

TO: FTC—Pet Medications Workshop, Project No. P12-1201

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## SUMMARY

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Pet medication in most markets is currently only available from veterinary offices, where it is often very expensive. In addition, most veterinarians don't offer portable prescriptions to be filled in other pharmacies or retail stores. Because of this traditional practice as well as safety concerns arising out of the confusion regarding supply chains, there is a lack of demand for pet medication from pharmacies and online retail stores. The Fairness to Pet Owners Act would work to create that demand by requiring that veterinarians offer portable prescriptions. This Act, if implemented correctly, can benefit pet owners, vets, and manufacturers by creating incentives to provide greater consumer choice, lower prices, and transparency in the supply chain.

# INTRODUCTION

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According to the ASPCA, approximately 62 percent of all households in the United States own a pet. The average cost of basic food, supplies, medical care and training for a dog or cat is \$600 to \$900 annually. As cited in the request for comments, the American Pet Products Association estimates that the U.S. market for pet medications has grown by nearly 70% in the last six years, and continues to grow. Most of these medications are preventative care medications, such as flea and tick control (36%) and heartworm protection (19%). The current practices of distribution with respect to these medications are inefficient and result in a high cost to consumers. The proposed Fairness to Pet Owners Act could benefit consumers by providing a competitive market for preventative pet medication, resulting in lower prices and greater convenience.

# THE CURRENT SYSTEM

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There is currently a great deal of mystery surrounding pet medications, particularly preventative treatments such as flea/tick control and heartworm protection. Because much of this medication has traditionally only been available from veterinarians, most consumers may not be aware what types of medication require a prescription, what types are over the counter, and what kinds of regulations are in place to prevent counterfeit or low quality medication appearing on the shelves. Consumers may feel that there are currently very few practical alternatives to buying expensive pet medications from their veterinarian at a significant mark up. In addition, consumers may not even be aware that veterinarians can offer portable prescriptions, much less think to ask for them in order to fill them online or in a retail store. In addition, many retail stores don't carry pet medication, largely because it is difficult to track the supply chain and ensure safe products. Retail stores or pharmacies may be reluctant to stock potentially dangerous medications because of potential liability issues.

# COMMENT

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Much of the commentary on this issue and the proposed Fairness to Pet Owners Act has been from either veterinarians or retailers and manufacturers. These two sides have a clear economic stake in the future of pet medication distribution. However, there is a third player in this discussion—the consumer, and by extension, the pets. As the owner of a multi-pet household, I can attest to the extraordinary cost of monthly preventative maintenance. Most veterinarians recommend a monthly flea/tick control and heartworm treatment. These medications can range from \$30-50/month for only one dog. When you consider that nearly 50% of pet-owning households are multi-pet households, this is a serious economic burden on consumers. The high prices of preventative medication may be cost-prohibitive for many pet owners, particularly those from multi-pet households. The purpose of the Fairness to Pet Owners Act should be to encourage pet owners to seek preventative care for their pets, rather than make the process less inconvenient and more expensive.

With respect to flea and tick control, this type of medication is an over-the-counter medication, despite its only recently becoming available in retail stores such as Wal-Mart and Costco. As an over-the-counter medication, these do not require a prescription and there is no need for a veterinarian-patient relationship in administering their use. Although these drugs are not regulated by the same rules as prescription medication, the closed distribution channels currently in place may work to cast suspicion on the safety and efficacy of even over the counter medications. A brief Internet search will turn up many consumer concerns regarding the efficacy of flea/tick control purchased from a retail or online store versus that purchased from a vet. To confound the situation, many of the major manufacturers of flea/tick control claim to sell only to qualified veterinarians, casting further doubt on the product on the shelves in retail stores. Flea and tick control prevents more than just itching—it also prevents the diseases spread by fleas, including: allergies, skin disease, tapeworms, heartworms, and blood diseases. The cost of care for treatment of these diseases varies widely, but is nonetheless considerably more expensive than monthly flea/tick control. Encouraging consumers to purchase this type of medication—through increased convenience, lower costs and clear supply channels, can help lower the cost of veterinary medicine for consumers.

Heartworm treatment is one of the most commonly prescribed pet medications on the market. This preventative treatment is often prescribed as a monthly dose, and typically costs around \$35-\$80 per year, depending on the pet's weight and species. This type of medication is also highly recommended by veterinarians, as the costs of heartworm treatment are high and the risks are serious. Unlike flea/tick control, heartworm prevention requires a prescription, as the veterinarian must determine whether or not the animal already has heartworm before

administering the preventative. Treating an already infected pet with heartworm preventative can lead to further complications and even death. In this case, many of the concerns voiced by veterinary boards regarding the veterinary-client relationship are valid to ensure the proper administration of the medication. However, these concerns do not also justify the current closed distribution channels of pet medication which in many cases, forces the consumer to buy their prescriptions from the vet at high markups and at greater inconvenience. By opening the market to competition from retail stores, consumers are thus encouraged by lower prices and greater inconvenience to get the preventative care their pets need. The Fairness to Pet Owners Act does not sacrifice the individual needs of the animals and a veterinary-client relationship as a prescription is still required to purchase the medication. In addition, the Act still allows veterinarians to sell the medications as they currently do.

One of the strongest criticisms of the Act is that pharmacies are not currently set up to fill pet medicine prescriptions—either because they don't carry the medication in the appropriate doses or because pharmacists aren't trained in animal physiology. The current distributive landscape doesn't provide many choices for consumers for pet medication, even with a portable prescription. It isn't very practical or reasonable to take a prescription written by your vet to another vet in order to get it filled. These criticisms seem to ignore the fact that the lack of consumer choice is largely a result of restrictive practices by the veterinary industry and the pet medication manufacturers. When portable pet prescriptions become mandatory, a demand will be created for more competitive pricing. Already online retail outlets have attempted to take advantage of portable prescriptions by offering cheaper prescriptions. The problem online retail stores have is twofold: 1) expediency—many pet prescriptions are urgent and cannot wait for two or three days to fill and ship and 2) reputation—there is still a significant consumer wariness for online medication, both for humans and pets. Brick and mortar retail outlets have a much greater chance at success in offering pet medications and prescriptions and will have a greater incentive to do so if portable prescriptions become the norm.

The current murky system of distributing pet medications, using 'diversion' and other confusing channels, creates some discomfort among pet owners about buying pet medications through online retail stores and, currently, brick and mortar establishments as well. This is one aspect of the pet medication industry that will need to be addressed through the implementation of the Fairness to Pet Owners Act. Who is to administer the regulations regarding the manufacture and distribution of pet medications? What assurances can consumers have that the retailers are receiving safe, reliable, and accurate products? In a very recent court decision out of Florida, U.S. v. Franck's Lab, Inc., a United States District Court refused to grant an injunction against a pharmacy engaging in bulk compounding of veterinary medicine. The FDA argued that this practice, typically reserved for manufacturers except in individualized cases, was governed by the Food, Drug, and Cosmetic Act and filed a motion to enjoin the pharmacy from continuing to compound the medicine. The FDA's primary concerns were: "(i) Franck's practice of compounding veterinary drugs using bulk active pharmaceutical ingredients; (ii) that a number of those drugs "appear[ed] to be compounded outside the context of a valid veterinarian-client-

patient relationship;” and (iii) that Franck's was compounding drugs where an approved drug would adequately treat the animal.” 816 F. Supp. 2d 1209, 1212 (M.D. Fla. 2011). Franck’s argued that the practice was traditional for pet medication, was not governed by the FDA but the state pharmaceutical board (which was apparently satisfied with Franck’s practice), and was simply a way of providing low-cost alternative medicines to consumers. The district court ruled against the FDA, stating, “In enacting the FDCA in 1938, Congress did not intend to give the FDA *per se* authority to enjoin the long-standing, widespread, state-regulated practice of pharmacists filling a veterinarian's prescription for a non-food-producing animal by compounding from bulk substances.” *Id.* This order was overturned on appeal and vacated on October 18, 2012, with an opinion not yet issued. This case begs the question: If the FDA doesn’t govern the compounding of pet medication, who does? Although the practice of bulk compounding by pharmacists is a separate issue from portable prescriptions, this concern for consumer/pet welfare should be taken into account by the new law. There may be greater incentives for pharmacies to continue this practice, for which Congress should establish a clear governing body, whether the FDA or a new agency. In addition, the new bill should make clear the intent regarding the competing policies of providing cheaper alternatives to expensive pet prescriptions and providing safe, tested medication.