

Resilient Floor Covering Institute (RFCI)

Attached please find comments submitted on behalf of the Resilient Floor Covering Institute (RFCI). Thank you for your consideration of these comments.



**COMMENTS OF THE RESILIENT FLOOR COVERING INSTITUTE
ON THE WASHINGTON DEPARTMENT OF ECOLOGY'S
DRAFT REGULATORY DETERMINATIONS – REPORT TO LEGISLATURE
SAFER PRODUCTS FOR WASHINGTON PROGRAM**

**SUBMITTED TO THE
WASHINGTON DEPARTMENT OF ECOLOGY**

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The Resilient Floor Covering Institute (“RFCI”) appreciates the opportunity to comment on the Washington Department of Ecology’s (“Ecology” or the “Department”) Draft Regulatory Determinations Report to the Legislature (“Draft Determinations”)¹ issued in connection with Implementation Phase 3 of Ecology’s Safer Products for Washington Program (the “Program”), as authorized by the Pollution Prevention for Healthy People and Puget Sound Act of 2019 (the “Act”).² RFCI supports Ecology’s efforts to reduce the use of toxic chemicals in household products through implementation of the Program; as described in greater detail below, RFCI member companies have long sought to assess and improve their products, including by proactively shifting away from ortho-phthalates in the manufacture of vinyl flooring products. RFCI applauds Ecology’s efforts in implementing the Program, in particular the Department’s commitment to meaningful dialogue with public interest groups, the manufacturer community, and other interested stakeholders as Ecology evaluates priority products and considers appropriate regulatory responses consistent with the Act’s mandate.

RFCI represents the interests of the resilient floor covering industry; virtually all RFCI flooring manufacturing members produce vinyl flooring, and RFCI associate members provide raw materials and sundry products for the manufacture and use of vinyl flooring. Resilient flooring is currently the number one consumer choice for hard surface flooring, and in recent years the product category—in particular, luxury vinyl tile (“LVT”)—has seen tremendous growth³ as consumers opt for the sustainability, durability, and aesthetics of this flooring option. Given the popularity of resilient flooring and the many benefits it offers to the consumer, it is important that this product category remain an available and affordable option in the Washington market.

RFCI has long been an advocate of sustainable product selection and building practices based on life-cycle assessment, sound science, and risk assessments. Ecology has made clear that it wishes to implement the Program and craft any regulations thereunder in a manner that will provide meaningful benefit to the health and safety of Washington consumers and to the environment. Ecology should therefore focus any regulatory requirements on priority products that present an ongoing risk to consumers or the environment—that is, priority products that continue to be manufactured on a regular basis and broad scale with priority chemicals. Similarly, Ecology should avoid any regulatory requirements that are overly broad or based on an over-

¹ Washington Department of Ecology (“Ecology”), Draft Regulatory Determinations Report to the Legislature, Safer Products for Washington, Implementation Phase 3, Publication 21-04-047 (Nov. 2021) (“Draft Determinations”).

² S.S.B. 5135 (2019); RCW 70A.350.010 *et seq.* (2020) (formerly RCW 70.365.010 *et seq.* (2019)).

³ *See, e.g.*, Verified Market Research, *Global Luxury Vinyl Tile-LVT Market Size By Type, By End-Use Sector, By Geographic Scope and Forecast*, Report ID 25815 (July 2021), available online at <https://www.verifiedmarketresearch.com/product/luxury-vinyl-tile-lvt-market/> (LVT market valued at \$16.11 billion in 2020, projected to reach \$37.92 billion by 2028); *see also* “Luxury Vinyl Tiles (LVT) Flooring Market by Type (Rigid, Flexible), End-Use Sector (Residential, Non-residential), and Region (North America, Asia Pacific, Europe, Middle East & Africa, and South America) – Global Forecast to 2024,” available online at <https://www.marketsandmarkets.com/Market-Reports/lvt-flooring-market-105150640.html>.

inclusive approach which—even if well-intentioned—would lead to consumer confusion, frustrating the goals of the Act.

As Ecology considers public input on the Draft Determinations and begins to develop more concrete regulatory requirements, RFCI urges the Department to ensure that any regulatory action ultimately taken under the Program is based on the best available scientific information and considers current market conditions. To achieve these goals and to promote clarity in the final recommendations, and to ensure that any forthcoming regulatory requirements represent an efficient use of administrative resources that will provide a meaningful health or environmental benefit, RFCI urges Ecology to consider the following:

- To avoid confusion among consumers and other members of the public, and to promote clarity regarding risk findings and regulatory requirements, Ecology should provide greater clarity regarding the meaning of “phthalates” under the Program. While the term “phthalates” is clearly defined under the statute and used by Ecology to mean ortho-phthalates—a category of chemicals with a distinct chemical structure and chemical characteristics—this term is sometimes, due to the similar nomenclature, misunderstood by the general public to include terephthalates. As discussed in greater detail below, Ecology should make clearer at the outset of its Regulatory Determinations and related reports to the legislature and/or the public that “phthalates” (*i.e.*, ortho-phthalates) are distinct from, behave differently from, and do not include terephthalates.
- Given the widespread and well-documented shift away from the use of ortho-phthalates in the manufacture of new vinyl flooring products that has already occurred, regulatory restrictions under the Program are not warranted for vinyl flooring products; Ecology’s finite resources would provide more meaningful public benefit, consistent with the legislative objectives of the Act, if focused on priority products that continue to be manufactured with priority chemicals.
- Regulatory restrictions proposed under the Act for resilient vinyl flooring, if any, must be narrowly tailored to address the risk identified in connection with exposure to ortho-phthalates as those chemicals may be present in vinyl flooring products; any such regulatory restrictions must be based on sound science and further must be practically achievable.
- The significant environmental and sustainability benefits associated with the responsible recycling of vinyl flooring products far outweigh any potential, and likely *de minimis*, risk associated with low levels of unintentionally added ortho-phthalates that may be present in some recycled vinyl flooring products; Ecology should consider the benefits of vinyl flooring recycling—which are consistent with and further Ecology goals under other programs—in developing any regulatory restrictions under the Act.

Each of these comments is discussed in greater detail below.

I. DTSC Should Provide Greater Clarity Regarding Its Use of the Term “Phthalates.”

The Act directs Ecology to consider six specific classes of “priority chemicals” (in addition to other chemicals the Department may identify as priority chemicals), including “phthalates.”⁴ The Act defines “phthalates” as “synthetic chemical esters of phthalic acid.”⁵ As Ecology explains in the Draft Determinations:

RCW 70A.350.010 defines phthalates as a class as “synthetic esters of phthalic acid” based on their chemical structure. The National Library of Medicine (NLM) defines the term phthalic acid as a “benzenedicarboxylic acid consisting of two carboxy groups at ortho positions.” This definition does not include benzenedicarboxylic acid with two carboxy groups in either the meta or para configurations (e.g., isophthalic acid or terephthalic acid).

Thus, the definition of this priority chemical class can be clarified to include only ortho-phthalates. Subsequent references to “phthalates” in this chapter refer specifically to ortho-phthalates.⁶

RFCI agrees with Ecology that the definition of “phthalates” under the Act and in related scientific literature limits the scope of this defined term to ortho-phthalates. RFCI appreciates the clarification offered by the above-quoted text; however, as this explanation is provided at about the halfway point of the over three-hundred-page report, readers of the report may miss this point. RFCI encourages Ecology to update the discussion of the term “phthalates” found on page 28 of the report to include the same explanation (including, specifically, the clarification that the term—as used in the Act, in the Draft Determinations, or otherwise—does *not* include terephthalates. This portion of the report may be further strengthened by an acknowledgment that terephthalates, while similar in name to ortho-phthalates, have a different chemical structure and toxicological profile from ortho-phthalates.⁷

For the sake of clarity, RFCI uses the term “ortho-phthalates” throughout these comments. This term is intended to be synonymous with the term “phthalates” as used by Ecology in the Draft Determinations.

⁴ RCW 70A.350.010(12).

⁵ *Id.* at 70A.350.010(10).

⁶ Draft Determinations at 140 (internal citations omitted).

⁷ Consumer advocacy groups including the Healthy Building Network have acknowledged, in the context of bis(2-ethylhexyl) terephthalate (commonly abbreviated as DEHT or DOTP), that “no reproductive or developmental toxicity or endocrine disrupting effects have been observed in studies on DEHT.” Sarah Lott, Healthy Building Network, “Phthalate-free Plasticizers in PVC”, v2 (Sept. 2014), available online at <https://fdocuments.in/document/phthalate-free-plasticizers-in-pvc-s3-phthalate-free-plasticizers-in-pvc.html>.

II. Manufacturers Have Already Ceased Using Ortho-Phthalates in the Manufacture of New Resilient vinyl flooring Products; No Regulatory Intervention is Warranted.

Ecology states in the Draft Determinations that “the use of phthalates in vinyl flooring is significant and vinyl flooring represents a significant source of phthalates,” concluding that “restricting the use of phthalates in vinyl flooring will reduce a significant source of phthalate exposure to people and the environment.”⁸ RFCI disagrees with this conclusion, as the underlying assumption—that “the use of ortho-phthalates in vinyl flooring is significant”—is faulty. Specifically, RFCI believes that existing data clearly demonstrate that actions *already taken* by resilient vinyl flooring manufacturers have already successfully reduced human and environmental exposure to ortho-phthalates from resilient vinyl flooring. Moreover, all available information indicates that this trend will only continue, with the already significantly reduced amounts of ortho-phthalates in resilient vinyl flooring continuing to steadily decrease over time. There is therefore no basis for any regulatory intervention; regulations are not necessary to prompt a development that is already, as a result of actions taken by manufacturers over the past several years, in motion. Below we provide more detail regarding the industry shift away from the use of ortho-phthalates.

Over the past decade, state regulatory agencies and consumer advocacy groups have focused on purported health risks associated with ortho-phthalates. As a result of the corresponding shift in market demand towards vinyl flooring that is free of ortho-phthalates, manufacturers of vinyl flooring have moved away from the use of ortho-phthalates and towards alternatives including terephthalates and bio-based plasticizers. These developments predate Ecology’s implementation of the Program, and even enactment of the Act itself. Specifically, by 2015, the three largest home improvement chains in the United States (Home Depot, Lowes, and Menards), as well as Lumber Liquidators, had all adopted policies to phase out ortho-phthalate-containing PVC flooring (not including vinyl flooring composed of recycled PVC content, which account for only a very small fraction of domestic vinyl flooring sales; however, Lumber Liquidators ceased sale of all vinyl flooring containing reprocessed plastics, including recycled vinyl flooring, by the end of 2015⁹). Ecology acknowledges these developments in the Draft Determinations.¹⁰ The success of these corporate policies is underscored by a 2019 study performed by a collection of environmental advocacy groups: the study sampled twenty-five vinyl

⁸ Draft Determinations at 151.

⁹ Safer Chemicals Healthy Families, “Lumber Liquidators commits to selling vinyl flooring made without reprocessed plastic” (Nov. 17, 2015), available online at <https://saferchemicals.org/2015/11/17/lumber-liquidators-commits-to-selling-vinyl-flooring-made-without-reprocessed-plastic/>.

¹⁰ Draft Determinations at Table 91.

flooring products collected from Home Depot, Lowes, and Lumber Liquidators and found that none of the samples contained any ortho-phthalates above laboratory detection limits.¹¹

Because of these ortho-phthalate bans by major domestic retailers and in response to evolving public concerns, the vinyl flooring industry moved away from ortho-phthalate plasticizers and towards alternatives including terephthalate plasticizers years ago. By early 2018, California’s Department of Toxic Substances Control (“DTSC”) had taken note of this shift in the context of its Safer Consumer Products (“SCP”) program, analogous to the Washington Program. In its initial development of a Priority Product Work Plan under the SCP, DTSC included the “vinyl flooring”-“phthalate” product-chemical combination in its Priority Product Work Plan for 2015-2017.¹² However, upon considering information regarding the flooring market shift to use of terephthalates rather than ortho-phthalates, DTSC *removed* vinyl flooring from its 2018-2020 Priority Product Work Plan, pointing to “progress made by manufacturers” as a basis for revising its focus on particular categories of building products.¹³

DTSC—an agency widely renowned for its aggressive approach to consumer product risk—appears to agree that this consumer product does not warrant regulatory attention under a program intended to address meaningful consumer product risk. In fact, DTSC’s Green Ribbon Science Panel has cited this shift away from ortho-phthalates as an “implementation success” of the Safer Consumer Product program.¹⁴ More recently, the Green Chemistry and Commerce Council, a multi-stakeholder collaborative driving commercial adoption of green chemistry, identified luxury vinyl tile as a case study for successful transition from ortho-phthalates to alternatives, noting that “[f]or the U.S. market, the switch to alternatives is essentially complete.”¹⁵

This trend away from ortho-phthalates and towards alternative materials, including terephthalates, was further documented in the survey data provided by RFCI members to Ecology in connection with the Department’s evaluation of vinyl flooring. As Ecology acknowledges in

¹¹ Safer Chemicals Healthy Families, “Success! – Home improvement retailers follow through on commitments to remove phthalates from flooring” (June 27, 2019), available online at <https://saferchemicals.org/2019/06/27/success-home-improvement-retailers-follow-through-on-commitments-to-remove-phthalates-from-flooring/>.

¹² California Department of Toxic Substances (“DTSC”), 2015-2017 Priority Product Work Plan Sections 4.2.1, 4.7, and Table 8 (identifying “vinyl flooring” and “phthalates” as a priority product-chemical combination).

¹³ DTSC, *Draft Three Year Priority Product Work Plan (2018-2020)* (February 2018) (removing “vinyl flooring” as a priority product; noting on page 16: “Note that the Building Products category in the 2015-2017 Work Plan ... focused on painting products, adhesives, sealants, and flooring. ... Although this category has been broadened from the prior Work Plan, we believe there is ample opportunity to streamline decision-making by leveraging progress made by manufacturers, retailers, large institutional buyers ..., and non-governmental agency efforts in reducing harmful chemical content in the built environment”); DTSC, *Three Year Priority Product Work Plan (2018-2020)* (May 1, 2018).

¹⁴ DTSC Green Ribbon Science Panel, Background Document for Feb. 12-13, 2018 Meeting.

¹⁵ Green Chemistry and Commerce Council, “Landscape Analysis of Drivers, Enablers, and Barriers to Plasticizer Substitution” (Dec. 2021), available online at (<https://greenchemistryandcommerce.org/documents/GC3-Plasticizer-Report-Case-Studies-Dec-2021.pdf>).

the Draft Determinations: “In data we received from manufacturers to date, the majority reported using alternative plasticizers and were no longer using phthalates.”¹⁶ While Ecology states that survey data provided by vinyl flooring manufacturers showed “that both DEHP and DINP are still used in a subset of products,” RFCI expects, based on member experience and input, that this diminishing subset of products represents only a small portion of the vinyl flooring industry. Moreover, we further expect that the level of ortho-phthalates in this subset of product is far below Ecology’s estimate of 9-32% by weight. This percentage range appears to be based on studies largely conducted prior to 2015—that is, prior to the developments that prompted the large-scale shift away from use of ortho-phthalates in vinyl flooring products.¹⁷ As explained above and as documented in the data submitted by RFCI members to Ecology, vinyl flooring products being sold today have shifted away from the use of ortho-phthalates; the range cited by Ecology no longer represents an accurate assessment of the formulations used in today’s marketplace.

For these reasons, Ecology should determine that no regulatory restrictions are necessary to address ortho-phthalates in vinyl flooring. This is within the Department’s discretion in implementing the Act’s mandate. Specifically, the Act provides Ecology with discretion to select the appropriate regulatory action with regard to priority chemicals in priority consumer products from the following options: (1) take no regulatory action, (2) require notice, or (3) implement a restriction or prohibition of a priority chemical in a consumer product.¹⁸ Because vinyl flooring products are now being manufactured without ortho-phthalates, the appropriate agency action would be a determination that no regulatory action is warranted as it relates to ortho-phthalates in vinyl flooring. This outcome would be sound from a risk-based perspective since manufacturers of vinyl flooring have already—in the absence of any legally enforceable mandate—proactively moved away from the use of ortho-phthalates in vinyl flooring products. Ecology’s finite resources would be put to better use, and yield more meaningful protection for both public health and the environment, if focused on priority products that result in more significant exposure to health/the environment—including those priority products for which manufacture continues to rely on the use of priority chemicals.

A determination that no regulatory action is required is appropriate not only from a common sense perspective but also from a statutory perspective. The Act requires that any restrictions or prohibitions imposed on a priority chemical in a priority consumer product must be based on a determination by Ecology that safer and feasible alternatives are available and that (1) the restriction will reduce a significant source of or use of a priority chemical or (2) the restriction is necessary to protect the health of sensitive populations or sensitive species. A restriction of ortho-phthalates in vinyl flooring satisfies neither (1) or (2). First, as discussed throughout these

¹⁶ Draft Determinations at 152.

¹⁷ Ecology, Priority Consumer Products Report to the Legislature, Safer Products for Washington Implementation Phase 2 (July 2020, Publication 20-04-019), Table 15 (cataloguing studies (one from 2004, four from 2014, and two from 2016) related to phthalate concentrations in vinyl flooring).

¹⁸ RCW 70A.350.040(1).

comments and RFCI's previous submissions, vinyl flooring is not a significant source of ortho-phthalates as such chemicals are no longer utilized in the manufacturing process. Second, a restriction or prohibition is not necessary to protect exposure of sensitive populations or sensitive species to ortho-phthalate-containing vinyl flooring, since manufacturers have already moved away from the use of ortho-phthalates.

III. Ecology Should Balance Any Potential Exposure to Low Levels of Ortho-Phthalates in Recycled Vinyl Flooring Content Against the Significant Environmental and Sustainability Benefits of Recycled Products.

As a result of the formulation changes noted above for vinyl flooring products, as a general matter, ortho-phthalates are no longer added to new vinyl flooring products. However, as Ecology notes in the Draft Determinations, ortho-phthalates may unintentionally be introduced into new vinyl flooring products through the utilization of recycled materials.¹⁹ However, recent survey data from RFCI members indicate that the likelihood of this potential outcome is low. As shown in the survey data recently submitted to the Department (the "RFCI Survey"),²⁰ only one RFCI flooring manufacturer survey respondent utilizes post-consumer product as recycled content in new flooring, and, based on follow-up discussions with RFCI members, that post-consumer content is most likely filler (*e.g.*, gypsum board) and *not* vinyl with plasticizer content. As demonstrated by the survey results, the only product type including post-consumer product content was vinyl composition tile ("VCT"), which uses a higher percentage of filler, and a lower percentage of vinyl resin and plasticizer, than other types of vinyl flooring products. Therefore, the post-consumer content would not include vinyl resin or ortho-phthalate plasticizer.

Seven out of fifteen of the flooring manufacturer respondents indicated that they utilize pre-consumer content. Typically, where manufacturers use regrind from another production line and/or plant location in another product type, the regrind would be considered pre-consumer content. Discussions with RFCI members in the wake of the RFCI Survey revealed that recycled content containing ortho-phthalates would typically not be used in new resilient flooring product formulations.

As time goes on, it will become increasingly likely that pre-consumer content would have been manufactured after the point at which manufacturers began phasing out ortho-phthalates. As development of various recycling means and methods of post-consumer—including methodologies to screen for and remove chemicals of concern in accordance with performance-based standard requirements—continues, this will give rise to additional opportunities for the uptake and use of post-consumer content. This in turn will expand the universe of available

¹⁹ Draft Determinations at 309.

²⁰ See email from Jane Rohde, RFCI Technical Consultant, to Lauren Tamboer, State of Washington Department of Ecology, re: "RFCI Survey Letter and Survey Results" (Jan. 27, 2022), and attachment thereto (the "RFCI Survey").

opportunities for post-consumer recycling of resilient flooring product, furthering both Ecology's and the resilient flooring industry's objectives.

Even where small amounts of ortho-phthalates may unintentionally be added to resilient vinyl flooring that includes recycled content, it is critical that Ecology weigh any related consumer health or safety risk associated with such recycled content against the significant environmental and sustainability benefits associated with utilizing recycled content for beneficial use—including reductions in the rate of landfilling of these materials. If Ecology imposes overly burdensome restrictions on vinyl flooring products, the result could be a decrease in the beneficial reuse of recycled vinyl product and an increase in landfilling of such product, which is in direct opposition to the goals of the Program.

The utilization of pre-consumer and post-consumer recycled content in vinyl flooring products provides significant opportunity for continual improvement from a sustainability perspective. RFCI flooring manufacturer and supply chain members are investing substantial resources into research and development to determine how to improve the means and methods of recycling processes that chemically remove ortho-phthalates and heavy metals from recycled content—predominantly post-consumer recycled content—through performance-based standard testing. In order to ensure that regulatory burden does not become a roadblock to this innovation, Ecology should clarify that any restrictions imposed under the Program (such as limits on ortho-phthalate content for vinyl flooring products sold in Washington) relate only to *intentionally added* ortho-phthalates and are not applicable to any ortho-phthalates that are *unintentionally added* as a result of utilizing recycled content. Moreover, if Ecology does impose any such content limitations for intentionally added ortho-phthalates, the Department should evaluate whether a higher level is justified in the case of ortho-phthalate-containing recycled content, due to the various benefits of recycling and landfill avoidance.

IV. Regulatory Restrictions on Vinyl Flooring, If Any, Must Be Narrowly Tailored and Implementable.

If Ecology does move forward with a regulatory restriction related to ortho-phthalates, any such restrictions should be narrowly tailored to focus on actual risk. In addition, in crafting any such regulations, Ecology should consider the operational and logistical challenges manufacturers will face in ensuring that their products are compliant with the Program's requirements.

Regulatory Restrictions Should Be Tailored to Address High-Exposure Scenarios.

As noted throughout these comments and documented by the data submitted by RFCI members to Ecology, vinyl flooring generally no longer utilizes ortho-phthalates in the manufacturing process. And it is a poor use of Ecology's resources to expend effort related to regulating those vinyl flooring products that do contain low levels of unintentionally added ortho-phthalates. Instead, Ecology should utilize existing standards and work with stakeholders to establish a threshold amount in connection with any restriction.

Existing consensus standards that measure and limit the use of ortho-phthalates are already in widespread use; these standards should inform any regulatory effort that Ecology undertakes. For example, RFCI's *Rigid Core Flooring Certification Standard*, SCS-0011 (May 1, 2020)²¹ (known as "Assure Certified™") requires that products be tested in accordance with CPSC-CH-C1001-09.4 or GB/T 22048-2015 and further requires that "[p]roducts cannot exceed 1,000 PPM for individual or total ortho-phthalates." Similarly, NSF/ANSI 332, *Sustainability Assessment for Resilient Floor Coverings*, incorporates the same content threshold of 1,000 PPM for ortho-phthalates.²² ASTM F3414-20, *Standard Test Method for Determining Ortho-phthalate Concentration in Flooring Containing Polyvinyl Chloride*, provides a standardized method for measuring ortho-phthalate concentrations in vinyl flooring products.

These consensus and industry standards have already established thresholds for the use of ortho-phthalates in vinyl flooring products (and, in ASTM F3414-20, a standardized method for measuring ortho-phthalates). Ecology should utilize these existing standards to inform their decision-making as it relates to any potential restrictions imposed on vinyl flooring products under the Program.

Ecology Should Consider Indirect Environmental and Sustainability Impacts of Any Regulations.

As noted in Section III above, the inclusion of pre-consumer and post-consumer recycled content into new vinyl flooring represents a significant opportunity to enhance the environmental and sustainability benefits of vinyl flooring products. RFCI members continue to invest substantial resources into new technology to determine how to encourage widespread use of recycled product in a safe and efficient manner. However, overly restrictive and unduly burdensome regulations could have a chilling effect, causing manufacturers to shy away from these efforts.

RFCI and its members look forward to continuing work with Ecology to identify modifications to its regulatory efforts that may be appropriate in the context of resilient vinyl flooring that includes pre-consumer and post-consumer recycled content (including, but not limited to, substituting a reporting requirement for such products in place of a restriction that might apply to products composed only of virgin material).

Ecology Should Allow a Reasonable Timeframe for Implementation of Compliance Programs.

The Act provides that a "rule adopted to implement a regulatory determination involving a restriction on the manufacture, wholesale, distribution, sale, retail sale, or use of a priority

²¹ Available online at https://cdn.scsglobalservices.com/files/program_documents/SCS_STD_RigidCoreFlooring_V1-0_050620_0.pdf (note: updated revision slated for 2022 publication).

²² Available online at https://d2evkimvhatqav.cloudfront.net/documents/SU_NSF_332_Flooring_Insert_LT_EN_LSU27100812.pdf?mtime=20200716160801&focal=none.

consumer product containing a priority chemical may take effect no sooner than three hundred sixty-five days after the adoption of the rule.” RCW 70A.350.080(2)(b). Ecology should utilize an extended timeline for compliance (*e.g.*, five years from promulgation of final regulations) to ensure that industry has an appropriate timeline to incorporate any necessary formulation modifications into the manufacturing process. Moreover, this will provide increased assurance that both pre-consumer and post-consumer content included in resilient vinyl flooring products would not include ortho-phthalates.

Ecology Should Grandfather Manufactured/In Production Products.

The Act provides that a “restriction or prohibition on a priority chemical in a consumer product may include exemptions or exceptions, including exemptions to address existing stock of a product in commerce at the time that a restriction takes effect.”²³ As noted throughout these comments, vinyl flooring products presently in the market are not a significant source of ortho-phthalates and do not pose a health or safety risk to consumers or the environment. An exemption for already manufactured products as well as for products that are already in production (*i.e.*, at the time of promulgation of regulations) will remove significant cost and logistical challenges with no associated increase in risk, and is consistent with the Act’s directive.

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RFCI appreciates this opportunity to comment on Ecology’s Draft Determinations. We thank the Department for its continued engagement with RFCI, its members, and other stakeholders. We reiterate that, in light of the significant progress that has been made over the past decade in eliminating ortho-phthalates from the manufacture of new resilient vinyl flooring, no regulatory restrictions are necessary in the case of resilient vinyl flooring. Nonetheless, we look forward to continuing to work with the Department as it finalizes its regulatory determinations and begins crafting regulatory restrictions for resilient vinyl flooring, should any such regulations be deemed necessary.

Please contact RFCI counsel Allison D. Foley (adfoley@venable.com; 202-344-4416) with questions regarding these comments.

²³ RCW 70A.350.040(5).