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Emergency Preparedness and Continuity of Operations (COOP) Planning in the Federal Judiciary

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Summary

In the wake of the September 2001 terrorist attacks, subsequent anthrax incidents that briefly affected the Supreme Court, and occasional warnings of the potential for further terrorist activity, judicial branch policymakers and administrators have given renewed attention to crisis response, emergency planning, and continuity of operations (COOP) issues. In the federal judiciary, COOP planning is an extension of court emergency preparedness plans designed to safeguard lives and property during emergencies.

The federal judiciary is highly decentralized, both geographically and administratively. Consequently, emergency and COOP planning is carried out locally, according to guidelines issued by the Administrative Office of the United States Courts (AOUSC). Each federal court, aside from the Supreme Court, which has dedicated facilities and security procedures that are not considered in this report, is responsible for planning for its continued operation in the event of a disaster or other interruption.

Prior to September 2001, the federal judiciary had engaged in efforts to improve security in court facilities. After the attacks, AOUSC recommended the designation of a senior court executive in every court to coordinate and be responsible for developing appropriate procedures for emergency preparedness, and COOP. AOUSC also recommended that the courts coordinate their planning activities with the Federal Emergency Management Agency (FEMA) and local federal executive agencies.

This report discusses actions taken by AOUSC following the September 11 attacks, and describes expectations for emergency preparedness and COOP plans in the judiciary. Other sections address issues and policy questions Congress might consider, including matters of the status of judicial emergency and COOP preparedness, and funding for future policy and oversight questions regarding judicial contingency planning.

This report is one of several CRS products related to government emergency preparedness and contingency planning, and will be updated as events warrant. Issues related to executive branch COOP activities are discussed in CRS Report RL31857, *Continuity of Operations (COOP) in the Executive Branch: Background and Issues for Congress*. 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 activities relating to the safeguarding of federal personnel and evacuation of federal buildings. For a more comprehensive analysis of continuity of government issues, see CRS Report RS21089, *Continuity of Government: Current Federal Arrangements and the Future*.

Contents

Introduction	1
Actions by the Administrative Office of the U.S. Courts	3
Occupant Emergency Program Plans	4
Continuity of Operations Plans	4
Issues	8
Role of the Courts in an Emergency	8
Issue Immediacy	8
Budgetary Constraints	8
Policy and Oversight Questions	9
Related CRS Products	10
Continuity of Operations	10
Continuity of Government	10
Background Issues	10

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Introduction

In the wake of the September 2001 terrorist attacks, subsequent anthrax incidents that briefly affected the Supreme Court, and occasional warnings of the potential for further terrorist activity, judicial branch policymakers and administrators have given renewed attention to crisis response, emergency planning, and continuity of operations (COOP) issues. COOP planning in the federal judiciary is an extension of court emergency preparedness plans designed to safeguard lives and property during emergencies.¹

While much of the current focus on contingency planning grows out of the aftermath of the autumn 2001 attacks, continuity of operations planning is an ongoing effort that predates the attacks, and grows out of efforts to prepare courts to withstand disasters and other unforeseen occurrences.² At the federal level, judicial COOP planning is related to efforts established during the Cold War to preserve the continuity of government (COG) in the event of a nuclear attack on the United States. Cold War era COG planning reportedly focused on preserving the senior leadership of each branch of government, including the Chief Justice of the United States and Associate Justices of the Supreme Court. These plans reportedly included locating and evacuating these individuals to secure, alternative operational facilities outside

¹ “Emergency Preparedness in the Judiciary,” *The Third Branch*, vol. 33 no. 11, Nov. 2001, available at [<http://www.uscourts.gov/ttb/nov01ttb/emergency.html>]. In Congress and the executive branch, 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. Another term that is sometimes used to describe COG activities is enduring constitutional government (ECG). The terms appear to describe similar activities discussed in presidential national security documents described in CRS Report RL31857, *Continuity of Operations (COOP) in the Executive Branch: Background and Issues for Congress*, by R. Eric Petersen. 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. 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.

² See National Association for Court Management, *Disaster Recovery Planning for Courts: a Guide to Business Continuity Planning* (Williamsburg: National Association for Court Management, 2000), pp.1-45.

of the District of Columbia in the event of a nuclear attack.³ Similarly, it is reported that contingency plans are currently in place to assure the protection of the Justices of the Supreme Court, but the details of these plans are not public information. On an operational level, the Court reportedly maintains emergency preparedness contingency plans to safeguard its facilities and personnel. Supreme Court contingency planning and emergency procedures are not considered in this report, due to their sensitive, contingent nature.

Beyond the Supreme Court, the federal judiciary is highly decentralized, both geographically and administratively. The courts are dependent on executive branch agencies for the provision of office and courtroom space, and physical security. The Public Buildings Service of the General Services Administration (GSA) provides building accommodations to the courts, and is responsible for the development and implementation of occupant emergency plans for those facilities. Security is provided by the United States Marshals Service (USMS), which protects judicial officers and employees, as well as attorneys and jurors.⁴ The Federal Protective Service (FPS), an agency of the Department of Homeland Security, also provides physical security in some buildings that house court facilities.⁵ Consequently, judicial emergency and COOP planning is carried out at the local level, according to guidelines issued by the Administrative Office of the United States Courts (AOUSC). Each federal court, in consultation with the appropriate executive branch agencies, is responsible for planning for its continued operation in the event of a disaster or other interruption.

The next section of this report discusses actions taken by AOUSC following the September 11 attacks, and describes expectations for occupant emergency programs (OEP) and COOP plans in the judiciary. The final two sections address issues and policy questions Congress might consider, including matters of the status of judicial emergency and COOP preparedness, and future policy and oversight questions regarding judicial contingency planning.

³ 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 executive branch officials in the line of presidential succession. 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, p. A1.

For more information on presidential succession, see CRS Report RL31761, *Presidential and Vice Presidential Succession: Overview and Current Legislation*, by Thomas H. Neale.

⁴ This information was obtained at the USMS Web site, available at [<http://www.usdoj.gov/marshals/courtsec.html>], visited June 27, 2003.

⁵ Until the creation of the Department of Homeland Security, FPS was unit of GSA.

Actions by the Administrative Office of the U.S. Courts

Prior to September 2001, the federal judiciary engaged in routine efforts to improve physical security in court facilities. Under guidance by AOUSC, it was recommended that each judicial district convene a security committee that would be responsible for developing district-wide plans and procedures in conjunction with USMS. Additionally, AOUSC recommended that each court facility should maintain an occupant emergency plan that outlines procedures to be followed “in the event of a natural disaster or security problem.”⁶ The extent to which these recommendations were implemented in judicial districts varied, and specific details regarding security changes, are not publicly available.

Following the attacks, AOUSC took several steps to prepare the courts to respond to potential interruptions. AOUSC created an Office of Emergency Preparedness to assist courts in the development of their own crisis response and COOP plans. Also, the office supplied courts with guidelines for handling mail to minimize potential exposure to anthrax. Acting on policies adopted by the Judicial Conference, AOUSC staff made arrangements for a contractor to test courthouses for potentially dangerous biological and chemical hazards.⁷

In an October 2001 memorandum, Leonidas Ralph Mecham, director of AOUSC, strongly recommended the designation of a senior court executive in each court to coordinate and be responsible for developing appropriate procedures for emergency preparedness, including COOP. The memorandum recommended that the courts coordinate their planning activities with the Federal Emergency Management Agency (FEMA)⁸ and local federal executive boards, associations, and councils.⁹ Contacts with local police, fire and public health officials also were suggested.¹⁰ The

⁶ “Judiciary Looks To Security Following Attacks,” *The Third Branch*, vol. 33 no. 10, Oct. 2001, available at [<http://www.uscourts.gov/ttb/oct01ttb/october01.html#secure>], visited June 27, 2003.

⁷ Administrative Office of the U.S. Courts, *Activities of the Administrative Office of the U.S. Courts: Annual Report of the Director Leonidas Ralph Mecham, 2001* (Washington, 2002), available at [<http://www.uscourts.gov/dir-rpt/report2001.pdf>], visited June 27, 2003.

⁸ FEMA is the lead agency for executive branch COOP planning, and 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. See CRS Report RL31857, *Continuity of Operations (COOP) in the Executive Branch: Background and Issues for Congress*, by R. Eric Petersen.

⁹ Leonidas Ralph Mecham, Director, AOUSC, “Emergency Preparedness in the Judiciary (URGENT INFORMATION),” Memorandum to all Chief Judges, United States Courts,” (hereafter Mecham preparedness memorandum), Oct. 17, 2001, pp. 1-3. According to the memorandum, the federal executive boards are composed of field office agency heads of executive branch agencies, and military commanders in 28 cities that are major centers of federal activity. Federal executive associations and councils are organizations of local principal officers in other locales.

¹⁰ See “Emergency Preparedness...,” *The Third Branch*, available at (continued...)

memorandum recommended that courts ensure that an occupant emergency plan be established by the relevant authority, and that a judicial COOP plan be put in place for each facility occupied by a judicial branch unit.

Occupant Emergency Program Plans. The Mecham memorandum described the occupant emergency plan (OEP) as an emergency response program that “establishes procedures for safeguarding lives and property during emergencies in particular facilities.” Because the federal judiciary frequently is a tenant in the GSA-owned or leased buildings it occupies, including federal courthouses, OEP planning is typically instituted under the auspices of GSA. Referring to the Federal Property Management Regulations (FPMR) issued by GSA, the memorandum indicated that an OEP might address two main issues involving the development of procedures to protect life and property, and the formation of a local occupant emergency organization (OEO) designated to undertake certain emergency response duties in the event of an incident. Among the responsibilities of GSA is the identification of a “designated official” responsible for the OEO and OEP in GSA-owned or leased facilities. The Mecham memorandum notes that in court facilities, that official is usually the chief judge on site.¹¹

Continuity of Operations Plans. COOP planning refers to the internal effort of an organization, such as a branch of government, court, 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 attacks, the highly decentralized nature of the federal courts suggests that all but the most widespread interruptions are unlikely to disable the entire judiciary. Nevertheless, localized operational interruptions that could necessitate the activation of a COOP in the judiciary might 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 that may interrupt federal judiciary activity include failure of information technology (IT) and telecommunications installations

¹⁰(...continued)

[<http://www.uscourts.gov/ttb/nov01ttb/emergency.html>].

¹¹ FPMR are codified in Title 41, Code of Federal Regulations. Since the Mecham memorandum was released, GSA has revised FPMR to reflect changes in organizational structure resulting from the creation of the Department of Homeland Security and the transfer of FPS to the new department. Emergency preparedness officials at AOUSC report that further guidance from GSA and FPS is pending. For a broader discussion of preparedness issues related to evacuation and other emergency planning in all three branches of the federal government, see CRS Report RL31739, *Federal Agency Emergency Preparedness and Dismissal of Employees*, by L. Elaine Halchin.

due to malfunction or cyber attack.¹² The Mecham memorandum established three purposes for judicial branch COOP planning. These were designed to ensure

- safety and well-being of employees, visitors, and the public;
- essential functions and activities are conducted without unacceptable interruption; and
- normal operations are resumed as quickly, safely, and efficiently as possible.

The memorandum also specified several topics that might be included in contingency planning:

- plan responsibility and scope;
- emergency telephone numbers;
- building and occupant information;
- procedures for periods when facilities are closed;
- communications;
- mail delivery;
- the establishment and staffing of a command center team of employees and appropriate staff from other agencies, such as, in the case of the courts, USMS, FPS, and GSA, that would have the responsibility for implementing emergency response procedures or tasks; and
- responses to specific types of emergencies, including fire, hazardous materials, threats, attacks and natural disasters.

In June 2002, AOUSC awarded a contract to Booz, Allen, Hamilton to develop model COOP plans for the federal judiciary. Beginning in the Second Circuit Court of Appeals and the Southern District of New York, the contractors gathered information through interviews and questionnaires to develop a series of templates that the courts could use to develop their COOP plans. The Second Circuit and the District Court for the Southern District of New York were chosen because of their experiences following September 11, 2001, when they successfully reestablished

¹² 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 RL30735, *Cyberwarfare*, by Steven A. Hildreth and CRS Report RL31787, *Information Warfare and Cyberwar: Capabilities and Related Policy Issues*, by Clay Wilson.

normal court functions in the aftermath of attacks on the World Trade center.¹³ Three model plans, covering appeals, district, and bankruptcy courts, were developed to assist court administrators in their COOP planning. These plans were distributed to circuit and district courts in November 2002. Each sample plan identified 10 essential matters to be considered in developing an effective judicial COOP plan. These matters include the following:

- identification of all essential activities and functions;
- identification and protection of vital records, systems, and equipment;
- determination of succession and delegations of authority;
- identification and preparation of alternate work sites;
- identification and training of a team of employees to perform essential activities in an emergency;
- development of a system of warning to alert employees, visitors, and the public of potential threats and what to do in an emergency;
- development of a system for identifying the location and status of employees following an emergency;
- development of ways to communicate with employees, visitors, and the public after an emergency;
- development of a system for restoring normal functions as soon as practicable; and
- establishment of regular COOP training and exercise.¹⁴

Following the distribution of the model plans to all court units, representatives from all the circuit courts of appeals and of representatives of several court advisory groups received training to develop individual court COOP plans. The two-day training workshop introduced court staff to the nature, function, and details of COOPs, discussed the specific model COOP for courts of appeals, and offered strategies to customize the model plan and implement it in individual courts. As plans are developed and deployed, some circuits have chosen to appoint emergency preparedness coordinators to oversee COOP planning efforts. Others have incorporated the planning into other routine administrative activities. The extent to which COOP plans are being implemented in judicial circuits and districts varies, and

¹³ “Court Continuity of Operations Plans Get Assist,” *The Third Branch*, vol. 34 no. 6, July 2002, available at [<http://www.uscourts.gov/ttb/july02ttb/essentials.html>].

¹⁴ *Ibid.*

specific details regarding COOP operational details, including spending, planning, and training are not publicly available.¹⁵

In September 2002, The Judicial Conference of the United States approved the concept of an off-site court operations support center, and authorized the release to Congress of a report entitled, "Court Operations Support Center and Continuity of Operations Housing Plan," based on a study conducted by an outside expert retained by the courts. The study reportedly addresses the feasibility, requirements, costs, and benefits of establishing an off-site facility. At the same meeting, the Judicial Conference approved funding for the FY2003 start-up costs for the center.¹⁶

In the FY2003 consolidated appropriations conference report, conferees recommended that the judiciary consider establishing a court operations support center located outside of Washington, D.C., based on the findings of the report. This leased facility, to be located at least 20 miles outside of Washington, D.C., would help ensure continuity of operations in the event that administrative and automation support functions are shut down as a result of the closure of the Thurgood Marshall Federal Judiciary Building (TMFJB) located near Capitol Hill. According to the conference report, the study recommends that this facility be within a reasonable travel range of the TMFJB so that it can be utilized by essential AOUSC and court staff in the event that their facilities located in Washington, D.C., are shut down. The conferees expected the costs of this facility to be absorbed within existing available resources as proposed by the judiciary. The conferees encouraged the judiciary to find alternative uses for the facility during nonemergency periods,¹⁷ but noted that the primary design goal of the facility should be continuity of operations.¹⁸

In testimony regarding AOUSC's FY2004 budget request, pledged to work quickly to establish the facility and keep the committee apprised of its progress. Other COOP-related measures in the request included funding of nine full time equivalent (FTE) positions, some of which would be used to add staff to the facilities and emergency program to ensure greater emphasis on planning for emergency preparedness and crisis response.¹⁹

¹⁵ This information was developed from discussions with the staff of the Office of Emergency Preparedness of the AOUSC, May-June, 2003

¹⁶ U.S. Judicial Conference, *Report of the Proceedings of the Judicial Conference of the United States*, Sept. 24, 2002, at [<http://www.uscourts.gov/judconf/sept02proc.pdf>].

¹⁷ According to the conference report, alternative uses for the proposed facilities included transferring portions of the courts' payroll processing, financial disbursing, and information technology support the new facility as well as developing telework opportunities.

¹⁸ U.S. Congress, Conference Committees, *Making Further Continuing Appropriations For the Fiscal Year 2003, and For Other Purposes*, conference report to accompany H.J. Res. 2, 108th Cong., 1st sess., H. Rept. 108-10 (Washington: GPO, 2003), pp.736-737; Also available at [[http://www.congress.gov/cgi-lis/cpquery/R?cp108:FLD010:@1\(hr010\):](http://www.congress.gov/cgi-lis/cpquery/R?cp108:FLD010:@1(hr010):)].

¹⁹ Unpublished statement of Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, House Committee on Appropriations, Subcommittee on Commerce, Justice, and State, the Judiciary and Related Agencies, 108th Cong., 1st sess., (continued...)

Issues

Policy questions and issues will likely arise as Congress examines the status of COOP planning in the federal courts and the implications of that planning for overall judiciary emergency preparedness. Some of the issues regarding judicial COOP planning include the following.

Role of the Courts in an Emergency. The Constitution mandates the Supreme Court of the United States and prescribes the statutory establishment of inferior federal courts. It is, however, silent regarding the continued functioning of the federal judiciary during or after an incapacitating operational interruption. If a localized interruption occurs, courts in the affected area could move judges and other court personnel to judicial facilities in unaffected areas, or reassign cases to other districts or circuits.²⁰ In more wide-ranging situations where federal courts could not function due to an extended interruption, the President could temporarily declare martial law and vest trial court authority in military tribunals convened by commanding officers in the field dispatched to enforce federal law.²¹ Congress might explore through oversight what legislative and administrative mechanisms might be available in situations of extended interruption to provide for the administration of a civilian judiciary.

Issue Immediacy. As the memory of dramatic interruptions such as the September 11 attacks and anthrax incidents fades, attention to administrative operations like COOP planning may receive lower priority attention in the federal judiciary. Emergency preparedness observers note that the success of contingency planning is dependent on current planning and regular drills, simulations, or other testing.

Budgetary Constraints. The current budgetary environment is characterized by limited resources, coupled with increased demand for a variety of homeland security protective measures, including judicial branch emergency preparedness and COOP planning. A possible consequence of the acquisition of technology, infrastructure, and supplies, such as those that might go into AOUSC's operations support center, is the likelihood that such an allocation might reduce resources available for routine court operations.

¹⁹(...continued)

Mar. 27, 2003, pp.16-17.

²⁰ While the Supreme Court building was closed due to anthrax contamination and remediation, the Court heard arguments in another location — the ceremonial courtroom in the District of Columbia E. Barrett Prettyman Federal Courthouse. See “Disruptions Taken In Stride as Business of Government Continues,” *The Third Branch*, vol. 33 no. 11, Nov. 2001, available at [<http://www.uscourts.gov/ttb/nov01ttb/disruptions.html>].

²¹ 10 U.S.C. 332. See CRS Report RS21089, *Continuity of Government: Current Federal Arrangements and the Future*, by Harold C. Relyea.

Policy and Oversight Questions

Judicial branch OEP and COOP planning raise several questions related to the oversight of underlying policy matters. Some of these questions include the following:

- How are judicial COOP plans maintained? Where are they physically located, and what provisions are in place for accessing plans in the event of an interruption?
- What is the general level of preparedness in the judiciary to carry out COOP plans?
- What is the capacity for GSA to support the establishment and deployment of OEP plans in court facilities?
- What plans do courts 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 circuits or districts have established effective COOP programs? To what extent 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, and by what organizations?
- Because COOP plans are typically customized to preserve an organization's unique operational needs, how can effective emergency planning in the courts be evaluated? What standards are to be imposed?
- What are the costs of relocating courts to alternate facilities or other court houses?
- What procedures are in place to maintain electronic data held by the courts? How can these resources be accessed if court facilities are unavailable?
- What provisions are in place for alternate computing facilities, including offsite storage for each court facility?
- What has been the effect of OEP and COOP planning on day-to-day personnel, office, and technological management?
- What are the implications of COOP planning in relation to record keeping and archiving of paper-based and electronic information?
- Have FEMA and GSA been effective in supporting the judiciary as it develops COOP plans? What are the consequences of incorporating FEMA into the Department of Homeland Security for government-wide COOP management and administration?

Related CRS Products

Continuity of Operations

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

CRS Report RL31857. *Continuity of Operations (COOP) in the Executive Branch: Background and Issues for Congress*, 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.

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>].

CRS Electronic Briefing Book. *Terrorism*. Page on “Continuity of Government in a Severe Emergency: Frequently Asked Questions/Statistics,” by Harold C. Relyea, at [<http://www.congress.gov/brbk/html/ebter185.html>].

Background Issues

CRS Report RL30735. *Cyberwarfare*, by Steven A. Hildreth.

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.

CRS Report RL31670. *Transfer of FEMA to the Department of Homeland Security: Issues for Congressional Oversight*, by Keith Bea.