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Executive Branch Continuity of Operations (COOP): An Overview

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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. Subsequent sections address authorities for COOP planning; the roles of the National Security Council, the Homeland Security Council, and the Federal Emergency Management Agency in COOP planning; COOP planning objectives, elements, and essential functions; potential issues for Congress, including matters of 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. Executive branch COOP issues that Congress might consider during the 109th Congress are discussed in CRS Report RL32752, *Continuity of Operations (COOP) in the Executive Branch: Issues in the 109th Congress*. COOP planning in Congress is addressed in CRS Report RL31594, *Congressional Continuity of Operations (COOP): An Overview of Concepts and Challenges*. Contingency planning in the federal judiciary is discussed in CRS Report RL31978, *Emergency Preparedness and Continuity of Operations (COOP) Planning in the Federal Judiciary*. 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 continuity of government (COG), see CRS Report RS21089, *Continuity of Government: Current Federal Arrangements and the Future*.

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Executive Branch Continuity of Operations (COOP): An Overview

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. Broadly, federal government contingency planning grows out of two major streams. One stream, identified as continuity of government (COG), typically focuses on preserving government leadership and officials.² The preservation of staff, facilities, technology systems, and data comprises the second stream and is usually the focus of COOP planning. Depending on the scope of an operational interruption, COOP and COG plans could be initiated independently or in concert with one another. Due to security concerns, current government contingency plans are not public information. This secrecy, coupled with the wide variety of potential operational interruptions, make a firm delineation between COOP and COG activities that could be generalized across all circumstance are all but impossible to specify. The history of contingency planning suggests, however, that it is reasonable to assume that contingency planning for government leaders, their staffs, and the facilities that support government operations are closely interrelated. Taken together, COOP and COG are designed to ensure survival of a constitutional form of government and the continuity of essential federal functions.

COOP planning refers to the internal effort of an organization, such as a branch of government, department, agency, 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

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

² Government-wide continuity of government planning is discussed in 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 (continued...)

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. Such a response 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, executive order, 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 plans⁶ 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. Subsequent sections address authorities for COOP planning; the roles of the National Security Council, the Homeland Security Council, the Federal Emergency Management Agency and executive branch departments and agencies in COOP planning; and COOP planning objectives, elements, and essential functions. The final two sections address potential issues for Congress, 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.⁷

³ (...continued)

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 RL30735, *Cyberwarfare*, by Steven A. Hildreth and CRS Report RL31787, *Information Warfare and Cyberwar: Capabilities and Related Policy Issues*, by Clay Wilson.

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 Executive branch COOP issues that Congress might consider during the 109th Congress (continued...)

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,⁸ along with the other senior leaders of cabinet 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.⁹

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 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

⁷ (...continued)

are discussed in CRS Report RL32752, *Continuity of Operations (COOP) in the Executive Branch: Issues in the 109th Congress*, by R. Eric Petersen.

⁸ Under the Presidential Succession Act of 1947, as amended (61 Stat. 380, 3 U.S.C. 19), 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. For more information on presidential succession, see CRS Report RL31761, *Presidential and Vice Presidential Succession: Overview and Current Legislation*, by Thomas H. Neale.

⁹ 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.

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 characterized by potential sudden, localized terrorist attacks that could include the use of weapons of mass destruction.¹⁰

Executive Branch COOP Planning Authority

Three presidential documents currently govern contingency planning activity. The oldest of these, Executive Order (E.O.) 12656, *Assignment of Emergency Preparedness Responsibilities*, issued in 1988 remains valid, although it arose from the context of the Cold War. The more recent Presidential Decision Directive (PDD) 67, *Enduring Constitutional Government and Continuity of Government Operations* and Executive Order 13286, *Amendment of Executive Orders, and Other Actions, in Connection With the Transfer of Certain Functions to the Secretary of Homeland Security*, were prepared in 1998 and 2003, respectively, within the context of terrorism. Lending further detail to COOP planning is Federal Preparedness Circular (FPC) 65, issued by the Federal Emergency Management Agency (FEMA) in 2004.¹¹

Three executive branch entities appear to oversee COOP planning. Under E.O. 12656, the National Security Council (NSC) oversees consideration of national security emergency preparedness policy. The Homeland Security Council (HSC) was created by executive order¹² in the immediate aftermath of the September 11, 2001 attacks and was established as a statutory entity of the Executive Office of the President (EOP) in the Homeland Security Act of 2002.¹³ The President, the Vice President, the Secretary of Homeland Security, the Attorney General, the Secretary of Defense, and such other individuals as designated by the President comprise the membership of HSC. The council's statutory mandate includes the oversight and

¹⁰ 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.

¹¹ A more detailed discussion of the requirements of E.O. 12656, PDD 67, and E.O. 13286 is available in CRS Report RL31857, *Continuity of Operations (COOP) in the Executive Branch: An Overview*, by Harold C. Relyea.

¹² E.O. 13228, October 8, 2001, 66 FR 51812-51817.

¹³ P.L. 107-296, Nov. 25, 2002, 116 Stat. 2135. A brief discussion of the of HSC prior to enactment of the Homeland Security Act is available in CRS Report RL31357, *Federal Interagency Coordinative Mechanisms: Varied Types and Numerous Devices*, by Frederick M. Kaiser, p.12.

review of the homeland security policies of the federal government.¹⁴ E.O. 12656 mandates the Director of FEMA to “serve as an advisor to the National Security Council on issues of national security emergency preparedness, including ... continuity of government, technological disasters, and other issues, as appropriate.” While it is not a directive issued by the President, Federal Preparedness Circular 65 identifies PDD 67 as the authority establishing FEMA as the lead agency for executive branch COOP activities.

Executive Order 12656

E.O. 12656, *Assignment of Emergency Preparedness Responsibilities* was issued November 18, 1988 by President Ronald Reagan.¹⁵ 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.”¹⁶ 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 enhance the ability of the U.S. 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.

¹⁴ 6 U.S.C. 494.

¹⁵ 53 FR 47491; Nov. 23, 1988.

¹⁶ 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.”

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 documents¹⁷ to the official or agency designated to maintain the *Federal Register* in an emergency;

¹⁷ These documents include Acts of Congress, presidential proclamations, executive orders, regulations, and notices of other actions.

- 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.¹⁸

Presidential Decision Directive 67

PDD 67, *Enduring Constitutional Government and Continuity of Government Operations*, was issued by the Clinton Administration on October 21, 1998,¹⁹ and has

¹⁸ 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.”

¹⁹ PDD 67 replaced 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 April 18, 1990. National Security Decision Directives (NSDD) 47 “Emergency Mobilization Preparedness,” issued July 22, 1982, and NSDD 55, “Enduring National Leadership,” issued September 14, 1982, by President Ronald Reagan, included consideration of continued government operations planning. See 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 January 5, 1973, and NSDM 8, “Crisis Anticipation and Management,” issued March 21, 1969, and two National Security Acton Memoranda (continued...)

been classified by the NSC. An unclassified fact sheet on the directive, prepared by HSC staff,²⁰ describes contingency planning efforts as “a top national security priority ... to ensure all three branches of government, individually and collectively, continues (sic) to preserve the capability to govern; to continue leadership; to perform essential functions and services required to meet essential defense and civilian needs; and, if necessary, to reconstitute themselves against the entire range of evolving post-Cold War threats.”

The PDD 67 fact sheet describes a program designed to ensure survival of constitutional government and continuity of essential federal functions, centered around three policy concepts: enduring constitutional government (ECG), continuity of government (COG), and COOP.

Enduring Constitutional Government. The PDD 67 fact sheet describes ECG as “a cooperative effort among the executive, legislative and judicial branches of government, coordinated by the President, to preserve the capability to execute constitutional responsibilities in a catastrophic emergency.” The endurance of the constitutional framework under which the nation is governed in the face of severe interruption is described as the overarching goal of contingency planning activities. To accomplish that goal, ECG requires orderly succession, appropriate transition of leadership, and the performance of essential functions by all three branches of government. The PDD 67 fact sheet notes that ECG is dependent on effective branch-level continuity of government and continuity of operations plans and capabilities.

Continuity of Government. The PDD 67 fact sheet describes COG as “a coordinated effort within each branch to ensure the capability to continue its minimum essential responsibilities in a catastrophic emergency.” COG activities involve ensuring the continuity of minimum essential branch functions through plans and procedures governing:

- succession to office;
- emergency delegation of authority;

¹⁹ (...continued)

(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 February 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.

²⁰ “Unclassified Provisions of PDD-67 (Enduring Constitutional Government and Continuity of Government Operations),” Homeland Security Council fact sheet, undated. No widely available official summary or other information about PDD 67 has been released. Some information regarding the directive may be 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 Feb. 3, 2005.

- safekeeping of vital resources, facilities and records;
- improvisation or emergency acquisition of vital resources necessary for the performance of minimum essential functions;
- capability to relocate essential personnel and functions to alternate work sites; and
- performance of minimum essential functions at the alternate work site until normal operations can be resumed.

The PDD 67 fact sheet indicates that COG is dependent on effective COOP plans and capabilities.

Continuity of Operations. COOP is described in the PDD 67 fact sheet as “an internal effort within individual components of the executive, legislative and judicial branches of government to assure the capability exists to continue” operations in response to “a wide range of potential emergencies, including localized acts of nature, accidents, and technological and/or attack-related emergencies. In the fact sheet, COOP plans and capabilities are described as covering the same functional objectives of COG, making COOP an integral part of ECG as well a “good business practice,” and “part of the fundamental mission of Federal departments and agencies as responsible and reliable public institutions.” The PDD 67 fact sheet notes that all executive branch departments and agencies, including those within the Executive Office of the President (EOP), are to establish a viable COOP capability.

Executive Order 13286

E.O. 13286 was issued by President George W. Bush on February 28, 2003.²¹ 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.

Role of the Department of Homeland Security and FEMA

As the lead agency for COOP planning, FEMA has the responsibility to formulate guidance for agencies to use in developing viable, executable COOP plans; facilitate interagency coordination as appropriate; and oversee and assess the status of COOP capability across the federal executive branch. Federal Preparedness Circular (FPC) 65, issued by FEMA on June 15, 2004, identifies PDD 67 as the authority establishing FEMA as the “as the lead agency for federal executive branch COOP.”²² According to the circular, this authority was transferred to the Department of Homeland Security (DHS) on March 1, 2003, and then delegated to the Emergency

²¹ 68 FR 10619, Mar. 5, 2003.

²² 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 Feb. 3, 2005.

FEMA. FEMA's Office of National Security Coordination (ONSC) has been designated as the department's lead agent for the executive branch COOP program. FPC 65 describes FEMA's responsibilities to include formulating guidance and establishing common standards for executive branch agencies to use in developing viable, executable COOP plans; facilitating interagency coordination; and overseeing and assessing the status of COOP capabilities in executive branch agencies. The circular notes that each executive branch agency is responsible for appointing a senior federal government executive as an emergency coordinator to serve as the program manager and agency point of contact for coordinating agency COOP activities, which include planning, programming, and budgeting for a viable and executable COOP program that conforms to FEMA guidance. The circular does not appear to carry authority for FEMA to compel action by other executive branch agencies.

COOP Planning Objectives, Elements, and Essential Functions

Planning Objectives

Although the specific details of a COOP plan will vary by agency, FEMA guidance attempts to 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. FPC 65 establishes several COOP planning objectives, which include

- 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;
- 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.

Plan Elements

To achieve the planning objectives FEMA specifies several elements that comprise a viable COOP capability. When implemented, a COOP plan will provide for continued performance of an organization's essential functions under all circumstances. According to Federal Preparedness Circular 65, elements of such a plan require agencies to, at a minimum:

- identify essential functions and activities, agency interdependencies, and the resources needed to perform them;
- establish orders of succession to key agency positions;
- establish and maintain current roster(s) of fully equipped and trained COOP personnel with the authority to perform essential functions;
- provide for the identification and preparation of alternate operating facilities for continuity operations;
- outline a decision process for determining appropriate actions in implementing COOP plans and procedures;
- provide procedures for the notification and relocation of COOP personnel to one or more alternate operating facilities;
- provide procedures for the orientation of COOP personnel and for conducting operations and administration at alternate operating facilities;
- provide for operational capability at the COOP site as soon as possible with minimal disruption to operations, but in all cases within 12 hours of activation;
- establish reliable processes and procedures to acquire resources necessary to continue essential functions and sustain operations until normal business activities can be reconstituted, which could be up to 30 days;
- provide for the ability to coordinate activities with non-COOP personnel; and
- provide for 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.²³ In addition, some agencies within departments have also established leadership succession contingencies as part of their COOP planning.²⁴

Essential Functions

COOP planners suggest that identification and prioritization of essential functions is a prerequisite for COOP because such an effort establishes the planning parameters that drive an agency's efforts in all other planning and preparedness areas. Essential functions are those that the executive branch agencies must be able to perform without significant interruption. Homeland Security Council guidance mandates the development of procedures that must be in place to enable each function to be performed regardless of the disruption that is occurring or has occurred.²⁵ If COOP plans are activated, continuous performance of essential functions should enable agencies to provide vital services, exercise civil authority, maintain the safety and well being of the general populace, and sustain the industrial economic base of the nation in an emergency.

Executive branch COOP planners identify three levels of essential government functions that are subject to continuity planning: national essential functions (NEF), priority mission essential functions (PMEF), and secondary mission essential functions (SMEF). In the event of an emergency that necessitated the activation of COOP or COG plans, NEF would be the primary concern of the President and the

²³ 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.

²⁴ 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, [<http://www.nnsa.doe.gov/docs/NAP-2.htm>], visited Feb. 3, 2005.

²⁵ Homeland Security Council, "Background Paper on Essential Functions Concept and Implementation and Recommended Guidelines for Submitting Department/Agency Priority Mission Essential Functions Information," Jan. 10, 2005.

national leadership. Priority mission essential functions would comprise those department and agency activities that directly support NEF. SMEF responsibilities lie in departments and agencies. Depending on the nature and duration of the event, some secondary functions would generally support agency PMEF, while others could support some NEF.

National Essential Functions. The Homeland Security Council defines national essential functions as those necessary to lead and sustain the country during an emergency, and that must be supported through department and agency continuity capabilities. These functions are expected to be the primary focus of the President and the national leadership during and following an emergency. National essential functions might be performed by one or more department or agency, and are not new authorities, requirements, or functions, but those that are routinely carried out during normal operating conditions. The Homeland Security Council identifies eight national essential functions that must be supported throughout an operational interruption.²⁶ These include the capacity to

- **preserve the constitutional form of government.** Department and agency functions should include activities that respect and implement checks and balances among the three branches of the federal government. An example is the preservation of essential communications between the executive, legislative, and judicial branches of government during an incident.
- **provide leadership visible to the nation and the world, and to maintain the trust and confidence of the American people.** Executive branch departments and agencies are expected to demonstrate that the federal government is viable, functioning, and effectively addressing the emergency. Activities in support of this function could include communicating with the American people and providing information to state and local governments, or communicating with foreign leaders.
- **defend the country against all enemies, foreign or domestic, and to prevent or interdict future attacks.** In addition to the protection and defense of the worldwide interests of the United States against foreign or domestic enemies, departments and agencies are to honor security agreements and treaties with allies, and maintain military readiness and preparedness in furtherance of national interests and objectives.
- **maintain and foster effective relationships with foreign nations.** Departments and agencies are responsible for ensuring the ability of the federal government to communicate and interact with foreign governments; share intelligence and identify threats in cooperation with foreign governments; and bring to justice perpetrators of crimes

²⁶ National essential functions definitions and examples are based on Homeland Security Council, “Background Paper on Essential Functions Concept and Implementation.”

or attacks against the United States, its citizens or interests. Examples identified by the Homeland Security Council include maintaining the security of the nation's borders against unlawful or hostile entry; ensuring the safety of commercial transportation; and conducting law enforcement investigations of federal crimes.

- **provide rapid and effective response to and recovery from the domestic consequences of an attack or other incident.** In the event of an incident, departments and agencies are to implement response and recovery plans, including, but not limited to, the National Response Plan (NRP).²⁷ Agency actions could include the collection and dissemination of incident and threat related information, or the provision of medical care to populations affected by the attack or incident.
- **protect and stabilize the nation's economy, and to ensure confidence in financial systems.** It is essential that department and agency functions minimize the economic consequences of an attack or other incident both nationally or internationally. Relevant executive branch department or agency activities could include coordinating the re-opening of financial markets, or facilitating the movement of goods and services across borders to support economic activity.
- **provide for critical federal government services that address the health, safety, and welfare needs of the nation.**²⁸ The activities of departments and agencies must ensure that the critical national needs of the nation are met during an emergency. Examples could include maintenance of the safety and efficiency of the nation's food supply, air traffic continuance, or the provision of timely and accurate severe storm warning information to the public.

Priority Mission Essential Functions. Unlike the national essential functions, priority mission essential functions are to be identified by departments and agencies respectively. The guidance provided by the Homeland Security Council directs that primary mission essential functions must be performed to support or implement national essential functions before, during, and in the immediate aftermath of an emergency. Generally, these functions are to be uninterrupted, or resumed,

²⁷ According to the Department of Homeland Security, The National Response Plan (mandated by 6 U.S.C. 312 (6)) establishes a comprehensive all-hazards approach to enhance the ability of the United States to manage domestic incidents. The National Response Plan is available from the department's website at [http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0566.xml], visited Feb. 3, 2005.

²⁸ HSC guidance notes that "this NEF is strictly limited to critical functions of the federal government with a national level consequence; it not does apply to general well-being and welfare of the nation."

during the first 24-48 hours after the occurrence of an emergency and continued through full resumption of all government activities.²⁹

Each executive branch department and agency is responsible for identifying its priority mission essential functions based on the eight national functions; describing those functions succinctly; determining the associated national essential functions for each; establishing a minimum time period for performing the function during an emergency; and identifying other departments and agencies upon which they depend in order to perform their functions.

Secondary Mission Essential Functions. Those activities that a department or agency determines must be performed in order to bring about full resumption of its normal functions, but that are not primary mission essential functions, are defined as secondary mission essential functions. According to Homeland Security Council guidelines, resumption of secondary functions “may need to occur within a very short period of time or only after several days, depending on the nature of the agency mission and the nature of the disruption to normal agency functions.” As with primary mission essential functions, secondary mission essential functions are identified by each executive branch department or agency. They are to be used within their respective organizations for continuity and related planning. Agency-identified secondary functions will not be collected, reviewed, or approved at the national level.³⁰

Defining Essential Functions of Departments and Agencies

In FPC 65, FEMA states that the “identification and prioritization of essential functions is a prerequisite for COOP because it establishes the planning parameters that drive the agency’s efforts in all other planning and preparedness areas.”³¹ The Homeland Security Council has provided guidance on identifying sources of executive branch department and agency-essential functions, and has provided several examples of resources that agencies might use to identify their primary- and secondary-mission essential functions.³² These include the following:

- agency strategic plans that directly support national essential functions;

²⁹ Primary mission essential function definitions and examples are based on Homeland Security Council, “Background Paper on Essential Functions Concept and Implementation.”

³⁰ Ibid.

³¹ Department of Homeland Security, Federal Preparedness Circular 65, “Federal Executive Branch Continuity of Operations (COOP),” p. 5.

³² Homeland Security Council, “Background Paper on Essential Functions Concept and Implementation,” unnumbered. Also, examples of potential primary and secondary mission essential functions are found in materials provided in the Essential Functions Workshop, presented by the Homeland Security Council, FEMA, and Interagency COOP Working Group staff, Jan. 12, 2005.

- lines of business³³ as defined in the business reference model materials agencies submitted to the Office of Management and Budget (OMB) in conjunction with its federal enterprise architecture planning program;³⁴
- submissions provided to various authorities under the Government Performance Results Act (GPRA);³⁵
- critical infrastructure protection plans prepared pursuant to Homeland Security Presidential Directive (HSPD) 7;³⁶
- presidential decision directives, executive orders, particularly E.O. 12656; and
- legislation.³⁷

Several observers suggest that in addition to these resources agency-essential functions could derive from statutory language that establish agencies and define or modify programs and functions carried out by the agencies, or committee or conference report language accompanying annual legislation appropriating agency funds.³⁸ Congress could ultimately act to consider legislative options intended to establish clearer understandings of the essential functions of executive branch departments and agencies related to COOP planning.

³³ OMB uses the term “lines of business” to refer to the activities carried out by a department or agency. External lines of business describe the services and products the government provides to its customers and stakeholders, while internal lines of business describe the inter-and intra-agency administrative and support activities that enable the government to operate.

³⁴ Generally, enterprise architecture refers to a blueprint of the business functions of an organization and the technology needed to support them. According to its website, the OMB “is developing the Federal Enterprise Architecture (FEA)” as “a business-based framework for Government-wide improvement,” see [<http://www.feapmo.gov/fea.asp>]. The business reference model is the first component of FEA. “OMB Releases New Business Reference Model to Improve Agency Management,” July 24, 2002, [<http://www.whitehouse.gov/omb/pubpress/2002-50.pdf>]. Both sites visited Feb. 3, 2005.

³⁵ P.L. 103-62; 107 Stat. 285.

³⁶ Homeland Security Presidential Directive 7, *Critical Infrastructure Identification, Prioritization, and Protection*, Dec. 17, 2003, available at [<http://www.whitehouse.gov/news/releases/2003/12/20031217-5.html>], visited Feb. 3, 2005.

³⁷ Resources for identifying agency mission essential functions are based on materials provided in the Essential Functions Workshop, Jan. 12, 2005.

³⁸ See Martha Derthick, *Policymaking for Social Security* (Washington: The Brookings Institution, 1979); I. M. Destler, “Delegating Trade Policy,” in Paul E. Peterson, ed., *The President, The Congress and the Making of Foreign Policy* (Norman, OK: University of Oklahoma Press, 1994), pp. 228-246; and CRS Report 98-558, *Appropriations Bills: What is Report Language?*, by Sandy Streeter.

COOP Policy Issues

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

- executive branch authority to carry out COOP activities;
- budgeting;
- the extent of COOP preparedness;
- congressional committee jurisdiction; and
- the perceived immediacy of contingency planning.

COOP Planning Authority

The authorities governing executive COOP planning raise several issues that might be examined by Congress. These include the capacity of existing executive authorities to effectively govern COOP planning and the implementation of such plans.

Authorities governing COOP activities, E.O. 12656, PDD 67 and E.O. 13286 have been issued by three different presidential administrations. Some observers suggested that each policy directive was issued at different times in response to disparate threat conditions. For example, E.O. 12656 is a continuation of Cold War-era contingency policies that assume a nuclear confrontation with a single state, the former Soviet Union. A continuity planning assumption from this era is the potential for a decapitating strike on the national leadership, including the President, cabinet, and congressional leaders.

By contrast, observers note that, when PDD 67 and E.O. 13286 were issued, the threat environment was evolving from a single state model to one characterized by the advent of threat from hostile states and loose organizations of non-state actors with the capacity to launch small scale attacks using non-traditional weapons. Such attacks may not disrupt senior leadership in its entirety, but have the potential to impair the operations of key government functions and programs. The PDD 67 fact sheet, as well as guidance issued by FEMA in Federal Preparedness Circular 65, recognize the enhanced threat of potential attack by hostile states or terrorists, as well as hazards occasioned by potential natural and technological disasters. A document that defines the potential threat environment, and that legally compels executive agencies to prepare plans to withstand such incursions, however, is not evident.

Moreover, it is not clear from publicly available documents what legal authority exists to implement COOP plans. E.O. 13286 is silent on the matter; section 102 (b) of E.O. 12656 notes explicitly that the order does not authorize the implementation of COOP plans, and that any such plans “may be executed only in the event that ...

such execution is authorized in law.”³⁹ The PDD 67 fact sheet notes that “with warning, the National Security Council process shall be used to reach deliberate decisions regarding the alerting or activation of government-wide COOP and COG plans and capabilities.” The fact sheet does not, however, identify the legal authority under which such a process could be initiated, or by which COOP plans could be activated.

Observers of presidential powers and authorities suggest that such an authorization could be found in broad national emergency powers that have been exercised by the President in times of crisis.. Typically, national emergency powers have been invoked in response to threats of the loss of life, property, or public order.⁴⁰ Following the attacks on Washington and New York on September 11, 2001, federal government COG and COOP plans were reportedly activated.⁴¹ It does not appear, however, that declarations of emergency pursuant to the National Emergencies Act⁴² would necessarily actuate statutory provisions granting the President the authority to activate COOP plans in response to threats or attack against government, or detailing the ability of the executive branch to carry out its statutory missions and programs.⁴³

Finally, experts in public administration and management might suggest that the attenuated stream of authorities governing executive branch COOP planning could lead to confusion regarding which agencies of the executive branch oversee planning activities. 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, the NSC was responsible for establishing guidelines and policies. Following the creation of the Homeland Security Council, it appears that, while the NSC retains broad national security responsibilities, including those related to COOP, as specified in PDD 67,⁴⁴ executive branch COOP activities now are overseen primarily by the HSC. Notably, guidelines related to essential COOP functions, described above, have recently been approved by Homeland Security Council staff. The council has communicated those guidelines directly to executive departments and agencies,⁴⁵ and through FEMA. No publicly identifiable document explicitly vesting the council with such authority over COOP planning has been identified.

³⁹ 53 FR 47492.

⁴⁰ See Harold C. Relyea, “Emergency Powers,” in Katy J. Harriger, ed., *Separation of Powers: Documents and Commentary* (Washington: CQ Press, 2003), pp. 80-97.

⁴¹ “The Armageddon Plan,” *Nightline*, ABC News, originally broadcast Apr. 7, 2004, transcript retrieved through nexis.com.

⁴² 50 U.S.C. 1601-1651.

⁴³ A list of declared national emergencies invoked under the National Emergencies Act is available in CRS Report 98-505, *National Emergency Powers*, by Harold C. Relyea

⁴⁴ For example, the National Security Council is the classifying authority for PDD 67.

⁴⁵ Frances Fragos Townsend, “Continuity Policy/Department and Agency Essential Functions,” memorandum for distribution from the Assistant to the President for Homeland Security, Jan. 10, 2005.

The sensitive nature of government contingency planning likely precludes a public discussion of the criteria for implementing COOP plans. Enactment of statutory authority to establish an entity to oversee and implement such plans, however, might address concerns regarding the apparent lack of clear authority to activate such plans. Any such authority would likely vest the lead executive branch entity with overall programmatic responsibility. Further, any such authority would likely be carried out in a timely manner appropriate to the threat environment. Finally, implementing authority could be publicly available through access to an executive order or statute. Congress might opt to consider legislative options to establish clear authorities for the formulation, management, and implementation of executive branch COOP planning.

Executive Branch COOP Budgeting

The current budgetary environment is characterized by limited resources, coupled with an increased demand for a variety of homeland security protective measures, including executive branch COOP planning. Homeland Security Council and FEMA staff have suggested that, as a consequence of the multi-disciplinary nature of COOP planning, executive branch agency expenditures for COOP activities are sometimes spread across several departmental or agency accounts, and data are not readily available to demonstrate agency COOP funding levels.

On August 6, 2004, OMB issued a budget data request⁴⁶ that requires executive branch departments and agencies to submit a summary table for COOP programs that includes the department or agency name, account title and number, activity, and budget authority for the enacted and request levels, as appropriate. In addition, departments and agencies are required to submit a narrative background summary of their COOP plan and activities as well as an explanation of how the plan, and resources committed to it, adequately support established COOP standards. OMB has announced that it will review agency COOP program budget submissions as part of the FY2006 budget process, in conjunction with the Homeland Security Council.⁴⁷

A potential consequence of this data gathering is that Congress might consider specific COOP program expenditures in the FY2006 authorization and appropriations cycles. Relatedly, Congress might request the Congressional Budget Office to prepare and analyze data similar to that specified in the budget data request.

⁴⁶ Generally, OMB uses budget data requests to identify budgetary and management information related to the programs and functions for which departments and agencies are responsible. According to OMB, the Aug. 6, 2004 budget data request will support review of executive branch homeland security and overseas combating terrorism funding, and will be used in developing the President's FY2006 Budget. The timing of the data submissions was to be determined in consultation between the departments and agencies and their OMB representatives.

⁴⁷ Office of Management and Budget, "Homeland Security (HS)/Overseas Combating Terrorism (OCT.) Funding Estimates, including Agency Continuity of Operations Program (COOP) Activities," Budget Data Request No. 04-41, Aug. 6, 2004.

A possible effect 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. Access to specific COOP program expenditure data might provide Congress with tools to determine the utility of executive branch COOP programs and their integration into routine agency activities.

Level of COOP Preparedness

A report issued by the Government Accountability Office (GAO; formerly named the General Accounting Office) in February 2004 found that some agencies had created COOP plans that did not include all of the elements of a viable plan as defined by previous versions of Federal Preparedness Circular 65.⁴⁸ Consequently, GAO concluded that agency efforts to provide services during an emergency could be impaired. Additionally, GAO found that FEMA did not

- provide specific criteria through FPC 65 for identifying essential functions, or address interdependencies between agencies;
- review the essential functions identified in its assessments of COOP planning, or follow up with agencies to determine whether they addressed previously identified weaknesses; or
- conduct tests or exercises that could confirm that the identified essential functions were correct.

During the 108th Congress, the House Committee on Government Reform held an oversight hearing on the GAO report.⁴⁹ In response to questions from Members, a GAO representative suggested that the plans departments and agencies had in place at the time of the study were not fully compliant with the requirements of Federal Preparedness Circular 65. Consequently, GAO concluded that there is no assurance that executive branch departments and agencies are prepared for an emergency.⁵⁰

In his opening statement to the committee, Michael D. Brown, Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, acknowledged that FEMA was designated the lead agency to provide guidance and assistance to the other Federal departments and agencies for COOP by Presidential

⁴⁸ U.S. Government Accountability Office, *Continuity of Operations: Improved Planning Needed to Ensure Delivery of Essential Government Services*, GAO-04-160, Feb. 27, 2004, available at [<http://www.gao.gov/new.items/d04160.pdf>], visited Feb. 3, 2005.

⁴⁹ The proceedings of the hearing are available in U.S. Congress, House Committee on Government Reform, *A Status Report on Federal Agencies' Continuity of Operations Plans*, 108th Cong., 2nd sess., Apr. 22, 2004, Serial No. 108-184 (Washington: GPO, 2004), available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_house_hearings&docid=f:95423.pdf], visited Feb. 3, 2005.

⁵⁰ *Ibid.*, p. 30.

guidance.⁵¹ The Under Secretary also noted that FEMA guidance requires executive branch departments and agencies to develop COOP plans to support their essential functions. Through working relationships with other departments and agencies, and new and ongoing COOP initiatives, he indicated that FEMA was working to ensure improved coordination and provide enhanced planning guidance.⁵²

The GAO report was based on COOP plans and materials of several agencies which were in place on October 1, 2002, and were evaluated on the basis of an earlier version of FPC 65, issued in July 1999. Some executive branch COOP planners suggest that the report failed to take into consideration ongoing changes made to the executive branch COOP program. Moreover, these observers suggest that GAO failed to acknowledge that FEMA's advisory role is accompanied by little or no authority to compel action by other executive branch agencies.

Since the release of the GAO report, the Department of Homeland Security has sponsored Forward Challenge '04, a full-scale, interagency COOP exercise in the spring of 2004. The exercise was designed to involve all federal executive branch departments and agencies. It afforded the participants an opportunity to

- execute alert and notification procedures;
- establish operational capability at agency alternate facilities;
- implement agency succession plans and delegations of authority;
- test interoperable communications capabilities; and
- test procedures for receiving, processing, analyzing, and disseminating information from internal agency assets and from external entities.⁵³

An after-action report on the exercise issued by FEMA in August 2004 reported that 45 agencies encompassing more than 300 sub-entities, mobilized to their alternate COOP locations, or other designated sites, to test the continuation of essential government services during a national security emergency. Approximately 3,500 – 4,000 staff from participating agencies took part in the exercise, which required them to move to more than 100 alternate site locations. The FEMA report concluded that the executive branch had 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

⁵¹ PDD 67.

⁵² U.S. Congress, House Committee on Government Reform, *Can Federal Agencies Function in the Wake of a Disaster?*, pp. 36-37.

⁵³ Department of Homeland Security, Federal Emergency Management Agency, *Exercise Forward Challenge '04: Interagency After Action Report* (Washington: 2004), p. iii.

departments and agencies to provide essential services in the event of an emergency or disaster, regardless of cause.⁵⁴

FEMA issued an updated FPC 65 in June 2004. Efforts by FEMA and the Homeland Security Council to provide guidance regarding the specification of essential functions continue, and include training to support the development of clearly defined, and mutually understood essential functions for all agencies.⁵⁵ Until those actions are completed, and systematic 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, might still be salient.

Congressional Committee Jurisdiction

Government operations in the executive branch are generally overseen by the House Committee on Government Reform and the Senate Committee on Homeland Security and Governmental Affairs. In the 109th Congress, the House committee has jurisdiction over government management measures, including the "management of government operations and activities,"⁵⁶ which would appear to give it a role in COOP oversight across the executive branch. At the start of the 109th Congress, the House converted the Select Committee on Homeland Security into a standing committee and transferred some, but not all, related legislative jurisdiction to it from other standing committees. The House Committee on Homeland Security has both oversight and legislative responsibility regarding the Department of Homeland Security, including "domestic preparedness for and collective response to terrorism," as well as "broad oversight authority over government-wide homeland security matters."⁵⁷ In the Senate, the Committee on Homeland Security and Governmental Affairs has jurisdiction over matters relating to the Department of Homeland Security, with certain limitations,⁵⁸ as well as "organization and reorganization of the executive branch of the government."⁵⁹ This would appear to give both panels some government-wide role in overseeing the guidance and implementation of COOP planning related to potential interruptions due to attack or other incursion.

Different approaches to homeland security in the House and Senate have resulted in different committees having different jurisdictions and internal structures. The Senate, pursuant to S.Res. 445 of the 108th Congress directed its Appropriations Committee to reorganize its subcommittees to accommodate the creation of the

⁵⁴ Ibid., pp. 1, 31.

⁵⁵ See section on FEMA Guidance and Essential COOP Functions, above.

⁵⁶ House Rule X (h).

⁵⁷ House Rule X (i) (D).

⁵⁸ CRS Report RS21955, *S.Res. 445: Senate Committee Reorganization for Homeland Security and Intelligence Matters*, by Paul S. Rundquist and Christopher M. Davis. The limitations do not appear to prevent the committee from exercising jurisdiction over executive branch COOP programs.

⁵⁹ Senate Rule XXV (1) (k) (1) (10).

Department of Homeland Security. What action the Senate panel will take, and whether the House Committee on Appropriations takes similar action is not yet clear. Ongoing bicameral coordination of congressional legislative, oversight, and investigative roles over homeland security might affect congressional attention to COOP activities in the 109th Congress. Also, the potential publication of COOP expenditures by OMB in annual budget proposals might encourage authorizing committees and appropriations subcommittees to provide more oversight of COOP activities in the departments and agencies they oversee.

Issue Immediacy

As the memory of dramatic disruptions, such as the September 11, 2001, attacks and biological agent 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 the National Security Council 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 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.

The apparent disparity between the level of planning by senior officials and the level of readiness and awareness by line managers and agency lead some observers to maintain that continual drills and educational awareness efforts will be necessary to achieve and maintain an appropriate degree of COOP capability. The current relatively low state of alert could offer an opportunity to test readiness during a non-crisis situation. Congress might elect to prevent miscommunications that occurred in September 2001 in future events by conducting oversight and exploring potential legislative options to establish such training.

Policy Questions

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

- Under what legal authority are COOP plans implemented?
- What are the roles of the NATIONAL Security Council, and Homeland Security Council in COOP planning?
- 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, or in response to new guidance issued by the Homeland Security Council or FEMA? 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 budgetary authority to agencies have to procure such facilities, services, or 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?
- Have the National Security Council, Homeland Security Council, or FEMA been effective in supporting agencies as they develop their COOP plans? What are the consequences of potentially dated guidance and unclear authority for government-wide COOP management and administration?
- Is legislation needed to clarify the roles of the National Security Council, Homeland Security Council, or FEMA with regard to COOP?

In considering issues related to conducting oversight of executive branch COOP planning, 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 the authorization and appropriations processes, or 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 the Government Accountability Office.

Related CRS Products

Continuity of Operations

CRS Report RL32752, *Continuity of Operations (COOP) in the Executive Branch: Issues in the 109th Congress*, by R. Eric Petersen.

CRS Report RL31594. *Congressional Continuity of Operations (COOP): An Overview of Concepts and Challenges*, by R. Eric Petersen and Jeffrey W. Seifert.

CRS Report RL31978. *Emergency Preparedness and Continuity of Operations in the Federal Judiciary*, by R. Eric Petersen.

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

Continuity of Government

CRS Report RS21089. *Continuity of Government: Current Federal Arrangements and the Future*, by Harold C. Relyea.

CRS Report RL31394. *House Vacancies: Selected Proposals for Filling Them After a Catastrophic Loss of Members*, by Sula P. Richardson.

CRS Report RL31761. *Presidential and Vice Presidential Succession: Overview and Current Legislation*, by Thomas H. Neale.

Background Issues

CRS Report RL31542. *Homeland Security — Reducing the Vulnerability of Public and Private Information Infrastructures to Terrorism: An Overview*, by Jeffrey W. Seifert.

CRS Report RL31787. *Information Warfare and Cyberwar: Capabilities and Related Policy Issues*, by Clay Wilson.

Acronym Glossary

| | |
|------|---|
| AAR | After Action Report |
| BDR | Budget Data Request |
| COG | Continuity of Government |
| COOP | Continuity of Operations |
| CWG | Interagency COOP Working Group |
| DHS | Department of Homeland Security |
| E.O. | Executive Order |
| ECG | Enduring Constitutional Government |
| EOP | Executive Office of the President |
| FAS | Federation of American Scientists |
| FC04 | Forward Challenge '04 |
| FEA | Federal Enterprise Architecture |
| FEMA | Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security |
| FPC | Federal Preparedness Circular |
| FR | <i>Federal Register</i> |
| FY | Fiscal Year |
| GAO | Government Accountability Office (formerly General Accounting Office) |
| GPRA | Government Performance Results Act |
| HSC | Homeland Security Council |
| HSPD | Homeland Security Presidential Directive |
| NCR | National Capital Region |
| NEF | National Essential Function |
| NSC | National Security Council |
| OMB | Office of Management and Budget |
| ONSC | Office of National Security Coordination, FEMA |

| | |
|------|--------------------------------------|
| PDD | Presidential Decision Directive |
| PMEF | Primary Mission Essential Function |
| SMEF | Secondary Mission Essential Function |