implemented a CAA program to attain the 8-hour ozone NAAQS at this time or has participated in a compact.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children From Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355; May 22, 2001 because it is not a significant regulatory action under E.O. 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This proposed rule does not involve technical standards. Therefore, EPA is not considering the use of any VCS. The EPA will encourage States that have compact areas to consider the use of such standards, where appropriate, in the development of their SIPs.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629; Feb. 16, 1994 establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

The health and environmental risks associated with ozone were considered in the establishment of the 8-hour, 0.08 ppm ozone NAAQS. The level is designed to be protective with an adequate margin of safety.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control.

Authority: 42 U.S.C. 7408; 42 U.S.C. 7410; 42 U.S.C. 7501–7511f; 42 U.S.C. 7601(a)(1).

Dated: February 23, 2007.

Stephen L. Johnson,

Administrator.

[FR Doc. E7–3584 Filed 2–28–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 07–29; FCC 07–7]

Implementation of the Cable Television Consumer Protection and Competition Act of 1992 Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission initiates a review to determine whether the prohibition on exclusive programming contracts continues to be necessary to preserve and protect competition and diversity in the distribution of video programming. Previously, the Commission retained for five years, until October 5, 2007, the prohibition on exclusive contracts. The Commission provided that, during the year before the expiration of the current 5-year extension on October 5, 2007, a review would be undertaken to determine whether or not the exclusivity prohibition should sunset. The Commission also seeks comment on whether and how our procedures for resolving program access disputes under Section 628 should be modified.

DATES: Comments for this proceeding are due on or before April 2, 2007; reply comments are due on or before April 16, 2007.

ADDRESSES: You may submit comments, identified by MB Docket No. 07–29, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.

• *People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Karen Kosar, *Karen.Kosar@fcc.gov* of the Media Bureau, Policy Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *NPRM of Proposed Rulemaking,* FCC 07–7, adopted on February 7, 2007, and released on February 20, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/

or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Summary of the NPRM of Proposed Rulemaking

I. Introduction

1. We issue this *NPRM of Proposed Rulemaking ("NPRM")* pursuant to Section 628(c)(5) of the Communications Act of 1934, as amended ("Communications Act") and Section 76.1002(c)(6) of the Commission's rules. In areas served by a cable operator, Section 628(c)(2)(D) generally prohibits exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators. Section 628(c)(5) directed that this prohibition on exclusive programming contracts would cease to be effective on October 5, 2002, unless the Commission found that such prohibition "continues to be necessary to preserve and protect competition and diversity in the distribution of video programming." In a proceeding commenced prior to the sunset date specified by Congress, the Commission examined whether the prohibition should sunset or be extended; *see Implementation of the Cable Television Consumer Protection and Competition Act of 1992—Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition,* 66 FR 54972–02 (2001) *("NPRM").* The Commission concluded that the prohibition remained necessary to preserve and protect competition and diversity in the distribution of video programming and extended the term of the prohibition on exclusive contracts between cable operators and vertically integrated programmers for five years (i.e., through October 5, 2007); *see Implementation of the Cable Television Consumer Protection and Competition Act of 1992—Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition*, 67 FR 49247–01 (2002) *("Sunset Report and Order").* The Commission provided that, during the year before the expiration of the 5-year term, a review would again be undertaken to determine whether the exclusivity prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming. This *NPRM* initiates that review. Further, this *NPRM* also seeks comment on whether and how our procedures for resolving program access disputes under Section 628 should be modified.

II. Background

2. The focus of Congress in enacting the program access provisions, adopted as part of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), was to encourage entry into the multichannel video programming distribution ("MVPD") market by existing or potential competitors to traditional cable systems by making available to those entities the programming necessary to enable them to become viable competitors. The 1992 Cable Act and its legislative history reflect congressional findings that increased horizontal concentration of cable operators, combined with extensive vertical integration, created an imbalance of power, both between cable operators and program vendors and between incumbent cable operators and their multichannel competitors. Vertical integration means the combined ownership of cable systems and suppliers of cable programming. Congress concluded at that time that vertically integrated program suppliers had the incentive and ability to favor their affiliated cable operators over other multichannel program distributors, such as other cable systems, home satellite dish ("HSD") distributors, direct broadcast satellite ("DBS") providers, satellite master antenna television ("SMATV") systems, and wireless cable operators; *see Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992: Development of Competition and Diversity in Video Programming Distribution and Carriage*, 58 FR 27658–02 (1993) ("*First Report and Order*"), *recon.*, 59 FR 66255–01 (1994), *further recon.*, 60 FR 3099–01 (1994); *see* 47 U.S.C. 522(13) ("multichannel video programming distributor" means "a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming").

3. When the Commission promulgated regulations implementing the program access provisions of Section 628, it recognized that Congress placed a higher value on new competitive entry into the MVPD marketplace than on the continuation of exclusive distribution practices when such practices impede this entry. Congress absolutely prohibited exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators in areas unserved by cable, and generally prohibited exclusive contracts within areas served by cable. The term "satellite cable programming" means video programming which is transmitted via satellite and which is primarily intended for direct receipt by cable operators for their retransmission to cable subscribers, except that such term does not include satellite broadcast programming. The term "satellite broadcast programming" means broadcast video programming when such programming is retransmitted by satellite and the entity retransmitting such programming is not the broadcaster or an entity performing such retransmission on behalf of and with the specific consent of the broadcaster. Specifically, the prohibition with regard to served areas, Section 628(c)(2)(D), states that:

> with respect to distribution to persons in areas served by a cable operator, [the Commission shall] prohibit exclusive contracts for satellite cable programming or satellite broadcast programming between a cable operator and a satellite cable programming vendor in which a cable operator has an attributable interest or a satellite broadcast programming vendor in which a cable operator has an attributable interest, unless the Commission determines * * * that such contract is in the public interest.

Thus, in areas served by cable, the prohibition is not absolute. Congress recognized that, in areas served by cable, some exclusive contracts may serve the public interest by providing offsetting benefits to the video programming market or assisting in the development of competition among MVPDs. Any cable operator, satellite cable programming vendor in which a cable operator has an attributable interest, or satellite broadcast programming vendor in which a cable operator has an attributable interest seeking to enforce or enter into an exclusive contract in an area served by a cable operator must submit a ''petition for exclusivity'' to the Commission for approval.

4. The Commission's factual findings, analysis, and rationale for retaining the prohibition on exclusivity are fully set forth in the *Sunset Report and Order* and need not be reiterated here, other than to note that the Commission concluded that:

> [t]he competitive landscape of the market for the distribution of multichannel video programming has changed for the better since 1992. The number of MVPDs that compete with cable and the number of subscribers served by those MVPDs have increased significantly. We find, however, that the concern on which Congress based the program access provisions—that in the absence of regulation, vertically integrated programmers have the ability and incentive to favor affiliated cable operators over nonaffiliated cable operators and programming distributors using other technologies such that competition and diversity in the distribution of video programming would not be preserved and protected—persists in the current marketplace.

Specific aspects of the *Sunset Report and Order* will be discussed below where relevant to provide context for the matters upon which we seek inquiry in this *NPRM.*

III. Notice of Proposed Rulemaking

A. Sunset of Exclusive Contract Prohibition

5. Congress based the program access provisions on its concern that in the absence of regulation, vertically integrated programmers have the incentive and ability to favor affiliated cable operators over nonaffiliated cable operators and programming distributors using other technologies such that competition and diversity in the distribution of video programming would not be preserved and protected. We ask whether this concern has diminished or increased in today's marketplace.

6. In the *Sunset Report and Order*, the Commission examined the status of the MVPD market over the decade between the adoption of the program access provisions and the sunset review. The Commission observed that cable's overall market share declined from 95 percent in 1992 to 78 percent at the time of the *Sunset Report and Order.* The Commission also considered DBS, which at the time served 18 percent of MVPD households. Finally, the Commission noted that other competitors such as multichannel multipoint distribution service (''MMDS''), SMATV, and HSD, had not fared as well, comprising less than four percent of all MVPD subscribers. As of June 2005, basic cable subscribers comprised approximately 69 percent of all MVPD households and DIRECTV and EchoStar Communications Corporation (''EchoStar'') (marketed as the DISH Network) served approximately 27.7 percent of all MVPD households nationwide. As of June 2005, MMDS, SMATV and HSD operators served less than three percent of all MVPD subscribers. How has the exclusivity prohibition impacted the general state of competition among MVPD operators? We seek comment on the current status of all these current MVPD competitors to cable and their continued viability should the prohibition on exclusivity be permitted to sunset. In addition, how would the absence of an exclusivity prohibition affect the likelihood that potential MVPD competitors will enter the market?

7. We request information as to whether developments in the marketplace since the passage of the 1992 Cable Act and our 2002 sunset review have diminished or increased the need for the exclusivity prohibition. In this regard, we seek comment on three events which have occurred in the multichannel programming market since our 2002 sunset review. First, we seek comment on the increase in the provision of MVPD service by local exchange carriers (''LECs''). For example, AT&T is moving forward with its IP-enabled broadband network called ''Project Lightspeed,'' using both Fiber to the Node (''FTTN'') and Fiber to the Home (''FTTH'') to deliver video and other services to residential customers. AT&T states that it currently has approximately 3,000 customers, with more projected once it launches beyond San Antonio, Texas. In addition, Verizon is deploying a FTTH network that delivers video, telephony, and high-speed Internet access service. Verizon estimates that it had 100,000 video subscribers at the end of the 3rd quarter, 2006, and that they will have 175,000 video subscribers and pass 1.8 million households by the end of 2006. Second, we seek comment on the impact of the acquisition of control of the assets of Hughes Electronics Corporation by The News Corporation Limited (''News Corp.''). Through this transaction, News Corp. placed under common control DIRECTV, the nation's second largest MVPD, and the broadcast and multichannel programming assets of the Fox Entertainment Group. We note that in this decision, the Commission placed certain conditions on News Corp. and DIRECTV in order to ensure that the access and non-discrimination requirements of the program access rules would continue to apply to News Corp.'s national and regional cable programming, and to obtain additional protections encompassed by the parties' related commitments. Further, the Commission stated that these conditions would continue to apply as long as it deemed News Corp. to have an attributable interest in DIRECTV and the Commission's program access rules relating to satellite cable programming vendors affiliated with cable operators are in effect. If the Commission's program access rules are modified, then the Commission determined that these conditions would be modified to conform to the Commission's revised rules. We note that News Corp. recently proposed an $11 billion asset swap with Liberty Media to trade News Corp.'s 38 percent stake in DIRECTV and some other assets for Liberty's shareholding in News Corp. This proposal, if approved, would give Liberty control of DIRECTV. Finally, we seek comment on the recent acquisition by Comcast Corporation and Time Warner, Inc. of the assets of Adelphia Communications Corporation. We seek comment on the extent, if any, to which these specific events should inform our analysis of whether to retain the prohibition on exclusivity. In addition, we seek comment on any other relevant developments in the MVPD market since our 2002 sunset review that we should consider in deciding whether to retain the prohibition on exclusivity.

8. We ask whether competitive MVPDs' access to what some refer to as ''marquee'' or ''must have'' vertically integrated programming, such as CNN, HBO, TNT, Discovery and others, remains essential to successful implementation of competitive services. Does satellite-delivered vertically integrated programming remain necessary to the viability of competitive MVPDs because there is no good substitute programming available? We also ask whether the retention of the exclusivity prohibition affects access to national and regional sports

programming networks. We seek comment on the effects that the exclusivity prohibition has had on the development and production of programming for the current MVPD marketplace. We concluded in the *Sunset Report and Order* that the retention of the exclusivity prohibition would not reduce incentives to create new or diverse programming. In support, we noted that the number of national programming services increased from the exclusivity prohibition's inception in 1992 from 87 to 294 in 2001. We also noted that the number of vertically integrated programming services nearly doubled from 56 in 1994 to 104 in 2001 and concluded that the ban did not serve as a disincentive for cable MSOs to develop new cable networks. Since the extension of the exclusivity ban in 2002, has there been a significant overall increase or decrease in the development, promotion, and launch of new and diverse programming services? We note that, our most recent report on the status of video competition found that, as of June 2005, there were 531 satellite-delivered national programming networks. How has the exclusivity prohibition affected investment incentives in the current marketplace for both vertically integrated and independent programming? We also ask if there has been any change in the resources of nonaffiliated cable operators and competitive MVPDs and their ability to develop their own programming, thereby limiting their dependence on ''must have'' vertically integrated programming. Finally, we ask what effect the retention of the exclusivity ban has had on the launch of local origination programming that may have a more limited geographic appeal.

9. We also ask how the current state of cable system clusters and distribution of regional video programming services affiliated with cable operators should affect our decision regarding the exclusivity prohibition. As the Commission concluded in the *Sunset Report and Order*, ''[w]e believe that clustering, accompanied by an increase in vertically integrated regional programming networks affiliated with cable MSOs that control system clusters, will increase the incentive of cable operators to practice anticompetitive foreclosure of access to vertically integrated programming.'' We seek comment on the continuing validity of this conclusion and whether events since the *Sunset Report and Order* mitigate or exacerbate the impact of clustering. In particular, we seek comment on what impact our recent approval of the acquisition of the assets of Adelphia Communications by Comcast and Time Warner has on this topic. We also seek comment on whether the current state of horizontal consolidation in the cable industry increases incentives for anticompetitive foreclosure of access to vertically integrated programming.

10. We seek comment on whether the exclusivity prohibition continues to be necessary to preserve and protect diversity in the distribution of programming. Our focus in this area is not on programming diversity, but rather on ''preserving and protecting diversity in the *distribution* of video programming—i.e., ensuring that as many MVPDs as possible remain viable distributors of video programming.'' As the Commission observed in the *Sunset Report and Order*, ''[o]ther than the two largest non-cable MVPDs, DirecTV and EchoStar, nonaffiliated cable operators and competitive MVPDs * * * assert that they lack the resources and ability to develop their own programming and are thus dependent on access to the programming of others, including 'must have' vertically integrated programming.'' Does this continue to be true for nonaffiliated cable operators and competitive MVPDs in today's marketplace? We seek comment on whether retention of the exclusivity prohibition in the current climate helps to ensure that as many MVPDs as possible remain viable distributors of video programming. One of Congress' express findings in enacting the 1992 Cable Act was that ''[t]here is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media.'' Would the sunset of the exclusivity prohibition in the current state of the market limit or foreclose access to vertically integrated programming so as to jeopardize a diverse market of existing and potential competitors?

11. Congress initially set a 10-year period for Commission review of Section 628(c)(2)(D) in order to determine whether the exclusive contract prohibition continued to be necessary to preserve and protect competition and diversity in the distribution of video programming. After completing its review, the Commission determined in the *Sunset Report and Order* that a five-year term provided a sufficient period in which to initiate a subsequent sunset review. If we determine in this proceeding that Section 628(c)(2)(D) should be retained and extended for another period of years, we seek comment on what time frame would be appropriate, taking into consideration the current and potential future competitive environment. We also seek comment on whether the exclusivity prohibition, if retained, should be automatically abolished depending on the triggering of a specific event or events in the marketplace.

12. We also seek comment on any new trends in the industry that would indicate that the MVPD distribution and program production sectors are moving toward the type of market structure that would support the sunset of the exclusivity prohibition. Finally, we seek comment on any other issues appropriate to our inquiry in accordance with Section 628(c)(5).

B. Program Access Complaint Procedures

13. This *NPRM* also seeks comment on whether and how our procedures for resolving program access disputes under Section 628 should be modified. Our rules provide that any MVPD aggrieved by conduct that it believes constitutes a violation of Section 628 and the Commission's program access rules may file a complaint at the Commission in accordance with 47 CFR 76.7 and 76.1003. The Commission's rules provide that before an MVPD may file such a complaint, it must first notify the cable operator or satellite programming vendor that it intends to file the complaint. The complaining MVPD must allow the cable operator or vendor 10 days to respond to the prefiling *NPRM* prior to filing its complaint with the Commission. The necessary contents of the complaint are specified in the rules, including a requirement that any damages sought must be clearly stated in the complaint. Once a complaint is filed, the cable operator or satellite programming vendor shall answer within 20 days of service of the complaint. Replies to the answer are due 10 days thereafter. Any program access complaint must be filed within one year of the date on which the MVPD enters into a contract with the programming vendor, the programming vendor offers the programming to the MVPD, or the MVPD notifies the cable operator or programming vendor that it intends to file a complaint with the Commission. The rules also address the determination of the proper damages to be assessed, including a recognition that the parties be given an opportunity to reach agreement on damages. In addition, the Commission has stated its goals for resolution of program access complaints which are: five months from the submission of a complaint for denial of programming cases, and nine months

for all other program access complaints, such as price discrimination cases.

14. We seek comment on whether and how our procedures for resolving program access disputes should be modified. The scope of our inquiry is limited to our rules governing the program access complaint process. In particular, we seek comment on the costs associated with the complaint process and whether the pre-filing *NPRM*, pleading requirements, evidentiary standards, timing, and potential remedies are appropriate and effective. In addition, we seek comment on whether additional time limits would improve the existing process. For instance, we seek comment on whether specific time limits on the Commission, the parties, or others would promote a speedy and just resolution of these disputes.

15. Are the Commission's program access complaint rules and procedures adequate? We seek comment on these issues and on additional procedures that would address infirmities. For example, are complaints resolved in a timely manner? Are our rules governing discovery and protection of confidential information adequate? Should the Commission adopt alternative procedures or remedies such as mandatory standstill agreements and/or arbitration, as it has done in two recent mergers? Commenters that favor these alternative procedures should address the Commission's authority to adopt them.

IV. Administrative Matters

16. *Ex Parte Rules.* This is a permit-but-disclose *NPRM* and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

17. *Comment Information.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

• Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the website for submitting comments.

• For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

• Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

18. *Initial Paperwork Reduction Act Analysis.* This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

19. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this *NPRM of Proposed Rulemaking.* The IRFA is set forth in the Appendix. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *Further NPRM*, and they should have a separate and distinct heading designating them as responses to the IRFA.

20. *Additional Information.* For additional information on this proceeding, please contact Karen Kosar, Policy Division, Media Bureau at (202) 418–1053.

V. Initial Regulatory Flexibility Analysis

21. As required by the Regulatory Flexibility Act of 1980, as amended (the ''RFA'') the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact of the policies and rules proposed in this *NPRM of Proposed Rulemaking (''NPRM'')* on a substantial number of small entities. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* indicated on the first page of this document. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA''). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Regulatory Approaches

22. The focus of the enactment of the program access provisions contained in Section 628 of the Communications Act of 1934, as amended, adopted as part of the Cable Television Consumer Protection and Competition Act of 1992, was to encourage entry into the multichannel video programming distribution market (''MVPD'') by

existing or potential competitors to traditional cable systems by making available to those entities the programming necessary to empower them to become viable competitors. Specifically, this proceeding involves Section 628(c)(2)(D), which prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators unless the Commission determines that such exclusivity is in the public interest.

23. Section 628(c)(5) directed that the prohibition contained in Section 628(c)(2)(D) should cease to be effective on October 5, 2002, unless the Commission found that such prohibition ''continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.'' The Commission initiated its proceeding in the matter by issuing a *NPRM of Proposed Rulemaking* seeking comment on the possible sunset of Section 628(c)(2)(D) in October 2001. The Commission's *Report and Order*, issued in June 2002, concluded that the term of the prohibition on exclusive contracts between cable operators and vertically integrated programmers should be extended for five (5) years from October 5, 2002. The prohibition on exclusivity is therefore set to expire on October 5, 2007, unless circumstances in the video programming marketplace indicate that the prohibition continues to be necessary within the meaning of the statute. The Commission has stated during the year before the expiration of the 5-year term, a review again will be undertaken to determine whether the exclusivity prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming. This *NPRM* initiate this review.

B. Legal Basis

24. The authority for the action proposed in the rulemaking is contained in Section 4(i), 303 and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303 and 548.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

25. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').

26. *Cable and Other Program Distribution.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.'' The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. An additional 61 firms had annual receipts of $25 million or more. Thus, under this size standard, the majority of firms can be considered small.

27. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

28. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard. The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules.

29. *Direct Broadcast Satellite (''DBS'') Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution. This definition provides that a small entity is one with $13.5 million or less in annual receipts. Currently, only four operators hold licenses to provide DBS service, which requires a great investment of capital for operation. All four currently offer subscription services. Two of these four DBS operators, DIRECTV and EchoStar Communications Corporation (''EchoStar''), report annual revenues that are in excess of the threshold for a small business. A third operator, Rainbow DBS, is a subsidiary of Cablevision's Rainbow Network, which also reports annual revenues in excess of $13.5 million, and thus does not qualify as a small business. The fourth DBS operator, Dominion Video Satellite, Inc. (''Dominion''), offers religious (Christian) programming and does not report its annual receipts. The Commission does not know of any source which provides this information and, thus, we have no way of confirming whether Dominion qualifies

as a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, we acknowledge the possibility that there are entrants in this field that may not yet have generated $13.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

30. *Private Cable Operators (PCOs) also known as Satellite Master Antenna Television (SMATV) Systems.* PCOs, also known as SMATV systems or private communication operators, are video distribution facilities that use closed transmission paths without using any public right-of-way. PCOs acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. The SBA definition of small entities for Cable and Other Program Distribution Services includes PCOs and, thus, small entities are defined as all such companies generating $13.5 million or less in annual receipts. Currently, there are approximately 135 members in the Independent Multi-Family Communications Council (IMCC), the trade association that represents PCOs. Individual PCOs often serve approximately 3,000–4,000 subscribers, but the larger operations serve as many as 15,000–55,000 subscribers. In total, PCOs currently serve approximately 1.1 million subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten PCOs, we believe that a substantial number of PCO may qualify as small entities.

31. *Home Satellite Dish (''HSD'') Service.* Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Cable and Other Program Distribution, which includes all such companies generating $13.5 million or less in revenue annually. HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. There are approximately 30 satellites operating in the C-band, which carry over 500 channels of programming combined; approximately 350 channels are available free of charge and 150 are scrambled and require a subscription. HSD is difficult to quantify in terms of annual revenue. HSD owners have access to program channels placed on C-band satellites by programmers for receipt and distribution by MVPDs. Commission data shows that, between June 2003 and June 2004, HSD subscribership fell from 502,191 subscribers to 335,766 subscribers, a decline of more than 33 percent. The Commission has no information regarding the annual revenue of the four C-Band distributors.

32. *Wireless Cable Systems.* Wireless cable systems use the Multipoint Distribution Service (''MDS'') and Instructional Television Fixed Service (''ITFS'') frequencies in the 2 GHz band to transmit video programming and provide broadband services to subscribers. Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. As previously noted, the SBA definition of small entities for Cable and Other Program Distribution, which includes such companies generating $13.5 million in annual receipts, appears applicable to MDS, ITFS and LMDS. In addition, the Commission has defined small MDS and LMDS entities in the context of Commission license auctions.

33. In the 1996 MDS auction, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities. We also note that MDS licensees and wireless cable operators that did not participate in the MDS auction must rely on the SBA definition of small entities for Cable and Other Program Distribution, which is: Such entities do not generate revenue in excess of $13.5 million annually. We estimate that the majority of these entities are small.

34. While SBA approval for a Commission-defined small business size standard applicable to ITFS is pending, educational institutions are included in this analysis as small entities. There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, the Commission estimates that at least 1,932 ITFS licensees are small businesses.

35. In the 1998 and 1999 LMDS auctions, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. Moreover, the Commission added an additional classification for a ''very small business,'' which was defined as an entity that had annual average gross revenues of less than $15 million in the previous three calendar years. These definitions of ''small business'' and ''very small business'' in the context of the LMDS auctions have been approved by the SBA. In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, we believe that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

36. *Open Video Systems (''OVS'').* The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of Cable and Other Program Distribution Services, which provides that a small entity is one with $13.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises, even though OVS is one of four statutorily-recognized options for local exchange carriers (LECs) to offer video programming services. As of June 2003, BSPs served approximately 1.4 million subscribers, representing 1.49 percent of all MVPD households. Among BSPs, however, those operating under the OVS framework are in the minority, with

approximately eight percent operating with an OVS certification. Serving approximately 460,000 of these subscribers, Affiliates of Residential Communications Network, Inc. (''RCN'') is currently the largest BSP and 11th largest MVPD. RCN received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. The Commission does not have financial information regarding the entities authorized to provide OVS, some of which may not yet be operational. We thus believe that at least some of the OVS operators may qualify as small entities.

37. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis * * *. These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.'' The SBA has developed a small business size standard for firms within this category, which is: firms with $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were 270 firms in this category that operated for the entire year. Of this total, 217 firms had annual receipts of under $10 million and 13 firms had annual receipts of $10 million to $24,999,999. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

38. A ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope.

39. *Incumbent Local Exchange Carriers (''LECs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses.

40. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. In addition, 12 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 12 are estimated to have 1,500 or fewer employees. In addition, 39 carriers have reported that they are ''Other Local Service Providers.'' Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities.

41. *Electric Power Generation, Transmission and Distribution.* The Census Bureau defines this category as follows: ''This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) Operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.'' The SBA has developed a small business size standard for firms in this category: ''A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.'' According to Census Bureau data for 2002, there were 1,644 firms in this category that operated for the entire year. Census data do not track electric output and we have not determined how many of these firms fit the SBA size standard for small, with no more than 4 million megawatt hours of electric output. Consequently, we estimate that 1,644 or fewer firms may be considered small under the SBA small business size standard.

D. Description of Proposed Reporting, Recordkeeping and Other Compliance Requirements

42. The *NPRM* seeks comment on the possible sunset or the retention of Section 628(c)(2)(D) of the Communications Act. The *NPRM* also seeks comment on whether and how our procedures for resolving program access disputes under Section 628 should be modified. The *NPRM* does not propose any specific reporting, recordkeeping or other compliance requirements.

E. Steps Taken To Minimize Significant Impact on Small Entities and Significant Alternatives Considered

43. The RFA requires an agency to describe any significant alternatives that it has considered in proposing regulatory approaches, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. The *NPRM* again seeks comment on whether Section 628(c)(2)(D) should cease to be effective, pursuant to the sunset provision in Section 628(c)(5), or whether Section 628(c)(2)(D) should be retained. Thus, the *NPRM* invites comment on issues that may impact some small entities. The *NPRM* seeks comment on what impact the retention of the exclusivity prohibition has had on the multichannel video programming distribution market (''MVPD'') overall. More specifically, the *NPRM* inquires what impact the provision has had on the entry of new competitive MVPDs into the marketplace. It further inquires about access by competitive MVPDs to ''marquee'' or ''must have'' programming and whether these services still remain essential to the successful implementation of

competitive services. The *NPRM* also seeks information on what impact cable system clusters, the distribution of regional programming services, and horizontal consolidation have on the programming marketplace. The *NPRM* also inquires about whether there has been any change in the resources and ability of nonaffiliated cable operators and competitive MVPDs to develop their own programming. In addition, comment is sought on what effect the prohibition has had on preserving and protecting diversity in the distribution of video programming.

F. Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals

None.

VI. Ordering Clauses

44. Accordingly, *it is ordered* that, pursuant to the authority contained in Sections 4(i), 303 and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303 and 548, *notice is hereby given* of the proposals described in this *NPRM* of Proposed Rulemaking.

45. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *NPRM of Proposed Rule Making,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–3520 Filed 2–28–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 070215034–7034–01; I.D. 020907D]

RIN 0648–AU98

Sea Turtle Conservation; Fishing Gear Inspection Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to establish an inspection program for modified pound net leaders in the Virginia waters of the mainstem Chesapeake Bay. Current regulations require modified pound net leaders, as defined in the regulations, in a portion of the Virginia Chesapeake Bay, and allow them to be used in a different portion of the Chesapeake Bay. This proposed action would ensure that leaders used in those areas do in fact meet the definition of a modified pound net leader. This action, taken under the Endangered Species Act of 1973 (ESA), as amended, is intended to facilitate compliance with the existing regulation, which is designed to help protect threatened and endangered sea turtles.

DATES: Comments on this action are requested, and must be received at the appropriate address or fax number (see **ADDRESSES**) by no later than 5 p.m., eastern daylight time, on April 2, 2007.

ADDRESSES: Written comments may be submitted on this proposed rule, identified by RIN 0648–AU98, by any one of the following methods:

(1) E-mail: *poundnetinspection@noaa.gov*. Please include the RIN 0648–AU98 in the subject line of the message.

(2) Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions on the website for submitting comments.

(3) NMFS/Northeast Region Website: *http://www.nero.noaa.gov/nero/regs/com.html* Follow the instructions on the website for submitting comments.

(4) Mail: Mary A. Colligan, Assistant Regional Administrator for Protected Resources, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930, ATTN: Sea Turtle Conservation Measures, Proposed Rule

(5) Facsimile (fax): 978–281–9394, ATTN: Sea Turtle Conservation Measures, Proposed Rule

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted in one of the above formats and by e-mail to *David__Rostker@omb.eop.gov,* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Pasquale Scida (ph. 978–281–9208, fax 978–281–9394), or Barbara Schroeder (ph. 301–713–2322, fax 301–427–2522).

SUPPLEMENTARY INFORMATION:

Background

Based upon documented sea turtle interactions with pound net leaders, NMFS issued a final rule on May 5, 2004 (69 FR 24997), that prohibited the use of offshore pound net leaders from May 6 to July 15 in an area now referred to as ''Pound Net Regulated Area I''. Pound Net Regulated Area I is defined as the Virginia waters of the mainstem Chesapeake Bay, south of 37°19.0′ N. lat. and west of 76°13.0′ W. long., and all waters south of 37°13.0′ N. lat. to the Chesapeake Bay Bridge Tunnel (extending from approximately 37°05′ N. lat., 75°59′ W. long. to 36°55′ N. lat., 76 08′ W. long.) at the mouth of the Chesapeake Bay, and the portion of the James River downstream of the Hampton Roads Bridge Tunnel (I–64; approximately 36°59.55′ N. lat., 76° 18.64′ W. long.) and the York River downstream of the Coleman Memorial Bridge (Route 17; approximately 37°14.55′ N. lat, 76°30.40′ W. long.). An offshore pound net leader refers to a leader with the inland end set greater than 10 horizontal feet (3 m) from the mean low water line. The May 2004 rule also placed restrictions on nearshore pound net leaders in Pound Net Regulated Area I and on all pound net leaders employed in ''Pound Net Regulated Area II.'' Pound Net Regulated Area II refers to Virginia waters of the Chesapeake Bay, outside of Pound Net Regulated Area I as defined above, extending to the Maryland-Virginia State line (approximately 37°55′ N. lat., 75°55′ W. long.), the Great Wicomico River downstream of the Jessie Dupont Memorial Highway Bridge (Route 200; approximately 37°50.84′ N. lat, 76°22.09′ W. long.), the Rappahannock River downstream of the Robert Opie Norris Jr. Bridge (Route 3; approximately 37°37.44′ N. lat, 76°25.40′ W. long.), and the Piankatank River downstream of the Route 3 Bridge (approximately 37°30.62′ N. lat, 76°25.19′ W. long.) to the COLREGS line at the mouth of the Chesapeake Bay. According to the 2004 rule, nearshore pound net leaders in Pound Net Regulated Area I and all pound net leaders in Pound Net Regulated Area II must have mesh size less than 12 inches (30.5 cm) stretched mesh and may not employ stringers.

In 2004 and 2005, NMFS implemented a coordinated research program with pound net industry participants and other interested parties to develop and test a modified pound net leader design with the goal of eliminating or reducing sea turtle interactions while retaining an acceptable level of fish catch. The modified pound net leader design used in the experiment consisted of a combination of mesh and stiff vertical lines. The mesh size was equal to or less than 8 inches (20.3 cm). The mesh was positioned at a depth that was no more than one-third the depth of the water.