

E. Avoid being forced to choose an inappropriate standard of measurement.

The cross-examining attorney may seek to have the witness choose a standard of measurement, which if adopted and applied to data submitted in direct testimony would either negate that testimony or lessen its impact. If offered a standard of measurement which is inappropriate in reaching conclusions noted in your testimony:

- State your position on the validity of using such a standard.
- Refuse to use the standard by stating that the imposed measurement will not yield a valid conclusion if applied to the submitted data.

EXAMPLE:

Facts: Witness was being cross-examined on whether an adverse economic impact resulted from suspended use of the reviewed pesticide. Data on yield and gross revenue per acre were supplied in witness's written direct testimony. No data on cost per acre were submitted. This witness would not make a definitive conclusion as to whether an adverse economic impact to users of the reviewed pesticide would and did result from its suspension.

The submitted data 'could' be used to demonstrate that no adverse economic impact in fact resulted from suspension if certain standards used to measure economic impact were adopted.

Cross-Examination:

- Q** - And which is, in your mind, a more valid measure of the impact? Yield per acre or revenue per acre.
- A** - Profit per acre is the most appropriate measure, but we don't have the means to present that.
- Q** - Well, between yield per acre and revenue per acre for purposes of an economic assessment of impact, which is the better measure?
- A** - I am not sure that there is a better measure. I would prefer to look at profit per acre.
- Q** - Well, if you want to advise the ALJ on the question of what the economic impact is, what is the more appropriate index—yield per acre or revenue per acre?
- A** - There is no one single appropriate measure to use. Without knowing what has happened to grower's costs, you can't say what the economic impact is.