

Along with the Chairman, I believe that our entire rulemaking process should be as transparent as possible to the public. Consequently, after the Roundtable is complete, I strongly recommend that the Commission submit both a proposal on the order in which the Commission will consider final rulemakings and a proposed implementation plan to the **Federal Register** to allow the public to comment before we begin to consider final rules. Once we receive and review comments, a final rulemaking and implementation schedule should be published in the **Federal Register**. This level of transparency will give the market a clear picture of how the Commission intends to proceed, and how we can be held accountable as we undertake this massive regulatory overhaul. It will also provide the market with certainty market participants need to make the critical investment decisions necessary to be in compliance with the rules upon implementation. Finally, this type of transparency will help guide the Commission's decision regarding when to make critical investments in advanced technology that are necessary for us to effectively oversee the futures, options, and swaps markets.

The more thoughtful, deliberate, and transparent our sequencing and implementation processes are, the more orderly this Commission's regulation of the swaps market will be.

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 40

[Docket No. RM10-29-000]

#### Electric Reliability Organization Interpretation of Transmission Operations Reliability

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** Under section 215 of the Federal Power Act (FPA), the Federal Energy Regulatory Commission (Commission) proposes to approve the North American Electric Reliability Corporation's (NERC's) proposed interpretation of Reliability Standard, TOP-001-1, Requirement R8.

**DATES:** Comments are due June 27, 2011.

**ADDRESSES:** You may submit comments, identified by docket number and in

accordance with the requirements posted on the Commission's web site, <http://www.ferc.gov>. Comments may be submitted by any of the following methods:

- **Electronic Submission:** Documents created electronically using word processing software should be filed in native applications or print-to-PDF format, and not in a scanned format, at <http://www.ferc.gov/docs-filing/efiling.asp>.
- **Mail/Hand Delivery:** Commenters unable to file comments electronically must mail or hand deliver an original copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. These requirements can be found on the Commission's Web site, see, e.g., the "Quick Reference Guide for Paper Submissions," available at <http://www.ferc.gov/docs-filing/efiling.asp>, or via phone from FERC Online Support at 202-502-6652 or toll-free at 1-866-208-3676.

#### FOR FURTHER INFORMATION CONTACT:

Robert T. Stroh (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *Telephone:* (202) 502-8473. Eugene Blick (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *Telephone:* (202) 502-8066. David O'Connor (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *Telephone:* (202) 502-6695.

**SUPPLEMENTARY INFORMATION:** Before Commissioners: Jon Wellinoff, Chairman; Marc Spitzer, Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

#### Notice of Proposed Rulemaking (Issued April 21, 2011)

1. Under section 215 of the Federal Power Act (FPA),<sup>1</sup> the Federal Energy Regulatory Commission (Commission) proposes to approve the North American Electric Reliability Corporation's (NERC's) proposed interpretation of Requirement R8 in Commission-approved NERC Reliability Standard TOP-001-1 — Reliability Responsibilities and Authorities.<sup>2</sup> The

<sup>1</sup> 16 U.S.C. 824o (2006).

<sup>2</sup> The Commission is not proposing any new or modified text to its regulations. As provided in 18 CFR part 40, proposed interpretation of a Reliability Standard will not become effective until approved by the Commission, and the ERO must post on its Web site each effective Reliability Standard.

Commission proposes to approve the interpretation as discussed below.

## I. Background

2. Section 215 of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. If approved, the Reliability Standards are enforced by the ERO, subject to Commission oversight, or by the Commission independently.

3. Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO<sup>3</sup> and, subsequently, certified NERC as the ERO.<sup>4</sup> On March 16, 2007, the Commission issued Order No. 693, approving 83 of the 107 Reliability Standards filed by NERC, including Reliability Standard TOP-001-1.<sup>5</sup>

4. NERC's Rules of Procedure provide that a person that is "directly and materially affected" by Bulk-Power System reliability may request an interpretation of a Reliability Standard.<sup>6</sup> The ERO's "standards process manager" will assemble a team with relevant expertise to address the requested interpretation and also form a ballot pool. NERC's Rules provide that, within 45 days, the team will draft an interpretation of the Reliability Standard, with subsequent balloting. If approved by ballot, the interpretation is appended to the Reliability Standard and filed with the applicable regulatory authority for regulatory approval.

#### A. Reliability Standard TOP-001-1

5. Reliability Standard TOP-001-1 (Reliability Responsibilities and Authorities) centers on the responsibilities of balancing authorities and transmission operators during a system emergency. Specifically, the stated purpose of Reliability Standard TOP-001-1 is to ensure reliability entities have clear decision-making authority and capabilities to take appropriate actions or direct the actions of others to return the transmission

<sup>3</sup> *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

<sup>4</sup> *North American Electric Reliability Corp., 116 FERC ¶61,062, order on reh'g & compliance*, 117 FERC ¶61,126 (2006), *aff'd sub nom., Alcoa, Inc. v. FERC*, 564 F.3d 1342 (DC Cir. 2009).

<sup>5</sup> *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g*, Order No. 693-A, 120 FERC ¶61,053 (2007).

<sup>6</sup> NERC Rules of Procedure, Appendix 3A, Reliability Standards Development Procedure, Version 6.1, at 27-29 (2010).

system to normal conditions during an emergency. Requirement R8 of the standard provides:

During a system emergency, the Balancing Authority and Transmission Operator shall immediately take action to restore the Real and Reactive Power Balance. If the Balancing Authority or Transmission Operator is unable to restore Real and Reactive Power Balance it shall request emergency assistance from the Reliability Coordinator. If corrective action or emergency assistance is not adequate to mitigate the Real and Reactive Power Balance, then the Reliability Coordinator, Balancing Authority, and Transmission Operator shall implement firm load shedding.<sup>7</sup>

#### B. NERC Proposed Interpretation

6. NERC submitted its petition for approval for an interpretation of Requirement R8 in Commission-approved Reliability Standard TOP–001–1 on July 16, 2010. Consistent with the NERC Rules of Procedure, NERC states that it assembled a team to respond to the request for interpretation and presented the proposed interpretation to industry ballot, using a process similar to the process it uses for the development of Reliability Standards.<sup>8</sup> According to NERC, the interpretation was developed and approved by industry stakeholders using the NERC Reliability Standards Development Procedure and approved by the NERC Board of Trustees (Board). In the NERC Petition, NERC explains that it received a request from Florida Municipal Power Pool (FMPP) seeking an interpretation of Reliability Standard TOP–001–1, Requirement R8. Specifically, FMPP requested clarification on several aspects of Requirement R8. FMPP asked the following:

Balancing real power is not a function of a [Transmission Operator] and balancing reactive power is not a function of a [Balancing Authority]. For Requirement R8 is the Balancing Authority responsibility to immediately take corrective action to restore Real Power Balance and is the [Transmission Operator] responsibility to immediately take corrective action to restore Reactive Power Balance?<sup>9</sup>

7. In response to FMPP's interpretation request, NERC provided the following:

The answer to both questions is yes. According to the NERC Glossary of Terms Used in Reliability Standards, the Transmission Operator is responsible for the reliability of its "local" transmission system, and operates or directs the operations of the

transmission facilities. Similarly, the Balancing Authority is responsible for maintaining load-interchange-generation balance, i.e., real power balance. In the context of this requirement, the Transmission Operator is the functional entity that balances reactive power. Reactive power balancing can be accomplished by issuing instructions to the Balancing Authority or Generator Operators to alter reactive power injection. Based on NERC Reliability Standard BAL–005–1b Requirement R6, the Transmission Operator has no requirement to compute an Area Control Error (ACE) signal or to balance real power. Based on NERC Reliability Standard VAR–001–1 Requirement R8, the Balancing Authority is not required to resolve reactive power balance issues. According to TOP–001–Requirement R3, the Balancing Authority is only required to comply with Transmission Operator or Reliability Coordinator instructions to change injections of reactive power.<sup>10</sup>

8. NERC contends that the interpretation is consistent with the stated purpose of the Reliability Standard, which is to ensure reliability entities have clear decision-making authority and capabilities to take appropriate actions or direct the actions of others to return the transmission system to normal conditions during an emergency. NERC adds that the interpretation clarifies the responsibilities of balancing authorities and transmission operators during a system emergency by referencing the *NERC Glossary of Terms Used in Reliability Standards* as well as other relevant Reliability Standards.<sup>11</sup>

9. On February 14, 2011, NERC made a supplemental filing in response to a Commission staff data request.<sup>12</sup> With regard to whether Requirement R8 obligates a joint response in a system emergency, NERC explained that Requirement R8 does not use the word "joint" or otherwise infer joint responsibility during system emergencies. Rather, NERC responded that the balancing authority and transmission operator have separate responsibilities to restore real and reactive power balance during system emergencies. NERC also stated that the use of "and" between the two entities should not construe communication or coordination. NERC added that the Blackout Report<sup>13</sup> correctly identifies communication and coordination issues as reliability issues and that

communication and coordination are addressed in the Communications (COM) Reliability Standards.<sup>14</sup>

#### II. Proposed Determination

10. We propose to approve NERC's interpretation of Reliability Standard TOP–001–1, Requirement R8. We believe that the ERO has presented a reasonable interpretation consistent with the language of the Reliability Standard. In addition, as discussed below, we note that a balancing authority and transmission operator each have coordination and communication functions that are necessary for maintaining real and reactive power balance.

#### Discussion

11. We propose to approve NERC's interpretation of TOP–001–1, Requirement R8. As explained by NERC, the interpretation supports the stated purpose of the Reliability Standard, i.e., ensuring that reliability entities have clear decision-making authority and capabilities to take appropriate actions or direct the actions of others to return the transmission system to normal conditions during an emergency.<sup>15</sup> The interpretation also clarifies the responsibilities of a balancing authority and transmission operator during a system emergency. Further, the language is consistent with the language of the requirement. Accordingly, the Commission proposes to approve the ERO's interpretation of TOP–001–1, Requirement R8.

12. We agree, as discussed in the interpretation, that the balancing authority is responsible for restoring real power balance during a system emergency and the transmission operator is responsible for restoring reactive power balance during a system emergency. However, during a system emergency, communication and coordination between the transmission operator and balancing authority can be essential to restore real and reactive power balance. For example, during an emergency, the balancing authority may rely on the real power output of a generator to fulfill its responsibility, while the transmission operator may expect the same generator unit to reduce real power to generate greater reactive power output.<sup>16</sup>

<sup>14</sup> NERC Response at 4–7.

<sup>15</sup> *Id.* at 6.

<sup>16</sup> The Blackout Report described such a scenario, explaining that a generator unit tripped because the unit's protection system detected the Var output, i.e., reactive power, exceeded the unit's capability. Blackout Report at 27. The Blackout Report also explained that no generator units were asked to

Continued

<sup>7</sup> Reliability Standard TOP–001–1, Requirement R8.

<sup>8</sup> NERC Reliability Standards Development Procedure at 27–29.

<sup>9</sup> NERC Petition at 5.

<sup>10</sup> *Id.* at 5–6.

<sup>11</sup> *Id.* at 6.

<sup>12</sup> Response of the North American Electric Reliability Corporation to Request for Additional Information Regarding Interpretation to Reliability Standard TOP–001–1, Requirement R8 (NERC Response).

<sup>13</sup> *Final Report on the August 14, 2003 Blackout in the United States and Canada* (Blackout Report).

13. NERC acknowledges the need for such communication and coordination. NERC maintains that this coordination and communication is required through two currently-effective Communication (COM) Reliability Standards: (1) COM-001-1.1—Telecommunications and (2) COM-002-2—Communication and Coordination.<sup>17</sup>

14. We agree with NERC that the currently effective COM Reliability Standards provide for such communication and coordination. For example, Reliability Standard COM-002-2, Requirement R1 provides that transmission operators, balancing authorities and generator operators must have communication links with one another and must be staffed to address a real-time emergency. Reliability Standard EOP-001-0, Requirements R3, R4.3 and R7 also contain provisions relevant to such communication and coordination in emergencies. These provisions require balancing authorities and transmission operators to develop plans to mitigate operating emergencies including coordination among adjacent transmission operators and balancing authorities.

15. Accordingly, for the reasons discussed above, we propose to approve NERC's proposed interpretation of TOP-001-1, Requirement R8.

### III. Information Collection Statement

16. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency.<sup>18</sup> The information contained here is also subject to review under section 3507(d) of the Paperwork Reduction Act of 1995.<sup>19</sup>

17. As stated above, the Commission approved, in Order No. 693, Reliability Standard TOP-001-1 that is the subject of the current rulemaking. This proposed rulemaking proposes to approve the interpretation of the previously approved Reliability Standard, which was developed by NERC as the ERO. The proposed interpretation, as clarified, relates to an existing Reliability Standard, and the Commission does not expect it to affect entities' current reporting burden.<sup>20</sup> Accordingly, we will submit this

reduce their real power output to produce more reactive power. *Id.* at 47.

<sup>17</sup> NERC Response at 6–7. NERC also identifies several ongoing Reliability Standards projects that are intended to strengthen the requirements around communication and coordination between functional entities.

<sup>18</sup> 5 CFR 1320.11.

<sup>19</sup> 44 U.S.C. 3507(d).

<sup>20</sup> See Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1901–1907.

proposed rule to OMB for informational purposes only.

18. For the purposes of reviewing this interpretation, the Commission seeks information concerning whether the interpretation will affect respondents' burden or cost.

*Title:* Mandatory Reliability Standards for the Bulk-Power System.

*Action:* FERC-725A.

*OMB Control No.:* 1902-0244.

*Respondents:* Businesses or other for-profit institutions; not-for-profit institutions.

*Frequency of Responses:* On Occasion.

19. *Necessity of the Information:* This proposed rule would approve the proposed interpretation of Reliability Standard, TOP-001-1, Requirement R8. The proposed rule would find the interpretation just, reasonable, not unduly discriminatory or preferential, and in the public interest. The TOP-001-1 Reliability Standard helps ensure the reliable operation of the North American Bulk-Power System by ensuring "reliability entities have clear decision-making authority and capabilities to take appropriate actions or direct the actions of others to return the transmission system to normal conditions during an emergency."<sup>21</sup>

20. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, e-mail: [DataClearance@ferc.gov](mailto:DataClearance@ferc.gov), Phone: (202) 502-8663, fax: (202) 273-0873].

For submitting comments concerning the collection of information and the associated burden estimate, please submit your comments to FERC and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395-7345, fax: (202) 395-7285]. Due to security concerns, comments should be sent electronically to the following e-mail address at OMB: [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov). Please refer to OMB Control No. 1902-0244, and the docket number of this proposed rule in your submission.

### IV. Environmental Analysis

21. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a

<sup>21</sup> The purpose of Standard TOP-001-1, according to the NERC Web site at <http://www.nerc.com/files/TOP-001-1.pdf>.

significant adverse effect on the human environment.<sup>22</sup> The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.<sup>23</sup> The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

### V. Regulatory Flexibility Act

22. The Regulatory Flexibility Act of 1980 (RFA)<sup>24</sup> generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.<sup>25</sup> The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.<sup>26</sup> The RFA is not implicated by this proposed rule because the interpretations discussed herein will not have a significant economic impact on a substantial number of small entities.

23. The Commission approved Reliability Standard TOP-001-1 in 2007 in Order No. 693. The proposed rulemaking in the immediate docket addresses an interpretation of Requirement R8 of previously-approved TOP-001-1. The proposed interpretation clarifies current compliance obligations of balancing authorities and transmission operators and therefore, does not create an additional regulatory impact on small entities.

### VI. Comment Procedures

24. The Commission invites interested persons to submit comments on the matters and issues proposed in this

<sup>22</sup> Order No. 486, *Regulations Implementing the National Environmental Policy Act*, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

<sup>23</sup> 18 CFR 380.4(a)(2)(ii).

<sup>24</sup> 5 U.S.C. 601–612.

<sup>25</sup> 13 CFR 121.101.

<sup>26</sup> 13 CFR 121.201, Section 22, Utilities, & n.1.

notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due 60 days from publication in the **Federal Register**. Comments must refer to Docket No. RM10–29–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

25. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

26. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

27. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

## VII. Document Availability

28. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

29. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

30. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the

Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

By the Commission.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–10010 Filed 4–25–11; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

#### 19 CFR Part 351

[Docket No. 110420253–1253–01]

RIN 0625–AA88

#### Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The Department of Commerce (the Department) proposes to modify its regulation that states that provisional measures during an antidumping or countervailing duty investigation usually take the form of a bonding requirement. The modification, if adopted, would establish that the provisional measures during an antidumping or countervailing duty investigation will normally take the form of a cash deposit.

**DATES:** To be assured of consideration, comments must be received no later than May 26, 2011.

**ADDRESSES:** All comments must be submitted through the Federal eRulemaking Portal at <http://www.regulations.gov>, Docket No. ITA–2011–0005, unless the commenter does not have access to the Internet. Commenters who do not have access to the Internet may submit the original and two copies of each set of comments by mail or hand delivery/courier. All comments should be addressed to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, Room 1870, Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230. The comments should also be identified by Regulation Identifier Number (RIN) 0625–AA88.

The Department will consider all comments received before the close of the comment period. The Department will not accept comments accompanied by a request that part or all of the

material be treated confidentially because of its business proprietary nature or for any other reason. All comments responding to this notice will be a matter of public record and will be available for inspection at Import Administration's Central Records Unit (Room 7046 of the Herbert C. Hoover Building) and online at <http://www.Regulations.gov> and on the Department's Web site at <http://www.trade.gov/ia/>.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, e-mail address: [webmaster-support@ita.doc.gov](mailto:webmaster-support@ita.doc.gov).

#### FOR FURTHER INFORMATION CONTACT:

Thomas Futtner at (202) 482–3814, Mark Ross at (202) 482–4794, or Joanna Theiss at (202) 482–5052.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Department proposes to modify its regulation to establish that the provisional measures during an antidumping or countervailing duty investigation will normally take the form of a cash deposit. The provisional measures period is the period between the publication of the Department's preliminary affirmative determination and the earlier of (1) the expiration of the applicable time period set forth in sections 703(d) and 733(d) of the Tariff Act of 1930, as amended (the Act), or (2) the publication of the International Trade Commission's final affirmative injury determination.<sup>1</sup> During the provisional measures period in antidumping and countervailing duty investigations, the Department is instructed by the Act to order “the posting of a cash deposit, bond, or other security, as the administering authority deems appropriate.” See Sections 703(d)(1)(B) and 733(d)(1)(B) of the Act.

Our regulations describe the preliminary determination in antidumping and countervailing duty investigations as the first point at which the Department may provide a remedy if we preliminarily find that dumping or countervailable subsidies has occurred. The regulations at 19 CFR 351.205(a) state that, “[t]he remedy (sometimes

<sup>1</sup> Also, pursuant to sections 703(e)(2) and 733(e)(2) of the Act, if the Department makes an affirmative determination of critical circumstances, then provisional measures shall apply on or after the later of (A) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (B) the date on which notice of the determination to initiate the investigation is published in the **Federal Register**.