al hydrogen aviation fuel research and development program, should it receive a hearing in September before the Senate Commerce, Science and Transportation Committee.

Mr. President, I should add the fact that today, July 11, is Mr. Conrad's 80th birthday. He first soloed as a pilot in 1929. He is truly an aviator of the barnstorming era whose Sunday afternoon feat last month now places him among such pioneers as Lindbergh, Yeager, and the Wright brothers. He is to be commended for demonstrating the way to the future for world aviation; namely, cryogenic fuel.

Both Mr. Conrad and the National Aeronautic Association are to commended also for their efforts to see that the United States remains a leader in advancing the hydrogen economy. I congratulate them both and only hope their example can inspire my colleagues to support my own legislative initiatives in this regard.

SAM NICOLETTI

Mr. DOLE. Mr. President, I would like to recognize a distinguished native of Kansas, Mr. Sam Nicoletti, who recently retired as superintendent of Northeast Unified School District 246, in Arma, KS. Mr. Nicoletti exhibited hard work and dedication to the education field for the benefit of many Kansans.

A lifelong citizen of Arma, Sam Nicoletti received a B.S. and M.S. from nearby Pittsburg State University.

Mr. Nicoletti taught school at the local high school and, in 1965, proceeded as superintendent of schools, Northeast Unified School District 246.

Sam Nicoletti's involvement in the education system extends beyond his impressive resume. He helped the district acquire statewide grant money for a junior high school and additions to the elementary school. He instigated construction of the North East High School and athletic facilities including a football field, track and bleachers.

His involvement in statewide education committees includes a position on the executive board of the Kansas State High School Activities Association and a member of the Curriculum Advisory Board, Kansas State Department of Education.

Civic pride is also important to Mr. Nicoletti. His involvement in the Arma Boy Scouts has lasted 39 years. For the past 42 years he has assisted with homecoming activities for the city of Arma, KS.

On the occasion of his retirement, it is appropriate to salute this native son of Kansas who has made significant contributions to the education system and the State of Kansas.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT—ESTABLISHMENT OF VETERANS' ADMINISTRATION AS AN EXECUTIVE DEPARTMENT

Mr. BYRD. Mr. President, I ask unanimous consent that on tomorrow, at 9:15 a.m., the Governmental Affairs Committee be discharged from further consideration of H.R. 3471; that the Senate proceed to its immediate consideration; that without any further debate, all after the enacting clause be striken and the test of S. 533 be substituted for the House language; that without any further debate, intervening action of any kind or any motion, the Senate proceed to an immediate vote on passage of H.R. 3471, as amended.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that it be in order at this time the yeas and nays on H.R. 3471.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask for the yeas and nays on final passage.

The ACTING PRESIDENT pro tempore. Is there sufficient second?

There is sufficient second.

The yeas and nays were ordered.

ORDER TO PRINT H.R. 1807

Mr. BYRD. Mr. President, on behalf of Mr. BUMPERS I ask unanimous consent that the amendment to H.R. 1807, the Minority Business Development Program Reform Act of 1988, be printed as passed.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

HEARING AID COMPATIBILITY ACT

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 743.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 314) to require certain telephones to be hearing aid compatible.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

That this Act may be cited as the "Hearing Aid Compatibility Act of 1988".

FINDINGS

SEC. 2. The Congress finds that—

(1) to the fullest extent made possible by technology and medical science, hearing-impaired persons should have equal access to the national telecommunications network;

(2) present technology provides effective coupling of telephones to hearing aids used by some severely hearing-impaired persons for communicating by voice telephone;

(3) anticipated improvements in both telephone and hearing aid technologies promise greater access in the future; and

(4) universal telephone service for hearing-impaired persons will lead to greater employment opportunities and increased productivity.

HEARING AID COMPATIBILITY REQUIREMENTS

SEC. 3. (a) Subsection (b) of section 710 of the Communications Act of 1934 (47 U.S.C. 610) is amended to read as follows:

"(b)(1) Except as provided in paragraphs (2) and (3), the Commission shall require that—

"(A) all essential telephones, and

"(B) all telephones manufactured in the United States (other than for export) more than one year after the date of enactment of the Hearing Aid Compatibility Act of 1988 or imported for use in the United States more than one year after such date, provide internal means for effective use with hearing aids that are designed to be compatible with telephones which meet established technical standards for hearing aid compatibility.

"(2)(A) The initial regulations prescribed by the Commission under paragraph (1) of this subsection after the date of enactment of the Hearing Aid Compatibility Act of 1988 shall exempt from the requirements established pursuant to paragraph (1)(B) of this subsection only—

"(i) telephones used with public mobile services;

"(ii) telephones used with private radio services;

"(iii) cordless telephones; and

"(iv) secure telephones.

"(B) The exemption provided by such regulations for cordless telephones shall not apply with respect to cordless telephones manufactured or imported more than three years after the date of enactment of the Hearing Aid Compatibility Act of 1988.

"(C) The Commission shall periodically assess the appropriateness of continuing in effect the exemptions provided by such regulations for telephones used with public mobile services and telephones used with private radio services. The Commission shall revoke or otherwise limit any such exemption if the Commission determines that—

"(i) such revocation or limitation is in the public interest;

"(ii) continuation of the exemption without such revocation or limitation would have an adverse effect on hearing-impaired individuals;

"(iii) compliance with the requirements of paragraph (1)(B) is technologically feasible for the telephones to which the exemption applies; and

"(iv) compliance with the requirements of paragraph (1)(B) would not increase costs to such an extent that the telephones to which the exemption applies could not be successfully marketed.

"(3) The Commission may, upon the application of any interested person, initiate a proceeding to waive the requirements of

paragraph (1)(B) of this subsection with respect to new telephones, or telephones associated with a new technology or service. The Commission shall not grant such a waiver unless the Commission determines, on the basis of evidence in the record of such proceeding, that such telephones, or such technology or service, are in the public interest, and that (A) compliance with the requirements of paragraph (1)(B) is technologically infeasible, or (B) compliance with such requirements would increase the costs of the telephones, or of the technology or service, to such an extent that such telephones, technology, or service could not be successfully marketed. In any proceeding under this paragraph to grant a waiver from the requirements of paragraph (1)(B), the Commission shall consider the effect on hearing-impaired individuals of granting the waiver. The Commission shall periodically review and determine the continuing need for any waiver granted pursuant to this paragraph.

"(4) For purposes of this subsection—

"(A) the term 'essential telephones' means only coin-operated telephones, telephones provided for emergency use, and other telephones frequently needed for use by persons using such hearing aids;

"(B) the term 'public mobile services' means air-to-ground radiotelephone services, cellular radio telecommunications services offshore radio, rural radio service, public land mobile telephone service, and other common carrier radio communication services covered by part 22 of title 47 of the Code of Federal Regulations;

"(C) the term 'private radio services' means private land mobile radio services and other communications services characterized by the Commission in its rule as private radio services; and

"(D) the term 'secure telephones' means telephones that are approved by the United States Government for the transmission of classified or sensitive voice communications.".

(b) Section 710(f) of the Communications Act of 1934 (47 U.S.C. 610(f)) is amended by striking out the second sentence and inserting in lieu thereof the following: "The Commission shall complete rulemaking actions required to implement the amendments made by the Hearing Aid Compatibility Act of 1988 within nine months after the date of enactment of such Act. Thereafter, the Commission shall periodically review the regulations established pursuant to this section.".

The ACTING PRESIDENT pro tempore. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

Mr. PRESSLER. Mr. President, I am very pleased to rise today to speak in favor of S. 314, the Hearing Aid Compatibility Act of 1988. I have been working on this legislation for 4 years now, and it was very gratifying to see the House of Representatives pass the companion measure last month. The Senate Committee on Commerce, Science, and Transportation favorably reported S. 314 on May 24, and I look forward to quick passage by the full Senate.

This act will require that all telephones, with certain exceptions, manufactured in or imported to the United States more than 1 year after enactment be hearing aid compatible. Thus this legislation ultimately aims at universal telephone compatibility with hearing aids.

The Telecommunications for the Disabled Act of 1982 began to address the needs of hearing-impaired individuals by requiring "essential" telephones to be hearing-aid compatible. This ensured that there always would be some telephones available to the hearing-impaired, but most telephones were not defined as essential.

I wonder how well most of us would function if we were restricted to using only those telephones which have been defined by the FCC as essential. Fortunately, for most of us, we can use any telephone. When we visit friends, we know we can call home from their home. When we are away from our desks, we know we can still use other telephones in the workplace. When we stay at a hotel, we don't have to ask for a room which has a compatible telephone, and then hope that such a room is available. Life would not be so easy if we were all restricted to only those telephones currently defined as essential.

Even that situation could be acceptable if there were some good reason for it. But there isn't. The technology which allows telephones to be hearing aid compatible has been available since 1945. It is known as inductive coupling and uses the electromagnetic field to transmit the conversation. This transmission can occur if both the telephone handset and the hearing aid are equipped with a telecoil. Prior to the deregulation of AT&T, virtually all the telephones they manufactured were hearing aid compatible. Thus there was no need for a legal requirement.

Since deregulation, however, with the entrance of many new manufacturers, and in the absence of a legal requirement, telephones without a magnetic coil inevitably have entered the marketplace. Many of these are produced overseas. To the credit of GTE and AT&T, they have continued to make nearly all of their telephones hearing aid compatible. But the percentage of incompatible telephones on the market has steadily climbed.

Not only is the technology available but it does not appreciably add to the cost of producing telephones. In 1985, the Commerce Department stated that hearing aid compatible telephones were no more expensive to manufacture than noncompatible telephones. The industry itself provides estimates of anywhere from 10 to 50 cents additional cost per phone, and GTE claims that compatible telephones are just as competitive on the market as noncompatible telephones.

Perhaps the most difficult issue with regard to this legislation was the question of new, as yet unknown, technologies. The original language did not allow for new technologies and this caused great concern in the industry. On the other hand, a broad exemption for new technologies could defeat the whole purpose of this bill by allowing some new type of general purpose telephone developed a couple of years from now to be noncompatible.

Dealing with the unknown is difficult, but I think we reached a good compromise. New technologies must be compatible with hearing aids, unless they are specifically exempted by the FCC. To gain such an exemption, the developer must demonstrate that compatibility is either technologically impossible or so costly as to prevent the product from being successfully marketed. Thus, products can be developed and marketed which cannot be made compatible.

We cannot predict all the specialized telephone technologies which may be developed in the future, and they must not be prevented from coming to market. On the other hand, the average telephone that is used in the home and place of business should continue to be compatible with hearing aids, regardless of how that technology changes.

To this end, the FCC is instructed to consider the needs of the hearing-impaired before granting any waivers. And in no case will any telephones currently required to be hearing-aid compatible be exempted.

Telephones used for national security are the only telephones permanently exempted from the compatibility requirement. Cordless telephones are exempted for 3 years and cellular telephones receive an initial exemption. Except for secure telephones and cordless telephones, all the initial exemptions and future exemptions to be granted by the FCC will be reviewed periodically by the FCC to determine if they are still warranted. The periodic review provisions act as a valve to keep the compatibility trend flowing in the right direction. A new exemption cannot be created for an old technology. Again, the ultimate goal of this legislation is to provide for universal compatibility.

Before closing, I must mention the role of David Saks, of the Organization for Use of the Telephone (OUT), in initiating and advocating this legislation. David has worked tirelessly for years on behalf of the hearing-impaired community to ensure universal access to the telephone network. OUT is not a large organization with a huge budget. Nevertheless, David coordinated support for this legislation from organizations such as the America Association of Retired Persons, the National Center for Law and the Deaf, the National Association of Regulatory Utility Commissioners, and numerous other national and State organizations. He worked vigorously with Mr. MAVROULES in the House, myself in the Senate, and the telephone and electronics industries.

Mr. President, I again urge passage of this legislation. With existing tech-

nology and at negligible cost to industry, we can create the same universal telephone service for hearing-impaired persons that the rest of us enjoy.

The ACTING PRESIDENT pro tempore. The question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar Order No. 723, H.R. 2213.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2213) to require certain telephones to be hearing aid compatible.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. BYRD. Mr. President, I ask unanimous consent that all after the enacting clause be stricken, and the text of S. 314, as amended, be inserted in lieu thereof.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The question is on the engrossment and the third reading of the bill.

The bill (H.R. 2213) was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsidered the vote by which the bill was passed.

Mr. DOLE. I Move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I ask unanimous consent that Calendar Order No. 743 be indefinitely postponed.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER TO INDEFINITELY POSTPONE S. 1993

Mr. BYRD. Mr. President, I ask unanimous consent that Calendar Order No. 753, S. 1993, a bill to amend the Small Business Act to improve the growth and development of small business concerns owned and controlled by socially and economically disadvantaged individuals, especially through participation in the Federal procurement process, and for other purposes, be indefinitely postponed.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDERS FOR TUESDAY, JULY 12, 1988

RECESS UNTIL 9 A.M.

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9 o'clock tomorrow morning.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

REDUCTION OF LEADER TIME AND MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that on tomorrow morning the time of the two leaders be reduced to 5 minutes each and that, following the time for the recognition on the two leaders under the standing order, there be a period for morning business to extend until 9:15 a.m., and that Senators may speak during that period for morning business for not to exceed 1 minute each.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

PROGRAM

Mr. BYRD. Mr. President, the order has been entered, has it not, for a vote on final passage of the Veterans' Department bill?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. BYRD. And that will occur at 9:15 a.m.?

The ACTING PRESIDENT pro tempore. The majority leader is correct.

Mr. BYRD. Mr. President, the distinguished Republican leader and I have agreed that on tomorrow, following the vote on the veterans' bill, the Senate will then proceed to the consideration of the transportation appropriations bill. So that will be the order following the vote. If both sides can alert Senators who are involved in the transportation bill, the managers thereof, the Senate can then proceed quickly to that bill.

After the transportation appropriations bill, Mr. President, under the order as it presently stands, the Senate will proceed to the consideration of the HUD appropriations bill. Upon the disposition of that bill, the Senate will take up the Interior appropriations bill.

Does the distinguished Republican leader have any statement he wishes to make or any comments about the program as I have outlined it, or any further business he would like to transact?

Mr. DOLE. No further business. I have indicated to the majority leader that we will check on the Labor-HHS appropriations bill—we might be able to do a portion of that—and also the other outstanding bills.

Mr. BYRD. The only remaining ones would be Agriculture, Defense, and State-Justice-Commerce. Those three, in addition to the Labor-HHS bill which has been mentioned by the able Republican leader.

Also tomorrow morning I would like to get a time agreement on the Endangered Species Act. If the distinguished leader could alert anyone on his side who might be involved in that act, I would like to put that request following the rollcall vote.

Mr. DOLE. I will ask the distinguished Senator from Idaho, Senator McCLURE, to be here. I will be attending a White House meeting at that time. He has an interest in that bill. We will notify him and ask him to be present following the vote.

Mr. BYRD. Very well.

CONCLUSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, has morning business been closed?

The ACTING PRESIDENT pro tempore. If there is no further morning business, morning business is closed.

ESTABLISHMENT OF VETERANS' ADMINISTRATION AS AN EXECUTIVE DEPARTMENT

The Senate continued with the consideration of the bill.

Mr. BYRD. Mr. President, what is the pending business before the Senate?

The ACTING PRESIDENT pro tempore. S. 533 is the pending business.

Mr. BYRD. That is the bill creating a new department for veterans' affairs?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. BYRD. I thank the Chair.

RECESS UNTIL 9 A.M., TOMORROW

Mr. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until the hour of 9 o'clock a.m. tomorrow.

The motion was agreed to; and, at 8:16 p.m., the Senate recessed until Tuesday, July 12, 1988, at 9 a.m.

NOMINATIONS

Executive nominations received by the Secretary of the Senate July 8, 1988, after the recess of the Senate, under authority of the order of the Senate of February 3, 1987:

DEPARTMENT OF THE TREASURY

SALVATORE R. MARTOCHE, OF NEW YORK, TO BE AN ASSISTANT SECRETARY OF THE TREASURY, VICE FRANCIS ANTHONY KEATING II.

DEPARTMENT OF COMMERCE

R. KENT BURTON, OF VIRGINIA, TO BE ASSISTANT SECRETARY OF COMMERCE FOR OCEANS AND ATMOSPHERE, VICE JAMES CURTIS MACK II, RESIGNED.

EXPORT-IMPORT BANK OF THE UNITED STATES

RICHARD C. HOUSEWORTH, OF ARIZONA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE EXPORT-IMPORT BANK OF THE UNITED STATES FOR A TERM OF 4 YEARS EXPIRING JANUARY 20, 1991, VICE RICHARD W. HELDRIDGE, RESIGNED.

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

THE FOLLOWING NAMED PERSONS TO BE MEMBERS OF THE BOARD OF TRUSTEES OF THE JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION FOR TERMS OF 6 YEARS:

JOAN R. CHALLINOR, OF THE DISTRICT OF COLUMBIA. (NEW POSITION.)

BETTY SOURHARD MURPHY, OF VIRGINIA. (NEW POSITION.)

This salary cap applies to the Staff Director of the Sentencing Commission. Opinion of the Comptroller General, File No. B-227781 (September 11, 1987).

As a result, the salary of the Staff Director is now artificially low, and over time will become increasingly unsuitable. The proposed amendment disengages the Staff Director's salary from the capped General Schedule and instead sets the salary at level 6 of the Senior Executive Service Schedule, currently $77,500.

Other government officials with responsibility comparable to that of the Staff Director are compensated at level 6 of the Senior Executive Service Schedule. For example, the Executive Director of the Federal Trade Commission and the Director of the FTC's Bureau of Economics are compensated at that level, as are the Executive Directors of the National Mediation Board, the National Capital Planning Commission, and the U.S. International Trade Commission. The staff directors, inspectors general, and general counsel of many other agencies are compensated at level IV of the Executive Schedule which is identical to level 6 of the Senior Executive Service Schedule. Under the proposal, the Staff Director of the Commission would still receive somewhat less compensation than the Directors of the Federal Judicial Center and the Administrative Office of the United States Courts. Those officials earn the same salary as federal district court judges, currently $89,500. 28 U.S.C. 603, 626.

Adoption of this amendment will enable the Commission to attract and retain highly qualified individuals for this important criminal justice post.

Section 315

Because of the Sentencing Commission's unusual status as an independent agency within the judicial branch, the Commission's employees are denied the opportunity, available to virtually all other federal employees, to receive incentive awards for meritorious service. An opinion of the Comptroller General dated September 11, 1987 (File No. B-227781), holds that the Commission may not grant such awards without express statutory authority. There is no apparent reason why the Commission's staff should be treated differently in this regard from, for example, the staff of the Administrative Office of the United States Courts.

Section 316

This amendment corrects a technical error. The Commission's authority to lower a sentencing range is set forth in subsection (o) of 994, not subdivision (n).

Section 317

Section 3553(a)(2)(C) directs a sentencing court to consider the need to protect the public from future crimes of the defendant. Section 9 of the Sentencing Act of 1987 included this factor among those to be considered in imposing a term of supervised release. The proposed amendment would include this factor among those to be considered in setting and modifying the conditions of supervised release as well.

Section 318

This amendment to 28 U.S.C. 994(p) grants the Sentencing Commission more flexibility with respect to the submission of guideline amendments to Congress. Although the power to submit more than one report and to amend a report may be implicit in section 994(p), it is desirable to provide this authority explicitly and to clarify the application of the one hundred and eighty day period in the case of an amended report.

This amendment also addresses a concern raised about the operation of section 21 of the Sentencing Act of 1987, Pub. L. 100-182. That provision gives the Sentencing Commission the authority to issue temporary guidelines in certain circumstances and provides that such temporary guidelines remain in effect only until the expiration of the 180-day review period following the issuance of the next set of permanent amendments made pursuant to section 994(p). It was contemplated at the time section 21 was enacted that any temporary guidelines promulgated pursuant to that section before May 1 of a given year would be incorporated in the report filed by the Sentencing Commission for that year. That statute, however, fails to account for the situation where the annual report is filed early in the legislative session and the temporary guidelines are promulgated thereafter, but not later than May 1. It appears that in such an event, the temporary guidelines, having not been incorporated in the annual report, could remain in effect in excess of 18 months—i.e., until the expiration of the one hundred and eighty day period following the filing of the next annual report.

This amendment of 994(p) rectifies that situation by providing for the filing of an amended report by the Commission not later than May 1. In the event it finds it necessary to promulgate temporary guidelines after it has filed its annual report under section 994(p), the Commission will be able to amend its report, incorporating the new guidelines, not later than May 1 so that Congress can review all pending guideline changes during the current session. The Commission, however, is not required to incorporate temporary amendments in an amended report because there may be insufficient opportunity for public comment concerning a temporary amendment, rendering its submission to Congress as a permanent amendment premature.

For example, if the Commission submits permanent amendments to Congress in January, and then issues a temporary amendment in February, the Commission would be expected to obtain public comment concerning the temporary amendment and either amend the permanent report by May to incorporate the temporary amendment or withdraw the temporary amendment. If the Commission possesses the authority to amend a submission to Congress, there is no reason why a temporary amendment issued early in the reporting period should remain in effect for over a year without Congressional review. In contrast, a temporary amendment issued in April need not be included in an amended report before May 1, due to the absence of an opportunity for meaningful public comment. Furthermore, if the Commission happens to issue an amended report or a new permanent report after issuing a temporary amendment in April, it would be appropriate for the Commission to reissue the temporary amendment after the new report in order to avoid a lapse of the temporary amendment. This course of action recognizes the Commission's authority, in this limited situation, to prolong the life of the temporary amendment until it has been exposed to public comment and submitted as a permanent amendment the following year.

Section 319

Section 3563(b)(3) currently provides that the court may order a defendant to make restitution as a condition of probation pursuant to the provisions of section 3556. That section merely refers to the procedures set forth in sections 3663 and 3664.

The Committee believes that in enacting the restitution provisions of 3563(b)(3) Congress intended to permit restitution to be a condition of probation in the case of any criminal offense. The indirect reference to section 3663, however, may have inadvertently frustrated this purpose, in that section 3663 describes the procedures for ordering restitution only in cases where violations of title 18 offenses, or violations of the Federal Aviation Act, have occurred.

In order to make clear that restitution may be made a condition of probation in any criminal case, the amendment specifies that while the procedures set forth in section 3663 and 3664 are to be used, the limitation to title 18 (and FAA) offenses does not apply. The intermediate reference to section 3556 is eliminated as unnecessary.

Section 320

Rule 4(b) of the Appellate Rules of Procedure provides that in a criminal case, a defendant has 10 days in which to file an appeal, and the government has 30 days. In both cases the time period runs from the entry of the judgement.

Under 18 U.S.C. 3742, both the defendant and the government are entitled to appeal from the sentence imposed by the court in certain circumstances. The Committee is concerned that the respective time limits on filing appeals currently set forth in Rule 4(b) might place a defendant at a disadvantage in some cases brought under this section. For instance, where a defendant receives a light sentence, he may allow the 10 day period to lapse without filing an appeal, only to find the government has chosen to file its own appeal within its thirty day limit. In such a case the defendant, under current law, would be forclosed from filing a cross appeal.

The amendment remedies this situation by permitting either party to start counting the period for filing an appeal at the day an appeal is filed by the opposing party. Thus if the government files an appeal on the thirtieth day, the defendant would have an additional 10 days from that point to file a cross appeal; and if two defendants in a case filed appeals on the fifth and tenth days, respectively, the government would have 30 days from the latter date in which to file its appeal.

BILLS PLACED ON THE CALENDAR

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate receives from the House the following bills that they be placed on the calendar:

H.R. 4416. The Library Services construction reauthorzation;

H.R. 4585. Taft Institute reauthorization;

H.R. 4592. Peace Institute reauthorization;

H.R. 4638. Elementary and secondary education technical amendments bill;

H.R. 4639. Higher education technical amendments bill;

H.R. 4621. To provide congressional approval of the governing International Fishery Agreement between the United States and the German Democratic Republic;

H.R. 2213. A bill to require certain telephones to be hearing aid compatible.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE FIRST FRIENDSHIP FLIGHT BETWEEN ALASKA AND SIBERIA

Mr. D'AMATO. Mr. President, I send an enclosed resolution to the desk on

al hydrogen aviation fuel research and development program, should it receive a hearing in September before the Senate Commerce, Science and Transportation Committee.

Mr. President, I should add the fact that today, July 11, is Mr. Conrad's 80th birthday. He first soloed as a pilot in 1929. He is truly an aviator of the barnstorming era whose Sunday afternoon feat last month now places him among such pioneers as Lindbergh, Yeager, and the Wright brothers. He is to be commended for demonstrating the way to the future for world aviation; namely, cryogenic fuel.

Both Mr. Conrad and the National Aeronautic Association are to commended also for their efforts to see that the United States remains a leader in advancing the hydrogen economy. I congratulate them both and only hope their example can inspire my colleagues to support my own legislative initiatives in this regard.

SAM NICOLETTI

Mr. DOLE. Mr. President, I would like to recognize a distinguished native of Kansas, Mr. Sam Nicoletti, who recently retired as superintendent of Northeast Unified School District 246, in Arma, KS. Mr. Nicoletti exhibited hard work and dedication to the education field for the benefit of many Kansans.

A lifelong citizen of Arma, Sam Nicoletti received a B.S. and M.S. from nearby Pittsburg State University.

Mr. Nicoletti taught school at the local high school and, in 1965, proceeded as superintendent of schools, Northeast Unified School District 246.

Sam Nicoletti's involvement in the education system extends beyond his impressive resume. He helped the district acquire statewide grant money for a junior high school and additions to the elementary school. He instigated construction of the North East High School and athletic facilities including a football field, track and bleachers.

His involvement in statewide education committees includes a position on the executive board of the Kansas State High School Activities Association and a member of the Curriculum Advisory Board, Kansas State Department of Education.

Civic pride is also important to Mr. Nicoletti. His involvement in the Arma Boy Scouts has lasted 39 years. For the past 42 years he has assisted with homecoming activities for the city of Arma, KS.

On the occasion of his retirement, it is appropriate to salute this native son of Kansas who has made significant contributions to the education system and the State of Kansas.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT—ESTABLISHMENT OF VETERANS' ADMINISTRATION AS AN EXECUTIVE DEPARTMENT

Mr. BYRD. Mr. President, I ask unanimous consent that on tomorrow, at 9:15 a.m., the Governmental Affairs Committee be discharged from further consideration of H.R. 3471; that the Senate proceed to its immediate consideration; that without any further debate, all after the enacting clause be striken and the test of S. 533 be substituted for the House language; that without any further debate, intervening action of any kind or any motion, the Senate proceed to an immediate vote on passage of H.R. 3471, as amended.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that it be in order at this time the yeas and nays on H.R. 3471.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask for the yeas and nays on final passage.

The ACTING PRESIDENT pro tempore. Is there sufficient second?

There is sufficient second.

The yeas and nays were ordered.

ORDER TO PRINT H.R. 1807

Mr. BYRD. Mr. President, on behalf of Mr. BUMPERS I ask unanimous consent that the amendment to H.R. 1807, the Minority Business Development Program Reform Act of 1988, be printed as passed.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

HEARING AID COMPATIBILITY ACT

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 743.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 314) to require certain telephones to be hearing aid compatible.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

That this Act may be cited as the "Hearing Aid Compatibility Act of 1988".

FINDINGS

SEC. 2. The Congress finds that—

(1) to the fullest extent made possible by technology and medical science, hearing-impaired persons should have equal access to the national telecommunications network;

(2) present technology provides effective coupling of telephones to hearing aids used by some severely hearing-impaired persons for communicating by voice telephone;

(3) anticipated improvements in both telephone and hearing aid technologies promise greater access in the future; and

(4) universal telephone service for hearing-impaired persons will lead to greater employment opportunities and increased productivity.

HEARING AID COMPATIBILITY REQUIREMENTS

SEC. 3. (a) Subsection (b) of section 710 of the Communications Act of 1934 (47 U.S.C. 610) is amended to read as follows:

"(b)(1) Except as provided in paragraphs (2) and (3), the Commission shall require that—

"(A) all essential telephones, and

"(B) all telephones manufactured in the United States (other than for export) more than one year after the date of enactment of the Hearing Aid Compatibility Act of 1988 or imported for use in the United States more than one year after such date,

provide internal means for effective use with hearing aids that are designed to be compatible with telephones which meet established technical standards for hearing aid compatibility.

"(2)(A) The initial regulations prescribed by the Commission under paragraph (1) of this subsection after the date of enactment of the Hearing Aid Compatibility Act of 1988 shall exempt from the requirements established pursuant to paragraph (1)(B) of this subsection only—

"(i) telephones used with public mobile services;

"(ii) telephones used with private radio services;

"(iii) cordless telephones; and

"(iv) secure telephones.

"(B) The exemption provided by such regulations for cordless telephones shall not apply with respect to cordless telephones manufactured or imported more than three years after the date of enactment of the Hearing Aid Compatibility Act of 1988.

"(C) The Commission shall periodically assess the appropriateness of continuing in effect the exemptions provided by such regulations for telephones used with public mobile services and telephones used with private radio services. The Commission shall revoke or otherwise limit any such exemption if the Commission determines that—

"(i) such revocation or limitation is in the public interest;

"(ii) continuation of the exemption without such revocation or limitation would have an adverse effect on hearing-impaired individuals;

"(iii) compliance with the requirements of paragraph (1)(B) is technologically feasible for the telephones to which the exemption applies; and

"(iv) compliance with the requirements of paragraph (1)(B) would not increase costs to such an extent that the telephones to which the exemption applies could not be successfully marketed.

"(3) The Commission may, upon the application of any interested person, initiate a proceeding to waive the requirements of

paragraph (1)(B) of this subsection with respect to new telephones, or telephones associated with a new technology or service. The Commission shall not grant such a waiver unless the Commission determines, on the basis of evidence in the record of such proceeding, that such telephones, or such technology or service, are in the public interest, and that (A) compliance with the requirements of paragraph (1)(B) is technologically infeasible, or (B) compliance with such requirements would increase the costs of the telephones, or of the technology or service, to such an extent that such telephones, technology, or service could not be successfully marketed. In any proceeding under this paragraph to grant a waiver from the requirements of paragraph (1)(B), the Commission shall consider the effect on hearing-impaired individuals of granting the waiver. The Commission shall periodically review and determine the continuing need for any waiver granted pursuant to this paragraph.

"(4) For purposes of this subsection—

"(A) the term 'essential telephones' means only coin-operated telephones, telephones provided for emergency use, and other telephones frequently needed for use by persons using such hearing aids;

"(B) the term 'public mobile services' means air-to-ground radiotelephone services, cellular radio telecommunications services offshore radio, rural radio service, public land mobile telephone service, and other common carrier radio communication services covered by part 22 of title 47 of the Code of Federal Regulations;

"(C) the term 'private radio services' means private land mobile radio services and other communications services characterized by the Commission in its rule as private radio services; and

"(D) the term 'secure telephones' means telephones that are approved by the United States Government for the transmission of classified or sensitive voice communications.".

(b) Section 710(f) of the Communications Act of 1934 (47 U.S.C. 610(f)) is amended by striking out the second sentence and inserting in lieu thereof the following: "The Commission shall complete rulemaking actions required to implement the amendments made by the Hearing Aid Compatibility Act of 1988 within nine months after the date of enactment of such Act. Thereafter, the Commission shall periodically review the regulations established pursuant to this section.".

The ACTING PRESIDENT pro tempore. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

Mr. PRESSLER. Mr. President, I am very pleased to rise today to speak in favor of S. 314, the Hearing Aid Compatibility Act of 1988. I have been working on this legislation for 4 years now, and it was very gratifying to see the House of Representatives pass the companion measure last month. The Senate Committee on Commerce, Science, and Transportation favorably reported S. 314 on May 24, and I look forward to quick passage by the full Senate.

This act will require that all telephones, with certain exceptions, manufactured in or imported to the United States more than 1 year after enactment be hearing aid compatible. Thus this legislation ultimately aims at universal telephone compatibility with hearing aids.

The Telecommunications for the Disabled Act of 1982 began to address the needs of hearing-impaired individuals by requiring "essential" telephones to be hearing-aid compatible. This ensured that there always would be some telephones available to the hearing-impaired, but most telephones were not defined as essential.

I wonder how well most of us would function if we were restricted to using only those telephones which have been defined by the FCC as essential. Fortunately, for most of us, we can use any telephone. When we visit friends, we know we can call home from their home. When we are away from our desks, we know we can still use other telephones in the workplace. When we stay at a hotel, we don't have to ask for a room which has a compatible telephone, and then hope that such a room is available. Life would not be so easy if we were all restricted to only those telephones currently defined as essential.

Even that situation could be acceptable if there were some good reason for it. But there isn't. The technology which allows telephones to be hearing aid compatible has been available since 1945. It is known as inductive coupling and uses the electromagnetic field to transmit the conversation. This transmission can occur if both the telephone handset and the hearing aid are equipped with a telecoil. Prior to the deregulation of AT&T, virtually all the telephones they manufactured were hearing aid compatible. Thus there was no need for a legal requirement.

Since deregulation, however, with the entrance of many new manufacturers, and in the absence of a legal requirement, telephones without a magnetic coil inevitably have entered the marketplace. Many of these are produced overseas. To the credit of GTE and AT&T, they have continued to make nearly all of their telephones hearing aid compatible. But the percentage of incompatible telephones on the market has steadily climbed.

Not only is the technology available but it does not appreciably add to the cost of producing telephones. In 1985, the Commerce Department stated that hearing aid compatible telephones were no more expensive to manufacture than noncompatible telephones. The industry itself provides estimates of anywhere from 10 to 50 cents additional cost per phone, and GTE claims that compatible telephones are just as competitive on the market as noncompatible telephones.

Perhaps the most difficult issue with regard to this legislation was the question of new, as yet unknown, technologies. The original language did not allow for new technologies and this caused great concern in the industry. On the other hand, a broad exemption for new technologies could defeat the whole purpose of this bill by allowing some new type of general purpose telephone developed a couple of years from now to be noncompatible.

Dealing with the unknown is difficult, but I think we reached a good compromise. New technologies must be compatible with hearing aids, unless they are specifically exempted by the FCC. To gain such an exemption, the developer must demonstrate that compatibility is either technologically impossible or so costly as to prevent the product from being successfully marketed. Thus, products can be developed and marketed which cannot be made compatible.

We cannot predict all the specialized telephone technologies which may be developed in the future, and they must not be prevented from coming to market. On the other hand, the average telephone that is used in the home and place of business should continue to be compatible with hearing aids, regardless of how that technology changes.

To this end, the FCC is instructed to consider the needs of the hearing-impaired before granting any waivers. And in no case will any telephones currently required to be hearing-aid compatible be exempted.

Telephones used for national security are the only telephones permanently exempted from the compatibility requirement. Cordless telephones are exempted for 3 years and cellular telephones receive an initial exemption. Except for secure telephones and cordless telephones, all the initial exemptions and future exemptions to be granted by the FCC will be reviewed periodically by the FCC to determine if they are still warranted. The periodic review provisions act as a valve to keep the compatibility trend flowing in the right direction. A new exemption cannot be created for an old technology. Again, the ultimate goal of this legislation is to provide for universal compatibility.

Before closing, I must mention the role of David Saks, of the Organization for Use of the Telephone (OUT), in initiating and advocating this legislation. David has worked tirelessly for years on behalf of the hearing-impaired community to ensure universal access to the telephone network. OUT is not a large organization with a huge budget. Nevertheless, David coordinated support for this legislation from organizations such as the America Association of Retired Persons, the National Center for Law and the Deaf, the National Association of Regulatory Utility Commissioners, and numerous other national and State organizations. He worked vigorously with Mr. MAVROULES in the House, myself in the Senate, and the telephone and electronics industries.

Mr. President, I again urge passage of this legislation. With existing tech-

nology and at negligible cost to industry, we can create the same universal telephone service for hearing-impaired persons that the rest of us enjoy.

The ACTING PRESIDENT pro tempore. The question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar Order No. 723, H.R. 2213.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2213) to require certain telephones to be hearing aid compatible.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. BYRD. Mr. President, I ask unanimous consent that all after the enacting clause be stricken, and the text of S. 314, as amended, be inserted in lieu thereof.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The question is on the engrossment and the third reading of the bill.

The bill (H.R. 2213) was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsidered the vote by which the bill was passed.

Mr. DOLE. I Move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I ask unanimous consent that Calendar Order No. 743 be indefinitely postponed.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER TO INDEFINITELY POSTPONE S. 1993

Mr. BYRD. Mr. President, I ask unanimous consent that Calendar Order No. 753, S. 1993, a bill to amend the Small Business Act to improve the growth and development of small business concerns owned and controlled by socially and economically disadvantaged individuals, especially through participation in the Federal procurement process, and for other purposes, be indefinitely postponed.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDERS FOR TUESDAY, JULY 12, 1988

RECESS UNTIL 9 A.M.

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9 o'clock tomorrow morning.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

REDUCTION OF LEADER TIME AND MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that on tomorrow morning the time of the two leaders be reduced to 5 minutes each and that, following the time for the recognition on the two leaders under the standing order, there be a period for morning business to extend until 9:15 a.m., and that Senators may speak during that period for morning business for not to exceed 1 minute each.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

PROGRAM

Mr. BYRD. Mr. President, the order has been entered, has it not, for a vote on final passage of the Veterans' Department bill?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. BYRD. And that will occur at 9:15 a.m.?

The ACTING PRESIDENT pro tempore. The majority leader is correct.

Mr. BYRD. Mr. President, the distinguished Republican leader and I have agreed that on tomorrow, following the vote on the veterans' bill, the Senate will then proceed to the consideration of the transportation appropriations bill. So that will be the order following the vote. If both sides can alert Senators who are involved in the transportation bill, the managers thereof, the Senate can then proceed quickly to that bill.

After the transportation appropriations bill, Mr. President, under the order as it presently stands, the Senate will proceed to the consideration of the HUD appropriations bill. Upon the disposition of that bill, the Senate will take up the Interior appropriations bill.

Does the distinguished Republican leader have any statement he wishes to make or any comments about the program as I have outlined it, or any further business he would like to transact?

Mr. DOLE. No further business. I have indicated to the majority leader that we will check on the Labor-HHS appropriations bill—we might be able to do a portion of that—and also the other outstanding bills.

Mr. BYRD. The only remaining ones would be Agriculture, Defense, and State-Justice-Commerce. Those three, in addition to the Labor-HHS bill which has been mentioned by the able Republican leader.

Also tomorrow morning I would like to get a time agreement on the Endangered Species Act. If the distinguished leader could alert anyone on his side who might be involved in that act, I would like to put that request following the rollcall vote.

Mr. DOLE. I will ask the distinguished Senator from Idaho, Senator McCLURE, to be here. I will be attending a White House meeting at that time. He has an interest in that bill. We will notify him and ask him to be present following the vote.

Mr. BYRD. Very well.

CONCLUSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, has morning business been closed?

The ACTING PRESIDENT pro tempore. If there is no further morning business, morning business is closed.

ESTABLISHMENT OF VETERANS' ADMINISTRATION AS AN EXECUTIVE DEPARTMENT

The Senate continued with the consideration of the bill.

Mr. BYRD. Mr. President, what is the pending business before the Senate?

The ACTING PRESIDENT pro tempore. S. 533 is the pending business.

Mr. BYRD. That is the bill creating a new department for veterans' affairs?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. BYRD. I thank the Chair.

RECESS UNTIL 9 A.M., TOMORROW

Mr. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until the hour of 9 o'clock a.m. tomorrow.

The motion was agreed to; and, at 8:16 p.m., the Senate recessed until Tuesday, July 12, 1988, at 9 a.m.

NOMINATIONS

Executive nominations received by the Secretary of the Senate July 8, 1988, after the recess of the Senate, under authority of the order of the Senate of February 3, 1987:

DEPARTMENT OF THE TREASURY

SALVATORE R. MARTOCHE, OF NEW YORK, TO BE AN ASSISTANT SECRETARY OF THE TREASURY, VICE FRANCIS ANTHONY KEATING II.

DEPARTMENT OF COMMERCE

R. KENT BURTON, OF VIRGINIA, TO BE ASSISTANT SECRETARY OF COMMERCE FOR OCEANS AND ATMOSPHERE, VICE JAMES CURTIS MACK II, RESIGNED.

EXPORT-IMPORT BANK OF THE UNITED STATES

RICHARD C. HOUSEWORTH, OF ARIZONA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE EXPORT-IMPORT BANK OF THE UNITED STATES FOR A TERM OF 4 YEARS EXPIRING JANUARY 20, 1991, VICE RICHARD W. HELDRIDGE, RESIGNED.

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

THE FOLLOWING NAMED PERSONS TO BE MEMBERS OF THE BOARD OF TRUSTEES OF THE JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION FOR TERMS OF 6 YEARS:

JOAN R. CHALLINOR, OF THE DISTRICT OF COLUMBIA. (NEW POSITION.)

BETTY SOURHARD MURPHY, OF VIRGINIA. (NEW POSITION.)

This salary cap applies to the Staff Director of the Sentencing Commission. Opinion of the Comptroller General, File No. B-227781 (September 11, 1987).

As a result, the salary of the Staff Director is now artificially low, and over time will become increasingly unsuitable. The proposed amendment disengages the Staff Director's salary from the capped General Schedule and instead sets the salary at level 6 of the Senior Executive Service Schedule, currently $77,500.

Other government officials with responsibility comparable to that of the Staff Director are compensated at level 6 of the Senior Executive Service Schedule. For example, the Executive Director of the Federal Trade Commission and the Director of the FTC's Bureau of Economics are compensated at that level, as are the Executive Directors of the National Mediation Board, the National Capital Planning Commission, and the U.S. International Trade Commission. The staff directors, inspectors general, and general counsel of many other agencies are compensated at level IV of the Executive Schedule which is identical to level 6 of the Senior Executive Service Schedule. Under the proposal, the Staff Director of the Commission would still receive somewhat less compensation than the Directors of the Federal Judicial Center and the Administrative Office of the United States Courts. Those officials earn the same salary as federal district court judges, currently $89,500. 28 U.S.C. 603, 628.

Adoption of this amendment will enable the Commission to attract and retain highly qualified individuals for this important criminal justice post.

Section 315

Because of the Sentencing Commission's unusual status as an independent agency within the judicial branch, the Commission's employees are denied the opportunity, available to virtually all other federal employees, to receive incentive awards for meritorious service. An opinion of the Comptroller General dated September 11, 1987 (File No. B-227781), holds that the Commission may not grant such awards without express statutory authority. There is no apparent reason why the Commission's staff should be treated differently in this regard from, for example, the staff of the Administrative Office of the United States Courts.

Section 316

This amendment corrects a technical error. The Commission's authority to lower a sentencing range is set forth in subsection (o) of 994, not subdivision (n).

Section 317

Section 3553(a)(2)(C) directs a sentencing court to consider the need to protect the public from future crimes of the defendant. Section 9 of the Sentencing Act of 1987 included this factor among those to be considered in imposing a term of supervised release. The proposed amendment would include this factor among those to be considered in setting and modifying the conditions of supervised release as well.

Section 318

This amendment to 28 U.S.C. 994(p) grants the Sentencing Commission more flexibility with respect to the submission of guideline amendments to Congress. Although the power to submit more than one report and to amend a report may be implicit in section 994(p), it is desirable to provide this authority explicitly and to clarify the application of the one hundred and eighty day period in the case of an amended report.

This amendment also addresses a concern raised about the operation of section 21 of the Sentencing Act of 1987, Pub. L. 100-182. That provision gives the Sentencing Commission the authority to issue temporary guidelines in certain circumstances and provides that such temporary guidelines remain in effect only until the expiration of the 180-day review period following the issuance of the next set of permanent amendments made pursuant to section 994(p). It was contemplated at the time section 21 was enacted that any temporary guidelines promulgated pursuant to that section before May 1 of a given year would be incorporated in the report filed by the Sentencing Commission for that year. That statute, however, fails to account for the situation where the annual report is filed early in the legislative session and the temporary guidelines are promulgated thereafter, but not later than May 1. It appears that in such an event, the temporary guidelines, having not been incorporated in the annual report, could remain in effect in excess of 18 months—i.e., until the expiration of the one hundred and eighty day period following the filing of the next annual report.

This amendment of 994(p) rectifies that situation by providing for the filing of an amended report by the Commission not later than May 1. In the event it finds it necessary to promulgate temporary guidelines after it has filed its annual report under section 994(p), the Commission will be able to amend its report, incorporating the new guidelines, not later than May 1 so that Congress can review all pending guideline changes during the current session. The Commission, however, is not required to incorporate temporary amendments in an amended report because there may be insufficient opportunity for public comment concerning a temporary amendment, rendering its submission to Congress as a permanent amendment premature.

For example, if the Commission submits permanent amendments to Congress in January, and then issues a temporary amendment in February, the Commission would be expected to obtain public comment concerning the temporary amendment and either amend the permanent report by May to incorporate the temporary amendment or withdraw the temporary amendment. If the Commission possesses the authority to amend a submission to Congress, there is no reason why a temporary amendment issued early in the reporting period should remain in effect for over a year without Congressional review. In contrast, a temporary amendment issued in April need not be included in an amended report before May 1, due to the absence of an opportunity for meaningful public comment. Furthermore, if the Commission happens to issue an amended report or a new permanent report after issuing a temporary amendment in April, it would be appropriate for the Commission to reissue the temporary amendment after the new report in order to avoid a lapse of the temporary amendment. This course of action recognizes the Commission's authority, in this limited situation, to prolong the life of the temporary amendment until it has been exposed to public comment and submitted as a permanent amendment the following year.

Section 319

Section 3563(b)(3) currently provides that the court may order a defendant to make restitution as a condition of probation pursuant to the provisions of section 3556. That section merely refers to the procedures set forth in sections 3663 and 3664.

The Committee believes that in enacting the restitution provisions of 3563(b)(3) Congress intended to permit restitution to be a condition of probation in the case of any criminal offense. The indirect reference to section 3663, however, may have inadvertently frustrated this purpose, in that section 3663 describes the procedures for ordering restitution only in cases where violations of title 18 offenses, or violations of the Federal Aviation Act, have occurred.

In order to make clear that restitution may be made a condition of probation in any criminal case, the amendment specifies that while the procedures set forth in section 3663 and 3664 are to be used, the limitation to title 18 (and FAA) offenses does not apply. The intermediate reference to section 3556 is eliminated as unnecessary.

Section 320

Rule 4(b) of the Appellate Rules of Procedure provides that in a criminal case, a defendant has 10 days in which to file an appeal, and the government has 30 days. In both cases the time period runs from the entry of the judgement.

Under 18 U.S.C. 3742, both the defendant and the government are entitled to appeal from the sentence imposed by the court in certain circumstances. The Committee is concerned that the respective time limits on filing appeals currently set forth in Rule 4(b) might place a defendant at a disadvantage in some cases brought under this section. For instance, where a defendant receives a light sentence, he may allow the 10 day period to lapse without filing an appeal, only to find the government has chosen to file its own appeal within its thirty day limit. In such a case the defendant, under current law, would be forclosed from filing a cross appeal.

The amendment remedies this situation by permitting either party to start counting the period for filing an appeal at the day an appeal is filed by the opposing party. Thus if the government files an appeal on the thirtieth day, the defendant would have an additional 10 days from that point to file a cross appeal; and if two defendants in a case filed appeals on the fifth and tenth days, respectively, the government would have 30 days from the latter date in which to file its appeal.

BILLS PLACED ON THE CALENDAR

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate receives from the House the following bills that they be placed on the calendar:

H.R. 4416. The Library Services construction reauthorzation;

H.R. 4585. Taft Institute reauthorization;

H.R. 4592. Peace Institute reauthorization;

H.R. 4638. Elementary and secondary education technical amendments bill;

H.R. 4639. Higher education technical amendments bill;

H.R. 4621. To provide congressional approval of the governing International Fishery Agreement between the United States and the German Democratic Republic;

H.R. 2213. A bill to require certain telephones to be hearing aid compatible.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE FIRST FRIENDSHIP FLIGHT BETWEEN ALASKA AND SIBERIA

Mr. D'AMATO. Mr. President, I send an enclosed resolution to the desk on