

California Department of Food and Agriculture
Division of Measurement Standards (DMS)
June 2023 Survey: Device Predominance

DMS surveyed California county weights and measures officials to learn how they interpreted the term “predominance” and enforced the provisions of CCR Title 4, Div. 9, Ch. 1, General Code G-UR.4.1. Maintenance of Equipment:

G-UR.4.1. Maintenance of Equipment. – All equipment in service and all mechanisms and devices attached thereto or used in connection therewith shall be continuously maintained in proper operating condition throughout the period of such service. Equipment in service at a single place of business shall not be considered “maintained in a proper operating condition” if:

(a) predominantly, equipment of all types or applications are found to be in error in a direction favorable to the device user; or

(b) predominantly, equipment of the same type or application is found to be in error in a direction favorable to the device user.

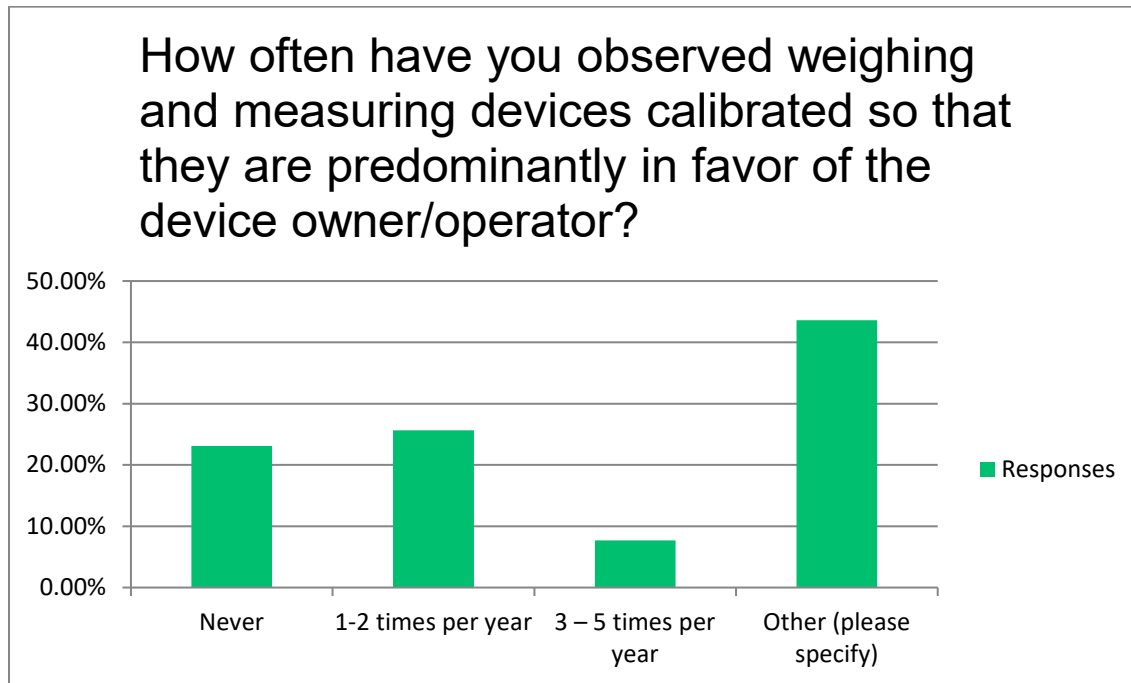
This document contains county responses to the survey, DMS conclusions, and the RSA Advisory Committee recommendations.

Question 1: County participation.

DMS received a 71% response rate. 39 of 55* county jurisdictions responded to the survey.

*There are 58 counties in California. However, six (6) county offices of weights and measures are combined with a neighboring county to perform weights and measures activities (Alpine/El Dorado; Inyo/Mono; and Plumas/Sierra).

Question 2:

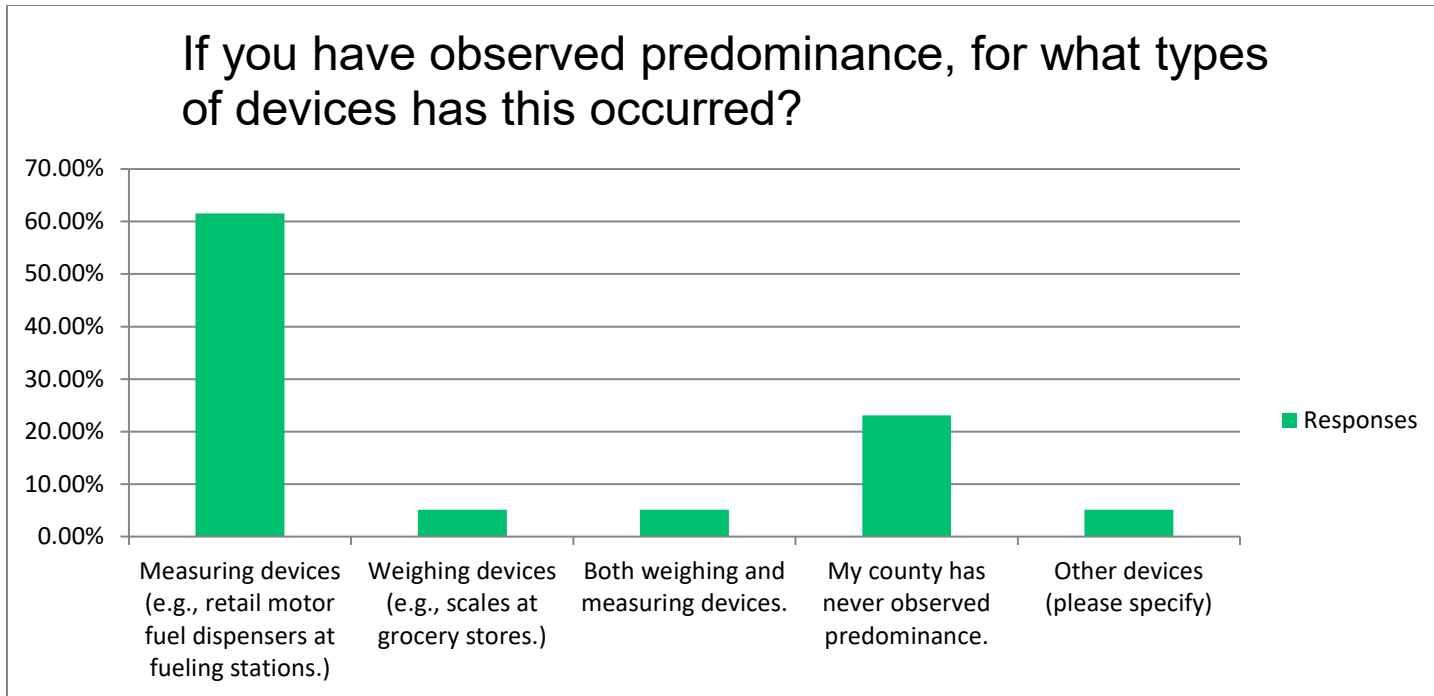


Other responses included:

- Once in the last 3 years
- Once in the last five years
- Have not noticed this in over 5 years
- 3-4 times over 20 years
- Less than once per year
- Three times in the last twenty-five years
- 2 times in past 21 years
- This question is not clear. The answer would change if the question is for each device or group of devices at a single location.
- Once every few (3-5) years
- Very rarely, maybe 1-2 times every couple of years
- only once in the past 5 years
- A few times at very small stations

- Maybe once a year at locations that only have 2-3 scales
- We don't track, but I would say more than 5 instances a year

Question 3:

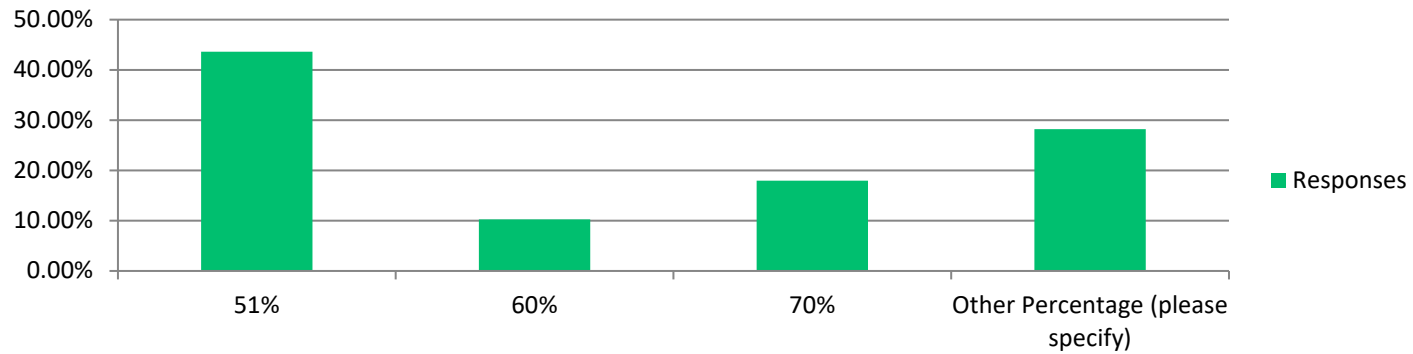


Other responses included:

- More predominantly with RMFD's at fuel stations.

Question 4:

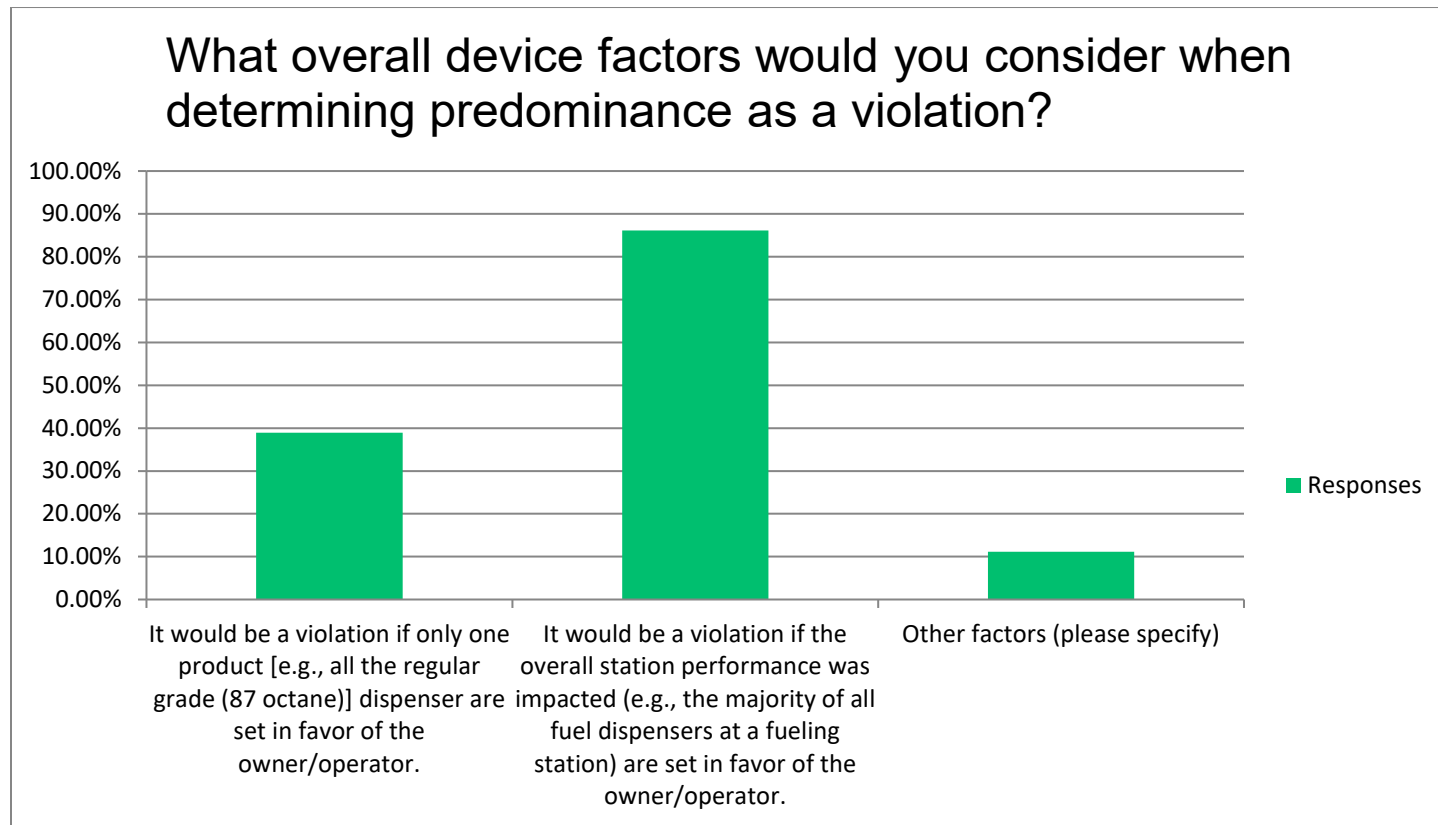
If you discovered that any equipment errors at a particular location were all in favor of the device user, what percentage of devices would it take for you to consider a failure to comply with G-UR.4.1. Maintenance of Equipment?



Other responses included:

- 75% or more
- >80% or more
- No set percent; it depends on the specifics. But generally only cited on very high percentage (~90%).
- I don't have a percentage that is specified in any handbooks as a threshold. I believe it would case by case.
- It depends on the total number of devices, greater percentage for fewer devices
- 90 – 100%

Question 5:

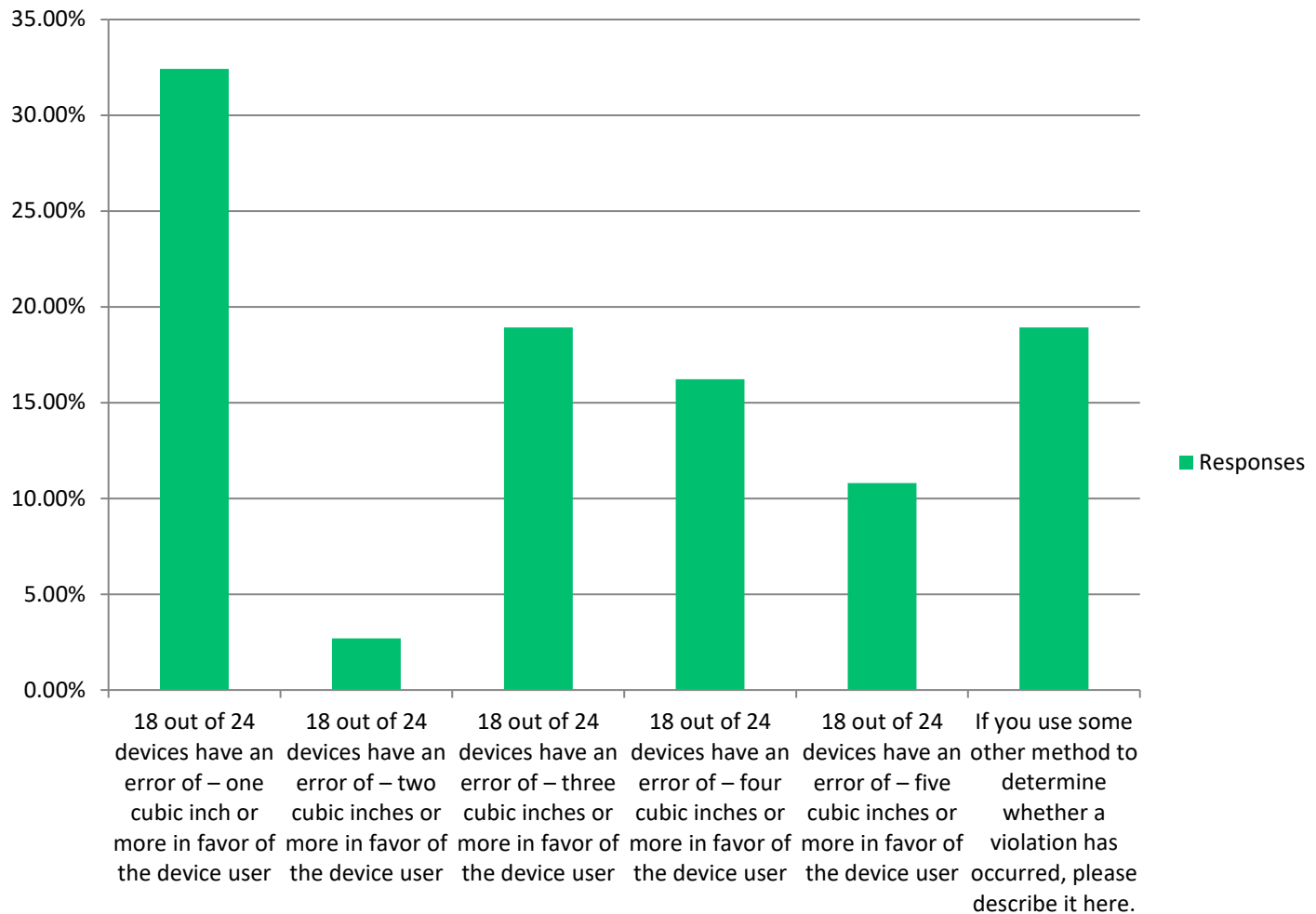


Other factors included:

- Any combination providing predominance and an advantage to the device owner.
- Greater than or equal to 80% of Gasoline Meters and or Greater than or equal to 80% of Diesel Meters.
- One time the RSA called and I said that the pumps were all way over. The test can the guy was using was broken cable was broken. I assume it could happen when the test can is off? Also, the history of the station would be looked at. For instance were the pumps all set in favor the year before?

Question 6:

Many times when predominance is observed, devices will have errors that are within legal tolerances. For example, when an inspector tests a fueling station that has 24 dispensers, 18 have been adjusted to deliver minus three cubic inches (-3 in^3) at five gallons. Using this example where 18 out of 24 devices have errors in favor of the device user, what amount of error would cause you to say there is a violation of G-UR.4.1. Maintenance of Equipment?



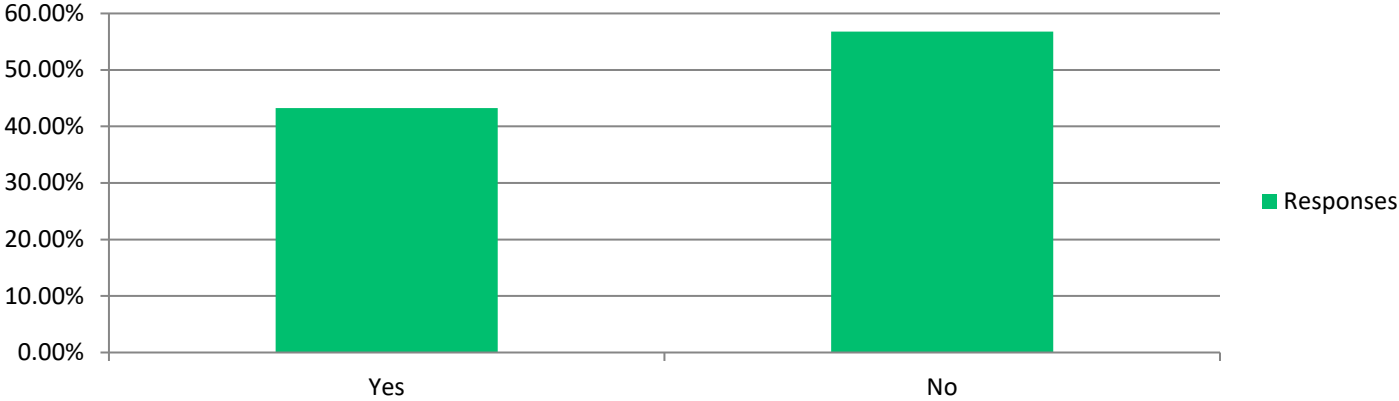
Other methods included:

- We would not take action on the example.
- Based on previous question, over 50% would have to be minus (in owner favor)
- Of the over 50% it could/would be any range of minus error"

- A predominance (violation) exists at any level of error when it occurs in more than 50% of a set or subset of devices.
- However, the severity of the violation will determine if we take an enforcement response."
- We haven't been writing up violations for this.
- We feel there is not enough specific information to make a definitive call in this hypothetical. We are wondering if by 24 dispensers, it was meant 24 meters. A station with 24 dispenser with 3 grades of gasoline and, many if not all with diesel, that would be a minimum of 72 meters and up to 96 meters. Most gas stations are not that large. If we assume 24 meters, we would want to know what the error was on the remaining 6 meters. Were they -2, -1, 0, or +. If the numbers are all very close and consistent, that might trigger predominance. If 18 meters showed -3 and the other 6 are -2 then we would likely call it out and require it to be fixed. If 18 meters showed a mix of -3 or more, but the remaining 6 meters were a mix of + we may not take issue with it. It also depends on whether all the minus errors are of the same grade. If only the regular grade is minus, that might trigger an issue. But, if the regular grade is minus, the mid-grade is close to even, and the premium is plus, that might be the best the service agent could do if the station was a blender station. Sometimes the regular and premium grades are on opposite ends to balance out and have the mid-grade pass. There is not cut and dry answer for this violation.

Question 7:

Have you taken enforcement action against a business for weighing and measuring devices that are calibrated to be predominantly in favor of the device user?



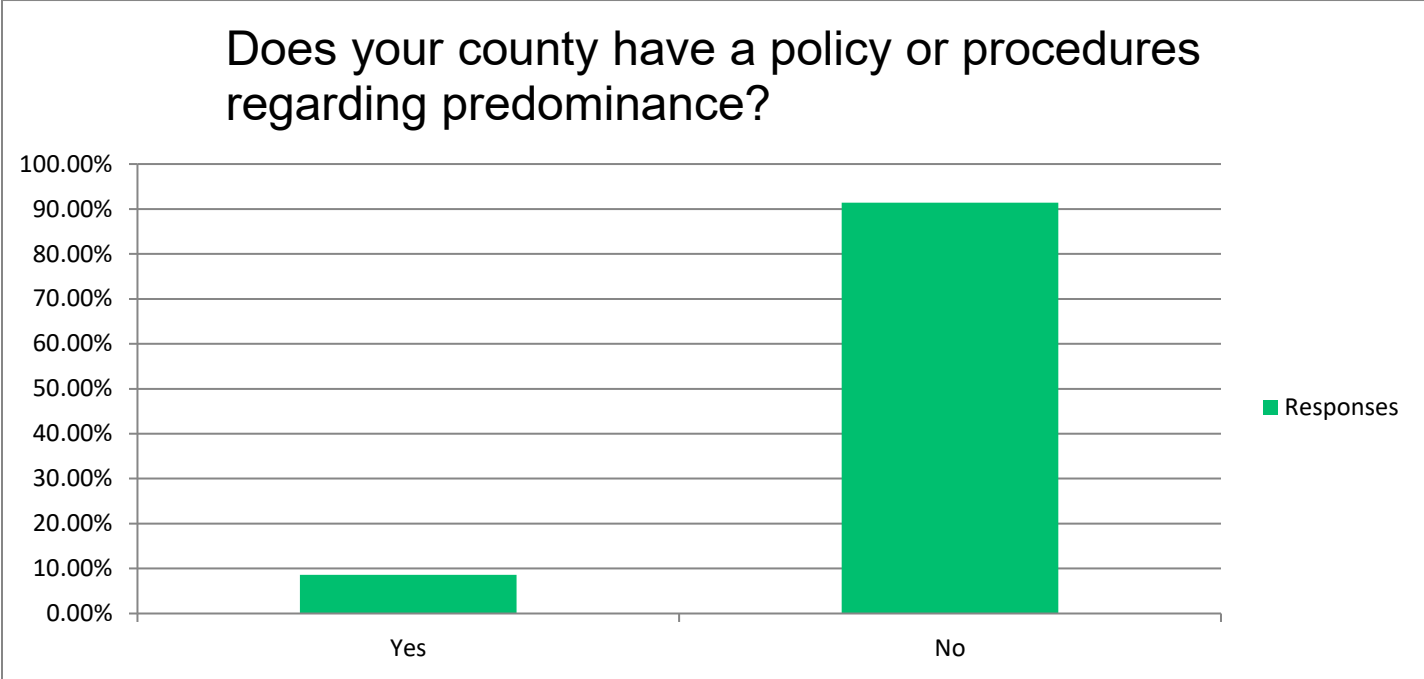
Question 8:



Other responses included:

- In each case we issued a Notice of Violation to the device owner. B&P Code 12107 to tie in with CCR 4000 1.10 G-UR.4.1. (b). We would not apply red tags because the devices were still within the allowable error limits and technically correct by definition. User requirements are not included in the definition of correct. Only tolerances & specifications are.
- We shut down the station when more than 50% of meters were predominantly in favor of the user (at 5+cubic inches) and at least one meter was red tagged.
- After discussing the issue with the gas station owner, he called service agent who worked on the calibration that day.

Question 9:



Question 10: Please add any additional comments here.

Responses:

- In most cases meters register in favor of the customer. We have no policy but inspectors know that if a majority of the devices at a place of business are set in favor of the owner that it is grounds to issue a violation and to alert the Supervisor and Deputy of the situation.
- A subject that was discussed in our group is how this code section fits with tolerances which seems to be the largest confusion. We would not mark devices out of order but take enforcement actions based on violating the code section.
- A zero-grey area code would be appreciated, with separate tighter tolerances for service agents would be appreciated.
- We find this to be exceedingly rare in our county. But it is also something that is very situational and should be treated with caution. Something else to consider is who the RSA is. There have been cases where the company has an internal licensed agent. That might cause a W&M department to look at things with a bit more scrutiny since they can profit more directly from a predominance issue.
- We do not have a written policy, but it is handled case by case considering also the inspection history of the location. It would be a step towards uniformity if DMS issued a statewide guidance until a formal revision to the CCR can be done through the legislative process. Thanks!
- When conducting inspections on a service station, when majority of the pumps (75%) are in the owner's favor, and the all of the out of tolerance devices redtagged are in the owner's favor. That is a red flag for us.
- The procedure for handling predominance at retail motor fuel stations is not a written policy. Verbal instructions from a supervisor are given to officers that encounter that situation in the field.
- This issue hasn't come up in our county for the past 6 years since I've been here unless there are about 4 or fewer devices total. In these instances, we haven't had concerns that these devices were calibrated in favor of the user, they are usually in places where the devices get a lot of wear and tear (scales at the docks and similar).
- In many instances the owner seems to be unaware of the predominance issue. Non-RSAs, RSAs using incorrect techniques, or incorrect standards have been a source of the errors.

DMS Conclusion:

The feedback DMS received during this survey indicates that counties are interpreting G-UR.4.1. in multiple ways and enforcement actions are inconsistent.

This appears to be a case where DMS should issue guidance to county jurisdictions to help achieve statewide uniformity. DMS' authority to do this lies in Business and Professions Code, Division 5, Chapter 2.

Section [12103.5](#): The duty of enforcing this division and carrying out its provisions and requirements is vested in the secretary and in each sealer acting under the supervision and direction of the secretary.

Section [12104](#) (a): The department shall issue instructions and make recommendations to the county sealers, and the instructions and recommendations shall govern the procedure to be followed by these officers in the discharge of their duties.

RSA Advisory Committee recommendation:

See 5/11/2023 meeting minutes (New Business, Item #2) for discussion.

See 6/14/2023 agenda (New Business, Item #2) and 6/14/2023 meeting minutes.

Committee members voted unanimously to address predominance (definition and specify it as a nonretroactive requirement) in California Code of Regulations 4002.2. General Code (1.10) via rulemaking.