SEC. 835. MODIFICATION OF PROHIBITION ON CONTRACTING WITH RUSSIAN SUPPLIERS OF ROCKET ENGINES FOR THE EVOLVED EXPENDABLE LAUNCH VEHICLE PROGRAM.

(a) MODIFICATION OF WAIVER.—Subsection (b) of section 1608 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291; 128 Stat. xxx; 10 U.S.C. 2271 note) is amended—

(1) by striking "waiver takes effect" and all that follows through "(1) the waiver" and inserting "waiver takes effect, that the waiver";

(2) by striking "; and" and inserting a period; and

(3) by striking paragraph (2).

(b) MODIFICATION OF EXCEPTION.—Subsection (c) of such section is amended—

(1) in paragraph (1)—

(A) by striking "that prior to" and inserting "if prior to"; and

(B) by striking "were either fully paid for" and all that follows through the end of the sentence and inserting "the contractor had fully paid for such rocket engines or had entered into a contract under which such rocket engines would be procured."; and

(2) in paragraph (2), by striking "prior to February 1, 2014" and all that follows through the end of the sentence and inserting "the offeror has met the terms specified in subparagraph (B) of paragraph (1) for the exception under that subparagraph.".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text above would amend existing law.]

Section-by-Section Analysis

This proposal would amend section 1608 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (10 U.S.C. 2271 note) to permit a contractor to use a rocket engine designed or manufactured in the Russian Federation when performing a contract for national security space launch activities under the Evolved Expendable Launch Vehicle (EELV) program if prior to February 1, 2014, the contractor had fully paid for the rocket engine or had entered into the contract under which the Russian rocket engine would be procured. The proposal would also permit the Secretary of Defense to waive the prohibition against a contractor using a Russian rocket engine on a contract for property or services for space launch activities on the basis of the national security interests of the United States and without the need to also certify that the space launch services and capabilities covered by the contract could not be obtained at a fair and reasonable price without the use of rocket engines designed or manufactured in the Russian Federation.

Currently, section 1608 provides exceptions to the prohibition on use of Russian rocket engines for the current 36-core contract with United Launch Alliance (ULA) and for Russian rocket engines the Secretary certifies, upon advice from the General Counsel of the Department of Defense (DoD), that were prior to February 1, 2014, either fully paid for or covered by a legally binding commitment to fully pay for such rocket engines. While this exception was intended to permit the use of the Russian-made RD-180 engines either already delivered to or on order by ULA to bridge the gap until a new engine and vehicle were ready, only a small number of engines (approximately five) actually satisfy the statutory requirements for an exception. As a result, section 1608 severely limits the Department's ability to contract for space launch activities that employ the Atlas V, which uses the RD-180 rocket engine and is ULA's most price competitive, certified launch vehicle for medium/intermediate class missions for the EELV program. Without relief from this language, coupled with ULA's recent decision to retire the non-price competitive Delta IV medium-class launch vehicle, DoD will be in jeopardy of not meeting the requirements in section 2273 of title 10, United States Code of assured access to space. Section 2273 requires, to the maximum extent practicable, to have two families of space launch vehicles for each DoD satellite. This essentially creates a multi-year gap without two price-competitive launch providers servicing medium to intermediate class missions. This proposal will also ensure that the Department can continue to contract for space launch activities that employ the more cost effective Atlas V rocket until additional price competitive launch vehicles are available.

Additionally, the proposal would eliminate the requirement that in order to waive the prohibition on the use of Russian rocket engines with respect to a contract for the procurement of property or services for space launch activities, the Secretary of Defense must determine and certify that the space launch services and capabilities covered by the contract could not be obtained at a fair and reasonable price without the use of rocket engines designed or manufactured in the Russian Federation. This adjustment would more closely tie a Secretary of Defense waiver to the assured access to space requirements of 10 U.S.C. 2273 and National Security Space Policy.

Budgetary Implications: The funding affected by this proposal is in the FY16 President's Budget (PB) request line identified in the table below. The FY16 PB request is based on having the Atlas V, which uses the Russian RD-180 engine, available for the competitive launch service

opportunities in EELV Phase 1A and Phase 2. Thus, the FY16 PB supports this legislative proposal if enacted. If the proposal is not enacted, additional funding will be required due to the effect on lost competition and lost capability in the EELV medium/intermediate range.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
	800.2	842.6	842.6	1,295.0	1,318.3	Space Procurement, Air Force	05	P-8	0305953F
Total	800.2	842.6	842.6	1,295.0	1318.3	--	--	--	--

Changes to Existing Law: This proposal would make the following changes to section 1608 of the National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291):

SEC. 1608. PROHIBITION ON CONTRACTING WITH RUSSIAN SUPPLIERS OF ROCKET ENGINES FOR THE EVOLVED EXPENDABLE LAUNCH VEHICLE PROGRAM.

(a) IN GENERAL.—Except as provided by subsections (b) and (c), beginning on the date of the enactment of this Act, the Secretary of Defense may not award or renew a contract for the procurement of property or services for space launch activities under the evolved expendable launch vehicle program if such contract carries out such space launch activities using rocket engines designed or manufactured in the Russian Federation.

(b) WAIVER.—The Secretary may waive the prohibition under subsection (a) with respect to a contract for the procurement of property or services for space launch activities if the Secretary determines, and certifies to the congressional defense committees not later than 30 days before the waiver takes effect, that—

~~(1)~~ the waiver is necessary for the national security interests of the United States~~; and~~

~~(2) the space launch services and capabilities covered by the contract could not be obtained at a fair and reasonable price without the use of rocket engines designed or manufactured in the Russian Federation~~.

(c) EXCEPTION.—

(1) IN GENERAL.—The prohibition in subsection (a) shall not apply to either—

(A) the placement of orders or the exercise of options under the contract numbered FA8811-13-C-0003 and awarded on December 18, 2013; or

(B) subject to paragraph (2), a contract awarded for the procurement of property or services for space launch activities that includes the use of rocket engines designed or manufactured in the Russian Federation ~~that~~ <u>if</u> prior to February 1, 2014, ~~were either fully paid for by the contractor or covered by a legally binding commitment of the contractor to fully pay for such rocket engines~~ <u>the contractor had fully paid for such rocket engines or had entered into a contract under which such rocket engines would be procured</u>.

(2) CERTIFICATION.—The Secretary may not award or renew a contract for the

procurement of property or services for space launch activities described in paragraph (1)(B) unless the Secretary, upon the advice of the General Counsel of the Department of Defense, certifies to the congressional defense committees that the offeror has provided to the Secretary sufficient documentation to conclusively demonstrate that ~~prior to February 1, 2014, the offeror had either fully paid for the rocket engines described in such paragraph or made a legally binding commitment to fully pay for such rocket engines~~ the offeror has met the terms specified in subparagraph (B) of paragraph (1) for the exception under that subparagraph.