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December 11, 2006

Dr. Ron Cotterill  
Food Marketing Policy Center  
University of Connecticut  
Storrs, Ct. 06269-4021

Re: Proposed state legislation for a Ct. milk tax and state-funded payments to dairy farmers.

Dear Ron,

You have asked for my legal opinion and comments on two pieces of draft state law legislation under case law dealing with the negative or “dormant” Commerce Clause: (1) “An Act Establishing Milk Handler TaxTax,” and (2) “An Act Concerning the Establishment of a Connecticut Milk Commission.”

The “Commerce Clause” of the Constitution affirmatively authorizes the federal Congress to regulate interstate commerce. For nearly 200 years, the Supreme Court has construed that authority to proscribe state laws that erect tariffs, discrimination or protectionism in interstate commerce. This aspect of the Commerce Clause, sometimes called “dormant” or “negative” derives, among other things, from the history of the Constitution and the practice of states to erect protectionist barriers to interstate trade under the Articles of Confederation. *Camps Newfound/Owatonna, Inc., v. Town of Harrison*, 520 U.S. 564 (1997).

Attempts by states to protect local milk producers from the rigors of interstate commerce played a significant role in the development of the Supreme Court’s Commerce Clause jurisprudence during the 20<sup>th</sup> Century. *West Lynn Creamery Corp. v. Healy*, 512 U.S. 186 (1994), is the most significant recent addition to the string of milk cases. *Baldwin v. GAF Seelig, Inc.*, 294 U.S. 511 (1935), laid the foundation. These, and other cases dealing with diverse commodities from apples to waste, establish the following simple principals:

1. State laws may not discriminate against interstate commerce.
  - a. Discrimination simply means differential treatment that benefits in-state interests and burdens out-of-state interests.
  - b. Discrimination may be demonstrated three ways: (1) on the face of state laws, (2) by effect or application of facially neutral laws, or (3) by proof of discriminatory intent.
  - c. Where discrimination is apparent by any of these measures, the state law is almost certainly unlawful under the dormant Commerce Clause, with some exceptions not relevant to your inquiry.

*West Lynn* is an example of discrimination against interstate commerce in its combination of interstate milk price levies and in-state subsidies to local producers.

2. State laws may not regulate activities outside of the state. Extraterritorial regulation was the primary focus of *Baldwin*, in which New York attempted to regulate minimum prices for milk purchased in Vermont in order to protect in-state milk prices. The 1<sup>st</sup> Circuit, in *Grant’s Dairy v. Commissioner*, 232 F.3d 8 (2000), however, observed that “direct

regulation” of interstate commerce might not invalidate a state law if it does not also burden interstate commerce.

3. Finally, state laws which are non-discriminatory and do not burden interstate commerce by extraterritorial reach might nevertheless violate the Commerce Clause if, after a fact-intensive review (i.e., trial), it appears that the law indirectly burdens interstate commerce and those burdens, on balance, outweigh the local benefits of state law. *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970), applied in *Grant’s Dairy*. Under this “balancing test,” many laws are challenged; few challenges succeed.

Your objective in the two draft laws at issue is to avoid discrimination in interstate commerce or extraterritorial reach of state regulatory burdens so that the new laws are likely to survive a Commerce Clause challenge. There is, of course, no guarantee that the state will not be sued; but if the suit boils down to a balancing test, the program is very likely to survive challenge. The devil, as they say, is in the details.

The two draft bills presented to me are patterned loosely after the milk tax and producer subsidy program that currently operates in Maine. A bit of historical caveat is due before you rely on the Maine program. At the time of the *West Lynn* litigation, Maine had a packaged milk tax and producer subsidy from proceeds of the milk tax. Relying on *West Lynn’s* disposition of a co-joined tax-and-rebate scheme that the 1<sup>st</sup> Circuit felt was similar, the Maine Program was held to be unconstitutional in *Cumberland Farms v. LaFaver*, 33 F.3d 1 (1994). The Maine legislature moved promptly to decouple the tax from the subsidy, and to make the tax payable to the state’s general fund. Monies were then appropriated from the general fund for payment of direct subsidies to Maine producers. This was upheld in *Cumberland Farms v. Mahany*, 943 F. Supp. 83 (D. Me. 1996), but the district court decision was vacated on appeal, and the case dismissed, because federal courts do not have jurisdiction to enjoin state tax laws. *Cumberland Farms* apparently abandoned the effort, and no other handler has taken up the gauntlet. As a result, Maine’s laws continue without any dispositive judicial opinion on their lawfulness under the Commerce Clause. My personal opinion is that they would pass muster under Commerce Clause scrutiny, and that the 1<sup>st</sup> Circuit, in any event, went out on a Commerce Clause limb in the *LaFaver* because the tax was assessed entirely on in-state transactions – the sale of packed fluid milk – not bulk raw milk in interstate commerce at issue in *West Lynn*.

Maine’s current procedure followed a roadmap (or loophole, depending upon the beholder) derived from the *West Lynn* opinions. The constitutional infirmity in *West Lynn* was the co-joined tax on milk produced in other states *and* subsidies paid only to in-state producers. The 5-judge majority opined, however, that “a pure subsidy funded out of general revenue ordinarily imposes no burden on interstate commerce, but merely assists local business,” and implicitly perceived no problem if the tax generating the subsidy was not assessed on interstate transactions. The concurring opinion by Scalia and Thomas went much further in approving state subsidies for in-state businesses, even if the subsidies provide demonstrable advantages to the home team. The 2-judge dissent went even further, and found the Massachusetts tax and subsidy scheme acceptable under the Commerce Clause. A milk tax and subsidy scheme under *West Lynn* and *Cumberland Farms* is most likely to avoid Commerce Clause infirmity where: (1) tax and subsidy laws are decoupled, particularly if the tax is borne heavily by interstate commerce and the subsidy is limited to in-state interests; (2) taxes are collected by state tax authorities and deposited into the general fund; (3) subsidies to in-state business are appropriated from the state’s general fund, and (4) the tax is imposed on a wholly in-state transaction (such as the retail sale of packaged milk).

I have some specific edits, suggestions and questions for each of the draft bills.

In the milk tax bill, I have changed “fees” to “tax.” This helps in the Commerce Clause analysis, and assures that only state courts have jurisdiction to review any Commerce Clause challenge. To avoid the appearance of tax (or burden) on interstate commerce – which is not, by itself, unlawful in any event – I have edited the collection process and tax target. The intention is to tax retail packaged milk sales. It may be too burdensome for taxpayers and for the department of revenue services to look to every mom & pop grocery for the tax. Therefore, like some state gasoline tax assessment and collection procedures, it would be more efficient to have wholesale handlers (to the extent they can be identified) collect and remit the taxes. It would be proper to allow a modest administrative cost to the wholesale handlers for providing this service, though I have not included a provision for this.

I changed the “basic price” definition to the Federal Price at Hartford rather than Boston. This is, of course, a Connecticut law. Why bring Boston into the mix? This change adds a dime to the threshold triggers for the milk tax in subsection (b). If exact correlation with the Boston price is necessary for some reason, these thresholds can be amended by reducing each number by ten cents.

The return allowance in subsection (d) is good, and consistent with gasoline tax shrinkage allowances. Does “returned” milk include dumped milk or other shrinkage of packages not sold to consumers? If not, an expansion may be in order.

I have not edited the last section (h), but question whether you need the following: “The funds may not be dedicated to a particular purpose and may be used for all purposes of State Government “ This may provide too much incentive to some legislators to divert revenues for non-agriculture purposes.

On the proposed Milk Commission Act, I also have edits, suggestions and questions, plus a criticism or two.

Section 1 definitions are not consistent in terminology with the Milk Tax Act. Why? Is there a reason, for example, why “dealer” is used in the Commission Act instead of “handler.”

In the Commission Act, like the Milk Tax Act, restaurant sales of milk, or bag sales to institutions, are not covered. Why is this?

In section 2 and 4(c), the Ag commissioner is not a voting member. Why not? I also believe you make the process of commission formation too cumbersome by requiring legislative confirmation.

In section 3 (e), I have made edits to make the commission process a bit more flexible, and to avoid the notion that prices below target necessarily constitute an emergency.

Section 6 presents potential Commerce Clause and Compact Clause problems. I believe that states may coordinate activities without needing permission by Congress for a compact. This, in fact, is a function of the IMS conference for coordination of state Grade A milk standards, and of the National Association of State Departments of Agriculture on many other issues. I have made edits to omit charged words. This does not mean that “agreements” will survive a compact clause or commerce clause challenge. It depends on content and context, which will come in the future.

In Section 8(b), it is unclear what is the source for money to be distributed to producers by the commission. Is this from price regulation or appropriated funds? If the former, reference should probably be made to following section 10.

Section 9, first part, in my view, presents the most vulnerable part of the package under the Commerce Clause. It appears to regulate or control purchase of raw or packaged milk from out-of-state sources at prices below Connecticut minimum prices. If so, this falls easily to a Commerce Clause challenge under *Baldwin*.

The second part of Section 9 is edited to conform to interstate business entity law. Did you intend for the Commission to “approve” of cooperatives beyond, or in addition to, the regulatory jurisdiction of the state corporation regulators?

I am in hearings in Pittsburgh all week, but can be reached by email or telephone message.

Sincerely,

john

# An Act Establishing A Connecticut Milk Tax

## Section 1 (NEW)

### Definitions

- (1) "Basic price" means the Federal Milk Market Order 1 class I price of milk at Hartford, Connecticut
- (2) "Tax period" means the period beginning on the Sunday closest to the first day of the month and continuing through the Saturday prior to the Sunday closest to the first day of the subsequent month.
- (3) "Handler," with respect to a particular container of packaged milk, means the wholesale handler or, if none, the producer-handler, or the retail handler.
- (4) "Milk" means the lacteal secretion of a healthily bovine animal and includes but is not limited to whole milk, skim milk, partially skimmed milk, flavored milk and buttermilk.
- (5) "Packaged milk" means milk that has been processed and placed in containers for ultimate sale to consumers.
- (6) "Person" means an individual, partnership, firm, corporation, association or other unit and this state and all political subdivisions or agencies of this state.
- (7) "Producer-handler" means a person who produces milk and packages that milk or part of that milk for retail sale or for sale to another handler in packaged form.
- (8) "Retail handler" means a person who handles packaged milk and offers packaged milk for sale to the final consumer within this state.
- (9) "Wholesale handler" means a person who handles packaged milk in this state, including producer handlers with respect to wholesale sales, and offers packaged milk for sale to retail handlers or other handlers.

## Section 2 (NEW)

### Milk tax, collection of tax.

(a) Upon notification by the Connecticut Milk Commission the department of revenue services shall levy and impose a milk tax at the rate established in subsection (b) of this section on packaged milk sold by retail handlers in this state. The tax shall be paid to the department of revenue services by the wholesale handler and charged by the wholesale handlers to retail handler customers; provided that for sales of packaged milk not made through a wholesale handler, or for which a wholesale handler cannot be identified, the tax shall be paid by the retail handler. The tax shall be computed on a gallon-equivalent basis. Milk packaged for sale in containers of less than one quart or 20 or more quarts in volume, or packaged milk that is sold to an institution that is owned and

operated by any town or municipality of this state, the state of Connecticut or the Federal Government shall be exempt from the milk handler tax.

(b) The rate of the tax levied under this section shall be established for each tax period on the basis of the basic price of milk in effect on the Sunday following the first Sunday of the tax period in accordance with the following:

- (1) If the basic price is \$18.50 per hundredweight and above, the rate of the milk handling tax is 0¢ per gallon;
- (2) If the basic price is \$18.00 to \$18.49 per hundredweight, the rate of the milk handling tax is one cent per gallon;
- (3) If the basic price is \$17.50 to \$17.99 per hundredweight, the rate of the milk handling tax is two cents per gallon;
- (4) If the basic price is \$17.00 to \$17.49 per hundredweight, the rate of the milk handling tax is four cents per gallon;
- (5) If the basic price is \$16.50 to \$16.99 per hundredweight, the rate of the milk handling tax is seven cents per gallon;
- (6) If the basic price is \$16.00 to \$16.49 per hundredweight, the rate of the milk handling tax is eight cents per gallon;
- (7) If the basic price is \$15.99 to \$15.50 per hundredweight, the rate of the milk handling tax is nine cents per gallon; and
- (8) If the basic price is below \$15.50 per hundredweight, the rate of the milk handling tax is ten cents per gallon.

(c) Handlers shall pay the tax for each tax period on all milk subject to the tax.

(d) In calculating the amount of packaged milk handled for sale in this state during each tax period, the handler shall deduct from that amount any packaged milk returned to the handler during that tax period.

(e) The tax imposed and collected under this section shall be in addition to any taxes or license taxtax imposed or collected under any other law of this state.

(f) Every handler subject to the tax imposed under subsection (a) of this section shall register with the department of revenue services within 5 business days of becoming subject to the tax on forms provided by the department of revenue services. The list of registered handlers must be available to the public. By the 25th day of each calendar month, every handler subject to the tax imposed under subsection (a) of this section shall report to the department of revenue services the quantity of packaged milk handled in this state for sale in this state during the preceding tax period, the quantity of packaged milk handled that was subject to the milk handling tax and any other information the department of revenue services determines necessary or useful in the administration of this chapter

and enforcement of the milk handling tax. The department of revenue services and the Connecticut Milk Commission may share information.

(g) Handlers shall pay to the department of revenue services the tax due for the preceding tax period not later than the 25th day of each calendar month and submit the information required by the department of revenue services on the forms provided.

(h) The department of revenue services shall immediately pay all funds received from the milk handling tax to the Treasurer of State to be deposited in the General Fund. The funds may not be dedicated to a particular purpose and may be used for all purposes of State Government.

## An Act Concerning the Establishment of a Connecticut Milk Commission

### Section 1 (NEW)

#### Definitions as used in this act.

- (1) "Books and records" means any book, ledger, record, account, memoranda or other data pertaining to the purchase and distribution of milk.
- (2) "Commission" means the Connecticut Milk Commission.
- (3) "Consumer" means any person other than a milk dealer who purchases milk for fluid consumption.
- (4) "Dealer" means any person who purchases or receives milk for sale as the consignee or agent of a producer, or handles for sale, shipment, storage or processing within this state and shall include a producer-dealer and a sub-dealer, but shall not include a store other than an integrated operation.
- (5) "Department" means the department of agriculture.
- (6) "Integrated operation" means a person who is a dealer and who also sells at retail the milk which he handles for sale, shipment, storage or processing within this state.
- (7) "Market" means any city, town or parts thereof of this state.
- (8) "Milk" means the lacteal secretion of a healthily bovine animal and includes but is not limited to whole milk, skim milk, partially skimmed milk, flavored milk and buttermilk.
- (9) "Person" means any individual, partnership, firm, corporation, association or other unit created to conduct business in this state, except state and municipal owned and operated institutions.
- (10) "Producer" means any person who produces milk and sells such milk only to dealers.
- (11) "Producer-dealer" means a dealer who processes and sells milk of their own production.
- (12) "Retail sale" means a doorstep delivery and over-the-counter sales by stores.
- (13) "Store" means a grocery store, dairy product store, canteen, milk vending machine operator, milk dispensing operator or any similar commercial establishment or outlet or any other sale where milk is sold to consumers for consumption off the premises where sold.
- (14) "Sub-dealer" means any person who does not process milk and who purchases milk from a dealer and sells such milk in the same containers in which he purchased it, but shall not include a store.
- (15) "Wholesale sale" means sale to any other person not included in retail sales.

(16) "Retail store" means a grocery store, dairy product store or any similar commercial establishment where milk is sold to consumers for consumption off the premises.

(17) "Annual production" means the total quantity of milk produced in a 12-month period beginning June 1st and ending May 31st of the next calendar year. Total quantity is expressed in hundredweight.

(18) "Base price" means Federal Milk Market Order 1 statistical uniform price for Boston, Massachusetts.

(19) "Target price" means the short-run break-even point for each of 3 categories of annual production.

## Section 2 (NEW)

Connecticut Milk Commission, organization.

(a) Members. The Connecticut Milk Commission, shall consist of the following 5 members:

(1) The commissioner or the commissioner's designated agent, ex officio; and

(2) Four members, who must be residents of this state, appointed by the Governor, subject to review by the executive and legislative nominations committee of the legislature and subject to confirmation by the legislature.

(b) The following qualifications shall apply to each commission member appointed under subsection (a)(2) of this section, and to commission employees:

(1) A member of the commission shall not, at the time of appointment or while serving as a member of the commission, have a business or professional relationship or connection with or a financial interest in any producer, dealer, store or other person whose activities are subject to the jurisdiction of the commission;

(2) An employee of the commission shall not have a business or professional relationship or connection with or a financial interest in any producer, dealer, store or other person whose activities are subject to the jurisdiction of the commission; and

(3) A member or employee of the commission shall not render, or be a member of a firm that renders, any professional or other service for or against a producer, dealer, store or other person whose activities are subject to the jurisdiction of the commission.

(c) Members of the commission appointed under subsection (a)(2) of this section, shall serve for a term of 4 years or until their successors are duly appointed and qualified, except that the initial terms of these members are for one, two, three and four years so that the terms of the members of the commission are staggered. A vacancy in the membership of the commission shall be filled by appointment by the Governor.

(d) The members of the commission shall elect a chair. The commissioner shall employ an executive director, a secretary and such clerks, assistants and other employees as the commissioner

determines necessary to assist the commission. Such employees shall be considered designated agents of the commission and may argue cases and bring actions before the commission, recommend action to be taken by the commission, present evidence and provide the commission with expert opinions and information. To the extent possible, the commission shall make use of professional, expert or other resources available within the various departments of state government, including, but not limited to, the department of agriculture, the Office of Attorney General and the University of Connecticut. Such departments shall, as resources allow, provide necessary and appropriate services at the request of the commission or the executive director. To the extent these services are not available or otherwise adequate, the commission may employ appropriate experts, professionals or others to assist it in carrying out its duties.

(f) The commission shall be furnished with a suitable office within the department and all necessary equipment and supplies. Each of the members of the commission appointed under the subsection (a)(2) of this section shall receive one hundred dollars for each day the member attends a meeting of the commission. The total payments to each member shall not exceed eight hundred dollars each year.

### Section 3 (NEW)

Commission powers, general.

(a) The commission may after hearing and making findings:

- (1) Establish minimum prices generally for milk produced and sold in this state;
- (2) establish separate minimum price categories to be to reflect different container costs;
- (3) establish separate minimum price categories for different quantities of milk packaged and sold in separate containers;
- (4) establish separate minimum price categories to reflect identifiable distribution costs;
- (5) establish a system of premiums for the various classes and types of milk produced in this state; and
- (6) establish and change the minimum wholesale and retail prices milk sold or offered for sale in this state.

(b) In administering this act the commission may:

- (1) subpoena and examine under oath persons whose activities are subject to the jurisdiction of the commission, including producers, dealers and stores and their officers, agents and representatives; and
- (2) subpoena and examine the business records, books and accounts of persons whose activities are subject to the jurisdiction of the commission, including producers, dealers and stores and their officers, agents and representatives.

(c) Any member of the commission and any agent designated by the commission may sign subpoenas and administer oaths to witnesses.

(d) The commission shall ensure that milk dealers and milk distributors give 30 days' notice before terminating delivery to any customer in their delivery area or in the delivery area of a milk dealer or milk distributor they have purchased. The 30-day notice does not apply to cancellation of milk delivery resulting from a failure to pay bills.

(e) Whenever the price received by milk producers in this state falls below the target price the commission may ascertain, determine and fix, upon such investigation and hearing as the circumstances may reasonably require, the minimum prices to be paid to milk producers, premiums to be paid to milk producers, or payments to be paid to milk producers to offset extraordinary economic circumstances in the dairy industry.

(f) Whenever the commission makes a finding and establishes minimum producer prices, premiums or payments to producers pursuant to subsection (e) of this section, the commission may establish or change the minimum prices to be charged by milk dealers to other milk dealers, milk processors, milk sub dealers and stores, the minimum prices to be charged by dealers to stores, and the minimum prices to be charged the consumer for milk, under varying conditions, as will best insure a sufficient quantity of fresh fluid milk to the inhabitants of this state.

(g) The commission shall not have any powers or duties regarding milk quality or sanitary regulation of any business.

#### Section 4 (NEW)

##### Commission meetings.

(a) The commission shall:

(1) Meet at least annually during the month of October;

(2) keep a record of all its proceedings;

(3) within thirty days of receiving a petition asking the commission to consider implementing an emergency milk pricing policy the chair call a special meeting. The petition shall represent Connecticut milk producers and be signed by at least thirty percent of the licensed milk producers; and

(4) At least once every three years the commission shall conduct or obtain an independent study of the economics and practices of the milk industry in order to assist the commission in establishing minimum prices. The studies shall include the compilation of cost data for farms at three different levels of production.

(b) The commission chair may call special meetings of the commission whenever the chair determines a special meeting is necessary or a special meeting has been requested in writing by two or more members of the commission.

(c) The commissioner or commissioners designated agent shall have no vote except to break a tie.

## Section 5 (NEW)

### Reporting, records.

Every producer, producer cooperative, milk handler, milk dealer and store shall keep and render to the commission, at such times and in such manner and form as may be prescribed by the rules of the commission, accounts of all business transacted that is related to the production, purchasing, processing, sale or distribution of milk. Such accounts must reasonably reflect, in such detail as the commission considers appropriate, income, expense, assets, liabilities and such other accounting entries as the commission considers necessary, to assist the commission in making its determinations.

## Section 6 (NEW)

### Interstate conferences and agreements.

The commission shall have power to enter into agreements with legally constituted milk commissions or similar authorities of other states or of the United States of America to effect a uniformity in regulating and insuring an adequate supply of pure and wholesome milk to the inhabitants of this State, to provide consistency and coordination in control of milk produced in this State and handled in interstate and intrastate commerce.

## Section 7 (NEW)

### Administrative enforcement

When the commission, after such investigation as it considers appropriate, believes that a violation of this act, or of any regulation, order or decision of the commission has occurred, the commission may by majority vote, order any person to cease that violation. When issuing any order, the commission shall notify any person who would be aggrieved by the order of their right to a hearing. If a person is aggrieved by an order of the commission, the aggrieved party may request a hearing, such hearing shall be held within thirty days of the date of the hearing request. After such hearing the commission shall publish its findings and issue a final order within thirty days. Any person aggrieved by a final order issued pursuant to this section may obtain judicial review of the order in the Superior Court for Judicial District of Hartford in Hartford. In responding to such a petition, the commission may seek enforcement of its order, including civil penalties for any violation found, and the court, if it upholds the order, may order its enforcement, including civil penalties.

## Section 8 (NEW)

### Dairy stabilization

(a) Determination of target prices. The Connecticut Milk Commission shall establish 3 tiers of production, each representing a range of annual production. The commission shall use the most recent studies conducted in accordance with section 4 of this act to estimate the short-run break-even point within each tier. Until the commission has met and established the target prices the following target prices shall be in effect:

- (1) For the first 18,000 hundredweight produced per year by each producer, the target price is \$16.20 per hundredweight;
- (2) For production between 18,000 hundredweight and 30,000 hundredweight per year, the target price is \$15.60 per hundredweight; and
- (3) For production in excess of 30,000 hundredweight per year, the target price is \$13.75 per hundredweight.

(b) For each month that the base price is below the target price, the commission shall distribute to each milk producer in this state an amount of money equal to the previous month's production in hundredweight multiplied by the difference between the applicable target price and the base price in the previous month.

#### Section 9 (NEW)

##### Milk purchased for less than minimum price; prohibition against sale and distribution

No milk dealer, processor, sub dealer or store shall distribute, sell or handle milk in this state which is obtained from any producer, other milk dealer, processor, sub dealer or store where the milk has been purchased either directly or indirectly for a price less than the minimum price fixed by the commission.

##### Sales of milk by cooperatives.

No provision of this act shall prevent a producer co-operative association or producer co-operative corporation authorized to transact business in this state, which sells the milk of or for its members or of persons who are now or hereafter under contracts with such producer co-operative association or producer co-operative corporation, from blending the proceeds of all its or their net sales either within or without this state, and so paying its members.

#### Section 10 (NEW)

##### Connecticut Dairy Stabilization and Growth Fund.

The Connecticut Dairy Stabilization and Growth Fund is created as a non-lapsing account in the Department of Agriculture. The fund shall consist of any money appropriated to the fund by the General Assembly, monies made available to it from grants, donations, and from other appropriate sources. The milk commission shall actively seek donations, grants, and other sources of money for the fund.

##### Dairy Stabilization and Growth Program.

(a) The commission may establish a program or programs to encourage the stabilization, growth and diversification of the dairy industry of this state. Such program may include grants to producers and processors from the fund. Such programs may include but are not limited to assisting the milk industry by facilitating the establishment of producing and processing facilities for specialty dairy products, encouragement of producer cooperation through joint ventures and establishment of niche marketing opportunities for milk producers and processors. The commission may enter into

cooperative arraignments with other state agencies, federal agencies and private agencies that allow funds to combined. The commission may enter into agreements with state agencies, federal agencies and private agencies to implement and monitor programs established pursuant to this section.

(b) Under exceptional circumstances and after a hearing, if the commission makes a finding that an emergency exists, the fund may be used to for direct payments to producers in an amount determined by the commission. Such direct payments shall be made only to producers currently producing milk and shall be calculated based upon the volume of milk each producer produces.

(c) Distributions made under subsection (b) of this section shall be made to eligible producers at least quarterly. All payments under the program are subject to the availability of funds.

(d) The commission shall file a report no later than the first day of the legislative session of each year with the joint standing committee on the Environment which shall include the following:

- (1) The short and long term problems associated with maintaining a viable dairy industry in this state;
- (2) The milk price outlook and the likelihood the milk price received by dairy farmers will exceed the target price and the amount of any shortfall;
- (3) Opportunities to expand the dairy industry, including attracting both new dairy producers and new processors to this state;
- (4) The contribution of dairy farms to the maintenance of prime agricultural land and the quality of life in this state; and
- (5) Other factors that impact the dairy industry in this state.

#### Regulations.

The commission shall adopt regulations to carry out the provisions of this act and regulations that establish procedures to enable the commission and agents authorized by the commission to inspect the records, books and accounts of milk dealers, milk distributors, milk producers and stores selling milk in a location acceptable to the commission.

#### Section 11 (NEW)

Section 22-203cc is repealed and the following substituted.

#### State delegation to compact commission. Membership.

Upon the establishment of the Northeast Interstate Dairy Compact Commission as provided for in section 22-203aa, the Governor shall appoint two of the state's delegation to said commission from among the members of the [Milk Regulation Board established under section 22-131] Connecticut Milk Commission[.], [The]the Governor [delegation shall include]shall also appoint one member to the commission who represents the interests [of milk consumers, one member who is a processor of milk and two members who are ]dairy farmers. [In addition to the members of the delegation from the Milk Regulation Board, the Governor shall appoint one retailer of milk to the delegation.]

Section 22-231 is repealed and the following substituted.

Grounds for refusal, suspension or revocation of license.

The Commissioner of Agriculture may refuse to grant or renew a license, or may suspend, revoke or refuse to transfer a license already granted, after the commissioner has determined that the applicant or dealer: (1) Has failed to comply, or has been a responsible member or officer of a partnership or corporation which failed to comply, with any provision of this part or any order, ruling, regulation or direction issued hereunder; (2) has insufficient financial responsibility, personnel or equipment to properly to conduct the milk business; (3) is a person, partnership, corporation or other business entity, in which any individual holding a material position, interest or power of control has previously been responsible in whole or in part for any act on account of which a license was or may be denied, suspended or revoked under the provisions of this part; (4) has failed to file a bond required by the commissioner under the provisions of this part; (5) if located out of the state, has failed to obtain a satisfactory milk sanitation compliance rating from a certified state milk sanitation rating officer or is not in compliance with all laws and regulations of the state pertaining to health and sanitation in the production, processing, handling or sale of milk; (6) has rejected, without reasonable cause, any milk purchased from a producer, or has refused to accept, without either reasonable cause or reasonable advance notice, milk delivered by or on behalf of a producer in ordinary continuance of a previous course of dealing, except when the contract has been lawfully terminated; provided, in the absence of an express or implied fixing of a period in the contract, "reasonable advance notice" shall be construed to mean not less than one week nor more than two weeks; (7) has continued in a course of dealing of such nature as to show an intent to deceive, defraud or impose upon producers or consumers; (8) has violated any stipulation or written agreement entered into with the commissioner in the course of any proceeding under this part; (9) has made a false material statement in his application; [or] (10) has failed to provide information required under this chapter[.]; or has failed to comply with the provisions of this act or any order, rule, or regulation of the Connecticut Milk Commission.