



October 3, 2008

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

Subject: Updated Leonardo Academy Response to USDA, AMS Appeal to ANSI Executive Standards Council Regarding Leonardo Academy Accreditation

Dear Ms. Caldas,

Please see the attached documents for Leonardo Academy's response to the appeal submitted by the United States Department of Agriculture, Agricultural Marketing Service to the *ANSI Executive Standards Council* (ExSC) requesting that the ExSC review the status of the Leonardo Academy as an ANSI-Accredited Standards Developer and further withdraw the Draft Standard for Trial Use titled, "Sustainable Agriculture Practice Standard for Food, Fiber and Biofuel Crop Producers and Agricultural Product Handlers and Processors" from further consideration as a DSTU or as the basis for an American National Standard. We are withdrawing our response dated September 22, 2008. The letter replaces and supersedes that response. In addition, we are enclosing several letter of support that we have received regarding this matter, to be considered as part of our response.

Please call me or Amanda Raster at 608-280-0255 if you have any questions.

Sincerely,

Michael Army
President

Attachments: Leonardo Academy Response to USDA Appeal Dated September 12, 2008
Letters of Support



**Leonardo Academy Response to
United States Department of Agriculture, Agricultural Marketing Service
September 12, 2008 Appeal to the ANSI Executive Standards Council (ExSC)
October 3, 2008**

Introduction

In this document Leonardo Academy demonstrates that it has diligently followed the Leonardo Academy ANSI Standard Developments Constitution (the “Leonardo Constitution”, Attachment 1). Based on this evidence, we believe that the appeal by the United States Department of Agriculture (USDA), Agricultural Marketing Service, dated September 12, 2008, is without foundation. Leonardo Academy therefore requests that the ANSI Executive Standards Council (ExSC) deny the appellant’s request to revoke Leonardo Academy’s standing as an ANSI Accredited Standard Developer and further deny the request that the DSTU SCS-001 (Attachment 2) be withdrawn.

A timeline of Leonardo Academy’s Management of the ANSI Standard Development Process for Sustainable Agriculture Standard SCS-001, which serves as a road map of our involvement in this process to date, is included as Attachment 3.

Leonardo Academy (“Leonardo”) recognizes that the development of a sustainable agriculture standard is a challenging pursuit. In light of these challenges, we are heartened to have proceeded to the point of having received applications for participation from over 200 interested stakeholders and having selected and confirmed a very diverse and experienced Standards Committee (Attachment 4), whose first meeting will take place on September 25-26, 2008. As demonstrated at this first Standards Committee meeting, the process to date has brought together stakeholders with immense expertise and a wide range of perspectives who are ready and willing to work together to discuss the complex issues involved in developing a sustainable agriculture standard (Attachment 5). Leonardo is very pleased that the Standards Committee was able to reach consensus on specific steps to move the process of developing a draft final standard forward in accordance with the ANSI procedures.

Leonardo has worked hard to include USDA representatives in the development process for this standard. To date, USDA representatives have participated in public outreach meetings and conference calls. Leonardo has also encouraged the USDA to participate on the Standards Development Committee, on the subcommittees and as observers. While several USDA representatives submitted applications to serve on the Standards Committee, these candidates withdrew their applications and expressed interest in participating instead on the subcommittees and/or as observers. Thus we are very pleased that five USDA representatives participated as observers in the first Standards Committee meeting, one of whom attended the meeting in person. Moreover, we are hopeful that the USDA will send representatives to participate in discussions in appropriate subcommittees as the development process unfolds.



After preparing and issuing a written response to the USDA's June 6, 2008 letter (see Attachment 6 for USDA June 6, 2008 Letter and Attachment 7 for Leonardo Academy's June 24, 2008 Response), Leonardo initiated discussions with the USDA on the issues of concern and extended an invitation to continue the dialogue on these issues. In a conference call on June 25, the participating USDA representatives were receptive and indicated that they would consult their agricultural technical experts so that, in the future, we could have a more in-depth discussion of the technical issues raised in the letter. Since that time, Leonardo has reiterated our request for a follow-up conference call with the USDA (Attachment 8); however, as of this date, the USDA has not yet responded. Leonardo will continue to work toward this objective and remains open to continuing this conversation with the USDA at any time.

The SCS-001 Standards Committee is Underway

As noted above, the Standards Committee for SCS-001 met for the first time on September 25-26, 2008, at the University of Wisconsin campus. The meeting was very successful. Thirty-nine of the Standards Committee members participated in person and eighteen participated by teleconference. An additional twenty-eight observers (including committee member alternates) also participated, including a representative of the USDA. The Committee made recommendations to Leonardo on the process used for selecting Standards Committee Officers; Leonardo accepted these recommendations, and the Officer selection process is now underway. The Standards Committee further agreed to set aside the DSTU SCS-001 and to use this document as a reference document in the Standards Committee's work on developing the draft final standard that will be submitted for public comment and finally for promulgation as an American National Standard. The Committee's decision to treat the DSTU as a reference document was not a withdrawal of the DSTU SCS-001 but rather an affirmation by the Committee that it recognizes that it is not in any way constrained by the DSTU in its development of the final draft standard. The Standards Committee also agreed to establish several task groups, to be populated by Standards Committee members, which will gather additional information to support the standard development work ahead. Attachments 9-13 include i) a list of participants at this meeting, ii) the meeting agenda, iii) the Standards Committee motions decisions from this meeting, iv) instructions on how to access an audio recording of the meeting and v) Standards Committee resumes and biographies.

A. Procedural Issues Regarding the Appeal

Leonardo Academy is fully committed to carrying out its obligations as a standards developer and is further committed to working with the USDA and other interested parties in the development of a national Sustainable Agriculture Standard. The success of the initial Standards Committee meeting was due in part to the extensive outreach to ensure wide stakeholder participation and was the culmination of much work, planning and preparation. Leonardo further recognizes that the process will require a great deal more time and effort. Leonardo is encouraged that the process will be fruitful.

One of the obligations of an ANSI-accredited Standards Developer (an "ASD") is to ensure that all of the ANSI procedures are followed, so that all parties' interests are fairly considered. We have given



very careful consideration to the appeal that the USDA has filed with the ANSI Executive Standards Council (the "ExSC"), requesting that the ExSC (1) revoke the accreditation of Leonardo as an ASD and (2) withdraw the Draft Standard for Trial Use (DSTU) titled, "Sustainable Agriculture Practice Standard for Food, Fiber and Biofuel Crop Producers and Agricultural Product Handlers and Processors" from further consideration as a DSTU or as the basis for an American National Standard. As the basis for its appeal, the USDA alleges that Leonardo has failed to operate in accordance with the ANSI Essential Requirements, which establish the procedural requirements for development of ANSI standards.

In order to apprise concerned parties of our initial view on the substance of the issues the USDA has raised, in advance of the first Standards Committee meeting held on September 25-26, 2008, we submitted an initial response to the USDA appeal. Since that submittal, we have scrutinized the issues further and have determined that we needed to revise and amend the prior response and, in addition, provide the ExSC with new information that came out of the Standards Committee meeting. (The full proceedings from the meeting have been audio recorded and are available for review as per Attachment 12). This response replaces and supersedes our prior submittal.

As part of our review of the USDA appeal, we looked at whether the issues raised by the USDA are ripe for presentation to the ExSC at this time. We have concluded that elements of the USDA's appeal to the ExSC suffer from a variety of procedural and jurisdictional defects, including failure to exhaust the appeals process at the ASD level and lack of timeliness in raising particular issues. One issue the USDA has raised—the request to withdraw the DTSU—has been made moot by actions taken at the Standards Committee meeting. We also believe that the requested relief—withdrawal of the DTSU—is not within the authority of the ExSC. In addition to these procedural defects, the USDA has failed to meet its burden of proving that Leonardo has violated the Essential Requirements or that the DSTU should be withdrawn. See ANSI Essential Requirements § 2.8.1 (January 2008), which states that the burden of proof "shall be on the appellant" to show that it has been adversely affected by development of a standard; see also Essential Requirements Annex B, which states that the burden of proof is on the appellant in a challenge to registration of a DSTU. Our analysis of these issues follows.

Analysis of USDA Appeal

A valid appeal must be based on a challenge to some identifiable action or inaction by either an ASD or an ANSI body, yet the USDA does not state clearly what action or inaction the appeal seeks to challenge. Nor is it clear under what authority the USDA is appealing to the ExSC. Accordingly, this response considers each of the various theories on which the USDA may base its appeal to the ExSC.

1. USDA's Challenge to Leonardo's ASD Accreditation Is Improper

The USDA characterizes its appeal as a request for revocation of Leonardo's ASD status. This request may be viewed as either (1) an appeal of the ExSC's decision to accredit Leonardo as an ASD, or (2) an appeal of the ExSC's inaction in failing to revoke Leonardo's ASD accreditation for cause. Under either theory, the USDA's appeal is deficient.



a. USDA Does Not Have Standing to Challenge Leonardo's ASD Accreditation

One interpretation of the USDA's request for revocation of Leonardo's accreditation as an ASD is to treat the request as an appeal of the ExSC's decision to accredit Leonardo as an ASD. The USDA does not have standing to raise this issue. The Operating Procedures of the ANSI Executive Standards Council (the "ExSC Operating Procedures") allow any directly and materially affected person to appeal actions or inactions of the ExSC or its designee (ExSC Operating Procedures § 17, Jan. 31, 2006). Accreditation of Leonardo as a standards developer was an action by the ExSC, so the USDA has standing to appeal the accreditation decision if it can prove that it was materially affected.

The USDA has not shown, however, that it was adversely affected by the accreditation of Leonardo as an ASD. Indeed, it is difficult to understand how the USDA could be adversely affected by Leonardo's accreditation. Appeals to an ASD's accreditation are typically brought by competing ASDs that fear duplication of their standards development activities (see, e.g., ANSI ExSC Appeals Panel Summary Decision Concerning Its Decision to Accredit EIMA As a Developer of American National Standards, Jan. 5, 2000). The USDA is not an ASD, nor do Leonardo's standards development activities duplicate or compete with activities of the USDA. None of its allegations show this kind of material harm flowing from the accreditation of Leonardo.

b. USDA's Appeal of Leonardo's Accreditation Is Not Timely

Again, treating the USDA action as an appeal of the accreditation decision, all appeals of an ExSC action must be filed with the secretary of the ExSC "within fifteen working days of notification by ANSI of an action by the ExSC or its designee (ExSC Operating Procedures § 17, Jan. 31, 2006)" The most recent ExSC action on Leonardo's accreditation was administrative reaccreditation, which took effect Sept. 13, 2007. Notice of the reaccreditation was published in Standards Action on Sept. 21, 2007. Any appeal of the accreditation decision is long since time-barred.

c. Revocation of Leonardo's Accreditation by the ExSC Is Not Authorized

Alternatively, the USDA's request for revocation could be characterized as an appeal of the ExSC's "inaction" in failing to revoke Leonardo's ASD accreditation for cause. Such a claim might not be time-barred because an appeal of this kind may be made "at any time with respect to inaction" by the ExSC (ExSC Operating Procedures § 17). However, there has been no inaction suitable for appeal because immediate revocation of an existing ASD's accreditation is not an action that the ExSC is authorized to take. Prior to revoking an ASD's accreditation, the Essential Requirements require good cause, notice to the ASD, and opportunity to cure any problem. See Essential Requirements § 4.1.4, "Withdrawal of Accreditation", which states:

"The ExSC may advise and request any accredited standards developer to take corrective action if the conditions upon which accreditation was granted are not maintained. If such action is not taken within the time period designated, the ExSC shall provide at least a thirty day notice to the standards developer stating that, unless specified conditions are corrected, its accreditation...shall be



withdrawn. Unless the necessary corrective actions are taken within the specified period, the ExSC shall withdraw the accreditation.” (Emphasis added)

It is clear from the language of the Essential Requirements that failure to maintain the "conditions upon which accreditation was granted" is a prerequisite to any withdrawal of accreditation. The USDA has not met its burden of proving any such failure by Leonardo. Moreover, section 4.1.4 makes clear that the ExSC cannot simply withdraw the accreditation of an ASD that has not maintained its conditions of accreditation. The ExSC must first advise the ASD of the conditions that have not been maintained and request that the ASD take corrective action within a designated time period. Only if the necessary corrective action is not taken within the designated time period may the ExSC provide a thirty-day notice of possible withdrawal. Even then, accreditation cannot be withdrawn unless the ASD fails to correct the specified conditions within the thirty-day period.

These explicit procedures make clear that the ExSC is not authorized to grant the relief requested by the USDA—i.e., the immediate revocation of Leonardo's ASD status. If the ExSC feels that Leonardo has not maintained the conditions of its accreditation, it should specify the conditions that have been violated and advise Leonardo of the corrective actions that are needed and the time frame in which they should be taken.

2. USDA's Challenge to Leonardo's Development of the Sustainable Agriculture Standard is Not Ripe for Consideration

As the basis for requesting that Leonardo's ASD accreditation be revoked, the USDA alleges that Leonardo failed to follow its own standards development procedures and/or the procedures required by the Essential Requirements. Consequently, the USDA's complaint could be characterized as an appeal of Leonardo's actions and procedures in developing the sustainable agriculture standard, rather than an appeal of an ExSC action. This type of appeal is appropriately directed to the ExSC, inasmuch as the Essential Requirements allow any person who is materially affected by "any ANSI-related process" to appeal to the ExSC (Essential Requirements § 2.8.2). Even assuming that USDA is materially affected, (which it is not), these issues are not yet ripe for consideration by the ExSC because the USDA has not exhausted the appeals process at the ASD level.

a. Leonardo's Appeals Procedures

Section 2.8.2 of the Essential Requirements states, "ANSI will not normally hear an appeal of an action or inaction by a standards developer relative to the development of an American National Standard until the appeals procedures provided by the standards developer have been completed." The principle of requiring use of the ASD's appeal procedures is an essential part of the smooth working of the ANSI process, as it provides both the ASD and the affected party the chance to work out a problem and provides a record for the ExSC to consider if an appeal to ANSI is needed.



Leonardo's ANSI Standards Development Constitution (the "Leonardo Constitution") establishes a procedure for appeals.¹ Section 6.1 of the Leonardo Constitution states:

“Persons who have been or may be affected by any [Leonardo Standards] Committee action or inaction . . . shall file a written complaint . . . within 30 days after the date of notification of any action, or at any time with respect to inaction. The complaint shall state the nature of the objection, the procedures or the sections of the Standards that are at issue, the action or inaction at issue, and the specific remedial action(s) that would satisfy the appellant's concerns.”

Once a complaint is received, Leonardo must respond in writing within 30 days and further attempt to resolve the complaint informally (Leonardo Constitution § 6.2). If informal resolution proves impossible, Leonardo is to appoint an appeals panel to hold a hearing on the complaint (Leonardo Constitution § 6.3). At the hearing, the appellant has the burden of proving that (1) the challenged action or inaction was procedurally improper under the Leonardo Constitution, (2) the appellant suffered adverse effects from the challenged action/inaction and (3) the requested remedial action would effectively address those adverse effects (Leonardo Constitution § 6.4.1). The appeals panel must render a decision within 30 days of the hearing (Leonardo Constitution § 6.5). At that time, further appeal may be made to ANSI (Leonardo Constitution § 6.6).

b. USDA's Failure to Exhaust the Leonardo Appeals Procedures

The USDA sent a letter to Leonardo on June 6, 2008, in which it explained that the USDA had "serious concerns regarding the use of and contents of the [DTSU], the methodology being employed in the standard setting process, and inconsistencies between the draft standards and U.S. domestic and international policies." The letter further stated that the USDA "do[es] not believe that the [DSTU] provides an adequate basis to move forward toward the development of a national consensus standard" and that "the [Standards] committee structure . . . would yield a biased outcome." Nonetheless, the letter concluded that the USDA was "willing to work with the Leonardo Academy to find alternative approaches and/or processes to resolve these issues."

The USDA letter did not satisfy the requirements for an appeal under the Leonardo appeals procedures. The letter did not specify any provisions of the Leonardo Constitution or the ANSI Essential Requirements that were allegedly violated by Leonardo's action or inaction. Nor did it state the sections of the DSTU that the USDA objected to. The USDA did not specify a remedial action to address its concerns; it merely expressed "deep concerns" about the DSTU and the development process and expressed a willingness to "work with" Leonardo to resolve

¹ An updated version of the Leonardo Constitution was prepared on May 12, 2008 but has not yet been approved by ANSI. All citations are to the previous version, dated Sept. 19, 2007. The appeals procedures contained in both versions are substantially identical. Therefore, it is immaterial whether the older or the newer version is referenced.



those concerns. At no time did the USDA characterize its correspondence as an appeal or seek to invoke the Leonardo appeals procedures; thus Leonardo did not treat the letter as an appeal.

Although the USDA's letter did not constitute a valid appeal, Leonardo properly attempted to resolve the issue informally by engaging with USDA representatives. Leonardo responded by letter to the USDA on June 24, 2008. In its letter, Leonardo addressed the USDA's complaints regarding the substance of the DSTU, as well as its complaints regarding the development process. Leonardo further explained that the DSTU is not binding upon the Standards Committee. Leonardo encouraged the USDA to continue to participate in the development process and stated that USDA representatives were welcome to submit applications to serve on the Standards Committee or subcommittees for the development standard.

In addition to its June 24 letter, Leonardo reached out to the USDA by holding a conference call with members of the USDA staff on June 25, 2008. Based on this discussion, in which USDA representatives expressed a continued interest in participating in the standard development process, Leonardo believed that they were making progress toward resolving the USDA's concerns. Following that conversation, Leonardo again wrote to the USDA, on August 15, 2008, to further encourage the USDA's participation in the development process and to invite USDA representatives to continue the discussion of the issues raised in the USDA's June 6 letter. The August 15 letter stated, in part:

“We had a productive conference call with Jeremy Stump and Michael Schechtman on June 25, 2008, regarding the issues raised in your June 6 letter and our responses to them. Mr. Stump agreed to initiate a dialogue with the USDA’s agriculture technical experts to further explore your issues of concern regarding the draft standard. We would like to offer an additional opportunity to discuss any feedback from your agricultural technical experts, as well as any remaining issues or concerns from your letter that you may have.” (Emphasis added)

The USDA did not respond to Leonardo's August 15 letter. Nor did it request an appeal hearing with Leonardo, as would have been proper had USDA considered its June 6 letter as an appeal. Instead, the USDA bypassed the appeals procedures established by Leonardo and filed the instant appeal with ANSI, in violation of section 2.8.2 of the Essential Requirements.

Given that the USDA has never filed a proper appeal with Leonardo and that the Leonardo appeals procedures have not been exhausted, the ExSC at this time should not hear the USDA's challenge to Leonardo's actions in developing the sustainable agriculture standard. Conversely, the USDA should continue to pursue the appeals procedures established by Leonardo. Although the USDA's June 6 letter did not satisfy the requirements for an appeal, Leonardo is willing to treat the letter as an appeal to initiate the appeals process at the ASD level. Given that informal discussions to date apparently have not addressed the USDA's concerns to its satisfaction, the next step in the Leonardo appeals process is for Leonardo to appoint an appeal panel and conduct an appeal hearing (Leonardo Constitution §§ 6.3-6.4). Leonardo stands



ready to proceed with those steps. If the USDA does not agree with the decision of the Leonardo appeal panel, then its appeal will be ripe for review by the ExSC.

3. USDA's Request for Withdrawal of the DSTU Is Moot and Is Not Properly Before the ExSC

In addition to requesting that Leonardo's ASD accreditation be revoked, the USDA requests in its appeal that the DSTU "be withdrawn from further consideration as a DSTU or as the basis for an American National Standard." As a threshold issue, we note that the USDA's challenge to the substance of the DSTU is moot. At the first meeting of the Standards Committee for development of the sustainable agriculture standard, the Standards Committee approved a motion to set aside the DSTU SCS-001 and to recognize it only as a reference document in its work to develop a final sustainable agriculture standard. The Committee's decision to treat the DSTU as a reference document was not a withdrawal of the DSTU SCS-001 but rather an affirmation by the Committee that it recognizes that it is not in any way constrained by the DSTU in its development of the final draft standard.

The USDA's request for withdrawal of the DSTU SCS-001 also is moot because of the ExSC's new decision that all American National DSTUs will be eliminated from this point forward and that the classification and process for American National DSTUs will be eliminated from the ANSI Essential Requirements. As a result, no "further consideration [of the standard] as a DSTU" is required, nor will the DSTU function as the "basis for an American National Standard."

Assuming, for the sake of argument, that the USDA's challenge to the DSTU is not moot, the request for withdrawal of the DSTU can be seen as either (1) a challenge to Leonardo's decision to register the DSTU with ANSI, pursuant to Annex B of the Essential Requirements or (2) a request for withdrawal of an American National Standard pursuant to section 4.2.1.3.4 of the Essential Requirements. Under either interpretation, the appeal is procedurally and jurisdictionally improper.

a. USDA's Challenge to Leonardo's Registration of the DTSU Under Annex B Is Not Ripe

Annex B of the Essential Procedures provides that a materially affected interest may "challenge the decision to register a draft standard for trial use with ANSI." The USDA has not explicitly challenged the decision to register the DSTU with ANSI. It has asked for the DSTU to be withdrawn, which is not an action authorized by Annex B. Assuming, however, that the ExSC chooses to consider the USDA's request as a challenge to the registration of the DSTU, the challenge is not ripe.

Annex B of the Essential Requirements states that a person wishing to appeal the registration of a DSTU to ANSI "shall first exhaust all methods of challenge at the [ASD] level prior to submitting an appeal to the ANSI ExSC. The only basis on which such an appeal shall be filed is the alleged failure of the [ASD] to follow either its own procedures or any other relevant ANSI requirements." As discussed above, while the USDA did send a letter raising questions about the DTSU, it did not characterize that letter as an appeal, nor did the letter satisfy the requirements for an appeal as set forth in the Leonardo Constitution. More importantly, the USDA did not follow the full appeal procedures set forth in the Leonardo Constitution.



The USDA must complete the Leonardo appeals process before its challenge to registration of the DSTU can be heard by the ExSC. As discussed above, the process includes an appeal hearing before an appeal panel appointed by Leonardo. If the USDA does not agree with the decision of the Leonardo appeal panel, then its appeal will be ripe for review by the ExSC.

We note that any appeal to the registration of the DSTU technically would not be timely if filed with Leonardo at this late date. The Leonardo Constitution requires appeals to occur within 30 days after notification of an action. The DSTU was announced in Standards Action on April 13, 2007 by NSF International, but Leonardo did not assume responsibility for the DSTU until September 2007. Leonardo re-announced the DSTU in Standards Action on May 16, 2008. At the latest, then, the USDA had until June 16, 2008 to challenge the registration of the DSTU. As discussed above, the USDA's June 6 letter was not a valid appeal to Leonardo. As for the USDA's appeal to ANSI, it was not filed until Sept. 11, 2008, and was not directed to Leonardo in any case.

Nonetheless, Leonardo is willing to waive this objection and to hear an appeal to the registration of the DSTU. Leonardo understands that the USDA may not have fully understood the procedural requirements for an appeal and that, as a result, there may have been some confusion regarding the USDA's intent to file an appeal. In the interest of affording full and fair consideration to all interests, to the extent the issue is not moot, Leonardo is willing to treat the USDA's June 6 letter as a timely appeal to the registration of the DSTU.

b. Withdrawal of an American National Standard By the ExSC Is Not Authorized

Section 4.2.1.3.4 of the Essential Requirements provides a procedure for withdrawal of an American National Standard (an "ANS") for cause. The USDA's request for withdrawal of the DSTU arguably could be construed as a request for relief under this section. However, the DSTU is not an ANS, and therefore section 4.2.1.3.4 is not applicable (see Essential Requirements § 4.2, stating that an ANS must be approved as such by the ANSI Board of Standards Review or an ANSI Audited Designator). A request for withdrawal of the sustainable agriculture standard under section 4.2.1.3.4 of the Essential Requirements will not be ripe for consideration unless and until the standard is approved as an ANS.

Moreover, even if Section 4.2.1.3.4 were applicable to a DSTU, the requested relief would be improper because it is the ANSI Board of Standards Review (the "BSR"), and not the ExSC, that hears requests for withdrawal of an ANS (see Essential Requirements § 4.2.1.3.4 (stating that "requests for withdrawal of an ANS for cause shall be approved by the BSR only upon a sufficient showing that one or more of the following conditions applies").

Conclusion

As detailed in the preceding paragraphs, the appeal filed by the USDA is procedurally and jurisdictionally deficient. The USDA does not have standing to challenge the accreditation of Leonardo as an ASD. Its challenges to Leonardo's accreditation and to the registration of the DSTU are not timely. Moreover, the USDA's claims are not ripe for review because it has not exhausted the appeals



process at the ASD level. Finally, the USDA's challenge to the DSTU is moot given the recent actions taken by the Standards Committee to designate the DSTU as a reference document.

In addition to these procedural defects, we note with concern that the USDA's actions undermine the consensual and collaborative spirit of the voluntary standards development process. Although the USDA has had ample opportunity to participate in the development of the sustainable agriculture standard, it now alleges that the Standards Committee is not representative of affected interests and that the process of development has not been open and fair. In seeking to eliminate the sustainable agriculture standard even before it can be developed, the USDA makes clear that it would prefer no standard at all to a standard that might contain some provisions that do not reflect the USDA's views. This attitude is wholly contrary to the spirit of ANSI. As a result, Leonardo is concerned that this appeal creates the appearance that the USDA is seeking to dominate the ANSI process for developing a Sustainable Agriculture Standard and to compromise the ability of Leonardo Academy, a charitable nonprofit organization, to continue to develop the standard. Leonardo recognizes the very important contributions that the USDA can make to this standard development process. It has worked hard to engage the USDA in the SCS-001 development process and will continue to do so. However, OMB Circular A-119, which directs federal agencies to support the development of voluntary standards, requires federal agencies not to dominate the development process for voluntary standards and to defer to such standards when they are completed.

ANSI is, in essence, a body devoted to fair procedures and respect for all affected interests. Consideration of the USDA appeal, in light of its disregard for the conflict resolution procedures established at the ASD level, would undermine those principles. Although we have addressed the substantive issues raised by the USDA in the remainder of this response, we believe it is unnecessary and improper to consider those issues in the present context. If the ExSC allows this appeal, it would be denying Leonardo the opportunity to address USDA's concerns through the appeal process as defined in the Leonardo Constitution. This is a denial of due process for all affected parties, including Leonardo, the SCS-001 Standards Committee members and all participants in the SCS-001 standard development process.

We respectfully request that the ExSC Appeals Panel dismiss the appeal presented by the USDA.

Requested Actions by the ExSC Appeals Panel on the Procedural Issues Regarding the Appeal

Leonardo Academy requests that:

- (1) The ExSC refuse to hear this extra normal appeal by the USDA at this time because the appeal procedures under the ANSI approved Leonardo Constitution have not been exhausted.
- (2) The ExSC direct the USDA to file this appeal directly with Leonardo and to follow the appeals procedures in the Leonardo Constitution, in order to determine whether the USDA's concerns can be resolved informally and to further instruct the USDA that, if this is not possible, it may bring any remaining issues back to the ExSC with an appeal only after the appeal procedures under the ANSI-approved Leonardo Constitution have been exhausted.



B. Leonardo's Response Regarding the Substance of the Appeal

Overall Assertion

Leonardo has failed in its responsibility to operate in accordance with ANSI Essential Requirements, as follows (Appeal Issues 1-9).

Leonardo Academy Response

Leonardo Academy presents the case below that it has diligently followed the Leonardo Academy ANSI Standards Development Constitution (the "Leonardo Constitution"). This is documented in responses to the September 12, 2008 Appeal Issues 1-9 below.

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.

Leonardo Academy Response to Appeal Issue 1

1. There is no ANSI rule requiring that an ANSI-accredited Standards Development organization (ASD) be the author of a Draft Standard for Trial Use (DSTU). In addition, it is worth noting that the DSTU was first published by NSF International, which later relinquished its ASD authority. ANSI was duly notified of the author’s decision to transition ASD status to Leonardo and agreed to this transition.
2. The Scope of Activities described in the Leonardo Constitution clearly provides for the development of sustainability standards for businesses and organizations. This provision is not confined to specific types of businesses, nor are agricultural businesses and organizations excluded. (Leonardo Constitution Sections 1.2 and 1.2.1, as follows:
 - 1.2. “*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:*
 - 1.2.1. *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.”)

3. Leonardo Academy’s scope of work as related to sustainability is not limited to environmental issues. As cited above, sustainability standards “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*” (emphasis added). These three pillars of sustainability — environment, economy and society — have been internationally recognized since the early 1990s, codified in numerous international documents and treaties and embedded in a wide variety of sustainability standards in many different industries. The social dimension includes both labor and community issues, while the economic dimension includes the ability of organizations to be financially viable, which is integrally tied to the quality, safety and performance of the products and services they produce and deliver. Likewise, the DSTU is demonstrably in line with other sustainability initiatives, both in the agricultural sector and in other sectors, such as Global Reporting Initiative, GlobalGap, Forest Stewardship Council, and the Sustainable Forestry Initiative, to name a few, in addressing these issues.
4. The DSTU recognizes organic agricultural practices as a subset of agricultural practices that fall within the larger spectrum of potential practices included within a sustainability framework. Organic agricultural practices are widely regarded in the general population and by many industry stakeholders as the foundation of sustainability. Many other stakeholders disagree with this view. The ANSI process, which brings together divergent points of view, provides the open, transparent forum for airing these different points of view and developing a consensus position.

It is also important to note here that the USDA has misread the DSTU in making the assertion that organic agriculture is the “sole qualifying agricultural production technology.” In fact, the DSTU states explicitly that organic practices may not always be practical to achieve and provides significant leeway for sector-specific and region-specific distinctions to be drawn. It recognizes organic practices as best practices in terms of pest management and soil fertility. What the DSTU does do is apply a risk matrix to the evaluation of the use of agrochemicals, where agrochemical use is weighed against a variety of mitigating considerations, with the goal of encouraging practices that reduce risks to humans and the environment.

As stated with regard to the DSTU’s scope in Section 2.1.1, “The Standard identifies crop production practices that: 1) build and maintain a healthy agro-ecosystem, based on healthy soil structure and functioning; 2) preferentially employ biological, mechanical, and cultural methods to control pest and disease vectors; 3) minimize agrochemical inputs, utilizing reduced risk or US National Organic Program (NOP) permitted agrochemical options; and 4) phase out those agrochemical inputs that pose significant, recognized acute and chronic risks to human



health or ecotoxic risks to the environment.” Also, Section 2.2 describes the relevant major goal of the standard as follows: “to provide a uniform standard and assessment matrix that can be applied when evaluating the sustainability performance of a diverse array of agricultural production approaches, including organic, integrated pest management and other approaches.” The DSTU does not state, as is asserted in the September 12, 2008 Appeal, that the “overall goal” is “the conversion to full implementation of organic principles as soon as practicable.”

5. Moreover, the September 12, 2008 Appeal’s focus on the DSTU overlooks that fact that: 1) all of the specifics of what the DSTU contains are on the table for the Standards Committee to keep, change or remove entirely from the final draft standard issued for public comment and that 2) the Standards Committee will have to re-address all issues raised in the public comment process before the standard can be put forward to ANSI for recognition as a final 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.

Leonardo Academy Response to Appeal Issue 2

1. The assertion that Leonardo “has never promulgated and made available procedures with respect to draft standards for trial use” is incorrect. The procedures for draft standards for trial use (DSTUs) are clearly specified in the Leonardo Constitution, including process procedures and specifications regarding who can make the decision to promulgate a DSTU.



- a. Leonardo Constitution -13.1: “A Standards Committee or the Secretariat may choose to issue a draft standard for trial use.”
- b. Leonardo Constitution -13.2: “Process for Issuing a Draft Standard for Trial Use (DSTU).”
- c. Leonardo Constitution -13.2.1: The Secretariat shall notify ANSI with the required DSTU registration form that a draft standard for trial use is being issued. An announcement that a DSTU is being issued will thereafter be published in Standards Action. The Secretariat shall announce this standards activity in suitable media as appropriate to demonstrate the opportunity for participation by all directly and materially affected parties.”
- d. Leonardo Constitution -13.2.1.1: Materially affected parties may challenge the decision to register a DSTU with ANSI on procedural grounds, using the appeals process in Section 6.

2. Additionally, it should be noted that the DSTU in question was originally posted in Standards Action under the direction of NSF International, the original Standards Developer.

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."

Leonardo Academy Response to Appeal Issue 3

1. As noted in the response to Appeal Issue 2 above, the procedures for draft standards for trial use (DSTUs) are specified in the Leonardo Constitution and specifically provide materially affected interests the opportunity to challenge the decision to register a DSTU with ANSI. As stated in LEO-SDC-13.2.1: "Materially affected parties may challenge the decision to register a DSTU with ANSI on procedural grounds, using the appeals process in Section 6."
2. In terms of the timing and sequence of events, Leonardo has worked very hard to assure adequate notice of the DSTU. Note that, contrary to the assertion made in the Appeal, it was NSF International, not Leonardo that issued the DSTU in April 2007. Upon assuming the ASD position in September of 2007, Leonardo issued widely distributed press releases to the general and trade media, conducted a series of public meetings and phone conference calls, then re-issued the DSTU in May of 2008. This re-issuance was announced in the May 16, 2008 issue of ANSI Standards Action, seven months after the Leonardo outreach meeting in October 2007. An email announcement and press release were sent to over 1300 individuals and organizations – including representatives of the USDA — clearly stating that the re-issuance of the DSTU provided materially affected parties with the opportunity to challenge the decision to register the DSTU with ANSI (Attachments 14 and 15).

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.

Leonardo Academy Response to Appeal Issue 4

1. The responses above and below demonstrate that the Leonardo Constitution procedures are not flawed, and that Leonardo has and is effectively administering the current process in accordance with the Leonardo Constitution.
2. Leonardo recognizes that the development of a final sustainable agriculture standard will be challenging for the Standards Committee and all other participants in the process and that reaching consensus as defined by the Leonardo Constitution and the ANSI Essential Requirements will be challenging as well. However, Leonardo notes that working on the development of standards where the development process will present challenges is not proscribed by the Leonardo Constitution or by the ANSI Essential Requirements. In fact, the ANSI standard development process provides a framework that supports working through the challenges that confront all standard development activities.
3. The DSTU contains many issues on which consensus is likely to be achieved. The DSTU draws much of its content from existing standards that have already undergone consensus review processes, either by specific industries, nationally or internationally, or are encoded in US regulations. The extensive listing of normative and additional references in Section 4 of the DSTU names these sources:

“4.1. Normative References . . .

1. Code of Federal Regulations Title 40 (40 CFR), last updated May 2, 2006.
 - Pesticide Programs, Subchapter E - Pesticide Programs,
<http://www.epa.gov/pesticides/regulating/cfr.htm>.
 - Part 170: Worker Protection Standard,
<http://www.epa.gov/pesticides/safety/workers/PART170.htm>.
2. ISO 14024:1999, “Environmental Labels and Declarations - Type I Environmental Labeling - Principles and Procedures.”
3. U.S. Department of Agriculture, Agricultural Marketing Service, 7 CFR Part 205 [Docket Number: TMD-00-02-FR] RIN: 0581-AA40, National Organic Program, 2002. <http://www.ams.usda.gov/NOP>.
4. U.S. Department of Health and Human Services, Food and Drug Administration Center for Food Safety and Applied Nutrition (CFSAN). *Guidance for Industry:*



Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables, and Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards for Fresh-Cut Fruits and Vegetables. October 1998.

5. U.S. Environmental Protection Agency. *National Recommended Water Quality Criteria: 2002.* EPA 822/R/02/038. Washington, DC. 2002.
www.epa.gov/waterscience/standards/wqcriteria.html.
6. U.S. Environmental Protection Agency website:
http://www.epa.gov/pesticides/health/tox_categories.htm.
7. U.S. Environmental Protection Agency. 40 CFR Part 82 [EPA- HQ-OAR-2005-0538; FRL-] RIN 2060-AN54, *Protection of Stratospheric Ozone: The 2007 Critical Use Exemption from the Phaseout of Methyl Bromide.*
8. U.S. Food and Drug Administration, Center for Food Safety and Applied Nutrition website: Pesticides, Metals, Chemical Contaminants & Natural Toxins.
<http://www.cfsan.fda.gov/~lrd/pestadd.html>.
9. WHO/PCS/01.5, International Programme on Chemical Safety, *The WHO Recommended Classification of Pesticides by Hazard and Guidelines to Classification 2000-2002.* United Nations Environment Programme, International Labour Organization. World Health Organization, IOMC Inter-Organization Programme for the Sound Management of Chemicals.
http://www.who.int/ipcs/publications/pesticides_hazard/en/

4.2. Additional References

1. ASTM E06.71.10, “Standard Practice for Assessing Environmental Performance Improvements of Electric Power Generation Facilities and Infrastructure,” Draft for Final Ballot, 2007.
2. California Environmental Protection Agency, No. 11. Rules for Medical Care When Handlers Use Organophosphates and Carbamates, Sacramento 2003.
<http://www.cdpr.ca.gov/docs/whs/pdf/hs8.pdf>
3. Food and Agriculture Organization of the United Nations (FAO). *Guidelines For Personal Protection When Working With Pesticides in Tropical Climates*, Rome, March 1990.
4. Food and Agriculture Organization of the United Nations (FAO). *International Code of Conduct for the Distribution and Use of Pesticides*, Rome 2002.
5. Food and Agriculture Organization of the United Nations (FAO). *Pesticide Storage and Stock Control Manual*, 1996.
<http://ecoport.org/Resources/Refs/Pesticid/Disposal/V8966E/01.htm>
6. International Labour Organization (ILO) Conventions:
 - ILO Convention 29 — Forced Labour Convention (1930)
 - ILO Convention 87 — Freedom of Association and Protection of the Right to Organise Convention (1948)
 - ILO Convention 98 — Right to Organise and to Bargain Collectively Convention (1949)
 - ILO Convention 100 — Equal Remuneration Convention (1951)
 - ILO Convention 105 — Abolition of Forced Labour Convention (1957)



- ILO Convention 110— Plantations Convention (1958), Convention and Protocol (1982)
 - ILO Convention 111 — Discrimination (Employment and Occupation) Convention (1958)
 - ILO Convention 135 — Workers’ Representatives Convention (1971)
 - ILO Convention 138 — Minimum Age Convention (1973)
 - ILO Convention 143 — Migrant Workers (Supplementary Provisions) Convention (1975)
 - ILO Convention 155 — Occupational Safety and Health Convention (1981)
 - ILO Convention 170 — Chemicals Convention (1990)
7. International Organization for Standardization (ISO) Standards:
 - ISO 9001:2000, “Quality Management Systems — Requirements”
 - ISO 14001:2004, “Environmental Management Systems — Requirements With Guidance For Use”
 - ISO 14020:2000, “Environmental Labels and Declarations — General Principles”
 - ISO 14040:1997, “Environmental Management — Life Cycle Assessment — Principles and Framework.”
 - ISO 14042:2000: “Environmental Management — Life Cycle Assessment — Life Cycle Impact Assessment.”
 8. International Organization for Standardization (ISO), *ISO and Conformity Assessment*, 2005.
 9. International Programme on Chemical Safety, *Safety and Health in the Use of Agrochemicals*. A collaboration of International Labour Organization, United Nations Environmental Programme, and the World Health Organization. 2006.
 10. International Union for the Conservation of Nature and Natural Resources. “2003 Red List of Threatened Species.” 2003. Geneva, Switzerland. www.redlist.org
 11. LODI Rules, Lodi-Woodbridge Winegrape Commission, *Pesticide Impact Units for Pesticides Registered for Use in Lodi Vineyards*, 2005.
 12. MeisterPro. *Crop Protection Handbook*, Volume 92, 2006.
 13. The Organic Center, Foster, Rhode Island. “On Farm Energy Use”, accessed through The Organic Center website: www.organic-center.org/reportfiles/Energy_SSR_Cons_Summary.pdf
 14. UN Environmental Programme, Technology and Economic Assessment Panel and the Methyl Bromide Technical Options Committee, “Handbook on Critical Use Nominations for Methyl Bromide,” Version 5, October 2006.
4. As indicated in the response to Appeal 3 above, Leonardo mounted a very diligent and concerted effort to assure adequate notice of the DSTU. To reiterate, upon assuming the ASD position in September of 2007, Leonardo issued widely distributed press releases to the general and trade media (Attachment 16) and conducted a series of public meetings (October 2007 in California, and February 2008 in Washington DC) and phone conference calls (December 2007, January 2008, February 2008). In response to concerns raised about the adequacy of the



notice of the original issuance of the DSTU by NSF, Leonardo re-issued the DSTU in May of 2008, as announced in the May 16 issue of ANSI Standards Action. Email announcements of the re-issuance of the DSTU, as well as a press release were sent to over 1300 individuals and organizations, including representatives of the USDA, to ensure broad awareness of the SCS-001 standard development process among interested and affected parties. Leonardo's re-issuance of the DSTU provided materially affected parties with the opportunity to respond to this action and to challenge the decision to register the DSTU if they so desired. The re-issuance announcements also included notification of an extended period for filing applications to participate on the standards committee and the subcommittees

Throughout this period, the DSTU author, SCS, participated in additional informational workshops, seminars and presentations in conjunction with major agricultural industry trade shows and in private meetings, and otherwise provided information about participation opportunities at trade shows. Thousands of people from diverse sectors of agriculture and related stakeholder interest groups were contacted during this process. Articles about the standard development process also appeared in a diverse array of publications.

5. Once the application period closed, the Standards Committee members were selected following the requirements of the Leonardo Constitution. The make-up of the Standards Committee attests to the diversity of stakeholders reached during the public outreach period and within the period during which the DSTU was subject to review and challenge. Indeed, the scope and depth of expertise on the Standards Committee is extensive, with 58 individuals representing a wide cross section of agricultural producers, users, NGOs, researchers, regulators, and sustainability experts.
6. The assertion in the Appeal that "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" is incorrect. The ANSI Essential Requirements have no such requirement for the beginning or middle of a standard development process. Only the final standard is required to achieve the consensus requirements of the ANSI Essential Requirements and the ANSI approved Standard Developer's process.
7. The assertion that specific fair labor practices for producers and handlers cannot be addressed in a voluntary standard is incorrect. These issues clearly may be addressed in a voluntary standard, and the Standards Committee will need to decide how it wants to address these issues in the process to develop a final draft standard. Leonardo agrees that neither the DSTU nor the final draft standard can change Federal or State laws on fair labor practices; however it should also be noted that one of the powerful aspects of voluntary standards is that these standards can be and generally are more stringent than what is required by law.

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.

Leonardo Academy Response to Appeal Issue 5

1. The claim that the interest categories used in providing balance in the Standards Committee are flawed is incorrect. The interest categories included in the Leonardo Constitution are: Producer, Users, Environmentalists and General Interest. The Leonardo Constitution, which includes this breakdown of interest categories, has been approved by ANSI.
2. The Leonardo Academy ANSI Standards Development interest categories include the three interest categories identified in the ANSI Essential Requirements Section 2.3.a-c which are: Producer, Users, and General Interest. As required by the ANSI Essential Requirements, Section 2.3, these interest categories are discretely defined, cover all materially affected parties and differentiate each category from the other categories. To these three interest categories, the Leonardo Constitution has added Environmentalists to account for the fact that Leonardo



- develops standards that address sustainability issues. To this end, a given Standards Committee must include environmental experts to ensure that multi-stakeholder perspectives are represented and that the consensus reached on a given standard includes those perspectives.
3. Balancing the committee members across the four interest categories of Producers, Users, Environmentalists and General Interest has produced a Standards Committee with broad scope and great depth of expertise. The list of Standards Committee members is included in Attachment 13. When taking into account the fact that many members of the Standards Committee represent the perspectives of more than one interest category, no single interest category represents a majority of the Standards Committee, as required by ANSI Essential Requirements, Section 2.3.
 4. The September 12, 2008 Appeal claims that the “Standards Committee should be composed primarily of entities involved in various areas of agricultural production, processing, marketing, etc.” Such an approach would lead to an inappropriately narrow scope of representation on the Standards Committee with minimal representation of the users, environmentalists and general interest category participants such as educators, government entities, technical societies, consumer groups, and non-profit organizations that may be affected by the standard.
 5. The claim that “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” is unsubstantiated. Industry representatives occupy all of the Producer and User interest group seats. In addition, among the 22 general interest Standards Committee members are representatives of industry associations that represent diverse industry memberships and thus could not be categorized under “producer” or “user” categories but nevertheless provide industry perspective.
 6. The selection of Standards Committee members very carefully took into account a wide range of perspectives, for example: mainstream agricultural production, organic agricultural production, large growers, small growers, large users, small users, regional diversity, industry associations, labor representatives, environmental representatives, academics, research institutions, governmental sustainable agriculture initiatives, regulators, certifiers, etc. Each group is represented; none has dominance.
 7. Leonardo is not an advocate for organic agriculture nor does it have a dominant role in the standard development process. Leonardo is a neutral third party without any vested interests in the agricultural sector whatsoever. The contents of the final standard and the decisions about how each area will be addressed will be decided by the Standards Committee. The breadth and depth of expertise on the Standards Committee is a testament to fair and equitable consideration of the full range of viewpoints, while the subcommittees provide broad opportunities for participation in the standard development process beyond those participating on the Standards Committee.
 8. Leonardo has repeatedly reminded all interested parties that the DSTU is a starting point for discussion and is subject to full review and revision by the Standards Committee.

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. 1/4 producers, 1/4 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.

Leonardo Academy Response to Appeal Issue 6

1. Leonardo does indeed have the administrative ability to properly administer the standard development process; the claims of failing identified in the September 12, 2008 Appeal are shown to be incorrect in the responses below.
2. Contrary to the assertion in the September 12, 2008 Appeal, all of the questions addressed in the document "[Q & A: Establishing an American National Standard for Sustainable Agriculture](#)" (Attachment 17) were asked by interested parties who participated in meetings, on phone calls, or otherwise submitted questions directly to Leonardo. In a few cases, questions from multiple stakeholders on the same topic were combined under one question to avoid redundancy. The document was developed to provide a single location where questions could be compiled and answered. The document is posted on the Leonardo web site and is periodically updated.
3. The response to Part A, Question 6 of the Q&A, which indicates that Leonardo thought it unlikely that it would file a PINS for the Sustainable Agriculture Standard, was correct at the time it was prepared as an answer to a question raised at the February 2008 outreach meeting on the Sustainable Agriculture Standard. The DSTU process did not require a PINS process at that time.



4. Before August 14, 2008, the ANSI Essential Requirements and ANSI ExSC had been silent on whether a PINS needed to be filed for standard developments where a DSTU has been announced. An accepted interpretation of the ANSI Essential Requirements at that time was that the issuing of a DSTU was equivalent to issuing a PINS for a standard and that a PINS did not need to be filed for a standard development process where a DSTU had been issued. It was in this environment that Leonardo re-issued the DSTU as announced by ANSI in Standards Action dated May 16, 2008. On August 14, 2008 the ExSC issued a decision that, going forward, all new DSTU issuances will need to be preceded by the filing of a PINS. For all previously filed DSTUs for which a PINS has not been submitted, a PINS will be required prior to requesting a public review announcement of the draft final standard. In keeping with this decision by the ExSC, Leonardo is committed to filing a PINS for the Sustainable Agriculture Standard prior to submission of the draft final Sustainable Agriculture Standard to ANSI for promulgation as an ANS.
5. Leonardo's response to Part A, Question 13 of the Q & A, posed at the February 2008 meeting, was appropriate at the time, as this was a general question about the establishment of the four interest groups. The reference to the ANSI Essential Requirements was an important part of this response to a questioner who might not have been familiar with this document. See also bullet 6 in the Response to Appeal 5, above.
6. In terms of the balance of representation on the Standards Committee, the response provided by Leonardo in Part A, Question 14 of the Q & A correctly referred to how this issue would be addressed in accordance with the ANSI Essential Requirements and the Leonardo Constitution. Striving to have an equal number of Standards Committee Members in each interest category demonstrates compliance with the balance requirements of both the ANSI Essential Requirement and the Leonardo Constitution. The balance of the members actually selected for the Standards Committee among the members in each interest category clearly is in compliance with the balance requirements of both the ANSI Essential Requirement and the Leonardo Constitution.
7. On the question of defining Sustainable Agriculture (Part B, Question 7 of the Q&A), the answer provided by Leonardo does not suggest that the definition of Sustainable Agriculture within the DSTU is flawed, contrary to the assertion in the September 12, 2008 Appeal. Rather Leonardo correctly states that this is a placeholder definition and that the Standards Committee will assume the responsibility of deciding what definition of sustainable agriculture it wants to include in the final standard developed. It is very common that standards setting bodies review and refine terms and definitions, in order to most accurately capture the consensus of the group. Frequently, standards setting bodies establish subcommittees for this purpose alone. Generally speaking, however, the definition provided in the DSTU does reflect international consensus around the key elements of sustainability claims — ecologically sound, economically viable, and socially responsible.
8. Regarding Part B, Question 9 of the Q & A, the development of the DSTU involved the compilation of requirements from a wide array of international, national and industry documents. As explained consistently throughout the entire outreach period, all aspects of a DSTU are subject to review, refinement, deletion, or change by the Standards Committee. Leonardo remains committed to administering a fair, balanced and transparent standards development process.



9. In terms of the standard's scope relative to questions related to livestock and dairy, the answer to Part B, Question 14 of the Q & A clearly describes the scope of the standard as related to crop agriculture only. If the Standards Committee chooses to recommend an expansion of this scope, then Leonardo would need to undertake administrative procedures to ensure proper outreach to and inclusion of representatives from these additional sectors.
10. The current scope of the DSTU is described in the DSTU and addressed in the Q&A prepared by Leonardo, which is available on the Leonardo website. In addition, in both the original DSTU announcement in Standards Action (April 2007) and the re-announcement (May 2008), the scope was explicitly described as "establish[ing] a comprehensive framework and common set of environmental, social, and quality requirements by which to demonstrate that an agricultural product has been produced and handled in a sustainable manner, from soil preparation and seed planting through production, harvest, post-harvest handling, and distribution for sale."

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.

Leonardo Academy Response to Appeal Issue 7

1. Leonardo's operations do indeed comply with ANSI Essential Requirements for Coordination/Harmonization. The ensuing discussion of the food safety, management requirements and greenhouse gas components of the standard by the Standards Committee and relevant subcommittees will include a discussion of coordination and harmonization with international standards in these areas, consistent with other aspects of the DSTU.
2. Section 2.4 of the ANSI Essential Requirements states: "Good faith efforts shall be made to resolve potential conflicts between and among existing American National Standards and candidate American National Standard." Leonardo is committed to fulfilling the coordination and harmonization requirements of Section 2.4 of the ANSI Essential Requirements. As the Standards Committee work progresses toward producing a candidate ANS, potential conflicts can be identified.

***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. Arny 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. Arny 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. Arny 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. Arny'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...

Leonardo Academy Response to Appeal Issue 8

1. Leonardo has prepared responses to each of the letters submitted and has repeatedly demonstrated its commitment to due process, consistent with the requirements of the ANSI Essential Requirements, as described further below. Specifically, the entire text of Leonardo's written responses to the January 31, 2008 letter, submitted on February 25, 2008 (Attachment 18), and the June 6, 2008 letter, submitted on June 24, 2008, are attached to this response document.
2. The assertion is incorrectly made that "In a June 24, 2008 letter, rather than substantively addressing all of the concerns raised by USDA, Mr. Arny 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 fact, Leonardo submitted a lengthy, substantive response, addressing each of the issues raised in the USDA letter and proposing follow-up discussions for further elaboration of issues. The first two paragraphs of Leonardo's June 24, 2008 response letter read as follows:

"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.”

3. In response to the assertion in the June 6, 2008, USDA letter that there were conflicts between proposed requirements of the DSTU and the definition of sustainable agriculture in the 1990 “Farm Bill (P.L. 101-624),” Leonardo explained in Attachment 1 to its June 24, 2008 response letter that no such conflicts were evident. In addition, Leonardo addressed each of the other issues raised, including the role of agricultural technologies, provisions related to organic agriculture, and due process.
4. Regarding the encouragement to narrow the scope of the DSTU in the January 31, 2008 letter from agricultural industry representatives and its reiteration in the USDA letter dated June 6, 2008, Leonardo explained its view that the rationale provided for narrowing the scope (i.e., the mistaken belief that the standard should only apply to organic agriculture) was based on a misreading of the DSTU language. In addition, Leonardo pointed out that (1) “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” and (2) “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.”
5. The September 12, 2008 Appeal correctly quotes Leonardo’s response letter of June 24, 2008, “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.” Indeed, Leonardo has repeatedly reminded stakeholders that the DSTU is a starting point for discussion and is subject to full review and revision by the Standards Committee.
6. The September 12, 2008 Appeal is not correct in asserting that the Leonardo dismissed the concerns and issues raised by USDA and other affected industry segments nor that it did not address the spirit of openness and consideration of views and objections contemplated by ANSI Essential Requirements in its June 24, 2008 response letter to the USDA. In fact, as can be seen by a review of this letter, Leonardo responded fully to the concerns raised in the June 6, 2008 USDA letter and, furthermore, expressed its appreciation for the views and concerns expressed by the USDA and all other stakeholders, invited continuing dialogue with the USDA and repeated the request that USDA consider full participation in the process.



7. The September 12, 2008 Appeal is not correct in asserting that Leonardo mischaracterized the requirements of the OMB Circular A-119 in its June 24, 2008 response letter. In fact, as can be seen by a review of this letter, Leonardo correctly quoted sections of the OMB Circular A-119 and furthermore appropriately raised the issue of potential dominance of the process by the USDA, given the provision against dominance in the Office of Management and Budget, Revised Circular A-119, 63 Fed. Reg. 8545, 8556 (Feb. 19, 1998), as well as the requirement in both the Leonardo Constitution and the ANSI Essential Requirements to prevent dominance by any single interest group or party in the standard development process (LEO-SDC 2.1.1 and ANSI Essential Requirements 1.2, respectively). Leonardo's full response to USDA regarding its interpretation of the requirements of the OMB Circular A-119 was as follows:

“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.”

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.

Leonardo Academy Response to Appeal Issue 9

1. The September 12, 2008 Appeal appears to argue that aspects of the DSTU should not be subject to review or change by the Standards Committee. For example, it states: “*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.” This is a misinterpretation of the role of the DSTU. The purpose of the ANSI process is to create a forum where all interest groups can have input into the development of a consensus final candidate standard to submit to ANSI for promulgation. For this to happen, the DSTU needs to be subject to modification by the Standards Committee, in accord with Leonardo’s ANSI-approved standard development process.

2. At the same time, the Leonardo agrees with USDA that the DSTU is “not *merely* a placeholder document.” (Emphasis added) The DSTU is a well-considered draft standard that addresses a full spectrum of sustainability issues that are well known and widely discussed with agricultural and non-agricultural circles. It cites and incorporates numerous regulatory, international treaty and industry standards and guidelines. Although it would be highly unlikely for any DSTU to represent all of the views or perspectives of any one stakeholder or interest group, stakeholder input to date suggests that the DSTU has comprehensively raised many of the key issues of interest to stakeholders, with many likely areas of potential consensus. Moreover, the DSTU as currently written provides substantive grounds for initiating discussions of a full stakeholder body, consistent with the goals of the ANSI process.
3. As documented throughout this response document, Leonardo has diligently followed the provisions of both the ANSI Essential Requirements and the Leonardo Constitution.
4. As previously addressed, the current scope of the DSTU is described in the DSTU, and addressed in the Q & A prepared by Leonardo, which is available on the Leonardo website. In addition, in both the original DSTU announcement in Standards Action (April 2007) and the DSTU re-announcement (May 2008), the scope was explicitly described as “establish[ing] a comprehensive framework and common set of environmental, social, and quality requirements by which to demonstrate that an agricultural product has been produced and handled in a sustainable manner, from soil preparation and seed planting through production, harvest, post-harvest handling, and distribution for sale.”
5. The September 12, 2008 Appeal incorrectly asserts that “Leonardo’s practices and actions with respect to the DSTU are not consistent with the expectations of an ANSI accredited Standards Developing Organization.” As demonstrated in responses herein, the standards development process does not contain any provisions that are inherently or in practice unfair to materially affected entities, including but not limited to major agricultural interests. As stated in previous response letters, the Leonardo is committed to ensuring that the Standards Committee will follow the Leonardo’s ANSI-approved standard development process in its deliberations on the development of the final standard.
6. The assertion that the DSTU and the development of a final Sustainable Agriculture Standard should not go forward on the grounds that achieving consensus will be difficult is premature. These are no provisions in the Leonardo Constitution nor in the ANSI Essential Requirements that proscribes working on the development of standards where reaching consensus will be



challenging. Indeed, the ANSI standard development process provides a framework that supports working through the variety of challenges that all standard development processes confront. We are optimistic about the potential to reach consensus based on the wide cross-section of interest groups who have in good faith determined that it is important to participate in an open, consensus-building process.

7. As stated above and documented in Leonardo's June 24, 2008 response letter to the June 6, 2008 USDA letter, the assertion that the "standards development process ... is contrary to the public interest as provisions of the DSTU are in conflict with existing federal regulations..." is incorrect.
8. The September 12, 2008 Appeal's assertion that the "standards development process ... would require an impossibly uniform application of varying State regulations and requirements" is unsubstantiated. Voluntary standards (a) cannot change state regulations and requirements and (b) need to comply with state regulations and requirements. Clearly, these issues may be addressed in a voluntary standard, and the Standards Committee will ultimately decide how to address these issues in the draft final standard. This being said, the DSTU repeatedly refers to "the applicable local or national requirements" and is written in such a manner as to allow for regional variants to be included. It does not seek to establish a ceiling of performance but rather to establish a baseline of performance for sustainability claims. It is built on a continuous improvement framework, consistent with international recognition that sustainability is not a finished destination but a journey. Finally, the resulting standard will be voluntary in nature. However, it should be noted that the DSTU includes as a prerequisite for conformity to the standard, full compliance with applicable laws and regulations.

Requested Actions by the ExSC Appeals Panel on the Substance of the Appeal

Leonardo Academy requests that:

- (1) Based on the documented diligence with which Leonardo has complied with the requirements of the Leonardo Constitution and the ANSI Essential Requirements, the ExSC Appeal Panel deny the request from the USDA that Leonardo's Accreditation as an ANSI standards Developer be revoked.
- (2) Based on the documented diligence with which Leonardo has complied with the requirements of the Leonardo Constitution and the ANSI Essential Requirements in regards to the Draft Standard for Trial Use titled, "Sustainable Agriculture Practice Standard For Food, Fiber and Biofuel Crop Producers and Agricultural Product Handlers and Processors (SCS-001), the ExSC Appeal Panel deny the request from the USDA that this DSTU be withdrawn.



Attachments to this Document

- Attachment 1: Leonardo Academy ANSI Standards Development Constitution, Proposed Revisions, May 13, 2008
- Attachment 2: Draft Standard for Trial Use SCS-001, “Sustainable Agriculture Practice Standard For Food, Fiber and Biofuel Crop Producers and Agricultural Product Handlers and Processors”
- Attachment 3: Timeline of Leonardo Academy Management of ANSI Standard Development Process for Sustainable Agriculture Practice Standard SCS-001
- Attachment 4: Membership of the SCS-001 Standards Committee
- Attachment 5: Excerpts from the Audio Recording of the First Standards Committee Meeting (September 25-26, 2008): Standards Committee Introductions
- Attachment 6: June 6, 2008 - USDA Letter to Leonardo Academy
- Attachment 7: June 24, 2008 - Leonardo Academy Response to June 6, 2008 USDA Letter
- Attachment 8: August 15, 2008 – Leonardo Academy Letter to USDA Regarding Observers and Invitation to Continue Discussions
- Attachment 9: List of Participants in the First Standards Committee Meeting (September 25-26, 2008)
- Attachment 10: Final Agenda for the Standards Committee Meeting on September 25-26, 2008
- Attachment 11: Approved Motions from the First Standards Committee Meeting
- Attachment 12: Instructions on How to Access the Full Audio Recordings of the First Standards Committee Meeting
- Attachment 13: SCS-001 Standards Committee Member Bios and Resumes (all currently available are included)
- Attachment 14: May 20, 2008 – Re-announcement of DSTU SCS-001 and Extension of Application Deadline to July 7, 2008 (Notification to Stakeholders)
- Attachment 15: May 20, 2008 – Press Release Regarding Re-announcement of DSTU SCS-001
- Attachment 16: September 27, 2007 – Press Release Regarding Launch of Standard Development Process
- Attachment 17: Membership of SCS-001 Standards Committee
- Attachment 18: [Q & A: Establishing an American National Standard for Sustainable Agriculture](#) (Updated August 15, 2008)
- Attachment 19: February 25, 2008 – Leonardo Academy Response to January 31, 2008 Industry Letter

Letters of Support