SEC. 1008. RATEMAKING PROCEDURES FOR CIVIL RESERVE AIR FLEET CONTRACTS.

(a) IN GENERAL.—Chapter 931 of title 10, United States Code, is amended by inserting after section 9511 the following new section:

"§ 9511a. Civil Reserve Air Fleet contracts: payment rate

"(a) AUTHORITY.—The Secretary of Defense shall determine a fair and reasonable rate of payment for airlift services provided to the Department of Defense by air carriers who are participants in the Civil Reserve Air Fleet program. Such rate of payment shall be determined in accordance with—

"(1) the methodology and ratemaking procedures in effect on the date of the enactment of this section; and

"(2) such other procedures as the Secretary may prescribe by regulation.

"(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations for purposes of subsection (a). Such regulations shall include a process for modifying the ratemaking methodology referred to in paragraph (1) of that subsection. The Secretary may exclude from the applicability of those regulations any airlift services contract made through the use of competitive procedures.

"(c) COMMITMENT OF AIRCRAFT AS A BUSINESS FACTOR.—The Secretary may, in determining the quantity of business to be received under an airlift services contract for which the rate of payment is determined in accordance with subsection (a), use as a factor the relative amount of airlift capability committed by each air carrier to the Civil Reserve Air Fleet.

"(d) INAPPLICABLE PROVISIONS OF LAW.—An airlift services contract for which the rate of payment is determined in accordance with subsection (a) shall not be subject to the provisions

of section 2306a of this title or to the provisions of subsections (a) and (b) of section 1502 of title 41.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 9511 the following new item:

"9511a. Civil Reserve Air Fleet contracts: payment rate.".

(c) INITIAL REGULATIONS.—Regulations shall be prescribed under section 9511a(b) of title 10, United States Code, as added by subsection (a), not later than 180 days after the date of the enactment of this Act.

Section-by-Section Analysis

The proposal would clarify that the contract currently described in paragraph (6) of section 9511 of title 10, United States Code, is not a standard contract under the Federal Acquisition Regulations. Unlike competitively awarded contracts, the value of an aircraft committed to the Civil Reserve Air Fleet for use during wartime cannot be realistically computed. The amount of business entitlement received by each of the air carriers awarded contracts pursuant to this section and section 41106 of title 49, United States Code, is based on the amount of wartime capability represented by the aircraft they offer to the program. That type of entitlement-based contract was in place many years prior to the expiration of the authority of the Civil Aeronautics Board. Effective July 19, 1979, the Civil Aeronautics Board, by Economic Regulation 1134, terminated its exercise authority over the prices of military charter service. After that termination, the Department of the Air Force assumed the role of rate setter and began establishing annual negotiated uniform rates for Department of Defense airlift service contracts. Nothing in the Airline Deregulation Act of 1978 (Pub. Law 95-504) or the Civil Aeronautics Board Sunset Act of 1984 (Pub. Law 98-443) is inconsistent with the continued use of the current rate making authority by the Department.

The Department of the Air Force (through its component airlift command) and air carriers executed a Memorandum of Understanding (MOU) that continued the basis for this method of ratemaking. In January 2007, this responsibility transferred from the Department of the Air Force to the Department of Defense. The Department of Defense has continued to execute the same ratemaking procedures as an effective means of establishing fair and reasonable rates while furthering the objectives of the Civil Reserve Air Fleet program. The need for a fair and reasonable rate, mandated in section 9512(b)(3) of title 10, United States Code, for transportation to any location on the globe is essential to the operation of the Civil Reserve Air Fleet program, as none of the major United States air carriers will have Federal Aviation Administration-approved operating specifications authorizing them to operate in every possible location required to fulfill the needs of the Department of Defense. Subsection (a)(2) of the proposal would allow changes to be made to the current MOU framework if necessary to the

operation of the program and development of reasonable rates. Competitive contracts cannot be used because oftentimes none of the air carriers will have commercial operations in the needed location and thus have no basis for providing a reasonable offer. The current rates set by the Department of Defense, after comment by and negotiation with industry, provide fair compensation by aircraft type to the air carrier at reasonable cost to the taxpayers. This framework also prevents excessive prices or refusals to provide services during contingencies. The current contract structure is essential to support interlocking contracts awarded under section 9512 of title 10, United States Code (the CRAF Enhancement Program).

The current contract type has provided effective airlift contracts for more than forty years. The economic theory of a uniform rate is to create an incentive for all carriers to become more cost efficient. Carriers increase profits by reducing overall operating cost--inefficient carriers may make little to no profit while efficient carriers will maximize profits. This methodology is a form of competitive pricing and has proven to ensure rate consistency over the past 40 years, while guaranteeing a viable Civil Reserve Air Fleet mobilization base.

In September 2010, the Department of the Air Force requested Department of Defense concurrence to rescind its Operating Instructions regarding rate making and the Secretary of the Air Force order authorizing the Uniform Airlift Rates. The Department of Defense, in seeking to institutionalize its authority, identified potential confusion in the term, "Civil Reserve Air Fleet contract." It also noted the lack of clear authority for that contract to be based on a commitment of aircraft and still comply with all the procurement laws affecting other types of contracts. This proposal would clarify the ratemaking process that exists today and that has worked exceedingly well for the Department of Defense.

This action would also clarify that application of Cost Accounting Standards and the requirement for certified cost and pricing data to Civil Reserve Air Fleet contracts is not required or appropriate. CRAF carriers now submit cost data in accordance with the Memorandum of Understanding and the Department of Transportation's Uniform System of Accounts and Reports for Large Certified Air Carriers (title 14, Code of Federal Regulations, section 241). These accounting practices are prescribed by the Department of Transportation pursuant to sections 329, 41708, and 41709 of title 49, United States Code, and are audited by the Defense Contract Audit Agency under the current ratemaking methodology. The air carriers are not required to comply with two sets of accounting standards. The government establishes program-wide uniform rates based upon this proven methodology.

Budget Implications: The proposal would not increase the overall budget requirements of the Department of Defense.

RESOURCE TRANSFERS ($THOUSANDS)								
	FY 2012	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**

Army	0	0	0	0	0	O&M, Army - 2080		
Navy	0	0	0	0	0	O&M Navy -		
Marine Corps	0	0	0	0	0	O&M Navy -		
Air Force	0	0	0	0	0	O&M, Air Force 3400		
Total	+0	+0	+0	+0	+0			

NUMBER OF PERSONNEL AFFECTED							
	FY 2012	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**	**Appropriation To**	**Personnel Type (Officer, Enlisted, or Civilian)**
Army	0	0	0	0	0	N/A	N/A
Navy	0	0	0	0	0	N/A	N/A
*Marine Corps	0	0	0	0	0	N/A	N/A
Air Force	0	0	0	0	0	N/A	N/A
Total	0	0	0	0	0		

Changes to Existing Law: This section would make add a new section to chapter 931 of title 10, United States Code. The new section is set forth in the legislative text above.