various plans been upgraded in the aftermath of the autumn, 2001 attacks? Have those plans been evaluated? By what organizations?

- Because COOP plans are typically customized to preserve an agency's unique operational needs, how can effective COOP planning be evaluated? What standards are imposed?

- What are the costs of establishing offsite facilities for use as emergency offices, alternate computing facilities, or securing office equipment and supplies in an emergency?

- What has been the effect of COOP planning on day-to-day personnel and technological management?

- What are the implications of COOP planning in relation to record keeping and archiving of paper-based and electronic information?

- Has FEMA been effective in supporting agencies as they develop their COOP plans? What are the consequences of incorporating FEMA into the Department of Homeland security for government-wide COOP management and administration?

- Is legislation needed to adjust respective agency roles as a result of the creation of the Department of Homeland Security?

In considering issues related to conducting oversight of executive branch COOP planing, Congress may examine strategies that could balance congressional responsibilities while maintaining the operational security of executive COOP plans. Some of the options for pursuing oversight include the potential use of congressional

staff to conduct evaluation and investigation; holding congressional hearings after determining whether such hearings should be open or closed to the public; and the possible utility of regularly updating the findings of widespread audit and program evaluation of COOP planning carried out by GAO.

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CRS Electronic Briefing Book. *Terrorism*. Page on "Continuity of Congress: Proposals and Issues," by Paul Rundquist, at [http://www.congress.gov/brbk/html/ebter201.html].

Background Issues

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