

2 FAM 1690

COMMITTEES PRESCRIBED BY EXECUTIVE ORDER OR LEGISLATION

(TL:GEN-1018; 04-12-1967)

The establishment, operation, organization, and termination of committees prescribed by Executive order or legislation, or the affiliation of the Department with such committees, to the extent that these subjects are not covered by Executive order or legislation. In addition, the concurrence of the Deputy Under Secretary for Administration is required in any statement of the Department's position or views on proposals to establish a committee by Executive order or legislation.

Responsibility for the preparation of such statements rests with the area of primary interest in the business of such a committee or with the Deputy Under Secretary for Administration in the event that no single area of primary interest can be identified.

2 FAM 1691 THROUGH 1694 UNASSIGNED

2 FAM 1695 PARTICIPATION OF PRIVATE SECTOR REPRESENTATIVES ON U.S. DELEGATIONS

(TL:GEN-1032; 03-24-1980)

The following guidelines were published in the Federal Register as Public Notice No. 665 on March 23, 1979 (44 FR 17846). The guidelines concern participation of private citizens as representatives of affected private-sector interests on U.S. delegations to international conferences, meetings, and negotiations, and address criteria for inviting such participation on various delegations and the role on the delegation of such private citizens.

2 FAM 1695.1 Application

(TL:GEN-1032; 03-24-1980)

a. These provisions apply to delegations accredited or chosen by the Department of State to represent the United States at international conferences, meetings or negotiations. The provisions regulate the selection and role of private citizens or nationals who are invited to participate on such delegations as representatives of private-sector interests and who do not perform governmental duties or functions.

b. The provisions do not apply:

(1) To the extent of any inconsistency with provisions of law regulating particular U.S. delegations;

(2) To the conduct of private persons invited by an international organization or conference to participate in a meeting in a personal or private capacity, instead of a representative of the United States, or as a member of a U.S. delegation;

(3) To the selection and role of private citizens or nationals who participate on delegations as "special government employees." Such persons are subject to the conflict of interest laws (18 U.S.C. 202 et seq.) and other laws and regulations. (See the Federal Personnel Manual, Chapter 735, Appendix C for the distinction between "special government employees" and persons who are invited to work with an agency in a representative capacity.)

2 FAM 1695.2 General

(TL:GEN-1032; 03-24-1980)

a. General Policy

Private-sector representatives shall be invited to participate on U.S. delegations only when such participation will further the public interest. Nothing in these guidelines shall be construed to require inclusion of private-sector representatives on any delegation or private association, or interest group, to participate on any delegation.

b. Objectives of Including Private-Sector Representatives on Delegations

Private-sector representatives are invited to participate on delegations in order to:

(1) Provide, on an individual basis, informed views on policy and technical details of matters under discussion, including matters that may arise in the course of the delegation's activities, such as the need to develop a response to proposals put forth by other countries during a conference; or

(2) Enable representatives of private interests directly affected by a negotiation to understand the positions being taken by other countries, the alternatives available to the United States, and the process by which agreements are reached.

c. **Balanced Representation**

Many international negotiations and meetings concern matters directly and substantially affecting two or more private interests with materially differing views, including in some cases, particular economic interests, such as industry, labor, or agricultural producers, and broader based interests, such as retail consumer or environmental interests. When private-sector representatives are to be invited to participate on a U.S. delegation in such cases, officers responsible for selection and/or accreditation of the delegation shall endeavor to obtain a balanced representation of interests on the delegation. The responsible officers shall exercise judgment as to what private interests are most likely to be directly and substantially affected and the degree of difference of interest, bearing in mind the provisions set forth in section 2 FAM 1695.3 b . In exercising such judgment, the responsible officers shall place special emphasis on inviting a representative or representatives of broadly based interests such as retail consumers or environmental groups, where these interests are directly and substantially affected.

2 FAM 1695.3 Selection of Private Sector Representatives

(TL:GEN-1032; 03-24-1980)

a. **Responsibility of Department Officials**

With respect to delegations accredited by the Office of International Conferences, Department of State, that office, in consultation with the head of delegation, shall be responsible for inviting participation of private-sector representatives in accordance with these regulations. With respect to all other delegations accredited or selected by the Department of State, the action office, in consultation with the head of the delegation, shall be responsible.

b. **Initial Justification**

In determining whether private-sector representatives should be invited to participate on a delegation, the following factors shall be considered:

(1) The importance of obtaining the informed view of private interests during the conference or negotiation;

(2) Whether consultations or the opportunity to provide written comments prior to the conference would be an adequate alternative to including particular private-sector representatives on the delegation;

(3) The need to limit overall delegation size to the minimum necessary best to carry out the mission of the delegation;

(4) The number of private-sector representatives that would be required, if any such representatives are included on the delegation, to provide balanced representation of the interests directly affected; and

(5) Whether participation of private-sector representatives is feasible with-in any applicable rules or understandings of the international conference or meeting.

c. Selection Procedures

(1) Private-sector representatives may be invited from labor groups, the academic community, trade associations, specific business firms, public interest groups or from any other sources, including the public at large. Representatives shall be invited with a view to their ability to meet the objectives stated in section 2 FAM 1695.2b. To the extent feasible, the responsible officers should consult with and seek the recommendations of representative private groups and associations concerning private-sector representatives, but the responsible officer shall not be bound by recommendations of such groups, nor shall the recommendation of such a group be required before a private-sector representative may be invited to participate on a delegation.

(2) The responsible office shall not be required to invite more than one representative of a private-sector interest merely because there is more than one private association or because there are differing views among individuals or entities within a private-sector interest group. The representative invited is not required to commit his or her interest group, entity, or association.

(3) Private-sector representatives shall be given written letters of invitation. The letter of invitation shall describe the role of the representative and outline the limitations on participation as set forth in sections 2 FAM 1695.4 and 2 FAM 1695.5 of these guidelines. The letter of invitation to private-sector representatives of trade or business interests shall enclose antitrust guidance prepared by the Antitrust Division, Department of Justice.

(4) To the extent practicable, the head of delegation, or his or her designee, shall provide private-sector representatives with advance information concerning the substance and logistics of the meeting or conference.

(5) The Department shall publish monthly in the *Federal Register* a list of those delegations which included private-sector representatives, and the names of Government officials and private-sector representatives participating in each such delegation during the previous month. The private affiliation or interest group of each private-sector representative shall be included in the published list.

(6) Private-sector representatives must have security clearances from the Government at a level equivalent to the classification of information which may be required for their participation on the delegation.

2 FAM 1695.4 Role of Private-Sector Representatives

(TL:GEN-1032; 03-24-1980)

a. Subject to the provisions of these guidelines and any applicable law, private-sector representatives on the delegation may offer views and information to government officials on the delegation, and government officials may solicit such views and information, on any matter under consideration by the delegation. The head of the delegation will decide when private-sector representatives may attend any meeting of the delegation or any meeting with foreign officials.

b. Government officials shall not discuss or reveal any commercially sensitive information of an individual business entity, except with other U.S. Government officials on a need-to-know basis. Commercially sensitive information includes, but is not necessarily limited to, an individual business entity's specific or anticipated costs, prices, profit margins or production goals, unless this information is already public. Government officials may not solicit or receive commercially sensitive information from a private-sector representative in the presence of anyone other than government officials, and may disseminate such information only on an aggregated basis and only if such aggregated information will not tend to reveal the commercially sensitive information of any individual business entity. Aggregated information may be solicited from or provided by a private-sector representative, provided that such information was aggregated by an independent auditor or other independent body, or the Government, or otherwise in accordance with U.S. law. No private-sector representative is obligated, by participation on a delegation, to provide any commercially sensitive information.

c. Government officials shall take account of the private interests of an adviser in assessing any views or information received. Government officials, wherever possible, shall seek views of other private-sector representatives on the delegation representing different private interests, if views on a material point are received from one such representative.

d. Subject to any limitations established by the head of delegation and the provisions of these guidelines, government officials may, in their discretion, provide to private-sector representatives any information pertaining to the negotiation, provided that:

(1) No information classified above the level at which the private-sector representatives have security clearance shall be provided, nor shall any classified information be provided to such representatives if it is not necessary to their function.

(2) No information shall be provided to any private-sector representative if such information knowingly could be used for private gain, unless such information is made available to the public in timely fashion so as to preclude special financial advantage for private-sector representatives. This shall include all information and proposals which would have the effect of giving commercial, competitive, or market advantage to the private-sector representatives or their employers or interest groups.

e. The head of the delegation shall assure that the private affiliation of private-sector representatives on the delegation is made known to other delegations, wherever possible, by inclusion of the private affiliation in listings of the delegation on conference records.

f. While two or more private-sector representatives may present the same or similar views on particular issues, government officials shall not request or require private-sector representatives to present joint or compromise views or reports.

2 FAM 1695.5 Limitations on Private-Sector Representatives

(TL:GEN-1032; 03-24-1980)

a. No government official shall permit private-sector representatives to speak for the U.S. Government at any meeting with foreign government officials. However, the head of the delegation may authorize a private-sector representative to explain a technical or factual point, if, in the judgment of the head of the delegation: (1) this will advance U.S. objectives at the conference or negotiation; and (2) the private-sector representative is best able to speak on the point under discussion.

b. Heads of delegations shall remind private-sector representatives that they may not, by law, divulge classified information to anyone not authorized to receive such information. The head of the delegation shall inform private-sector representatives what information is classified. It is recognized that private-sector representatives may wish to report to the groups or interests they represent, and to receive views or information from those groups or interests. The head of delegation shall provide guidance which will not inhibit such activities, within the legitimate requirements for protection of classified information.

c. Private-sector representatives shall not at any time negotiate or purport to negotiate for the U.S. Government, nor shall they advocate positions outside of the delegation during a conference or negotiation which would tend to undermine the tactical or substantive positions of the United States as determined by the head of the delegation. However, no private citizen or entity is represented by a private-sector representative on the delegation, nor shall any private-sector representative be prohibited from expressing views on the outcome of a negotiation after conclusion of the negotiation, so long as classified information is not released.

d. Private-sector representatives are not immune from any laws or regulations of the United States as a result of participation on a U.S. delegation, and no government officials may represent that participation confers any such immunity.

e. Private-sector representatives are not to be considered employees of the U.S. government. The Government will not pay any expenses of private-sector representatives, except as funds are authorized and appropriated for this purpose. Private-sector representatives are not entitled to use of any facilities of the Government, if such use would entail additional expense to the Government, nor shall they be given access to government files or communications facilities (except facilities which do not entail additional expense to the Government, or which are necessary to protect the security of information pertaining to official functions of the delegations).

f. The head of the delegation or the Office of International Conferences may limit the period of participation on a delegation of any private-sector representative. The head of the delegation may exclude from the delegation any private-sector representative whose conduct or actions are: (1) contrary to the provisions of these guidelines; (2) contrary to limitations or prohibitions imposed by the head of the delegation pursuant to these guidelines or other authority; or (3) prejudicial to the interests of the United States, including the effective functioning of the delegation. No private-sector representative, however, may be excluded from the delegation merely because of views provided in good faith to government officials on the delegation, nor may a private-sector representative be excluded from the delegation for declining to provide views on a matter where he or she believes this would be inappropriate or prejudicial.

2 FAM 1696 THROUGH 1699 UNASSIGNED