

availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined “negligible impact” in 50 CFR 216.103 as “\* \* \* an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.”

Regulations governing the take of 14 species of marine mammals, by Level B harassment only, incidental to operation and repair and maintenance activities at the Neptune Port off Massachusetts were issued on June 13, 2011 (76 FR 34157). These regulations are effective from July 11, 2011, through July 10, 2016 (76 FR 35995, June 21, 2011). The species which are authorized for taking are: North Atlantic right whale; humpback whale; fin whale; sei whale; minke whale; long-finned pilot whale; killer whale; Atlantic white-sided dolphin; harbor porpoise; common dolphin; Risso’s dolphin; bottlenose dolphin; harbor seal; and gray seal. For detailed information on this action, please refer to the final rule and correction to the final rule (76 FR 34157, June 13, 2011; 76 FR 35995, June 21, 2011). These regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during operation and repair and maintenance activities at the Neptune Port.

This LOA is effective from July 12, 2011, through July 10, 2016, and authorizes the incidental take of the 14 marine mammal species listed above that may result from port commissioning and operations, including maintenance and repair activities, at the Neptune Deepwater Port off Massachusetts. Once the Port is fully operational, it is anticipated that there may be up to 50 shuttle regasification vessel (SRV) trips per year.

Potential effects of Neptune’s port operations and maintenance/repair activities would most likely be acoustic in nature. LNG port operations and maintenance/repair activities introduce sound into the marine environment. Potential acoustic effects on marine mammals relate to sound produced by thrusters during maneuvering of the SRVs while docking and undocking, occasional weathervaning at the port, and during thruster use of dynamic positioning maintenance vessels should a major repair be necessary. Marine mammals may experience masking and behavioral disturbance.

Take of marine mammals will be minimized through the implementation of the following mitigation measures: (1) Restricting repair and maintenance activities to the period between May 1 and November 30, to the greatest extent practicable, so that acoustic disturbance to the endangered North Atlantic right whale can largely be avoided; (2) using NMFS-approved protected species observers (PSOs) onboard vessels and bioacoustic technicians; (3) taking appropriate actions to minimize the risk of striking whales, including reducing speed to 10 knots or less in certain seasons and areas and alerting personnel responsible for navigation and lookout duties to concentrate their efforts when a marine mammal is sighted; (4) remaining 1 km (0.6 mi) away from North Atlantic right whales and other whales to the extent possible while moving, and PSOs will direct a moving vessel to slow to idle if a baleen whale is seen less than 1 km (0.6 mi) from the vessel; (5) remaining 91 m (100 yd) away from all other marine mammal species; (6) ceasing any noise emitting activities that exceed a source level of 139 dB re 1  $\mu$ Pa if a right whale is sighted within or approaching to a distance of 457 m (500 yd); (7) ceasing any noise emitting activities that exceed a source level of 139 dB re 1  $\mu$ Pa if a marine mammal other than a right whale is sighted within or approaching to a distance of 91 m (100 yd); and (8) implementing passive acoustic monitoring of marine mammals to supplement the effectiveness of visual sightings. Additionally, the rule includes an adaptive management component that allows for timely modification of mitigation or monitoring measures based on new information, when appropriate. No injury or mortality is anticipated, and none is authorized.

Through this LOA, Neptune is required to monitor for marine mammals using both visual observers (*i.e.*, PSOs) and passive acoustic monitoring systems. Neptune is required to submit an annual report to NMFS on August 1 of each year. The report will include data collected for each distinct marine mammal species observed in the LNG facility area during the period of January 1 through December 31 of the previous year of activity. Additional information on the mitigation, monitoring, and reporting requirements can be found in the final rule (76 FR 34157, June 13, 2011). Neptune is also required to submit a comprehensive report, which shall provide full documentation of methods, results, and interpretation of all

monitoring during the period of effectiveness of this LOA.

Dated: July 11, 2011.

**James H. Lecky,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

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## CONSUMER PRODUCT SAFETY COMMISSION

[CPS C Docket No. 11-C0006]

### Macy’s, Inc., Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Macy’s, Inc., containing a civil penalty of \$750,000.00.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by July 29, 2011.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 11-C0006, Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Room 820, Bethesda, Maryland 20814-4408.

**FOR FURTHER INFORMATION CONTACT:** Seth B. Popkin, Lead Trial Attorney, Division of Enforcement and Information, Office of the General Counsel, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-7612.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

July 11, 2011.

**Todd A. Stevenson,**  
*Secretary.*

### Settlement Agreement

1. In accordance with 16 CFR 1118.20, Macy’s, Inc. (“Macy’s”) and the U.S. Consumer Product Safety Commission (“Commission”) staff (“Staff”) enter into this Settlement Agreement (“Agreement”). The Agreement and the

incorporated attached Order (“Order”) settle Staff’s allegations set forth below.

### Parties

2. Staff is the staff of the Commission, an independent Federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (“CPSA”).

3. Macy’s is a corporation organized and existing under the laws of Delaware, with its principal offices located in Cincinnati, Ohio. At all relevant times, Macy’s sold apparel and other products.

### Staff Allegations

4. During periods of time from April 2006 through October 2010, Macy’s, through its subsidiaries, imported, sold, and/or held for sale various quantities of the following children’s upper outerwear products with drawstrings at the neck: Quiksilver, Inc.—Hide & Seek hooded sweatshirts; Jerry Leigh of California, Inc.—Harajuku Lovers hooded jackets; La Jolla Sport USA, Inc.—O’Neill hooded sweatshirts; Dysfunctional Clothing, LLC—Lost hooded sweatshirts; Macy’s Merchandising Group, Inc.—Epic Threads hooded sweatshirts; Macy’s Merchandising Group, Inc.—Green dog sweaters; C—MRK, Inc.—Ocean Current hooded sweatshirts; NTD Apparel, Inc.—Hello Kitty hooded sweatshirts; S. Rothschild & Co., Inc.—wool coats; and VF Contemporary Brands, Inc.—Splendid hooded jackets and hooded vest sets. The products identified in this paragraph are collectively referred to herein as “Garments.”

5. Macy’s sold the Garments, and/or held the Garments for sale, to consumers.

6. The Garments are “consumer product[s],” and, at all relevant times, Macy’s was a “manufacturer” and/or “retailer” of those consumer products, which were “distributed in commerce,” as those terms are defined in CPSA sections 3(a)(5), (8), (11), and (13), 15 U.S.C. 2052(a)(5), (8), (11), and (13).

7. In February 1996, Staff issued the Guidelines for Drawstrings on Children’s Upper Outerwear (“Guidelines”) to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, Staff recommends that no children’s upper outerwear in sizes 2T to 12 be manufactured or sold to consumers with hood and neck drawstrings.

8. In June 1997, ASTM adopted a voluntary standard (ASTM F1816–97) incorporating the Guidelines. The Guidelines state that firms should be aware of the hazards associated with drawstrings and should ensure that garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its website a letter from the Commission’s Director of the Office of Compliance to manufacturers, importers, and retailers of children’s upper outerwear. The letter urges them to make certain that all children’s upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that Staff considers children’s upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (“FHSA”) section 15(c), 15 U.S.C. 1274(c). The letter also references the CPSA’s section 15(b) (15 U.S.C. 2064(b)) reporting requirements.

10. Macy’s informed the Commission that there had been no reported incidents or injuries associated with the Garments.

11. Macy’s distribution in commerce of the Garments did not meet either the Guidelines or ASTM F1816–97, failed to comport with Staff’s May 2006 defect notice, and posed a strangulation hazard to children.

12. The Commission, in cooperation with Macy’s and/or other firms that were the Garments’ manufacturers, importers, or distributors, announced recalls of the Garments.

13. Based in part on information available through the sources set forth in paragraphs 7 through 9 herein, Macy’s had presumed and actual knowledge that the Garments distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). Macy’s obtained information that reasonably supported the conclusion that the Garments contained a defect that could create a substantial product hazard or that the Garments created an unreasonable risk of serious injury or death. Pursuant to CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), Macy’s was required to immediately inform the Commission of the defect and risk.

14. Macy’s knowingly failed to immediately inform the Commission about the Garments as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term “knowingly” is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure

violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this knowing failure subjected Macy’s to civil penalties.

15. On multiple occasions from March 2009 to January 2010, Macy’s offered Garments for sale, sold Garments, and/or distributed Garments in commerce that were subject to voluntary corrective action taken by the Garments’ manufacturers, in consultation with the Commission. The Commission notified the public of that action, or Macy’s knew or should have known of that action.

16. Macy’s knowingly engaged in the acts alleged in paragraph 15 as the term “knowingly” is defined in CPSA section 20(d), 15 U.S.C. 2069(d). These acts violated CPSA section 19(a)(2)(B), 15 U.S.C. 2068(a)(2)(B). Pursuant to CPSA section 20, 15 U.S.C. 2069, these acts subjected Macy’s to civil penalties.

### Macy’s Responsive Allegations

17. Macy’s denies Staff’s allegations above, including, but not limited to, any claim that Macy’s failed to timely report to the Commission the sale or distribution of any children’s upper outerwear products with drawstrings pursuant to section 15(b) of the CPSA.

18. Macy’s promptly notified the Commission pursuant to section 15(b) of the CPSA upon learning that certain children’s upper outerwear products contained drawstrings.

### Agreement of the Parties

19. Under the CPSA, the Commission has jurisdiction over this matter and over Macy’s.

20. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Macy’s, or a determination by the Commission, that Macy’s knowingly violated the CPSA.

21. In settlement of Staff’s allegations, Macy’s shall pay a civil penalty in the amount of seven hundred fifty thousand dollars (\$750,000.00). The civil penalty shall be paid within twenty (20) calendar days of service of the Commission’s final Order accepting the Agreement. The payment shall be made electronically to the Commission via <http://www.pay.gov>.

22. Macy’s agrees that it will not seek or accept, directly or indirectly, indemnification, reimbursement, insurance, or any other form of compensation or payment, including, but not limited to, cash, account credit, or set-off, from any vendor or supplier from which Macy’s acquired the Garments, or from any other firm or person, for the civil penalty that Macy’s

agrees and is ordered to pay pursuant to the Agreement and Order.

23. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register**, in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

24. Macy's shall conduct annual training of all employees responsible for purchasing children's upper outerwear, including training regarding all drawstring prohibitions, restrictions, guidelines, rules, and laws, and shall include such training when first hiring or assigning employees responsible for purchasing children's upper outerwear.

25. Within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement, Macy's shall conduct a comprehensive review of its existing children's apparel inventory to identify any children's upper outerwear bearing drawstrings at the neck ("Drawstring Garments").

26. Within ten (10) calendar days of the completion of the review Macy's conducts pursuant to paragraph 25, Macy's shall submit to Staff an Inventory Review Completion Report, covering the review that Macy's conducted pursuant to paragraph 25. The report shall, at a minimum, include the following:

a. A comprehensive list of all Drawstring Garments that Macy's has identified, including, but not limited to, the following: item description; style number(s); garment sizes in inventory; number of units of each size in inventory; date(s) of purchase; identity of the company/ies from which the garment was purchased; and (if applicable) the period of time during which Macy's sold and/or offered for sale the Drawstring Garment.

b. One sample of each available size of each Drawstring Garment identified during the inventory review;

c. A description of the step(s) that Macy's has taken to eliminate the strangulation hazards posed by each of the Drawstring Garments; and

d. The following certification signed by an officer of Macy's:

Pursuant to 28 U.S.C. 1746, I certify under penalty of perjury that I have examined and am familiar with the information submitted in this document and all attachments, and that the information is true and correct. I am aware that there are significant penalties for

submitting false information to Federal officials, including the possibility of fines and imprisonment.

The report shall be directed to the following Staff: Seth B. Popkin, Lead Trial Attorney, Office of the General Counsel, Division of Compliance, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814.

27. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Macy's knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Macy's failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

28. The Commission may publicize the terms of the Agreement and the Order.

29. The Agreement and the Order shall apply to, and be binding upon, Macy's and each of its successors and assigns.

30. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Macy's and each of its successors and assigns to appropriate legal action.

31. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

32. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Macy's agree that severing the provision materially affects the purpose of the Agreement and the Order.

Macy's, Inc.

Dated: 6/21/11.

By: \_\_\_\_\_  
Dennis Broderick,

*Executive Vice President, General Counsel, and Secretary, Seven West Seventh Street, Cincinnati, Ohio 45202.*

Dated: 6/22/11.

By: \_\_\_\_\_  
Jeffrey B. Margulies, Esq., William L. Troutman, Esq.,  
*Fulbright & Jaworski L.L.P., 555 South Flower Street, 41st Floor, Los Angeles, CA 90071, Counsel for Macy's, Inc.*

U.S. Consumer Product Safety Commission Staff.

Cheryl A. Falvey,  
*General Counsel.*

Mary B. Murphy,  
*Assistant General Counsel, Office of the General Counsel.*

Dated: 6/28/11.

By: \_\_\_\_\_  
Seth B. Popkin,  
*Lead Trial Attorney, Division of Compliance, Office of the General Counsel.*

### Order

Upon consideration of the Settlement Agreement entered into between Macy's, Inc. ("Macy's") and the U.S. Consumer Product Safety Commission ("Commission") staff, and the Commission having jurisdiction over the subject matter and over Macy's, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

*Ordered*, that the Settlement Agreement be, and hereby is, accepted; and it is

*Further Ordered*, that Macy's shall pay a civil penalty in the amount of seven hundred fifty thousand dollars (\$750,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made electronically to the Commission via <http://www.pay.gov>. Upon the failure of Macy's to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Macy's at the Federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b); and it is

*Further Ordered*, that Macy's shall fully perform all of its obligations as set forth in the Settlement Agreement at paragraphs 24, 25, and 26.

Provisionally accepted and provisional Order issued on the 8th day of July, 2011.

By Order of the Commission.

**Todd A. Stevenson,**

*Secretary, U.S. Consumer Product Safety Commission.*

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