§ 24.100(a) may file, or have filed by any person on the employee’s behalf, a complaint alleging such retaliation. The date of the postmark, facsimile transmittal, e-mail communication, telephone call, hand-delivery, delivery to a third-party commercial carrier, or in-person filing at an OSHA office will be considered the date of filing. The time for filing a complaint may be tolled for reasons warranted by applicable case law.

(2) Under the Energy Reorganization Act, within 180 days after an alleged violation of the Act occurs (i.e., when the retaliatory decision has been both made and communicated to the complainant), an employee who believes that he or she has been retaliated against in violation of the Act may file, or have filed by any person on the employee’s behalf, a complaint alleging such retaliation. The date of the postmark, facsimile transmittal, e-mail communication, telephone call, hand-delivery, delivery to a third-party commercial carrier, or in-person filing at an OSHA office will be considered the date of filing. The time for filing a complaint may be tolled for reasons warranted by applicable case law.

(e) Relationship to Section 11(c) complaints. A complaint filed under any of the statutes listed in §24.100(a) alleging facts that would also constitute a violation of Section 11(c) of the Occupational Safety and Health Act, 29 U.S.C. 660(c), will be deemed to be a complaint under both Section 11(c) and the applicable statutes listed in §24.100(a). Similarly, a complaint filed under Section 11(c) that alleges facts that would also constitute a violation of any of the statutes listed in §24.100(a) will be deemed to be a complaint under both section 11(c) and the applicable statutes listed in §24.100(a). Normal procedures and timeliness requirements under the respective statutes and regulations will be followed.

§ 24.104 Investigation.

(a) Upon receipt of a complaint in the investigating office, the Assistant Secretary will notify the respondent of the filing of the complaint by providing the respondent (or the respondent’s legal counsel if respondent is represented by counsel) with a copy of the complaint, redacted, if necessary, in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, et seq., and other applicable confidentiality laws. The Assistant Secretary will provide a copy of the unredacted complaint to the complainant (or complainant’s legal counsel, if complainant is represented) and to the appropriate office of the Federal agency charged with the administration of the general provisions of the statute(s) under which the complaint is filed.

(b) Within 20 days of receipt of the notice of the filing of the complaint provided under paragraph (a) of this section, the respondent may submit to the Assistant Secretary a written statement and any affidavits or documents substantiating its position. Within the same 20 days, the respondent may request a meeting with the Assistant Secretary to present its position.

(c) Throughout the investigation, the agency will provide to the complainant (or the complainant’s legal counsel if complainant is represented by counsel) a copy of all of respondent’s submissions to the agency that are responsive to the complainant’s whistleblower complaint. Before providing such materials to the complainant, the agency will redact them, if necessary, in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, et seq., and other applicable confidentiality laws.

(d) Investigations will be conducted in a manner that protects the confidentiality of any person who provides information on a confidential basis, other than the complainant, in accordance with part 70 of title 29 of the Code of Federal Regulations.

(e) Investigation under the six environmental statutes. In addition to the investigative procedures set forth in §§24.104(a), (b), (c), and (d), this paragraph sets forth the procedures applicable to investigations under the Safe Drinking Water Act; Federal Water Pollution Control Act; Toxic Substances Control Act; Solid Waste Disposal Act; Clean Air Act; and Comprehensive Environmental Response, Compensation and Liability Act.

(1) A complaint of alleged violation will be dismissed unless the complainant has made a prima facie showing...
that protected activity was a motivating factor in the adverse action alleged in the complaint.

(2) The complaint, supplemented as appropriate by interviews of the complainant, must allege the existence of facts and evidence to make a prima facie showing as follows:

(i) The employee engaged in a protected activity;

(ii) The respondent knew or suspected that the employee engaged in the protected activity;

(iii) The employee suffered an adverse action; and

(iv) The circumstances were sufficient to raise the inference that the protected activity was a motivating factor in the adverse action.

(3) The complainant will be considered to have met the required showing if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence sufficient to give rise to an inference that the respondent knew or suspected that the employee engaged in protected activity and that the protected activity was a motivating factor in the adverse action. The required showing may be satisfied, for example, if the complainant shows that the adverse action took place shortly after the protected activity, giving rise to the inference that it was a motivating factor in the adverse action.

(4) The complaint will be dismissed if a preponderance of the evidence shows that the respondent would have taken the same adverse action in the absence of the complainant’s protected activity.

(5) If the respondent fails to make a timely response or fails to demonstrate by clear and convincing evidence that it would have taken the same adverse action in the absence of the behavior protected by the Act, the Assistant
§ 24.105 Issuance of findings and orders.
(a) After considering all the relevant information collected during the investigation, the Assistant Secretary will issue, within 30 days of filing of the complaint, written findings as to whether or not there is reasonable cause to believe that the respondent has retaliated against the complainant in violation of any of the statutes listed in § 24.100(a).

(1) If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, he or she shall accompany the findings with an order providing relief to the complainant. The order shall include, where appropriate, a requirement that the respondent abate the violation; reinstate the complainant to his or her former position, together with the compensation (including back pay), terms, conditions and privileges of the complainant’s employment; pay compensatory damages; and, under the Toxic Substances Control Act and the Safe Drinking Water Act, pay exemplary damages, where appropriate. At the complainant’s request the order shall also assess against the respondent the complainant’s costs and expenses (including attorney’s fees) reasonably incurred in connection with the filing of the complaint.

(2) If the Assistant Secretary concludes that a violation has not occurred, the Assistant Secretary will notify the parties of that finding.

(b) The findings and order will be sent by certified mail, return receipt requested, to all parties of record (and each party’s legal counsel if the party is represented by counsel). The findings and order will inform the parties of their right to file objections and to request a hearing and provide the address of the Chief Administrative Law Judge. The Assistant Secretary will file a copy of the original complaint and a copy of the findings and order with the Chief Administrative Law Judge, U.S. Department of Labor.

(c) The findings and order will be effective 30 days after receipt by the respondent (or the respondent’s legal counsel if the respondent is represented by counsel) or on the compliance date set forth in the order, whichever is later, unless an objection and/or a request for a hearing has been filed as provided at § 24.106.

§ 24.106 Objections to the findings and order and request for a hearing.
(a) Any party who desires review, including judicial review, of the findings and order must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and order pursuant to paragraph (b) of § 24.105. The objection and/or request for a hearing must be in writing and state whether the objection is to the findings and/or the order. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, 800 K Street, NW., Washington, DC 20001, and copies of the objections must be mailed at the same time to the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

(b) If a timely objection is filed, all provisions of the order will be stayed. If no timely objection is filed with respect to either the findings or the order, the findings and order will become the final decision of the Secretary, not subject to judicial review.

§ 24.107 Hearings.
(a) Except as provided in this part, proceedings will be conducted in accordance with the rules of practice and procedure and the rules of evidence for administrative hearings before the Office of Administrative Law Judges, codified at part 18 of title 29 of the Code of Federal Regulations.