

**FISH AND WILDLIFE SERVICE
ADMINISTRATIVE PROCEDURE**

Administrative Procedure

Part 205 Regulatory Flexibility Act

Chapter 1 Nonretaliation Against Small Entities

205 FW 1

1.1 What is the purpose of this chapter? The purpose of this chapter is to explain the Fish and Wildlife Service (Service) policy on the treatment of small entities that comment on our activities.

1.2 What is the policy? Our policy is that we must not penalize small entities in any way for sharing their views with us.

1.3 What is the scope of this chapter? This chapter applies to all employees who interact with small entities. This includes, but is not limited to, employees who issue licenses or permits, administer conservation agreements, carry out regulatory enforcement actions, or administer contracts.

1.4 What is the authority for this chapter? The authority for this chapter is the Regulatory Flexibility Act (5 U.S.C. 601-612).

1.5 What is a small entity? Small entities include small businesses, small government agencies, and small not-for-profit organizations.

A. Small business. A small business is a concern that:

(1) Is organized for profit with a place of business in the United States, operates primarily within the United States, or makes a significant contribution to the U.S. economy by paying taxes or using American products, materials, or labor.

(2) Is not dominant in its field on a national basis.

(3) Meets or is below an established size standard. The Small Business Administration's (SBA) [website](#) has detailed information on size standards for U.S. businesses. Table 1-1 shows the general size standards by industry. (For a more detailed definition, see 5 U.S.C. 601(3).)

Industry	Standard
Measured by Number of Employees	
Manufacturing and mining	500 or fewer
Wholesale trade	100 or fewer
Measured by Average Annual Revenue	
Retail and service	\$6.5 million or less
General and heavy construction	\$31 million or less
Special trade contractors	\$13 million or less
Agricultural	\$0.75 million or less

Table 1-1 SBA General Size Standards

B. Small government agency. A small government agency is a government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. (For a more detailed definition, see 5 U.S.C. 601(5).)

C. Small not-for-profit organization. A small not-for-profit organization is an enterprise that is independently owned and operated and is not dominant in its field. (For a more detailed definition, see 5 U.S.C. 601(4).)

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1.6 What are the responsibilities of Service employees who interact with small entities?

A. Employees must provide good customer service to small entities at all times. Employees provide good customer service by ensuring that they interact in a professional manner and respond appropriately to small entity concerns.

B. When a small entity expresses concern to any Service official about the actions of an employee or the effects of a Service program, we should attempt to resolve the situation to the satisfaction of everyone concerned.

C. If we receive such a complaint from a small entity, employees must not take any type of retaliatory action against the small entity (see section 1.7 for more information).

1.7 What is retaliatory action? Retaliatory actions are actions designed to impose more rigorous compliance standards on a small entity that voices a complaint. Examples include:

A. Taking more stringent regulatory enforcement actions against the small entity that complained,

B. Denying the small entity a permit or license we might otherwise have issued, or

C. Terminating a contract without just cause.

1.8 What is the penalty for taking retaliatory actions against small entities? Taking retaliatory actions against small entities is unacceptable conduct that may result in disciplinary action up to and including removal from the Service. Such conduct may also result in referral to the Office of the Inspector General for investigation.


Acting
DIRECTOR

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