

# MAINE STATE LEGISLATURE

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May 26, 2021

The Honorable Troy D. Jackson, President  
MAINE STATE SENATE  
3 State House Station  
Augusta, Maine 04333

The Honorable Ryan M. Fecteau, Speaker  
MAINE HOUSE OF REPRESENTATIVES  
2 State House Station  
Augusta, Maine 04333

The Honorable Mark Lawrence, Senate Chair  
The Honorable Seth Berry, House Chair  
COMMITTEE ON ENERGY, UTILITIES AND TECHNOLOGY  
100 State House Station  
Augusta, Maine 04333

Re: *2019/2020 Attorney General Report to the Legislature  
Under the Petroleum Market Share Act*

Greetings, President Jackson, Speaker Fecteau, Senator Lawrence, and Representative Berry:

I am pleased to submit this report in accordance with the Petroleum Market Share Act ("PMSA"), 10 M.R.S. § 1677. The PMSA requires the Attorney General to make a report to the Legislature describing the concentration of retail outlets in the State, including a recommendation as to whether additional legislation is needed to further limit or curtail the activity of refiners operating retail outlets.

Enclosed is a report describing concentration of retail outlets in the State. The report, which is based on data collected from wholesalers of both motor fuel oil and home heating oil, includes maps depicting relative concentration in designated markets throughout the State. This report is also available on the Attorney General's website at: <https://www.maine.gov/ag/docs/Bi-annual%20PMSA%20Report%202019-20.pdf>

Since no refiners of petroleum products operate retail outlets in this State, we recommend no legislation to limit or curtail such operations.

I appreciate this opportunity to provide this information and hope it is useful.

Sincerely,

A handwritten signature in black ink that reads "Aaron M. Frey". The signature is written in a cursive style with a large initial 'A'.

Aaron M. Frey  
Attorney General

Enclosure

cc: Suzanne Gresser, Executive Director, Maine State Legislature  
John R. Melendez-Barden, Director, Maine State Law and Legis. Reference Library  
Charles E. Summers, Jr., President, Maine Energy Marketers Association

# **STATE OF MAINE OFFICE OF THE ATTORNEY GENERAL**

**Aaron M. Frey, Attorney General**



## **PETROLEUM MARKET SHARE ACT**

### **REPORT OF THE ATTORNEY GENERAL TO THE MAINE LEGISLATURE PURSUANT TO 10 M.R.S. § 1677**

**FOR THE REPORTING PERIOD  
2019 – 2020**

**May 2021**

**Retail Petroleum Outlets Concentration**  
**10 M.R.S. § 1677**  
**May 2021**

**I. INTRODUCTION**

This report is provided by the Attorney General to the Legislature pursuant to Maine’s Petroleum Market Share Act (“PMSA”), 10 M.R.S. § 1677. As required by the statute, the report describes the concentration of retail petroleum outlets. The concentration levels described in this report reflect conditions in Maine as of the end of May 2020. The statute also requires the Attorney General to make “a recommendation to the Legislature as to whether additional legislation is needed to further limit or curtail the activity of refiners operating retail outlets.” The Attorney General does not recommend any legislative changes at this point.

The report focusses on markets for home heating oil and motor fuel oil. In general, the geography of petroleum markets is local. In the case of home heating oil, the market may encompass an urban area or a segment of a county. Motor fuel markets tend to be smaller, in some instances limited to a single neighborhood or one side of a busy street. For continuity purposes, our analyses retain the longstanding geographic markets developed by the Attorney General in the 1990s, when the PMSA reporting first began. The state is divided into 33 home heating oil (“HHO”) markets and Maine’s 16 counties are used as the motor fuel oil (“MFO”) markets.

The Maine Attorney General receives data annually from home heating oil and motor fuel oil wholesalers stating the annual gallons supplied to each

home heating oil and motor fuel retailer located in Maine. That data enables us to determine the number of retail competitors and their percentage market shares within the pre-defined geographic markets.<sup>1</sup> 10 M.R.S. § 1673. Those figures, in turn, allow us to calculate where each of the HHO and MFO markets falls on a concentration index widely used by federal and state antitrust agencies to assess competitive conditions (usually in the context of proposed mergers and acquisitions). The Appendices to the Report show the concentration levels, and corresponding maps depicting those levels, for each pre-defined market. The tables in the Appendices also show concentration numbers for the same markets for the past ten years for comparison purposes.

## **II. LEVELS OF CONCENTRATION**

### **A. Methodology**

The methodology employed by the Maine Attorney General to assess levels of concentration in Maine's retail petroleum markets, as reflected in this report, is essentially the same methodology used by the U.S. Department of Justice, the Federal Trade Commission, and other state Attorneys General in evaluating the legality of a given merger or acquisition under applicable antitrust law. The Maine Attorney General has employed a similar analysis enforcing Maine's merger law for more than thirty years. 10 M.R.S. § 1102-A.

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<sup>1</sup> It should be noted that the Attorney General collects neither retail nor wholesale price information under the PMSA. Moreover, the data collected from individual wholesalers, which is confidential by statute, is aggregated and not identifiable by wholesaler or retailer in this report. 10 M.R.S. § 1675.

The most important factor affecting competition in a particular market is the level of concentration (how many sellers and the size of their market shares). The sales volume data the Maine Attorney General receives annually from home heating oil and motor fuel oil wholesalers allows us to calculate market shares of retailers within a defined geographic area.

**1. Market Definition.** The first step in a concentration analysis is to determine the relevant product and geographic markets. This report focusses on two product markets, home heating oil and motor fuel oil. Home heating oil is defined as “#2 fuel oil sold for heating residential, industrial or commercial space or water.” 10 M.R.S. § 1672(3). Motor fuel “means internal combustion fuel sold for use in motor vehicles,” as more fully defined in 29 M.R.S. § 101(42). 10 M.R.S. § 1672(4).

Determining geographic markets for this report is less straightforward. For the purposes of this report, we are not looking to identify the geographic area within which two merging companies operate, as we would if we were reviewing a proposed merger. Rather, we are attempting to obtain a very broad snapshot of competition in the petroleum industry and trends within each geographic market and across the entire state.

The Maine Attorney General has taken different approaches to defining geographic markets for home heating oil and for motor fuel oil. At the time the Attorney General initially began preparing these reports, we conducted a series of interviews with a number of persons knowledgeable in the petroleum industry in Maine. On that basis, we divided the state into 33 separate

geographic markets intended to approximate economic and competitive circumstances relative to home heating oil sales. Motor fuel markets are generally more localized. However, since our task is not to analyze a specific local merger, but rather to portray broad trends in levels of concentration across the state, we use county-wide markets. Markets are not static; nonetheless, we have retained the original geographic markets to be able to compare concentration trends over time within consistent geographic areas.

Importantly, these geographic market depictions are not used to analyze individual mergers or acquisitions in Maine. Each individual merger or acquisition proposal will require an evaluation of the unique competitive and economic circumstances in the areas within which both companies operate.

**2. Herfindahl-Hirschman Index.** Market concentration is a well-accepted tool for evaluating competitiveness within identified markets. As a general rule, the fewer the competitors, and the higher those competitors' market shares, the more concentrated (and less competitive) the market. Federal and state antitrust agencies (including the Maine Attorney General) employ the Herfindahl-Hirschman Index ("HHI") to measure market concentration.<sup>2</sup> The HHI concentration index is arrived at by squaring the market shares of all the competitors in a given market. This simple mathematical device expresses the insight that market power increases exponentially in proportion to market share. Federal antitrust guidelines used by the Maine Attorney General in merger enforcement indicate that a market

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<sup>2</sup> DOJ/FTC Horizontal Merger Guidelines (rev. ed. 2010)(available at <https://www.justice.gov/atr/horizontal-merger-guidelines-08192010>).



with an index of less than 1500 should be viewed as unconcentrated (and therefore likely to function competitively).<sup>3</sup> A market with an index between 1500 and 2500 is described as moderately concentrated; while any index over 2500 is termed highly concentrated.<sup>4</sup> A market in the highly concentrated category is subject to a high degree of market power, unless the effects of high concentration are mitigated by other factors, such as ease of entry for a new competitor.

Our analysis of levels of concentration in home heating oil markets largely tracks the categories reflected in federal guidelines.<sup>5</sup> Thus, a home heating oil market with an index below 1500 is “unconcentrated,” 1500-2500 is “moderately concentrated,” and 2500-5000 is “highly concentrated.” In addition to the federal benchmarks, this Office deems markets above 5000 points to be “extremely concentrated.”<sup>6</sup>

For our designated motor fuel markets, we have adjusted the concentration index to reflect the fact that the large, county-level geographic markets inevitably understate levels of concentration. Thus, for motor fuel, an index below 500 is “unconcentrated,” 500-1000 is “moderately concentrated,” and 1000-1800 is “highly concentrated.” Markets above 1800 points are referred to as “extremely concentrated.”

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<sup>3</sup> For example, ten firms with market shares of 10% each would yield an index of 1000 (10 squared x 10).

<sup>4</sup> For example, a market comprising five firms with market shares of 20% each would yield an index of 2000 (20 squared x 5).

<sup>5</sup> The Attorney General has updated the concentration index since the last report to once again align with the federal guidelines, which were updated in 2010.

<sup>6</sup> The federal guidelines consider any market registering above 2500 to be highly concentrated.

Appendix A lists the geographic markets within which we measure concentration at the retail sales level for both home heating oil and motor fuel oil. The HHO markets map depicts the relative concentrations in the 33 designated home heating oil geographic markets, based on the latest analysis of data from wholesalers. The MFO markets map depicts the relative concentrations based on the latest analysis of county-wide retail motor fuel markets. Again, these geographic market depictions are not used to analyze individual mergers or acquisitions in Maine. The tables in Appendix B contain the latest HHI concentration analyses within both home heating oil and motor fuel markets, as well as concentration comparisons in those markets over the last ten reporting years.

#### **B. Overview - Retail Home Heating Oil Markets.**

Overall, concentration levels in Maine's home heating oil markets have remained relatively consistent. We note that some variations from last year's report are due to refinement/corrections made to the database compilation process.

Areas centered around Augusta, Belfast, and Biddeford/Saco are the most competitive. Moderately concentrated markets include: those that roughly follow I-95 from Millinocket/Medway through Lincoln to Lagrange; areas from Bangor/Old Town then southeast (roughly following Routes 9 and 1A) through Ellsworth to the coast; in the areas along I-95 and I-295; and some markets bordering New Hampshire. Similar to last year's report, Northern and Downeast Maine, as well as the northwestern and southern tip of the state

remain among the most concentrated, or least competitive. (Note that we don't collect data pertaining to retailers based in New Hampshire who deliver in Maine.)

### **C. Overview - Retail Motor Fuel Oil Markets.**

The concentration levels for the county-wide motor fuel markets have not shifted significantly since the last report. The same three counties are extremely concentrated (Knox, Oxford, and Piscataquis). Franklin, Hancock, Sagadahoc and York again appear to be among the most competitive counties, with Kennebec joining and Penobscot dropping from the list. In most cases, changes from last year reflect shifts in marketshare between competitors, rather than existing competitors leaving or new competitors entering individual markets.

## **III. RECOMMENDATION**

The Attorney General is required to recommend whether additional legislation is needed to further limit or curtail the activity of refiners operating retail outlets. We do not recommend any changes on that basis, since there are no refiner retail operations in Maine in either home heating oil or motor fuel oil. Further, we recommend no changes to the law because it works relatively well for the Office as a starting point in merger enforcement. The availability of sales data from wholesalers enables the Attorney General to evaluate competitive conditions surrounding proposed mergers and acquisitions in the petroleum industry much more quickly than we would be able to if the data were not required under the PMSA. This makes merger enforcement in this

area more nimble for the Attorney General, and less burdensome for companies wishing to engage in merger or acquisition transactions in the Maine petroleum industry.

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## **APPENDIX A**

### **HHO MARKETS**

1. St. John Valley
2. Ashland/Presque Isle
3. Houlton
4. Lincoln
5. Woodland/Calais
6. Cherryfield/Machias
7. Old Town
8. Ellsworth
9. Bangor
10. Dover-Foxcroft
11. Pittsfield/Newport
12. Belfast
13. Rockland
14. Mid Coast
15. Augusta
16. Waterville
17. Skowhegan
18. Jackman/Greenville
19. Farmington
20. Jay
21. Lewiston/Auburn
22. Bath/Brunswick
23. Portland
24. Gray
25. Paris
26. Rumford/Rangeley
27. Bethel
28. Bridgton
29. Limerick
30. Sanford
31. Biddeford/Saco
32. York
33. Mt. Desert

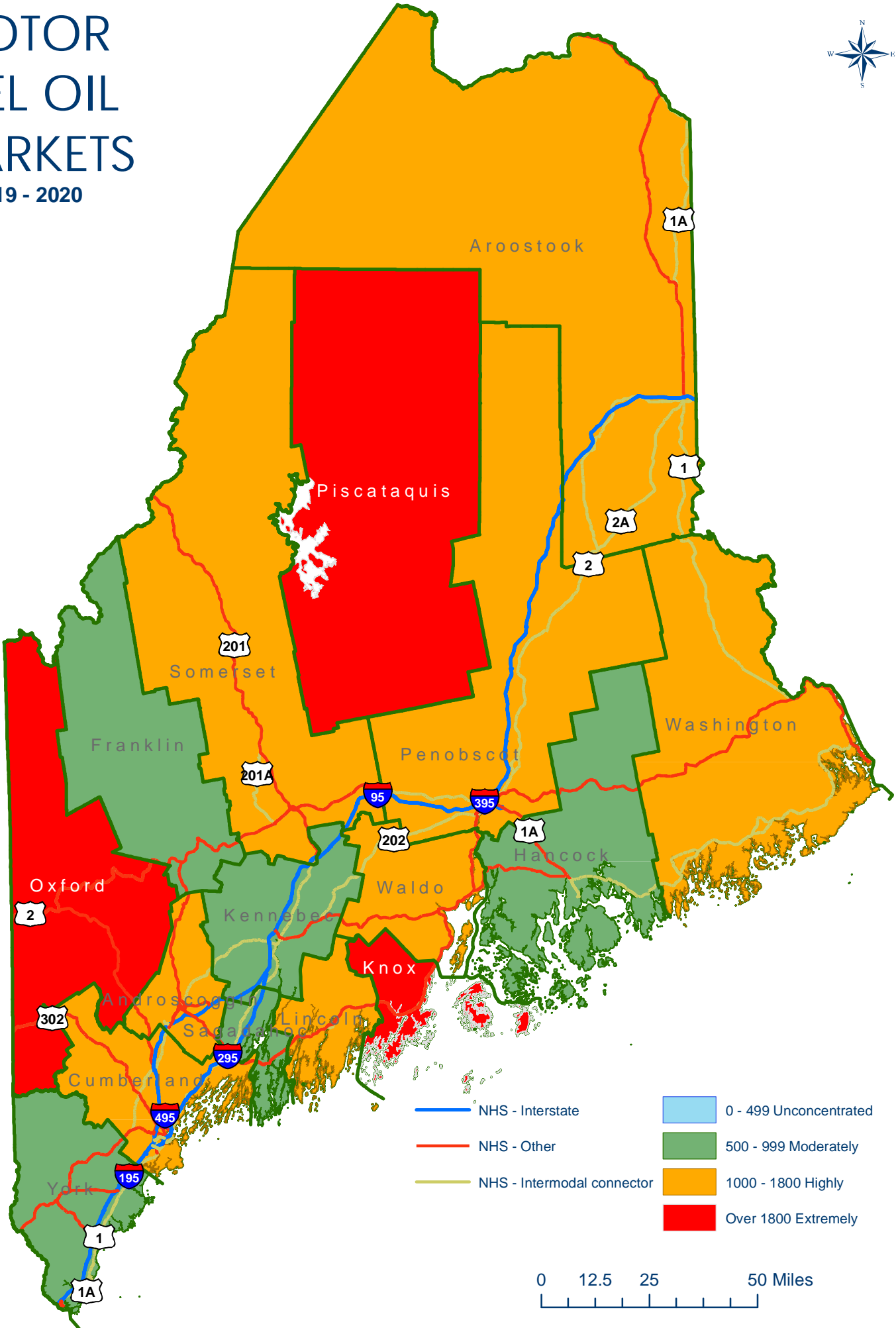
### **MFO MARKETS**

Androscoggin  
Aroostook  
Cumberland  
Franklin  
Hancock  
Kennebec  
Knox  
Lincoln  
Oxford  
Penobscot  
Piscataquis  
Sagadahoc  
Somerset  
Waldo  
Washington  
York



# MOTOR FUEL OIL MARKETS

2019 - 2020



## **APPENDIX B**

### **HHI DATA TABLES**

#### **HHO & MFO Concentration by Market Area 2010 to 2020**





