

UPDATE ON THE ANSI SCS-001 SUSTAINABLE AGRICULTURE STANDARD-SETTING PROCESS

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In our last issue, James Andreasen and Christopher McDonald provided a summary and background information about the proposed Agricultural Sustainability Standard. *See*, James H. Andreasen and Christopher M. McDonald, *Standard Setting and the New Draft ANSI Agricultural Sustainability Standard*, AGRIC. MGMT. COMMITTEE NEWSL. (ABA Sec. of Env't, Energy, and Resources), Apr. 2008, at 10, available at <http://www.abanet.org/environ/committees/agricult/newsletter/>). This article updates the progress toward adoption of the *Sustainable Agriculture Practice Standard for Food, Fiber, and Biofuel Crop Producers and Agricultural Product Handlers and Processors* (SCS-001), which was proposed by the American National Standards Institute (ANSI). Scientific Certification Systems (SCS), is the drafter and principal promoter of the SCS-0001 standard.

On July 28, 2008, the Secretariat (i.e., administrator) of the SCS-001 Draft Standard on Sustainable Agriculture, the Leonardo Academy, published the list of members of the Standards Committee. The SCS-001 Standards Committee (Committee) held its first meeting on Sept. 25-26 in its hometown of Madison, Wisconsin.

Observers may still apply to attend and observe committee meetings and applications for subcommittees. While Sept. 22, 2008 was the deadline, this will likely be extended.

While the Draft Standard on Sustainable Agriculture (Standard) purports to cover the entirety of production agriculture (e.g., food, fuel, fiber, etc.) the make-up of the Standards Committee membership had a curious emphasis on organic and floral members. The apparent lack of "balance" in the Standards Committee could prove troublesome going forward, if the scope of the proposed standard is not narrowed by committee vote to take biofuels, livestock, GM crops, and other subject matter out of the scope. In fact, the positions of various groups were staked out in letters posted at the "perishable pundit" blog, with organic interests defending the ANSI process and other stakeholders, including the U.S. Department of Agriculture (USDA), expressing concerns. *See*, USDA letter to the Leonardo Academy at <http://www.perishablepundit.com/index.php?date=7/25/08#5>; *see also* Markon letter available at <http://www.perishablepundit.com/index.php?date=03/06/08>; *see also* Di Matteo letter at <http://www.perishablepundit.com/index.php?date=03/12/08&pundit=4>.

There appears to be a pattern of excluding inputs (e.g., fertilizers, agricultural chemicals) and major agricultural sectors that are users of crops (e.g., livestock, biofuels, and processors), which, while consistent with an organic-only standard, raise red flags if the Standard is covering all sectors of the agricultural community. At least five industry sectors are completely excluded, including: (i) fertilizers, (ii) agricultural-chemicals; (iii) livestock; (iv) biofuels; and (v) processors. In addition, there is a long line of producer commodity groups, including those representing the interests of alfalfa, wheat, and pear commodity groups, as well as the U.S. Soybean Export Council (USSEC), that were denied a seat on the Standards Committee. These groups are under-represented, even if friends on the Standards Committee work to give them a voice.

On June 6, 2008, USDA sent the Leonardo Academy and ANSI a letter objecting to the exclusion of mainstream commodity agriculture while favoring certain specialty, floral, and organic sectors. The rules

of the Leonardo Academy provide 25 percent of the seats on the Standards Committee to “environmentalists,” and 25 percent each to “users,” “producers,” and “general interest.” At present, the ratios on the Standards Committee are weighted toward the floriculture industry and organic industry interests, with “environmentalists” making up 21 percent of the committee.

The USDA’s strongly worded letter demanded action to bring the Standard in line with 2008 Farm Bill’s definition of sustainability. This letter is summarized in the attached chronology. One of the more surprising developments, which was sent to the authors in early August, was an anti-SCS-001 letter from the National Campaign for Sustainable Agriculture that criticized the Standard for ignoring the economic viability of the Standard on small to medium growers, and calling on Standards Members to withdraw, or reorient the Standard to general principles that address these growers’ concern.

Chronology of the SCS-001 Standard

April 11, 2006

Scientific Certification Systems (SCS), the drafter and principal promoter of the SCS-0001 standard, meets with wine producers who wish to pilot test the draft Standard. The wine producers are carefully integrating agricultural chemicals to manage their environmental footprint. SCS had no further discussions with wine producers regarding the pilot test of the Standard, which SCS announces to the world as the “first organic sustainable standard.”

April 13, 2007

The National Science Foundation (NSF) published the Draft Standard for Trial Use (DSFTU). The DSFTU was announced in ANSI’s Standards Action. However, unlike other DFSTU’s posted in ANSI’s Standards Action, no Web link to the draft Standard was provided. One ANSI director who works for a major trade association in Washington, D.C. says “we thought this was only for organic producers.” Yet, no action is taken. NSF and SCS go their separate ways

due to “policy differences” and SCS has to find another ANSI Standards Development Organization (SDO).

August 2007

SCS holds notification session with NGOS, which many environmental groups (including Natural Resources Defense Council, World Wildlife Fund (WWF), etc.) attend, while mainstream commodity groups are not invited.

September 2007

The Leonardo Academy in Madison, Wisconsin becomes the first SDO to mandate that 25 percent of participants of the Standards Committee represent “environmentalists.” While knowing little of agriculture, SCS finds the lack of “conflicts” enticing and charges the Leonardo Academy with overseeing and facilitating the DSFTU into an ANSI standard.

October 2007

Kickoff meeting in Berkeley, California, for potential applicants to the Standards Committee. While mainstream commodity groups are not invited, they learn of this from WWF.

Feb. 4, 2008

In response to questions regarding whether the Standards is a purely organic standard, Linda Brown of SCS clarifies that the Standards will apply to sectors of the agricultural community.

March 26, 2008

The U.S. Soybean Export Council (USSEC) and other parties bring appeals to the Leonardo Academy objecting to the lack of notice to mainstream agricultural producers.

April 2, 2008

The Leonardo Academy extends the application deadline for the SCS-001 Standards Committee to

May 23, 2008 and makes greater effort at expanding awareness of the opportunity to participate in the draft standard process.

May 6, 2008

USSEC writes to the Leonardo Academy demanding a reply to its appeal, which the Leonardo Academy should have replied to by April 24, 2008.

May 16, 2008

The Leonardo Academy writes the USSEC and suggests that an “acceptable way to address these issues” is through re-announcement of the the DFSTU for SCS-001 in the May 16, 2008 ANSI *Standards Action* to ensure that all materially affected parties are aware of the draft Standard and are provided the opportunity to participate in the standard development process. The Leonardo Academy also provides an additional extension of the application deadline for participation on the Standards Committee to July 7, 2008.

May 6, 2008

USDA Deputy Secretary Charles Conner sends a letter to the Leonardo Academy asking it to appoint three USDA observers.

June 6, 2008

USDA Deputy Secretary Charles Conner sends a letter to the Leonardo Academy alerting it to inconsistencies between the draft Standard and U.S. domestic and international policies. He cites to the Farm Bill’s definition of sustainable agriculture, which provides for:

- Satisfaction of human food and fiber needs;
- Enhancement of environmental quality and the natural resource base upon which the agricultural economy depends;
- Making the most efficient use of nonrenewable resources and on-farm resources and integrate, where appropriate, natural biological cycles and controls;
- Sustaining the economic viability of farm operations; and

- Enhancement of the quality of life for farmers and society as a whole.

See, Food, Agriculture, Conservation, and Trade Act of 1990 (FACTA), Public Law 101-624, Title XVI, Subtitle A, Section 1603 (Government Printing Office, Washington, DC, 1990) NAL Call # KF1692.A31 1990; See also comments at National Agricultural Library available at www.nal.usda.gov/afsic/pubs/agnic/susag.

USDA has a broad-ranging program called “Sustainable Agriculture Research and Education.” which funds innovative agriculture, but does not exclude biotech or agricultural chemical/fertilizer inputs as the draft Standard does.

June 24, 2008

The Leonardo Academy responds to USDA’s June 6, 2006 letter by stating it is a “neutral facilitator” and includes “Attachment 1” which addresses the “mischaracterization” concerning the draft Standard’s enshrinement of organic agriculture as the “best practice” starting point for sustainable agriculture.

In what has to be an affront to USDA, Michael Arny, from the Leonardo Academy, stated that while “Circular A-119 provides that agency representatives may serve as members of voluntary consensus bodies, ... I am concerned that the course set out in your letter is not consistent with ANSI rules and procedures and the directive to avoid the appearance of undue influence by a federal agency.” While apparently welcoming USDA participation on one hand, the Leonardo Academy then rejects the request by USDA to send observers due to the “undue influence” risks it perceives.

The Leonardo Academy responds further stating that biotech crops are excluded from the SCS-001 Draft Standard in recognition of “a precautionary approach that permeates other sustainability labeling standards around the world”; Leonardo Academy further notes that SCS-001 is a draft standard, and the committee can make changes to the Draft Standard, stating “We anticipate a vigorous debate on this point.”

July 7, 2008

The deadline for filing applications passes, with the Leonardo Academy reportedly receiving 175 applications. Unfortunately, key stakeholders involved in USDA's sustainable agriculture program, such as the Sustainable Agriculture Coalition, did not apply. Moreover, the leading environmental NGO involved in certifying over twenty major agricultural commodity groups, the World Wildlife Fund, did not apply, despite being among the lucky folks who got direct outreach from SCS in the early days of promoting this Standard to organic and environmental interests in 2007.

July 21, 2008

After consultation with the Leonardo Academy on June 25, 2008, Deputy Secretary Charles Conner writes ANSI CEO, Joseph Bhatia, to register opposition to standard development process. He states "we are supportive" of stakeholder appeals, yet questions whether the June 24, 2008 letter from the Leonardo Academy has the required neutrality since the letter "further substantiates our view that [the Leonardo Academy] is acting as a proponent for the current proposed standard rather than as a neutral facilitator of the process."

July 28, 2008

The Leonardo Academy announces the members of the Standards Committee, with floral and organic interests significantly outweighing other sectors of the agricultural community, including producers/processors in commodity groups who trade billions of dollars annually, and feed the vast majority of the world's animals and people. The list of members of the Standards Committee includes an outnumbered minority of mainstream agriculture interests, including the American Soybean Association, the National Corn Growers Association (NCGA), and the Corn Refiners Association. These commodity groups have openly endorsed the farm bill's definition of "sustainable agriculture." These entities may assist excluded groups in overcoming the stated bias toward the "precautionary approach."

Despite receiving applications from highly qualified representatives, there are no representatives from major industry sectors that are potentially materially affected by the draft Standard, including: (i) biofuels, (ii) fertilizer, (iii) pesticides, and (iv) livestock on the Standards Committee. These interests had 30 days to initiate appeal of their rejection under the Leonardo Academy's complaint procedures.

Aug. 7, 2008

A floral industry newsletter touted the strong representation—eight votes of fifty-eight—of floral industry interests on the Standards Committee. Several of the SCS-001 Draft Standards Committee members representing the floral industry are producers of flowers that are certified under the SCS Veriflora standard.

Aug. 14, 2008

A number of sustainable agriculture groups called the "National Campaign on Sustainable Agriculture" (NCSA) send the Leonardo Academy a letter stating their concerns with the draft Standard's "genesis, organizational development and potential for serious harm to the very interests it purportedly aims to protect" and suggest that they "are unconvinced of the need for or merit of a new and broad sustainable agriculture standard beyond already existing ecolabels addressing sustainability in the farm and food sector."

Aug. 15, 2008

The Leonardo Academy sets Sept. 25-26 in its hometown of Madison, Wisconsin, for the first meeting of the Standards Committee.

Aug. 20, 2008

The Leonardo Academy promptly replies to the NCSA letter, urging them to apply to participate in the standards development process through participation in subcommittees or as observers. Leonardo states "[t]o support broad participation in the standard development process, observers will be able to sit in on the Standards Committee meetings, and Leonardo Academy will make participation by conference call

available to both Standards Committee members and observers. We are also currently seeking funding to provide additional support to standard development participants.”

The Sept. 8, 2008 *Food & Chemical News* quotes the chair of a task force, which is forming, to address this Standard (Russell Williams, regulatory relations director for the American Farm Bureau Federation), that this “informal conventional agriculture task force” remains concerned about the makeup of the Standards Committee. Mr. Williams, along with Kenneth McCauley, representing the NCGA, and Ronald Moore, representing the American Soybean Association, were chosen to serve on the committee. “We hope the apparent bias [against conventional agriculture] is only superficial,” Williams says, however “We’ll reserve judgment until we get there.”

Sept. 11, 2008

USDA files appeal directly to the American National Standards Institute’s Executive Standards Council asking it to “withdraw the accreditation as a Developer of American National Standards of the Leonardo Academy” and that SCS-001 Draft Standard be “withdrawn from further consideration as a DSTU or as the basis for an American National Standard.” Among other grounds, USDA states that: “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.”

On Sept. 25-26, 2008, the first meeting of the Standards Committee for the SCS-001 Draft Standard for Trial Use on Sustainable Agriculture was held in

Madison, Wisconsin. The interim chair, James Barrett of University of Florida, Environmental Horticulture Dept. (also a partner in Visions Group, LLC, <http://www.superfreshmarketing.com/visionsgroup/who-we-are.html>), in response to a letter from several environmentalist members of the Standards Committee, changed the agenda to allow for breakout sessions on Sept. 25 to discuss the vision and scope of this standard.

This culminated in near-consensus vote that the meeting should start from general principles, and set aside the SCS-001 standard to use as a “reference” document along with other relevant standards and initiatives. Work to begin in drafting a standard will commence only after the vision and scope are defined and further outreach takes place, no sooner than 4 to 6 months from the close of the meeting. Toward that end, six Task Forces will begin working on the following issues.

1. Mission and Principles—review and define mission vision and principles.
2. Needs assessment—current data about the value, market demand, and potential uses for a sustainable agriculture standard.
3. Reference documents task force—gather, catalog, and compare all relevant standards
4. Methodologies—indicators for environmental social and financial sustainability.
5. Funding—identify and seek funds for full stakeholder participation in the process.
6. Outreach—list all missing stakeholders and propose ways to engage them.

All Standards Committee members are asked to join one of the six Task Forces.

The permanent chair election will be conducted via the “Google Group” that has been formed, and efforts will be made to allow observers to participate.