



United States
Department of
Agriculture

Agricultural
Marketing
Service

Room 3071-S, STOP 0201
1400 Independence Avenue, SW
Washington, DC 20250-0201

ExSC 6915

Ms. Anne Caldas
Director, Procedures and Standards Administration Accreditation Services
American National Standards Institute
25 West 43 Street, 4th Floor
New York, New York 10036

Dear Ms. Caldas:

In accordance with the *Operating Procedures of the ANSI Executive Standards Council (ExSC)*, appellant petitions the ExSC to review the status of the Leonardo Academy (Leonardo) as an ANSI-Accredited Standards Developer. Leonardo was accredited by ANSI as a standards developer on December 9, 2005. Appellant believes, as detailed below, that Leonardo's accreditation should be revoked.

Appellant is the United States Department of Agriculture, Agricultural Marketing Service, which is directly and materially affected by the actions of Leonardo.

Basis for Appeal:

Leonardo has failed in its responsibility to operate in accordance with *ANSI Essential Requirements*, as follows.

Appeal Issue 1. Leonardo published as a *Draft Standard for Trial Use*, a document it did not prepare and which exceeds the scope of standards activities for which it was approved to develop standards as an ANSI-Accredited Standards Developer.

The DSTU, titled, "Sustainable Agriculture Practice Standard For Food, Fiber and Biofuel Crop Producers and Agricultural Product Handlers and Processors," purports to address a "spectrum of issues" identified as follows:

Environmental Sustainability – Sustainable crop production, resource conservation & energy efficiency, ecosystem protection, and integrated waste management.

Social & Economic Sustainability – Fair labor practices and community benefits.

Product Integrity – Product quality and product safety and purity.

Leonardo's ANSI-approved scope of standards activities reads as follows:

"The development of sustainability standards for measuring the overall sustainability performance and reduced environmental impacts of individuals, families, businesses, government, other organizations, vehicles, events; and standards for emission reductions actions. The scope of these includes:

1. Standards for Sustainable Organizations (Sustainability Achievements of Organizations) that provide a scale for measuring the achievement of businesses, governments, government agencies and other organizations in reducing their negative impacts and increasing their positive impacts on the environment, the economy and society. Components of sustainable organization performance include both direct and indirect impacts on the land, water, and atmosphere, including the environmental impacts of supply chains for the goods and services purchased and/or produced by the organization.
2. Standards for Sustainable Vehicles that provide a scale for measuring the achievements of manufacturers of vehicles and others in reducing the negative impacts of vehicles on the environment, the economy and society. Components of sustainable vehicle performance include both direct and indirect environmental impacts on the land, water, and atmosphere during all phases of the vehicle life, including manufacturing, operation, and end-of-life disposal.
3. Standards for Sustainable Events that provide a scale for measuring the achievements of events organizers and participants in reducing the negative impacts of events on the environment, the economy and society. Components of sustainable event performance include both the direct and indirect impacts of the event on the land, water, and atmosphere as related to the goods and services consumed during the planning, implementation, and clean up phases of the event and other event-related activities.
4. Standards for Emissions Reductions that quantify the environmental emissions caused by individuals, businesses, government, and other organizations; quantify and credit emission reductions and sequestration, and offsets; and quantify the net environmental emissions caused by individuals, businesses, government, and other organizations.”

Leonardo’s scope of standards development activity is limited to sustainability as it pertains to environmental issues. While some leeway must be allowed for tangential issues that may impact environmental concerns, Leonardo’s scope clearly does not encompass issues such as fair labor practices, community benefits, product quality, and product safety and purity - all of which have specific requirements in the DSTU.

Further, the DSTU requires producers to begin to integrate organic agriculture practices into their operations with the overall goal of conversion to full implementation of organic principles as soon as practicable. There is no commonly recognized nexus between organic agriculture and long-term sustainability. The adoption of organic agriculture principles as a qualifying activity for certification by a producer under the DSTU exceeds the scope of Leonardo’s allowable standards activities. In addition, requiring organic agriculture as the sole qualifying agricultural production technology effectively eliminates at least 95 percent of production agriculture in the United States from being able to obtain certification under the standard.

Appeal Issue 2. Leonardo failed to develop, promulgate, and make publicly available its procedures with respect to draft standards for trial use.

Annex B: Draft American National Standards for trial use of the ANSI Essential Requirements states the following:

“Accredited Standards Developers that intend to utilize draft standards for trial use are required to establish procedures for use in connection with their promulgation. *Such procedures shall specify how and by whom the decision to promulgate a draft standard for trial use shall be made. (Emphasis added)* Such procedures shall afford materially affected interests the opportunity to challenge the decision to register a draft standard for trial use with ANSI. A copy of such procedures shall be received by ANSI, reviewed and approved by the Executive Standards Council (ExSC) or its designee, and placed on file prior to the submission and announcement of any draft standards for trial use.”

Leonardo clearly failed to meet this requirement. Leonardo has never promulgated and made available procedures with respect to draft standards for trial use. Leonardo has published on its website “PROCEDURES FOR THE DEVELOPMENT AND MAINTENANCE OF ANSI STANDARDS BY LEONARDO ACADEMY INC.” A careful reading of Leonardo’s procedures indicates that they address the development of an American National Standard (ANS), not draft standards for trial use. In effect, Leonardo is using the DSTU procedure to bypass the standards project initiation notification (PINS) process which would have required Leonardo to explain the need for the project and identify the relevant stakeholders.

Appeal Issue 3. Leonardo failed to afford materially affected interests the opportunity to challenge the decision to register a DSTU with ANSI.

Annex B: Draft American National Standards for trial use of the ANSI Essential Requirements states the following:

“Accredited Standards Developers that intend to utilize draft standards for trial use are required to establish procedures for use in connection with their promulgation. Such procedures shall specify how and by whom the decision to promulgate a draft standard for trial use shall be made. *Such procedures shall afford materially affected interests the opportunity to challenge the decision to register a draft standard for trial use with ANSI. (Emphasis added)* A copy of such procedures shall be received by ANSI, reviewed and approved by the Executive Standards Council (ExSC) or its designee, and placed on file prior to the submission and announcement of any draft standards for trial use.”

Leonardo clearly failed to meet this requirement. As stated above, Leonardo has established no procedures with respect to draft standards for trial use. Even if the procedures Leonardo has identified for the development of an ANS could be construed as applicable to the DSTU for Sustainable Agriculture, the initial work on development of the document which became the DSTU was conducted by Scientific Certification Systems (SCS), a third party provider of certification, auditing and testing services, without outreach to the agricultural communities (materially affected interests) that could be impacted by the requirements of the DSTU. Leonardo published the DSTU in ANSI’s *Standards Action* in April of 2007. Leonardo’s timeline of events (attached) indicates that its first outreach activities occurred in October of

2007, long after publication of the DSTU. The vast majority of possibly affected agricultural communities were not made aware of the DSTU by Leonardo before its publication. In point of fact, major stakeholders only found out about the DSTU through word of mouth contacts within the industry well after Leonardo's October 'kick-off meetings.' Thus no opportunity was provided by Leonardo for affected stakeholders "to challenge the decision to register a draft standard for trial use with ANSI."

Appeal Issue 4. Leonardo's flawed procedures have led to a flawed process which will be impossible to administer. On too many issues, consensus will not be able to be reached.

Leonardo's failure to identify the breadth of agricultural producers, marketers and other impacted communities likely to be impacted by the DSTU; make the proposed requirements of the DSTU known to them; and, obtain feedback from them prior to publication of the DSTU has forced major agricultural interests to scramble to obtain information on and about the DSTU. Some of those entities are mounting appeals to Leonardo of specific aspects of the DSTU and to the announced membership and make-up of Leonardo's Standards Committee.

One of the core requirements of ANSI's standards development process, whether addressed through a DSTU or a PINS process, is the ability to identify issues relevant to stakeholders upon which consensus can be reached. Leonardo has included issues in the DSTU upon which consensus cannot be reached under its definition of sustainability. How sustainability should be defined is currently being debated among many agricultural sectors. Those debates cover the inclusion of the entire range of modern production agricultural practices, including the use of biotechnology-derived seed stocks and synthetic pesticides and fertilizers. Many of these practices would be prohibited by the requirements of Leonardo's DSTU.

Another example is the inclusion of specific Fair Labor Practices for all producers and handlers. Fair labor laws are specified by both Federal and State statutes. State statutes differ in their applicability across the United States. Requiring one set of Fair Labor practices for all producers and handlers seeking certification under the requirements of the DSTU fails to recognize the reality of those myriad regulations. No ANS (or DSTU) can modify existing statutory requirements to meet a desired social goal, no matter how laudable.

Perhaps the most glaring example of an issue upon which consensus is unobtainable is the requirement for all producers to move to solely organic agricultural production methods in order to be considered sustainable. This is a philosophical position and an absolute impossibility if the United States is to feed its citizens and have available significant exports of food and grain crops to feed the world and positively impact our balance of trade. Again, consensus on this issue cannot be achieved.

Appeal Issue 5. Leonardo's flawed procedures for representation on its Standards Committee created Interest Categories without input from the affected stakeholders. Lacking proper input, the Interest Categories defined by Leonardo result in over-representation by certain industry related segments and under-representation by certain industry participants.

Leonardo has defined four Interest Categories common to all of its Standards Committees. They are Producers - entities that produce or supply goods or services; Users - entities that use goods or services; Environmentalists - individuals or organizations focused on preserving and improving the environment; and, General Interest - entities not covered in the first three categories, to include educators, government entities, technical societies, consumer groups, and non-profit organizations. Leonardo has announced the initial membership on its Standards Committee for sustainable agriculture, composed of 12 Producers, 12 users, 12 Environmentalists, and 22 General Interest.

Clearly a DSTU focused on agricultural practices should have a Standards Committee composed primarily of entities involved in various areas of agricultural production, processing, marketing, etc., while remaining consistent with ANSI requirements to avoid dominance by a particular group. Instead, Leonardo's Standards Committee drastically under-represents those impacted most by the DSTU and gives a larger than appropriate voice to environmentalists and others not directly impacted. The interest categories articulated in Leonardo's procedures are not appropriate to the nature of the standard under development, thereby necessarily precluding reaching consensus on important issues, and the improper implementation of procedures has resulted in the exclusion of materially affected and interested parties.

In addition, Section **1.2 Lack of dominance of ANSI Essential Requirements** states that, "The standards development process shall not be dominated by any single interest category, individual or organization. Dominance means a position or exercise of dominant authority, leadership, or influence by reason of superior leverage, strength, or representation to the exclusion of fair and equitable consideration of other viewpoints." This requirement applies to Leonardo, as the standards developer, as well as to other parties to the consensus process. Leonardo has made it clear that it is an advocate for organic agriculture as the only acceptable path to sustainability. The requirements in the DSTU relative to organic agriculture and Leonardo's published answers to questions about the DSTU and its process demonstrate this bias. As the Secretariat for the DSTU, Leonardo's bias has resulted in an unfair breakdown of interest categories on, and the selection of members to, the Standards Committee for the DSTU.

Appeal Issue 6. Even if Leonardo's announced procedures for the development of an ANS could be construed as also meeting the requirement to have announced procedures relative to the development of a DSTU (See Issues 2 & 3 above.), Leonardo does not have the administrative ability to properly administer them.

Materials Leonardo has posted on its own website on the DSTU clearly demonstrate Leonardo's administrative failings, as follows.

Leonardo's document titled, "**Q & A: Establishing an American National Standard for Sustainable Agriculture**" contains Leonardo's responses to questions it has asked of itself (and, to be fair, some posed by concerned stakeholders) in an attempt to enlighten affected stakeholders about how Leonardo will operate as an SDO.

6) Is there any possibility that Leonardo Academy could go back to a PINS process for this standard? February 2008

It is unlikely that LEO will go back to a PINS process for the development of this standard.

According to Section **2.5 Notification of standards development and coordination of ANSI Essential Requirements**, Leonardo cannot go directly from a DSTU to an ANS without use of the PINS process.

13) How were the four stakeholder groups established? The categories selected do not seem equitable (e.g. lumping government, non-environmental NGOs, academia and industry—all of which are major segments)? February 2008

The stakeholder groups for the standards Leonardo Academy develops are based on the *ANSI Essential Requirement* criteria for giving consideration to at least the following interest categories: producer, user and general interest. These criteria also include giving consideration to additional interest categories where appropriate. Due to the nature of the standards it develops, Leonardo Academy expanded the stakeholder categories to include environmental interest groups. It is common procedure for ANSI standards development processes to have multiple players, such as government, non-environmental NGOs, academia and industry, within one main stakeholder group.

Rather than providing a coherent and rational response to the question, Leonardo merely quotes general text from the **ANSI Essential Requirements**. Pointing to ANSI requirements to provide interest categories does not, in any way, explain Leonardo's rationale for how those categories were chosen and stakeholders placed within them.

14) What criteria do you use to consider “balance” in the composition of the Standards Committee in a sector like agriculture that has so many diverse stakeholders? Will each category represented on the Standards Committee have an equal number of members (e.g. ¼ producers, ¼ NGOs, etc.)? Is the ISO CSR process a useful model? February 2008

Leonardo Academy's *ANSI Standards Development Constitution* requires that membership on a given Standards Committee be balanced among the interest categories. “Balance” shall be represented by an approximately equal number of members for each of the four interest categories, with no single interest maintaining a majority of the voting membership. In addition, all efforts will be made to ensure balance among the stakeholders within each interest category (e.g. large commodity producers vs. small diversified alternative producers within the ‘producer’ category).

Stating that their own “*ANSI Standards Development Constitution*” requires a specified level of balance does not, in any way, explain Leonardo's rationale for choosing a balance of 25% for each interest category. Section **1.3 Balance of ANSI Essential Requirements** states that, “The standards development process should have a balance of interests. Participants from diverse interest categories shall be sought with the objective of achieving balance.” There is no requirement for equal percentages among interest categories and Leonardo has failed to explain why it chose to do so.

7) Is a definition of “Sustainable Agriculture Production” provided in the draft standard? Is the draft standard using an existing definition, or providing a new one? February 2008

The narrow definition of sustainable agricultural practices provided in the definitions section of the current draft standard is intended to serve as a placeholder only:

“Agricultural production and product handling activities that result in the production and delivery of products in a manner that is economically viable, ecologically sound and socially responsible.” There has been considerable debate nationally and internationally about the definition of this term, and it will be left to the Standards Committee to take up the question of whether such a definition should be provided and what such a definition would be.

Leonardo recognizes that its own definition of “**Sustainable Agriculture Production**” is narrow, that there has been considerable debate nationally and internationally about the definition, and that the Standards Committee must redefine it. Incredibly, this definition is the basis on which a 90-page DSTU, plus appendices, has been developed! This is a clear admission of Leonardo’s misunderstanding of its administrative responsibilities to propose a DSTU upon which interested parties can knowledgeably comment. If the definition upon which the entire DSTU is based is flawed (as Leonardo admits in its own public document), how can interested parties even begin to understand how the DSTU would operate or need to be revised?

9) On the list of experts consulted, why apparently have no national “mainstream” agriculture and commodity associations been consulted in developing the draft standard? January 2008

The draft standard was developed with extensive input, but clearly a much wider net must be cast in the development of the final standard. Agriculture and commodity associations are among the many stakeholders invited to participate in the development process of an American National Standard for Sustainable Agriculture. Leonardo Academy will continue its outreach to these groups to encourage their involvement in the standard development process.

By its own admission, Leonardo has failed to meet its administrative responsibilities with respect to develop of a DSTU. Leonardo recognizes that “mainstream agriculture and commodity associations” need to be consulted in the development of an ANS. They needed to be consulted in the development of the DSTU! Leonardo’s failure to do so, merely publishing a document developed in its entirety by SCS, clearly demonstrates Leonardo’s lack of understanding of, or willingness to comply with, its administrative responsibilities.

14) What are the advantages of including specific interest areas as Annexes to the overall sustainable agriculture standard as opposed to developing a separate ANSI standard for discrete interest areas such as livestock, dairy, and biofuel crops that may be different in significant ways from other agricultural sectors? February 2008

The draft standard was written to focus solely on agricultural crops; it does not address livestock, dairy, or wild crops. With respect to agricultural crops, there are numerous areas of overlap in which one set of requirements can be developed that are applicable across the board. To the extent that common elements can be identified and standards

adopted, educational efforts concerning sustainability issues and innovations will be strengthened. Another advantage is that producers will be able to rely on a single agricultural plan and sustainability management structure, although details may vary from crop to crop or region to region. The precedent of developing a core set of standards, with sector-specific annexes or supplements, is well established in existing standards for sustainable agriculture.

1) Will livestock and dairy production be addressed? *January 2008*

Although the DSTU does not address livestock or dairy at this time, it will be up to the Standards Committee to determine whether to expand the scope to include such product categories.

Above, from two separate sections of Leonardo's own public document, Leonardo demonstrates its inability to understand the administrative requirements of properly developing a DSTU for consideration by affected parties. Leonardo states that the DSTU does not address livestock or dairy. Then it says that the Standards Committee can choose to expand its scope to livestock and dairy. The overall scope of the DSTU must be clearly identified and stable. How else can possibly affected industry segments know if they should participate in the standards development process or not? Must livestock and dairy interests incur the time and monetary costs to participate on the off chance that the standard might be applicable to their businesses? This is neither fair nor practical.

Appeal Issue 7. Leonardo's operations do not comply with **ANSI Essential Requirements** for Coordination/Harmonization.

Section 2.4.2 Coordination/Harmonization of ANSI Essential Requirements states, in part:” ANSI-Accredited Standards Developers shall make a good-faith effort to resolve potential conflicts and to coordinate standardization activities intended to result in harmonized American National Standards. A “good faith” effort shall require substantial, thorough and comprehensive efforts to harmonize a candidate ANS and existing ANSs.”

Although the document in question is a DSTU and not yet proposed as a candidate ANS, Leonardo has failed to make a good faith effort to identify, much less resolve, potential conflicts with existing standards.

Food safety requirements detailed in the DSTU should have been compared and harmonized with existing standards covered in the ISO Food Safety Systems Package (ISO 22000:2005, ISO/TS 22003:2007, ISO/TS 22004:2005, ISO 9001:2000, ISO 15161:2001, ISO 9000:2005, ISO 19011:2002, and ISO/IEC 17021:2006).

Management requirements, such as hiring and employment practices, and worker requirements, such as worker safety and training, detailed in the DSTU should have been compared and harmonized with existing standards covered in the ISO Quality Management series (ISO 9000:2005, ISO 9001:2000, ISO 9004:2000, ISO 10002:2004, ISO 10005:2005, ISO 10006:2003, ISO 10007:2003, ISO 10012:2003, ISO/TR

10013:2001, ISO 10014:2006, ISO 10015:1999, ISO/TR 10017:2003, ISO 10019:2005, ISO 19011:2002, ISO/FDIS 10001, and ISO/FDIS 10003).

The “reductions in greenhouse gases” requirements detailed in the DSTU should have been compared and harmonized with existing standards covered in the ISO Greenhouse Gases Package (ISO 14064-1:2006, ISO 14064-2:2006, ISO 14064-3:2006, and ISO 14065:2007).

Leonardo’s failure to make these comparisons, and possibly others, and make them known in the text of the DSTU is another example of Leonardo’s inability or unwillingness to comply with ANSI Essential Requirements. Lacking this information, the DSTU can only be a source of confusion for those wishing to comment on its requirements.

Appeal Issue 8. Leonardo’s operations do not comply with **ANSI Essential Requirements** for due process.

In January 31, 2008, and June 6, 2008, letters to Leonardo (attached), USDA and others representing major agricultural industry segments raised specific concerns about the DSTU, how it was developed, and the process planned by Leonardo to move forward with further development of a sustainable agriculture standard. In brief, the following concerns were raised about the DSTU.

From the January 31, 2008, letter about the DSTU:

- It equates organic practices with best agricultural practices, a conclusion that would be soundly rejected by many in the scientific community and an issue that will provoke intense debate between the organic and conventional agricultural communities.
- It rejects the use of biotechnology, perpetuating scientifically unsound and overly precautionary approaches that have been rejected by many governments, including our own, and which have provoked significant trade concerns.
- It requires that producers follow organic processes rather than achieving specific results that can be objectively and metrically validated as sustainable, making it unsuitable for the very sectors of agriculture that would be impacted
- It requires agriculture to engage in discussions of carbon emission standards that are well beyond the technological knowledge and capability of most of the participants likely to be engaged in this standards process. Carbon emissions standards are the proper focus of climate change discussions and regulatory guidance processes, which have just begun.
- It applies to biofuels, which are also the subject of many other standard setting efforts, including the International Standards Organization (ISO) and the Roundtable on Sustainable Biofuels. Food and agriculture stakeholders are also participating in other initiatives including legislative discussions.

The June 6, 2008, USDA letter pointed out: conflicts between proposed requirements of the DSTU and the definition of sustainable agriculture in the 1990 “Farm Bill (P.L. 101-624);” concerns about precluding the use of modern biotechnology, synthetic fertilizers, or other modern technologies from use by producers; conflicts between the DSTU’s requirements for organic production requirements and regulatory requirements of the Federal National Organic Program; concerns over ANSI’s due process requirements not being met by Leonardo; and, USDA’s fear that the national consensus could not be achieved on the basis of the DSTU.

Both letters encouraged Leonardo to narrow the scope of the DSTU.

In a June 24, 2008, letter, rather than substantively addressing all of the concerns raised by USDA, Mr. Army simply stated the following.

“You have raised questions about both the substance of the Draft Standard and the process that will be used to consider it. Your basic view is that the Draft Standard does not provide an adequate basis to move forward. As discussed in this letter, I do not agree.”

In that same letter, Mr. Army also stated the following.

“...it is our responsibility to inform all stakeholders that, in accordance with ANSI standard setting procedures, the language of the Draft Standard may be revised in any measure up to its entirety by the multiple stakeholders comprising the Standards Committee.”

Finally, referencing OMB Circular A-119, Mr. Army stated the following.

“Circular A-119 also comments that:

[a]gency representatives must not dominate [standard setting] bodies, and in any case are bound by voluntary consensus standards bodies' rules and procedures, including those regarding domination of proceedings by any individual. Regardless, such agency employees must avoid the practice or the appearance of undue influence relating to their agency representation and activities in voluntary consensus standards bodies.

Office of Management and Budget, Revised Circular A-119, 63 Fed. Reg. 8545, 8556 (Feb. 19, 1998).

“In this instance, I am concerned that the course set out in your letter is not consistent with the ANSI rules and procedures and the directive to avoid the appearance of undue influence by a federal agency.”

Mr. Army's dismissal of concerns and issues raised by USDA and other affected industry segments is unfortunate and not in the spirit of openness and consideration of views and objections contemplated by **ANSI Essential Requirements**. His mischaracterization of the requirements of OMB Circular A-119 and his statement with regard to USDA attempting to exert undue influence over Leonardo's standards development process is a direct violation of **1.0 Essential requirements for due process of ANSI Essential Requirements** which provides, in part, that any person (organization, company, government agency, individual, etc.) with a direct and material interest has a right to participate by: a) expressing a position and its basis, and b) having that position considered,...

Appeal Issue 9. Leonardo's operations do not comply with **ANSI Essential Requirements** for compliance with normative American National Standards policies and administrative procedures.

In Leonardo's June 24, 2008, letter to USDA and in its response to an appeal of the publication of the DSTU by the United Soybean Board, the American Soybean Association, the US Soybean Export Council, and the National Association of Wheat Growers, Leonardo provides the following advice.

The Draft National Standard for Trial Use on Sustainable Agricultural Products SCS-001 is a placeholder document. The Standards Committee will follow the Leonardo Academy's ANSI-approved standard development process and will determine what the final approved standard will contain.

Everything in the Draft Standard is on the table to be addressed by the Standards Committee and each issue addressed can be addressed differently as a result of the Standard Committee's work following the Leonardo Academy's ANSI-approved standard development process.

Leonardo uses this language, or variations thereof, in answer to a multitude of concerns and questions raised about the DSTU. A DSTU is not merely a placeholder. A DSTU must provide a basis of understanding for the affected community to intelligently participate in the standards development process, or to know if their participation is even required. As published by Leonardo, the DSTU for sustainable agriculture is meant to be a performance standard. It describes what entities must do and what they are prohibited from doing with respect to myriad practices. But if the entire DSTU is up for modification, no entity knows the proposed bounds of any of these practices, or even if those practices will be contained in the final draft standard. Additionally, as Leonardo demonstrates in its questions and answers on the scope of the DSTU, entities cannot even know if their operations will be covered by the standard or not. This is not a standards development process. It is a forum for an open-ended debate about the need for a standard, or multiple standards, and what processes and practices should be included in them, i.e., the scope of those standards.

Leonardo's practices and actions with respect to the DSTU are not consistent with the expectations of an ANSI accredited Standards Developing Organization. The standards development process defined and implemented by Leonardo, to date; (1) contains provisions that are unfair to materially affected entities, i.e. major agricultural interests, (2) is unsuitable for

national use as many of its proposed provisions are so diverse that consensus on how they should be defined will be impossible to achieve, (3) and is contrary to the public interest as provisions of the DSTU are in conflict with existing federal regulations and would require an impossibly uniform application of varying State regulations and requirements.

Relief Sought:

For all of the issues raised herein, appellant requests that the ExSC withdraw the accreditation as a Developer of American National Standards of the Leonardo Academy.

Appellant further requests that the Draft Standard for Trial Use titled, “Sustainable Agriculture Practice Standard For Food, Fiber and Biofuel Crop Producers and Agricultural Product Handlers and Processors,” be withdrawn from further consideration as a DSTU or as the basis for an American National Standard.

Documents Described in this Appeal and Attached Hereto:

- May 20, 2008, letter from USDA to Leonardo’s President, Mr. Michael Army
- January 31, 2008, letter from 33 agricultural industry businesses and trade associations to Leonardo’s President, Mr. Michael Army
- June 6, 2008, letter from USDA to Leonardo’s President, Mr. Michael Army
- February 25, 2008, Response to Procedural Complaint from Leonardo’s President, Mr. Michael Army to 40 US based agricultural associations, businesses, and other entities
- June 24, 2008, letter to USDA from Leonardo’s President, Mr. Michael Army

Documents Described in this Appeal Available on Leonardo’s Public Website:

(<http://www.leonardoacademy.org/Projects/SustainAgStdDevelopment.htm>)

- Draft Standard for Trial Use titled, “Sustainable Agriculture Practice Standard For Food, Fiber and Biofuel Crop Producers and Agricultural Product Handlers and Processors
 - Establishing an American National Standard for Sustainable Agriculture: Working Timeline
 - [Q & A: Establishing an American National Standard for Sustainable Agriculture](#) (Updated June 17, 2008)
 - [Leonardo Academy's ANSI Standards Development Constitution](#)
 - [Leonardo Academy's REVISED ANSI Standards Development Constitution](#)
 - Membership of Leonardo’s Standards Committee
- Applicants for membership on Leonardo’s Standards Committee

Sincerely,

/s/ Lloyd C. Day

September 11, 2008

Lloyd C. Day
Administrator
Agricultural Marketing Service
United States Department of Agriculture



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

MAY 20 2008

Mr. Michael Army
President
Leonardo Academy
1526 Chandler Street
Madison, Wisconsin 53711

Dear Mr. Army,

The United States Department of Agriculture (USDA) has a keen interest in the activities of the Leonardo Academy in developing a draft standard for Sustainable Agricultural Practice. As we will describe in a separate letter, we have a number of serious reservations relating to this effort, but our interest is in the development of an appropriate and meaningful standard through a robust, inclusive, and transparent process. Accordingly, we would like to nominate three individuals from USDA to serve as observers to the Standards Committee for this standard as the effort continues to unfold. They are:

- R. Charles Martin, Deputy Associate Administrator, Agricultural Marketing Service (E-mail chuck.martin@usda.gov)
- Michael Schechtman, Biotechnology Coordinator for the Office of the Secretary (E-mail michael.schechtman@ars.usda.gov) and
- Kirsten Jaglo, Office of Scientific and Technical Affairs, Foreign Agricultural Service (E-mail Kirsten.jaglo@fas.usda.gov).

We would much appreciate their inclusion in all future activities related to the development of this standard.

Thank you very much for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles F. Conner".

Charles F. Conner
Deputy Secretary

January 31, 2008

Mr. Michael Arny, President
Leonardo Academy
1526 Chandler Street,
Madison, Wisconsin 53711

Dear Mr. Arny,

We are writing in follow-up to our conversation on January 17th with Anne Caldas of American National Standards Institute (ANSI) to express our concern about the process used to establish the proposed American National Standards Institute Draft Standard for Sustainable Agriculture for Trial Use. We understand the Leonardo Academy's desire to generate and harmonize sustainability standards. It is unfortunate, however, that this standard with its important implications for American agriculture was processed in this manner. We are concerned that the ANSI process has not been followed and that this may have already led to irremediable defects in terms of ANSI's ability to receive approval.

Stakeholder concerns and the controversial nature of the standard make procedural issues of utmost importance.

- It equates organic practices with best agricultural practices, a conclusion that would be soundly rejected by many in the scientific community and an issue that will provoke intense debate between the organic and conventional agricultural communities.
- It rejects the use of biotechnology, perpetuating scientifically unsound and overly precautionary approaches that have been rejected by many governments, including our own, and which have provoked significant trade concerns.
- It requires that producers follow organic processes rather than achieving specific results that can be objectively and metrically validated as sustainable, making it unsuitable for the very sectors of agriculture that would be impacted
- It requires agriculture to engage in discussions of carbon emission standards that are well beyond the technological knowledge and capability of most of the participants likely to be engaged in this standards process. Carbon emissions standards are the proper focus of climate change discussions and regulatory guidance processes, which have just begun.
- It applies to biofuels, which are also the subject of many other standard setting efforts, including the International Standards Organization (ISO) and the Roundtable on Sustainable Biofuels. Food and agriculture stakeholders are also participating in other initiatives including legislative discussions.

We believe that the ANSI process is not being followed and we would like to highlight several concerns.

- The draft standard for trial use was not notified to “materially affected stakeholders” prior to its adoption for trial use by the Leonardo Academy.
- The draft standard has not since been notified effectively to materially affected stakeholders both domestically and internationally.
- The standard’s stated purpose is to define sustainable agriculture. However, the draft standard as written clearly pertains to “sustainable organic agriculture” only and does not meet the definition of “sustainable agriculture” as defined in law by the 1990 Farm Bill. Therefore, had it been notified as a standard for “sustainable agriculture”, it would have been misleading and inaccurate.
- Because the Leonardo Academy has demonstrated that it has little knowledge of or experience with the broad range of stakeholders that will be affected by this standard, we are concerned that the process it is following will not accurately reflect the balance or scope required by its rules and by ANSI’s.
- We are concerned that the Leonardo process will not garner sufficient input to ensure that this standard is credible, particularly since Leonardo has not established a group composed of government experts.

We encourage the Leonardo Academy to narrow the scope of this standard to organic agriculture and work with other ongoing standard setting efforts. We believe that the inevitable years of intense debate on irresolvable conflicts that this standards process will provoke can and should be avoided.

American Farm Bureau
American Seed Trade Association
American Soybean Association
American Sugar Alliance
Animal Health Institute
Biotechnology Industry Association
California Association of Wheat Growers
California Citrus Quality Council
California Dried Plum Board
California Grain and Feed Association
California Grape & Tree Fruit League
California Pear Growers
California Seed Association
California Warehouse Association
California Tree Fruit Agreement
Croplife America

Cotton Incorporated
Del Monte Foods
Florida Fruit and Vegetable Association
Grocery Manufacturers Association
Lodi-Woodbridge Winegrape Commission
National Association of Wheat Growers
National Cattlemen's Beef Association
National Corn Growers Association
National Cotton Council
National Oilseed Processors Association
National Sorghum Producers
North American Millers' Association
RISE
United Soybean Board
U.S. Rice Producers Association
United States Soy Export Council
USA Rice Federation

cc. Mr. Joseph Bhatia, President
Ms. Anne Caldas, Director
Procedures and Standards Administration
Accreditation Services
American National Standards Institute
25 West 43 Street, 4th Floor
NY, NY 10036



United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

JUN 6 2008

Mr. Michael Army
President
Leonardo Academy
1526 Chandler Street
Madison, Wisconsin 53711

Dear Mr. Army:

The United States Department of Agriculture (USDA) has been approached by several organizations representing a large number of stakeholders in the agricultural community who are greatly concerned about the process used and potential impacts of the proposed Draft National Standard for Trial Use Sustainable Agriculture Practice Standard (SCS-001) under development by Leonardo Academy. We have serious concerns regarding the use of and contents of the document itself, the methodology being employed in the standard setting process, and inconsistencies between the draft standard and U.S. domestic and international policies.

The subject of "Sustainable Agriculture" was addressed by Congress in the 1990 "Farm Bill" (Food, Agricultural, Conservation, and Trade Act of 1990 (FACTA), Public Law 101-624, Title XVI, Subtitle a, Section 1603). Within that law, "the term sustainable agriculture means an integrated system of plant and animal production practices having site-specific application that will, over the long term:

- Satisfy human food and fiber needs;
- Enhance environmental quality and the natural resources and on-farm resources and integrate, where appropriate, natural biological cycles and controls;
- Sustain the economic viability of farm operations; and
- Enhance the quality of life for farmers and society as a whole."

The wording of the law indicates a broad definition of sustainable agriculture, recognizing that sustainability can be achieved by employing various methodologies and practices. The definition is intentionally broad and does not exclude particular practices or technology that may contribute to achieving that sustainability. This perspective is reflected in the official U.S. Government positions being carried forward in various international fora in which we are discussing sustainable agriculture, and we believe that standards developed for U.S. agriculture, whether public or private, need to be consistent with U.S. laws and policies.

In contrast, the draft standard from which the Leonardo Academy is starting is highly restrictive. The proposed standard identifies sustainable agriculture as a subset of certified organic agriculture as defined in the National Organics Program (NOP), with the various proscriptions

Mr. Michael Arny

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specific to that program. Consequently, producers meeting the draft standard would not be allowed to use modern biotechnology, synthetic fertilizers, or other modern technologies – tools that are well within sustainable agriculture as defined by law but would in fact either be required to be certified organic or document their intentions and plan to become certified organic.

Moreover, while the draft standard claims to uphold the NOP as the standard producers should strive to achieve, it infringes on the integrity of the NOP standard in several ways. The draft standard permits deviations for individual crops from organic standards and conformance on a regional basis. It permits relaxation of the NOP when organic standards are not practicable. The draft standard further suggests that certain organic practices could negatively impact sustainability. Yet with these conflicting proposals, the draft standard suggests that one of its aims is to reduce confusion and disagreement over the term “organic,” which has been well defined in statute and regulation since at least 1990.

At a time when global food prices are reaching record or near-record levels, an agricultural system that narrowly defines sustainability as to reject the use of modern technologies can hardly be considered sustainable. Nor is there any sound evidence put forth that these excluded tools and technologies are as a group inherently unsustainable.

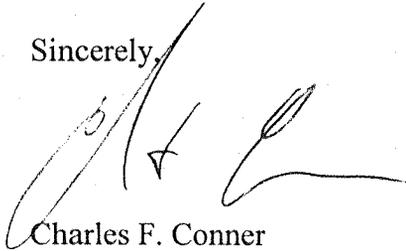
USDA has long supported the development of voluntary consensus standards to meet the needs of the private sector when the standards are properly developed in an inclusive and balanced process that takes into account the perspectives of all affected stakeholders. USDA also believes that the development of an appropriate standard for sustainable agriculture could be valuable for the future of agriculture and the environment if based on existing definitions currently published and available through the National Agricultural Library’s Alternative Farming Information Center web site at <http://www.nal.usda.gov/afsic/pubs/terms/srb9902.shtml>.

While the American National Standards Institute (ANSI) provides a detailed process for public and private collaboration in the development of voluntary consensus standards, the drafting process utilized by the Leonardo Academy was not inclusive of all facets of U.S. agriculture. When it comes to creating a suite of standards for sustainable agriculture, experts managing nearly 1.4 billion acres of crop, forest, and grazing lands need to be represented. If the ANSI published process was correctly followed, then the Institute’s cardinal principles of consensus, due process and openness would have been adhered to and all interest groups and stakeholders, including landowners, producers, and operators would have been included. This leads us to believe that national consensus on the basis of this document cannot be achieved. This is reflected in the concerns expressed by stakeholders representing a major portion of U.S. agriculture. Likewise, the composition and voting procedures of the proposed committees are also not inclusive of those who already practice, utilize and contribute to sustainable agriculture in its many forms.

Mr. Michael Arny
Page 3

We do not believe that the document, Draft National Standard for Trial Use Sustainable Agriculture Practice Standard (SCS-001), provides an adequate basis to move forward toward the development of a national consensus standard. Moreover, the committee structure does not represent all of those involved in sustainable agriculture and is constructed in a way that excludes them and we believe it would yield a biased outcome. Due to the serious problems that we foresee with this document and the process by which it was initially developed, we have very deep concerns but are willing to work with the Leonardo Academy to find alternative approaches and/or processes to resolve these issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Conner', with a stylized flourish at the end.

Charles F. Conner
Deputy Secretary

cc: Christopher A. Padilla
Under Secretary for International Trade
International Trade Administration
U. S. Department of Commerce

EXHIBIT 2



LEONARDO ACADEMY
THE SUSTAINABILITY EXPERTS

Response to Procedural Complaint:
National Sustainable Agriculture Product Standard: SCS-001

Date: February 25, 2008
To: Jane Earley, Earley & White Consulting Group LLC
CC: American Farm Bureau, American Seed Trade Association, American Soybean Association, American Sugar Alliance, Animal Health Institute, Biotechnology Industry Association, California Association of Wheat Growers, California Citrus Quality Council, California Dried Plum Board, California Grain and Feed Association, California Grape & Tree Fruit League, California Pear Growers, California Seed Association, California Warehouse Association, California Tree Fruit Agreement, Croplife America, Cotton Incorporated, Del Monte Foods, Florida Fruit and Vegetable Association, Grocery Manufacturers Association, Lodi-Woodbridge Winegrape Commission, National Association of Wheat Growers, National Cattlemen's Beef Association, National Corn Growers Association, National Cotton Council, National Oilseed Processors Association, National Sorghum Producers, North American Millers' Association, RISE, United Soybean Board, U.S. Rice Producers Association, United States Soy Export Council, USA Rice Federation
Subject: Response to Procedural Complaint dated January 31, 2008 on Sustainable Agricultural Products Standard: SCS-001
(Process Reference Number: SCS-001 Complaint #1, Response #1)

Dear Ms. Earley,

We received your letter dated January 31, 2008 that raised several procedural complaints. We have reviewed these complaints and we believe that the processes implemented for the development of the Sustainable Agriculture Product Standard: SCS-001 have followed the Leonardo Academy's ANSI-approved standard development process. Specific responses to each issue raised are included in Attachment A below. Please forward this response to representatives of all the organizations listed in your letter dated January 31, 2008.

Once you have reviewed the responses to the complaints in your letter, please call us to set up a time discuss these responses. We would like to resolve these complaints informally if this is possible.

Leonardo Academy's ANSI approved process for standard development provides for an appeal process if you wish to appeal this decision.

Please call us if you would like to discuss this response to these complaints.

Sincerely,

Michael Army
President
Leonardo Academy

Cc: Mr. Joseph Bhatia, President
Ms. Anne Caldas, Director
Procedures and Standards Administration
Accreditation Services
American National Standards Institute
25 West 43rd Street, 4th Floor
New York, NY 10036
Petitioner



Attachment A
Responses to Specific Issues Raised in the
Complaint dated January 31, 2008
(Process Reference Number: SCS-001 Complaint #1)
Date: February 18, 2008

A. Response to General Issues

1. The complaint seems to assume that the Draft National Standard for Trial Use on Sustainable Agricultural Products SCS-001 is a final result of the standard development process rather than a placeholder document.
 - a. Response:
 - i. The Draft National Standard for Trial Use on Sustainable Agricultural Products SCS-001 is a placeholder document. The Standards Committee will follow the Leonardo Academy's ANSI-approved standard development process and will determine what the final approved standard will contain.
 - ii. Everything in the Draft Standard is on the table to be addressed by the Standards Committee and each issue addressed can be addressed differently as a result of the Standard Committee's work following the Leonardo Academy's ANSI-approved standard development process.

B. Specific Complaints about the Contents of the Draft National Standard for Trial Use on Sustainable Agricultural Products SCS-001:

1. Issue: "It equates organic practices with best agricultural practices, a conclusion that would be soundly rejected by many in the scientific community and an issue that will provoke intense debate between the organic and conventional agricultural communities."
 - a. Response:
 - i. See Response A.1.a. above
2. Issue: "It rejects the use of biotechnology, perpetuating scientifically unsound and overly precautionary approaches that have been rejected by many governments, including our own, and which have provoked significant trade concerns."
 - a. Response:
 - i. See Response A.1.a. above
3. Issue: "It requires that producers follow organic processes rather than achieving specific results that can be objectively and metrically validated as sustainable, making it unsuitable for the very sectors of agriculture that would be impacted."
 - a. Response:
 - i. See Response A.1.a. above
4. Issue: "It requires agriculture to engage in discussions of carbon emission standards that are well beyond the technological knowledge and capability of most of the participants likely to be engaged in this standards process. Carbon emissions standards are the proper focus of climate change discussions and regulatory guidance processes, which have just begun."
 - a. Response:
 - i. See Response A.1.a. above



5. Issue: "It applies to biofuels, which are also the subject of many other standard setting efforts, including the International Standards Organization (ISO) and the Roundtable on Sustainable Biofuels. Food and agriculture stakeholders are also participating in other initiatives including legislative discussions."
 - a. Response:
 - i. See Response A.1.a. above

6. Issue: "The standard's stated purpose is to define sustainable agriculture. However, the draft standard as written clearly pertains to "sustainable organic agriculture" only and does not meet the definition of "sustainable agriculture" as defined in law by the 1990 Farm Bill. Therefore, had it been notified as a standard for "sustainable agriculture", it would have been misleading and inaccurate."
 - a. Response:
 - i. See Response A.1.a. above

- C. Specific Complaints about the Compliance of the Process Used to Date of the Draft National Standard for Trial Use on Sustainable Agricultural Products SCS-001 with the Leonardo Academy's ANSI-approved standard development process.
 1. Issue: "The draft standard for trial use was not notified to "materially affected stakeholders" prior to its adoption for trial use by the Leonardo Academy."
 - a. Response:
 - i. The Draft National Standard for Trial Use on Sustainable Agricultural Products SCS-001 was:
 - (A.) Publicly announced prior to its filing with ANSI:
 - (1) A press release issued by SCS on March 23, 2007.
 - (B.) Announced by NSF of the DSTU:
 - (1) Published in the ANSI Standards Action on April 13, 2007.
 - ii. Scientific Certification Systems requested that ANSI transfer SDO responsibility for this standard to Leonardo Academy and this change was published in ANSI Standards Action on October 5, 2007.

 2. Issue: "The draft standard has not since been notified effectively to materially affected stakeholders both domestically and internationally."
 - a. Response:
 - i. In addition to the announcements in the Standards Record identified in C.1.a above, there has been a 10-month outreach program to spread awareness of the development of the standard and awareness of options for participating in the standard development process. This outreach has included the following:
 - (A.) A web page with information on this standard development process has been set up on the Leonardo Academy web site.
 - (B.) A press release was issued on September 27, 2008 by Leonardo Academy and Scientific Certification Systems on the transfer of SDO responsibilities for this standard to Leonardo Academy and on the continuing work on the development of this standard.
 - (C.) Two multi-stakeholder meetings:
 - (1) An informational meeting on the standard development was held in Berkeley, CA on October 29-30, 2007
 - (2) An informational meeting on the standard development will be held in Arlington, VA on February 29, 2008
 - (D.) Three phone informational meetings have been held:



LEONARDO ACADEMY
THE SUSTAINABILITY EXPERTS

- (1) December 3, 2007
 - (2) January 7, 2008
 - (3) February 4, 2008
 - (E.) Presentations to various stakeholder audiences, including:
 - (1) NGO Briefing, Washington DC (August 2007)
 - (2) BSR Food and Agriculture Industry Network meeting, San Francisco (October 2007)
 - (3) Domestic Fair Trade Association (December 2007)
 - (4) Sustainable Food Laboratory meeting (December 2007)
 - (5) American Soybean Association meeting, Washington DC (January 2008)
 - ii. Based on this ongoing outreach, an interested parties list of over 1,000 contacts has been developed and is being used to keep these interested parties informed about the development process for this standard. This list is being expanded on an ongoing basis as additional interested parties identify themselves to Leonardo Academy. In addition, all parties contacted have been asked to notify their stakeholder networks.
 - iii. Numerous articles have appeared in major agricultural trade publications, including announcements of meeting dates. Reporters have participated in informational meetings and have been notified of updates.
- D. Specific Complaints about possible future lack of compliance of the standard development process with the Leonardo Academy's ANSI-approved standard development process.
1. Issue: "Because the Leonardo Academy has demonstrated that it has little knowledge of or experience with the broad range of stakeholders that will be affected by this standard, we are concerned that the process it is following will not accurately reflect the balance or scope required by its rules and by ANSI's."
 - a. Response:
 - i. Leonardo Academy has long term and broad experience with sustainability issues and significant experience with the public policy development processes.
 - ii. The Leonardo Academy has no operational conflicts of interest since it does not have businesses operating in the field of agriculture, an important factor in its selection to serve as a truly neutral third-party ANSI-accredited SDO.
 - iii. If, as the future unfolds, actions or absences of actions in the standard development process occur that the complainants believe do not comply with the Leonardo Academy's ANSI-approved standard development process, they can file a complaint with Leonardo Academy at that time.
 - iv. The Leonardo Academy's ANSI-approved standard development process does not specify a level of expertise required for Leonardo Academy in the specific subject area of the standard.
 - v. The Standards Committee is open to all interested parties.
 2. Issue: "We are concerned that the Leonardo process will not garner sufficient input to ensure that this standard is credible, particularly since Leonardo has not established a group composed of government experts."
 - a. Response:
 - i. The Standards Committee is open to all interested parties, including government representatives, academic experts, industry stakeholders, environmental and labor NGOs, etc.
 - ii. Government representatives are included in the "General Interest" stakeholder group category, and several stakeholders have participated directly in the process already.



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- iii. Ongoing outreach efforts are occurring for all types of participants including government agencies. See Section C.2. above.
- iv. If, as the future unfolds, actions or absences of actions in the standard development process occur that the complainants believe do not comply with the Leonardo Academy's ANSI-approved standard development process, they can file a complaint with Leonardo Academy at that time.

June 24, 2008

Mr. Charles Conner
Deputy Secretary
U.S. Department of Agriculture
Office of the Secretary
Washington, D.C. 20250

Subject: Response to Your Recent Letter

Dear Secretary Conner:

Thank you for your letters dated May 20 and June 6, 2008, regarding the Draft Standard for Trial Use Sustainable Agriculture Practice Standard (SCS-001) (the “Draft Standard”). The Leonardo Academy appreciates the Department’s interest in this ANSI process and the time you have taken to address issues raised during the development of the Draft Standard. You have raised questions about both the substance of the Draft Standard and the process that will be used to consider it. Your basic view is that the Draft Standard does not provide an adequate basis to move forward. As discussed in this letter, I do not agree. I encourage you and the stakeholders on whose behalf you write to continue to participate in the process that has been established for this standard.

Before addressing the specific concerns you have raised, allow me to state that, as the neutral facilitator of this process by an ANSI accredited standard developer, the Leonardo Academy’s position is not one of endorsement of the proposed Draft Standard for Trial Use but rather as guarantor of an open, transparent process in which all stakeholders will be represented. In addition, it is our responsibility to inform all stakeholders that, in accordance with ANSI standard setting procedures, the language of the Draft Standard may be revised in any measure up to its entirety by the multiple stakeholders comprising the Standards Committee. In the discussion that follows, we address your concerns with the process. We address your concerns about the standards in Attachment 1. Among other points, Attachment 1 addresses mischaracterizations referenced in your letter concerning how the Draft Standard addresses organic agricultural practices. Similar statements have been repeated in numerous questions and comments submitted to Leonardo Academy. Despite our efforts to clarify this point in written documents, on public phone calls and in presentations, this mischaracterization has been perpetuated. We hope our response will ensure that this issue is put to rest.

Background—The ANSI Process

In developing standards for final approval as ANSI standards, Leonardo Academy, like all ANSI Accredited Standards Developer, is required to follow its own procedures (the Leonardo Academy Standards Development Constitution), which in turn must follow the ANSI Essential Requirements for standard development. Both the Leonardo Academy Standards Development Constitution and the ANSI Essential Requirements for standard development are dedicated to the very requirements for voluntary standard development identified in the excerpts from OMB circular A-119 included in Attachment 2:

- Openness
- Balance of interest
- Due process
- An appeals process
- Consensus, which is defined as general agreement, but not necessarily unanimity, and includes a process for attempting to resolve objections by interested parties by interested parties, as long as all comments have been fairly considered, each objector is advised of the disposition of his or her objection(s) and the reasons why, and the consensus body members are given an opportunity to change their votes after reviewing the comments.

For your reference we have also attached copies of the Leonardo Academy Standards Development Procedures and the ANSI Essential Requirements (Attachment 3 and Attachment 4, respectively, included under separate cover).

The fact that both the Leonardo Academy Standards Development Constitution and the ANSI Essential Requirements for standard development mirror the OMB circular A-119 definition of the attributes of a voluntary consensus standard development process gives us confidence that, in spite of the apparent challenges, this process will provide for a balance of interests and will move toward the development of a consensus standard. We would like to emphasize that, beyond the participation of the voting members of the Standards Committee and the non-voting members of the supporting subcommittees and advisory groups, there is also a public comment process that provides everyone the opportunity to comment on the proposed standard once the Standards Committee has come to initial consensus on the final draft standard.

Role of the Federal Government in the ANSI Process

The ANSI process provides a valuable forum for all stakeholders to comment on the development of a standard—including federal agencies. The National Technology Transfer and Advancement Act, 15 USC § 272, directs federal agencies to participate in the process of developing voluntary consensual standards. Circular No. A-119 states that the use of such voluntary consensus standards is intended to eliminate the cost to the Government of developing its own standards and to decrease the cost of goods procured and the burden of complying with agency regulation, to provide incentives and opportunities to establish standards that serve national needs, to encourage long-term growth for U.S. enterprises and to promote efficiency and economic competition through harmonization of standards.

Circular A-119 provides that agency representatives may serve as members of voluntary consensus standards bodies. If they do so, they should participate actively and on an equal basis with other members, consistent with the procedures of those bodies, particularly in matters such as establishing priorities, developing procedures for preparing, reviewing, and approving standards, and developing or adopting new

standards. Active participation includes full involvement in discussions and technical debates and registering of opinions. Agency participation in voluntary consensus standards bodies does not necessarily connote agency agreement with, or endorsement of, decisions reached by such organizations.

Circular A-119 also comments that:

[a]gency representatives must not dominate [standard setting] bodies, and in any case are bound by voluntary consensus standards bodies' rules and procedures, including those regarding domination of proceedings by any individual. Regardless, such agency employees must avoid the practice or the appearance of undue influence relating to their agency representation and activities in voluntary consensus standards bodies.

Office of Management and Budget, Revised Circular A-119, 63 Fed. Reg. 8545, 8556 (Feb. 19, 1998). In this instance, I am concerned that the course set out in your letter is not consistent with the ANSI rules and procedures and the directive to avoid the appearance of undue influence by a federal agency. At the same time, I am appreciative of your interest in and views on the issues and welcome your participation in this standard development process.

The Draft Standard Development Process

Some of the key steps in the process to date and the future planned actions are shown in the table below.

Establishing an American National Standard for Sustainable Agriculture: Working Timeline

When	What
April 13, 2007	The publication of the DSTU was announced in ANSI <i>Standards Action</i> .
Oct 29-30, 2007	First of two kick-off meetings. Held in Berkeley, California.
Monday, Dec 3, 2007 10-11am Pacific	Orientation teleconference with interested stakeholders to discuss the ANSI process and the Draft Standard.
Monday, Jan 7, 2008 10-11am Pacific	Orientation teleconference with interested stakeholders to discuss the ANSI process and the Draft Standard.
Monday, Feb 4, 2008 10-11am Pacific	Orientation teleconference with interested stakeholders to discuss the ANSI process and the Draft Standard.
Friday, Feb 29, 2008	Second of two kick-off meetings. Held at Radisson Hotel Reagan National Airport, Arlington, VA.
Monday, July 7, 2008	Applications from stakeholders due for submission to Leonardo Academy.
Monday, July 28, 2008	Notification to stakeholders of Standards Committee and subcommittee assignments.

Wednesday, September 10,
2008

First Standards Committee meeting. Time and location TBA.

Starting October 2008

Subcommittee meetings will start after the first Standards Committee Meeting, with various schedules for each subcommittee to be determined by each subcommittee.

As you can see, there has been extensive opportunity for all concerned parties to participate in the development process following the publication of The Draft in April, 2007. We have received a wide range of comments from all areas of the stakeholder spectrum, representing many different points of view. (See the Questions and Answers posted on our website for a summary of this participation.

http://www.leonardoacademy.org/download/Q&A_LEO&ANSI_SCS-001_0608.pdf.) As evidence of the inclusive process that has driven the development of the Draft Standard, more than one hundred organizations have applied to serve on the Standards Committee that will shape the final standard submitted to ANSI for ANSI approval. Thus we are at the stage of the development process where the decision-making process is really just beginning. With respect to your request for three observers to the Standards Committee for this standard (in your May 20, 2008 letter), I do not anticipate that non-participating observers will be involved in committee meetings; however, I am willing to work with you to address how to best structure your participation in this regard.

Next Steps

Moving forward, I assure you that the Leonardo Academy is fully committed to the ANSI process and to meeting ANSI's Essential Requirements of openness, due process, balance and consensus, which mirror the goals set forth in Office of Management and Budget Circular A-119. Ultimately, neither Leonardo Academy nor SCS will decide which portions of the Draft Standard will be included in the final standard submitted to ANSI for approval; this will be the responsibility of the Standards Committee. The Standards Committee will be a balanced group representing all four categories of stakeholders affected by the standard—producers, users, environmentalists and general interest organizations.

Once the Standards Committee approves the language to be submitted in the final standard, the standard will be made available for public comment. All comments will be addressed by the subcommittees and/or the Committee, and all commenters will be informed of the resolution of their comments. Any person who believes that they have been injured by the Committee's decisions may appeal, first to Leonardo Academy and ultimately to ANSI.

Conclusion

Given that the policy of the federal government, including the USDA, is to support and participate in the process of developing voluntary consensual standards, we believe it is inappropriate for the USDA to assert that the process for the Draft Standard should be abandoned. Instead, we encourage the USDA to remain involved in the development of the sustainable agriculture standard by participating in the ANSI process. Leonardo

Academy welcomes applications from one or more representatives of the USDA to serve on the Standards Committee or supporting subcommittees for SCS-001. The application period is open until July 7, 2008.

In closing, we greatly appreciate the USDA's engagement in this standard development process, both through its June 6th letter and through USDA staff participation in our conference calls and meetings to date. We have provided initial responses to the concerns raised in your letter, included with this letter as Attachment 1. In addition, we look forward to the opportunity to explore these issues more fully during our scheduled conference call with Jeremy Stump and Michael Schechtman of your staff on Wednesday, June 25, 2008.

Sincerely,

Michael Army
President
Leonardo Academy

cc:

Jeremy Stump, U.S. Department of Agriculture
Michael Schechtman, U.S. Department of Agriculture
Anne Caldas, ANSI

Attachment 1

Responses to Concerns Raised in USDA Letter

As you have pointed out in your letter, the 1990 Farm Bill's definition of sustainable agriculture provides valuable guidance on the subject of sustainability in agricultural practices. The elements of this definition—satisfying human food and fiber needs, enhancing environmental quality, sustaining economic viability, and enhancing the quality of life for farmers and society—are directly reflected in the framework of the current Draft Standard.

The Farm Bill's broad definition has clearly been successful in encouraging a wide array of practices and technologies and spawning tremendous innovation and thus has served its purpose well. The specific question at hand, however, relates to the range of practices that should be considered when companies voluntarily assert a public "sustainable agriculture" claim in the marketplace. Today, there is a growing proliferation of such claims, many of which clearly do not embody the full spectrum of issues addressed in the Farm Bill definition of sustainable agriculture. Purchasing entities are increasingly developing their own sustainability specifications, often without input from growers and without consistent guidelines. Consequently, numerous surveys have documented consumer confusion around the claim "sustainable" and other similar terms, as well as consumer skepticism and distrust of company-asserted "green" marketing claims. Additionally, in this global economy, US agriculture companies are increasingly being measured against sustainability standards developed overseas that are far more specific in nature than the definitions and standards currently available in the US.

With that in mind, here are preliminary responses to some to the specific concerns raised in your letter:

1. *The proposed standard identifies sustainable agriculture as a subset of certified organic agriculture as defined in the National Organic Program, with the proscriptions specific to that program.*

Comment: This statement of concern represents a misreading of the SCS-001 Draft Standard for Trial Use as currently drafted, one that has been repeated in numerous questions and comments submitted to Leonardo Academy by the same organizations that have submitted these concerns to your office. Despite our efforts to clarify this point in written documents, on public phone calls and in presentations, this mischaracterization has been perpetuated.

The opposite statement is, in fact, more factual. The draft standard recognizes that organic agriculture practices as defined under the US National Organic Program may be, though are not required to be, part of a larger set of sustainability practices. Organic practices are recognized as a level of best practice, but the draft standard recognizes that such practices are not always practical from a broader sustainability perspective.

2. *Producers meeting the draft standard would not be allowed to use modern biotechnology, synthetic fertilizers, or other modern technologies*

Comment: The Draft Standard for Trial Use is built around the principle of minimizing risk to human health and the environment while maintaining crop productivity. The type of technologies selected for use are left up to the producer's discretion with one exception, which is the case of genetically engineered planting materials, which are not permitted under the Draft. This provision reflects a precautionary approach that permeates many other sustainability labeling standards around the world, based on concerns about the potential unintended spread of genetic material. Of course, since this is a draft standard, the stakeholders involved in the committee work and those participating through the public comment process will ultimately determine whether this provision will remain in the final standard submitted for American National Standard approval. We anticipate a vigorous debate on this point.

3. *Moreover, while the draft standard claims to uphold the NOP as the standard producers should strive to achieve, the standard infringes on the integrity of the NOP in several ways. The draft standard permits deviations for individual crops from organic standards and conformance on a regional basis . . . Yet with these conflicting proposals, the draft standard suggests that one of its aims is to reduce confusion and disagreement over the term "organic," which has well defined in statute and regulation since at least 1990.*

Comment: Further to my comment above, while the draft standard does recognize organic practice in accordance with the NOP as a best practice level for pest management and soil fertility, it does not equate sustainability practice with organic practice. Today, US agriculture is welcome to adopt any aspect of the organic practice defined by the NOP. The Draft Standard does not alter this dynamic, nor does it allow producers to claim to be organic if they are not fully compliant with the requirements of the NOP or otherwise change or alter the NOP. Moreover, there is no language in the Draft Standard to indicate that one of its aims is to reduce confusion about organic. To the contrary, the Draft Standard includes the NOP as a normative reference.

4. *When it comes to creating a suite of standards for sustainable agriculture, experts managing nearly 1.4 billion acres of crop, forest and grazing lands need to be represented . . . This leads us to believe that national consensus on the basis of this document cannot be achieved.*

Comment: We are very cognizant of the need to have all sectors represented and we believe the process in place will accomplish that objective. The concerns you raise in your letter are common to all voluntary consensus efforts. We see many area of practice in which consensus can in fact be achieved. For instance, a review of many existing sustainability standards, including the USDA report you reference, suggests that there

may be wide consensus around issues such as water conservation, ecological conservation and integrated waste management. Labor protections may also be an area of widespread consensus, given that the Draft Standard essentially establishes minimum requirements that are already consistent with US labor law. Significant industry strides in food safety and quality, addressed in the Draft Standard, are also cause for optimism. In other areas, particularly pest management, soil fertility and crop variety selection, consensus is expected to be more difficult to achieve. However, observing other voluntary sustainability initiatives underway (e.g., the Roundtable for Sustainable Biofuels), there is ample precedent to indicate that a consensus position can be established even for some of the most contentious issues, such as the issue of allowing biotechnology options with sufficient environmental safeguards. In any event, given the time and effort that has been expended to date and the importance of this standard, abandonment now would be counterproductive.

Attachment 2
Excerpts from OMB CIRCULAR A-119, Revised: February 10, 1998
Section 4 and Section 7

4. What Are Voluntary, Consensus Standards?

a. For purposes of this policy, "voluntary consensus standards" are standards developed or adopted by voluntary consensus standards bodies, both domestic and international. These standards include provisions requiring that owners of relevant intellectual property have agreed to make that intellectual property available on a non-discriminatory, royalty-free or reasonable royalty basis to all interested parties. For purposes of this Circular, "technical standards that are developed or adopted by voluntary consensus standard bodies" is an equivalent term.

- (1) "Voluntary consensus standards bodies" are domestic or international organizations which plan, develop, establish, or coordinate voluntary consensus standards using agreed-upon procedures. For purposes of this Circular, "voluntary, private sector, consensus standards bodies," as cited in Act, is an equivalent term. The Act and the Circular encourage the participation of federal representatives in these bodies to increase the likelihood that the standards they develop will meet both public and private sector needs. A voluntary consensus standards body is defined by the following attributes:

- (i) Openness.
- (ii) Balance of interest.
- (iii) Due process.
- (vi) An appeals process.
- (v) Consensus, which is defined as general agreement, but not necessarily unanimity, and includes a process for attempting to resolve objections by interested parties, as long as all comments have been fairly considered, each objector is advised of the disposition of his or her objection(s) and the reasons why, and the consensus body members are given an opportunity to change their votes after reviewing the comments.

7. What Is The Policy For Federal Participation In Voluntary Consensus Standards Bodies?

Agencies must consult with voluntary consensus standards bodies, both domestic and international, and must participate with such bodies in the development of voluntary consensus standards when consultation and participation is in the public interest and is compatible with their missions, authorities, priorities, and budget resources.

a. What are the purposes of agency participation?

Agency representatives should participate in voluntary consensus standards activities in order to accomplish the following purposes:

- (1) Eliminate the necessity for development or maintenance of separate Government-unique standards.
- (2) Further such national goals and objectives as increased use of the metric system of measurement; use of environmentally sound and energy efficient materials, products, systems, services, or practices; and improvement of public health and safety.

b. What are the general principles that apply to agency support?

Agency support provided to a voluntary consensus standards activity must be limited to that which clearly furthers agency and departmental missions, authorities, priorities, and is consistent with budget resources. Agency support must not be contingent upon the outcome of the standards activity. Normally, the total amount of federal support should be no greater than that of other participants in that activity, except when it is in the direct and predominant interest of the Government to develop or revise a standard, and its timely development or revision appears unlikely in the absence of such support.

c. What forms of support may my agency provide?

The form of agency support may include the following:

- (1) Direct financial support; e.g., grants, memberships, and contracts.

- (2) Administrative support; e.g., travel costs, hosting of meetings, and secretarial functions.
- (3) Technical support; e.g., cooperative testing for standards evaluation and participation of agency personnel in the activities of voluntary consensus standards bodies.
- (4) Joint planning with voluntary consensus standards bodies to promote the identification and development of needed standards.
- (5) Participation of agency personnel.

d. Must agency participants be authorized?

Agency employees who, at Government expense, participate in standards activities of voluntary consensus standards bodies on behalf of the agency must do so as specifically authorized agency representatives. Agency support for, and participation by agency personnel in, voluntary consensus standards bodies must be in compliance with applicable laws and regulations. For example, agency support is subject to legal and budgetary authority and availability of funds. Similarly, participation by agency employees (whether or not on behalf of the agency) in the activities of voluntary consensus standards bodies is subject to the laws and regulations that apply to participation by federal employees in the activities of outside organizations. While we anticipate that participation in a committee that is developing a standard would generally not raise significant issues, participation as an officer, director, or trustee of an organization would raise more significant issues. An agency should involve its agency ethics officer, as appropriate, before authorizing support for or participation in a voluntary consensus standards body.

e. Does agency participation indicate endorsement of any decisions reached by voluntary consensus standards bodies?

Agency participation in voluntary consensus standards bodies does not necessarily connote agency agreement with, or endorsement of, decisions reached by such organizations.

f. Do agency representatives participate equally with other members?

Agency representatives serving as members of voluntary consensus standards bodies should participate actively and on an equal basis with other members, consistent with the procedures of those bodies, particularly in matters such as establishing priorities, developing procedures for preparing, reviewing, and approving standards, and developing or adopting new standards. Active participation includes full involvement in discussions and technical debates, registering of opinions and, if selected, serving as chairpersons or in other official capacities. Agency representatives may vote, in accordance with the procedures of the voluntary consensus standards body, at each stage of the standards development process unless prohibited from doing so by law or their agencies.

g. Are there any limitations on participation by agency representatives?

In order to maintain the independence of voluntary consensus standards bodies, agency representatives must refrain from involvement in the internal management of such organizations (e.g., selection of salaried officers and employees, establishment of staff salaries, and administrative policies). Agency representatives must not dominate such bodies, and in any case are bound by voluntary consensus standards bodies' rules and procedures, including those regarding domination of proceedings by any individual. Regardless, such agency employees must avoid the practice or the appearance of undue influence relating to their agency representation and activities in voluntary consensus standards bodies.

h. Are there any limits on the number of federal participants in voluntary consensus standards bodies?

The number of individual agency participants in a given voluntary standards activity should be kept to the minimum required for effective representation of the various program, technical, or other concerns of federal agencies.

i. Is there anything else agency representatives should know?

This Circular does not provide guidance concerning the internal operating procedures that may be applicable to voluntary consensus standards bodies

because of their relationships to agencies under this Circular. Agencies should, however, carefully consider what laws or rules may apply in a particular instance because of these relationships. For example, these relationships may involve the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), or a provision of an authorizing statute for a particular agency.

j. What if a voluntary consensus standards body is likely to develop an acceptable, needed standard in a timely fashion?

If a voluntary consensus standards body is in the process of developing or adopting a voluntary consensus standard that would likely be lawful and practical for an agency to use, and would likely be developed or adopted on a timely basis, an agency should not be developing its own government-unique standard and instead should be participating in the activities of the voluntary consensus standards body.



UNITED STATES DEPARTMENT OF COMMERCE
National Institute of Standards and Technology
Gaithersburg, Maryland 20899-

September 12, 2008

Ms. Anne Caldas
Director, Procedures and Standards Administration Accreditation Services
American National Standards Institute
25 West 43rd Street, 4th floor
New York, NY 10036

Dear Ms. Caldas:

I am writing in my capacity as the Department of Commerce Standards Executive to support the appeal recently submitted to the American National Standards Institute (ANSI) by the U.S. Department of Agriculture (USDA) regarding the accreditation of Leonardo Academy as a developer of American National Standards.

The Department of Commerce is directly and materially affected by the actions of Leonardo Academy because these actions go to the heart of the provisions of Section 12 of the National Technology Transfer and Advancement Act of 1995 (NTTAA) and OMB Circular A-119, as outlined below. The Department, through the National Institute of Standards and Technology, has been charged by Congress and OMB with coordination of federal agency standards-related activities.

Both the Act and the OMB Circular direct agencies to use technical standards developed by voluntary consensus standards bodies to the extent practicable, as a means to carry out policy objectives. The Act and the Circular encourage the participation of federal representatives in these bodies to increase the likelihood that the standards they develop will meet both public and private sector needs. The attributes associated with a voluntary consensus standards body as defined in the Circular are consistent with those contained in the *ANSI Essential Requirements*.

The USDA appeal cites nine instances in which Leonardo Academy has failed in its responsibility to operate in accordance with *ANSI Essential Requirements* and, in particular, makes a clear case that Leonardo's operations do not comply with *ANSI Essential Requirements* for due process and openness. These principles are critical to the integrity of the American National Standard development process. The Department strongly supports ANSI's investigation of the USDA assertion that the Leonardo Academy's practices and actions with respect to the Draft Standard for Trial use for sustainable agriculture are not consistent with the expectations of an ANSI-accredited standards developing organization.

We commend ANSI for its oversight of the process for accrediting standards developing organizations and recommend serious consideration of the USDA appeal.

Sincerely,

Belinda L. Collins, Ph.D.
Director, Technology Services

NIST