(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§185.108 Service of complaint.

- (a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure. Service is complete upon receipt.
- (b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by:
- (1) Affidavit of the individual serving the complaint by delivery;
- (2) A United States Postal Service return receipt card acknowledging receipt; or
- (3) Written acknowledgment of receipt by the defendant or his or her representative.

§185.109 Answer.

- (a) The defendant may request a hearing in the answer filed with the reviewing official within 30 days of service of the complaint.
 - (b) In the answer, the defendant:
- (1) Shall admit or deny each of the allegations of liability made in the complaint;
- (2) Shall state any defense on which the defendant intends to rely;
- (3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and
- (4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.
- (c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing official shall file promptly with the ALJ the complaint, the general answer denying liability, and the request for an extension of time as provided in § 185.110. For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section. The ALJ shall decide expeditiously whether the dependent shall be granted an additional period of time to file such answer.

§ 185.110 Default upon failure to file an answer.

- (a) If the defendant does not file an answer within the time prescribed in § 185.109(a), the reviewing official may refer the complaint to the ALJ.
- (b) Upon the referral of the complaint, the ALJ shall promptly serve on the defendant in the manner prescribed in § 185.108, a notice that an initial decision will be issued under this section.
- (c) The ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 185.103, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.
- (d) Except as otherwise provided in this section, by failing to file a timely answer the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section and the initial decision shall become final and binding upon the parties 30 days after it is issued.
- (e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.
- (f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.
- (g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 185.138.
- (h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.
- (i) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.
- (j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.
- (k) If the authority head decides that extraordinary circumstances excused the defendant's failure to file a timely

- answer, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.
- (l) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 185.111 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 185.112 Notice of hearing.

- (a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 185.108. At the same time, the ALJ shall send a copy of such notice to the reviewing official or his or her designee.
 - (b) Such notice shall include:
- (1) The tentative time and place, and the nature of the hearing;
- (2) The legal authority and jurisdiction under which the hearing is to be held;
- (3) The matters of fact and law to be asserted;
- (4) A description of the procedures for the conduct of the hearing;
- (5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and
- (6) Such other matters as the ALJ deems appropriate.

§185.113 Location of hearing.

- (a) The hearing may be held:
- (1) In any judicial district of the United States in which the defendant resides or transacts business;
- (2) In any judicial district of the United States in which the claim or statement in issue was made; or
- (3) In such other place as may be agreed upon by the parties and the ALJ.
- (b) Each party shall have the opportunity to present argument with respect to the location of the hearing.
- (c) The hearing shall be held at the place and at the time ordered by the ALJ.

§185.114 Parties to the hearing.

- (a) The parties to the hearing shall be the defendant and OPM.
- (b) Except where the authority head designates another, OPM shall be represented by the members of the Office of the General Counsel.
- (c) Pursuant to section 3730(c)(5) of title 31, United States Code, a private