(e) Other categories of actions. Based upon the completion of the 8-step decision-making process (§9.6), the Director may find that a specific category of actions either offers no potential for carrying out the purposes of the Orders and shall be treated as those actions listed in §9.5(c), or has no practicable alternative sites and shall be treated as those actions listed in §9.5(d), or has no practicable alternative actions or sites and shall be treated as those actions listed in §9.5(g). This finding will be made in consultation with the Federal Insurance Administration and the Council on Environmental Quality as provided in section 2(d) of E.O. 11988. Public notice of each of these determinations shall include publication in the Federal Register and a 30-day comment period.

(f) The National Flood Insurance Program (NFIP). (1) Most of what is done by FIA or the Mitigation Directorate, in administering the National Flood Insurance Program is performed on a program-wide basis. For all regulations, procedures or other issuances making or amending program policy, FIA or the Mitigation Directorate, shall apply the 8-step decision-making process to that program-wide action. The action to which the 8-step process must be applied is the establishment of programmatic standards or criteria, not the application of programmatic standards or criteria to specific situations. Thus, for example, FIA or the Mitigation Directorate, would apply the 8-step process to a programmatic determination of categories of structures to be insured, but not to whether to insure each individual structure. The two prime examples of where FIA or the Mitigation Directorate, does take site specific actions which would require individual application of the 8-step process are property acquisition under section 1362 of the National Flood Insurance Act of 1968, as amended, and the issuance of an exception to a community under 44 CFR 60.6(b). (See also §9.9(e)(6) and §9.11(e).)

(2) The provisions set forth in this regulation are not applicable to the actions enumerated below except that the Federal Insurance Administrator or the Assistant Administrator for Mitigation, as appropriate shall comply with the spirit of the Orders to the extent practicable:

(i) The issuance of individual flood insurance policies and policy interpretations;

(ii) The adjustment of claims made under the Standard Flood Insurance Policy;

(iii) The hiring of independent contractors to assist in the implementation of the National Flood Insurance Program;

(iv) The issuance of individual flood insurance maps, Map Information Facility map determinations, and map amendments; and

(v) The conferring of eligibility for emergency or regular program (NFIP) benefits upon communities.

(g) For the action listed below, the Regional Administrator shall apply steps 1, 4, 5 and 8 of the decision-making process (§§9.7, 9.10 and 9.11). For any action which is excluded from the actions listed below, (except as indicated in paragraphs (c), (d) and (f) of this section regarding other categories of partial or total exclusion), the full 8-step process applies (See §9.6). The Regional Administrator may also require certain other portions of the decision-making process to be carried out for individual actions as is deemed necessary. The references are to the Disaster Relief Act of 1974, Public Law 93-288. The above requirements apply to repairs, under section 402, between $5,000 and $25,000 to damaged structures or facilities except for:

(1) Actions in a floodway or coastal high hazard area; or

(2) New or substantially improved structures or facilities; or

(3) Facilities or structures which have previously sustained structural damage from flooding due to a major disaster or emergency.

§9.6 Decision-making process.

(a) Purpose. The purpose of this section is to set out the floodplain management and wetlands protection decision-making process to be followed by the Agency in applying the Orders to its actions. While the decision-making
§ 9.7 Determination of proposed action’s location.

(a) The purpose of this section is to establish Agency procedures for determining whether any action as proposed is located in or affects (1) the base floodplain (the Agency shall substitute the 500-year floodplain for the base floodplain where the action being proposed involves a critical action), or (2) a wetland.

(b) Information needed. The Agency shall obtain enough information so that it can fulfill the requirements of the Orders to (1) avoid floodplain and wetland locations unless they are the only practicable alternatives; and (2) minimize harm to and within floodplains and wetlands. In all cases, FEMA shall determine whether the proposed action is located in a floodplain or wetland. In the absence of a finding to the contrary, FEMA may assume that a proposed action involving a facility or structure that has been flooded is in the floodplain. Information about the 100-year and 500-year floods and location of floodways and coastal high hazard areas may also be needed to comply with these regulations, especially §9.11. The following additional flooding characteristics