

Animal testing ban for cosmetics to come into force on December 22, 2023

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On December 22, 2023, amendments to the federal *Food and Drugs Act*^[1] (F&DA) will come into force effectively prohibiting cosmetic brands from relying on animal testing to support the safety of their products (the amendments). The amendments were introduced as part of the *Budget Implementation Act, 2023, No. 1*,^[2] which received royal assent on June 22, 2023.

In this Update, we provide an overview of the amendments to aid the industry in understanding how to comply with the new regulatory requirements.

Regulatory amendments and guidance

The amendments introduce three new sections to the F&DA:

1. Section 16.1 will prohibit the sale of cosmetics that rely on animal testing data to meet safety requirements under the F&DA.
2. Section 16.2 will prohibit animal testing in Canada for the purpose of satisfying a safety requirement under the F&DA or to meet safety requirements under the laws of a foreign state.
3. Section 16.3 will prohibit brands from making false and unsubstantiated claims that a product has not been tested on animals.

Health Canada has also published a guidance document titled "[Animal testing ban on cosmetics](#)" to assist industry in both interpreting and understanding the impact of the amendments (the guidance).^[3]

Section 16.1: prohibition on the sale of cosmetics relying on animal testing data

Section 16.1 prohibits brands from selling cosmetics unless they can establish the safety of the product without relying on animal testing data. Specifically, cosmetics safety claims cannot be substantiated by data derived from a test conducted on an animal that could

cause pain, suffering or injury, whether physical or mental, to the animal.

Cosmetics sold in Canada must still be able to demonstrate that they are safe for use.^[4] While there was never an obligation under the F&DA to conduct animal testing to substantiate the safety of a cosmetic, manufacturers will now need to consider other methods of testing to demonstrate that a cosmetic is safe for use. Such methods might include testing on cell cultures, computer-based models or relying on existing information for similar chemicals.

The requirements under s. 16.1 do not need to be complied with in the following circumstances:

- the cosmetic was sold in Canada at any time before December 22, 2023
- the Government of Canada has published the animal testing data being relied on
- the animal testing data being relied on is publicly available and is derived from a test that was not sponsored by or conducted by or on behalf of a person who manufactures, imports or sells the cosmetic
- the substance may have multiple uses beyond the cosmetic industry and the animal testing data was conducted in order to meet the requirements under another Canadian law or a law of a foreign state that does not pertain specifically to cosmetics
- the data is derived from a test that was conducted before December 22, 2023

Although the requirements under s. 16.1 will not apply to products that were already sold in Canada prior to December 22, 2023, the safety of new or reformulated products introduced after that date will need to be demonstrated without the use of animal testing data unless other exemptions can be relied upon.

Section 16.2: prohibition on conducting animal testing to demonstrate the safety of cosmetics

Section 16.2 prohibits animal testing in Canada that is done to satisfy a cosmetic safety requirement under the F&DA or a cosmetics safety requirement under a foreign law. Accordingly, cosmetics or their ingredients cannot be tested on animals in Canada for the purpose of sale in Canada or sale in a foreign jurisdiction.

Section 16.3: advertising related to animal testing

Section 16.3 prohibits claims for a cosmetic that create a misleading impression that the cosmetic was not tested on animals, even if the testing occurred for use in a non-cosmetic product. This might include “cruelty-free” claims or visuals of animals on packaging or advertising. These marketing prohibitions apply to manufacturers, importers and retailers or anyone acting on their behalf, including beauty and lifestyle influencers or internet personalities.

Health Canada states it will generally assess claims as being true as of December 22, 2023. Where the claim includes a specific earlier date in the claim (e.g., “Free from animal testing since 2020”), Health Canada may forward it to the Competition Bureau for further consideration under the *Competition Act*.

Next steps

Cosmetics companies operating in Canada should review their product lifecycles to get a better understanding of whether — and the extent to which — they may rely on data derived from animal testing. Additionally, brands looking to introduce a new product to the Canadian market or reformulate an existing product should assemble permissible data to support the safety of the cosmetic product that must be provided to Health Canada in the event of a regulatory investigation.

Osler works closely with clients to respond to rapidly changing regulatory requirements for all forms of consumer products. We would be pleased to provide guidance and answer any questions relating to the implementation of Canada's new cosmetic compliance regime.

[1] RSC, 1985, c. F-27.

[2] SC 2023, c. 26.

[3] Health Canada, "[Guidance document: Animal testing ban on cosmetics](#)" (4 December 2023).

[4] FDA, section 16.