



Re: Comments on Proposed Rule Adding Chapter 42 to Title 24 of the Rules of the City of New York — Designation of Restricted Substances for Menstrual and Intimate Care Products (Reference Nos. 2026 RG 056 / DOHMH-73; implementing Local Law 136 of 2025, N.Y.C. Admin. Code § 20-699.30)

Submitted via resolutioncomments@health.nyc.gov **and** rules.cityofnewyork.us

New York City Department of Health and Mental Hygiene
Attn: Svetlana Burdeynik
28th Street, 14th Floor
30 Long Island City, NY 11101-4132

Dear Ms. Burdeynik:

The Personal Care Products Council (PCPC) respectfully submits the following comments to the New York City Department of Health and Mental Hygiene. PCPC is a leading national trade association representing cosmetics and personal care products companies. PCPC is dedicated to promoting product safety, quality and innovation, serving as a unifying voice that champions science-based standards and responsible practices to support health, well-being and economic growth. PCPC's global members are some of the most beloved and trusted brands in beauty and personal care today, providing millions of consumers with the diverse products they rely on every day. This includes the important cosmetic intimate care products impacted by Local Law 136.

At the outset, it is important to emphasize that fragrance ingredients in cosmetics, like washes, wipes, powders and sprays, follow strict safety requirements as any other cosmetic ingredient. That is, both the ingredients and products' exposure must be substantiated as safe for consumers when they are "used according to labeled directions, or as people customarily use them."¹ Fragrances are essential ingredients in a variety of products including cosmetics, over the counter (OTC) drugs, and medical devices.

We write to identify three provisions of the proposed rule that, as drafted, will result in the unnecessary removal of safe and effective cosmetic products, restrict consumer access and preferences, and create serious compliance uncertainty and legal exposure without advancing the alleged health objective. We propose the following targeted revisions, of which the principal concern is the inclusion of "fragrance" as a restricted substance.

¹See [Fragrances in Cosmetics | FDA](#)

The Department should remove “fragrance” from the restricted-substance list and align it with State law.

Local Law 136 directs the commissioner of health and mental hygiene to adopt by rule “the intentionally added ingredients that shall constitute restricted substances for purposes of this section.” Local Law 136 further states that “restricted substances” include “fragrance,” itself defined as “any natural or synthetic substance or substances used solely to impart an odor to a product.” Of the fifteen designated restricted substances in proposed § 42-02, fourteen identify specific, well-defined chemicals, or broad chemical classes. “Fragrance” (§ 42-02(o)) is different in kind and should be removed. Treating “fragrance” categorically as a restricted substance treats chemically and toxicologically distinct substances and exposure conditions as though they present an equivalent risk. Further, a cosmetic manufacturer cannot reasonably determine at what point a single “substance” or mixture of “substances” becomes a prohibited “fragrance,” or how to demonstrate the absence of a category that the rule never bounds. For example, botanical extracts may impart a characteristic scent but also provide beneficial skin conditioning properties.

The recently enacted State law governing restricted substances in menstrual products, N.Y. General Business Law § 399-aaaa (effective December 19, 2026), restricts a closely comparable enumerated list. Crucially, it does not list fragrance. The State reaches fragrance only indirectly. By adding fragrance as a standalone restricted substance, the proposed City rule departs from the State’s considered approach and subjects products sold in New York City to a stricter, City-specific requirement than the same products face everywhere else in the State. That divergence multiplies compliance cost and confusion without a demonstrated corresponding health benefit. Aligning the City list with the State list would eliminate divergence.

Second, fragrance performs a core, intended function in the cosmetic “intimate care products,” identified in Local Law 136. Odor management is a documented reason some women choose these products (Zota et al., 2023; Suwanrattanadech et al., 2011). Published consumer-use data demonstrate that odor management and the feeling of cleanliness are important personal reasons for use of intimate-care products, and U.S. data further indicate that scent influences product choice among consumers who use scent-altering menstrual and intimate-care products (Zota et al., 2023; Suwanrattanadech et al., 2011). Banning all intentionally added fragrance at any level therefore prohibits an essential product characteristic and, in practical effect, bars entire product lines from the New York City market. Moreover, it denies women their full choice of product benefits for self-care and body confidence. That is a sweeping consumer-choice and economic consequence that the record does not justify.

The definition of intimate care products is overbroad and turns on the undefined term “sexual health.”

The rule’s reach depends on the meaning of intimate care products. It extends beyond menstrual care and is framed by reference to “sexual health,” a term neither the rule nor Local Law 136 defines.

This indeterminacy is not academic, and it drives compliance outcomes. Because “sexual health” is undefined, a manufacturer may reasonably regard an intimate wash or wipe as a general cleanliness product, one that is not intended nor marketed for “sexual health.” Consequently, the manufacturer reasonably concludes that it is not marketed for sexual health, and that the product falls outside the rule altogether. However, it is possible that a retailer conducting its own

compliance assessment on the same product may reach the opposite, more conservative conclusion. Rather than examine the line product by product, the retailer may simply decline to stock the entire category of fragranced intimate care products to avoid risk. The predictable result of that conservative response is the removal of safe, lawful, and complaint products from New York City shelves, and a corresponding loss of choice for the women who use them, even where the products are clearly not covered by the law.

The Department should clarify that the law applies to products that are primarily marketed for or intended for menstrual use. This would comport with the NY State Law which is limited to menstrual care products.

The Department should align the compliance timeline with State law and, if it exceeds State law, provide a substantially longer implementation period.

In practice, regulated parties must reformulate products, obtain supplier certifications and additional disclosures to identify fragrance components and conduct analytical testing to verify absence, exhaust and relabel existing inventory, and reorder packaging. These steps cannot be accomplished on a short timeline across a product portfolio and a multi-tier supply chain.

As explained above, the Department should remove "fragrance" from the restricted-substance list and otherwise align Chapter 42 with GBL § 399-aaaa, including its menstrual-product scope. Because the State already prohibits the enumerated restricted substances as of December 19, 2026, an aligned City rule would impose no additional reformulation burden, and the City's effective date could be coordinated with the State's December 19, 2026, date to provide a single, coherent compliance deadline.

In the alternative and if the Department retains "fragrance" as a restricted substance or otherwise imposes requirements exceeding GBL § 399-aaaa, it should adopt a phased implementation period of at least 18 to 24 months following adoption of the final rule. Reformulation, supplier certification and full ingredient disclosure, analytical testing to verify absence, relabeling, and exhaustion of existing inventory cannot be completed by December 19, 2026, and a compliance date tied to that timeline would in practical effect bar products from the New York City market.

Conclusion

The scientific evidence supports a weight-of-evidence, substance-specific, and exposure-based approach rather than treating "fragrance" itself as a toxicological hazard class. Where credible evidence identifies a concern for a specific fragrance ingredient at relevant levels of consumer exposure, that ingredient can be evaluated and, where scientifically justified, appropriately restricted. A categorical restriction on fragrance, however, does not distinguish among substances with different toxicological properties, potencies, concentrations, or consumer exposures.

We therefore urge the Department to: (1) remove "fragrance" and align it with State law; (2) define or remove sexual health and narrow intimate care products to products primarily marketed for menstrual use; and (3) coordinate the City's effective date with the State's December 19, 2026 date if Chapter 42 is aligned with GBL § 399-aaaa, or, if the City retains "fragrance" or otherwise exceeds State law, provide an implementation period of at least 18 to 24 months following adoption of the final rule. Most fundamentally, we ask the Department to consider the women whose choices this rule would constrain. Fragrance serves legitimate formulation functions in these products, and the fragrance ingredients used in them must already be

substantiated as safe for their intended use. A categorical ban would simply remove safe, lawful products from the shelf and, with them, the ability of women to choose the intimate care products that best suit their own needs and preferences. We do not believe the Department wishes to narrow women's choices over their own personal care, particularly if doing so departs from the measured, substance-specific approach the State has already adopted. We respectfully urge the Department to leave those decisions where they belong, that is with the women who make them by removing "fragrance" from the restricted-substance list.

We appreciate the Department's consideration and welcome the opportunity to provide any further information that would assist in refining the rule.

Respectfully submitted,

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