AMENDMENT TO RULES COMM. PRINT 116–19
OFFERED BY MR. SHERMAN OF CALIFORNIA

At the appropriate place in subtitle E of title XII, insert the following:

SEC. 12. NORTH KOREA SMUGGLING ENFORCEMENT ACT.

Title II of the North Korea Sanctions and Policy Enhancement Act of 2016 (22 U.S.C. 9221 et seq.) is amended by inserting after section 205 the following new section:

“SEC. 205A. ADDITIONAL DUE DILIGENCE WITH RESPECT TO LISTED HIGH-RISK VESSELS AND PERSONS.

“(a) IDENTIFICATION OF HIGH-RISK VESSELS.—Not later than 60 days after the date of the enactment of this section, and every 30 days thereafter, the President shall publish in the Federal Register a list of each vessel with respect to which reasonable grounds exist to believe that such vessel has, after March 2, 2016—

“(1) entered North Korean territorial water or a North Korean port, other than to deliver food or humanitarian assistance to the people of North Korea;
“(2) been operated by a master or by crew members who are nationals of North Korea;

“(3) been owned, controlled, registered, or insured, whether directly or indirectly, by the Government of North Korea or by any designated person;

“(4) been involved in any activities prohibited pursuant to any applicable United Nations Security Council resolution or described in section 104(a), including by transporting cargo in violation of such a resolution or participated in transferring cargo that would be in violation of such a resolution between ships on open waters;

“(5) operated without the use of a properly installed and operational maritime navigation safety communications system standardized by the International Telecommunication Union, adopted by the International Maritime Organization, that—

“(A) automatically provides vessel information, including the vessel’s identity, type, position, course, speed, navigational status, and other safety-related information, to appropriately equipped shore stations, other ships, and aircraft;
“(B) automatically receives such information from similarly-fitted ships, and monitors and tracks ships; and

“(C) automatically exchanges data with shore-based facilities.

“(6) met two or more of the risk factors described in subsection (b).

“(b) RISK FACTORS.—The risk factors described in this subsection are the following with respect to a vessel that has entered North Korean territorial water after March 2, 2016:

“(1) The vessel was physically altered to conceal or disguise its name or any identifying number.

“(2) The vessel was re-registered or re-named on three or more occasions in any three-year period subsequent to such entry.

“(3) The vessel is registered in Sierra Leone, Dominica, Tanzania, Fiji, Tuvalu, Kiribati, Niue, Cambodia, Belize, Jamaica, Mongolia, Kiribati, Togo, the Comoros, the People’s Republic of China, or any other jurisdiction that the President determines has failed to implement sufficient vessel registration due diligence regulations to prevent the Government of North Korea, or persons acting on its behalf, from accessing global commercial and fi-
financial systems to evade any sanctions imposed pursuant to this Act.

“(4) The vessel was owned or controlled by a person registered in Hong Kong, the Seychelles, the British Virgin Islands, the Republic of the Marshall Islands, the People’s Republic of China, or any other jurisdiction that the President determines has failed to implement sufficient corporate registration due diligence regulations to prevent the Government of North Korea, or persons acting on its behalf, from accessing global commercial and financial systems to evade any sanctions imposed pursuant to this Act.

“(5) The incorporation documents of any person who owns or controls the vessel have misstated, or have withheld or concealed from the public, information about its business operations, or about the identities and nationalities of any of its beneficial owners, shareholders, officers, and directors.

“(6) The vessel has transported any high-risk cargo on three or more occasions through a high-risk port.

“(c) Sanctions Imposed.—No vessel listed pursuant to subsection (a) may enter or operate in the navigable waters of the United States or transfer cargo in any port or place under the jurisdiction of the United States.
“(d) IDENTIFICATION OF HIGH-RISK PERSONS.—Not later than 90 days after the date of the enactment of this section, and every 30 days thereafter, the President shall publish in the Federal Register a list of each person with respect to which reasonable grounds exist to believe that such person has—

“(1) after March 2, 2016, owned or controlled a vessel listed pursuant to subsection (a); or

“(2) after the date of the enactment of this section—

“(A) insured such a listed vessel;

“(B) provided vessel registration, bunkering, freight, cargo handling, or port services that facilitated three or more shipments by such listed vessels; or

“(C) provide corporate registration services to a person described in paragraph (1).

“(e) ADDITIONAL LICENSING REQUIREMENTS FOR LISTED VESSELS AND PERSONS.—

“(1) MANDATORY REQUIREMENTS.—Not later than 120 days after the date of the enactment of this section, the President shall require the following enhanced due diligence measures with respect to vessels and persons listed pursuant to subsection (a) or subsection (d):
“(A) A license issued by the Office of Foreign Assets Control of the Department of the Treasury for any transaction that involves a listed vessel or a listed person.

“(B) Any transaction or proposed transaction that involves a listed vessel or a listed person shall be deemed a suspicious transaction for purposes of the reporting of suspicious transactions under section 5318(g) of title 31, United States Code.

“(C) The Secretary of the Treasury shall be instructed to require domestic financial institutions and domestic financial agencies to take all of the special measures described in section 5318A(b) of title 31, United States Code, with respect to a listed vessel or a listed person.

“(D) Any transaction that involves a listed vessel or a listed person shall be treated as a ‘willful’ or ‘reckless’ violation of any applicable regulation promulgated pursuant to chapter 53 of title 31, United States Code, for purposes of determining the amount of any civil monetary penalty or the appropriateness of any administrative action in response to such transaction.
(2) DISCRETIONARY REQUIREMENTS.—Not later than 120 days after the date of the enactment of this section, the President may also require the following enhanced due diligence measures with respect to vessels and persons listed pursuant to subsection (a) or subsection (d):

“(A) The enhanced security targeting requirements described in subsection 205(c), with respect to any cargo entering the United States through a land, sea, or air port that originates from a port that has discharged, transferred, imported, or exported three or more shipments involving listed vessels or listed persons.

“(B) An importer that is a listed person shall maintain additional records of any transaction involving a listed vessel that—

“(i) identify biographical information about each person who owns, controls, operates, or maintains a beneficial ownership interest in, the vessel or any cargo carried by the vessel;

“(ii) include records of any registration, insurance, repair, maintenance, or bunkering services received by the vessel;

and
“(iii) includes any invoices, bills of lading, receipts, wire transfer records, and other documents describing any cargo carried by the vessel.

“(f) W A I V E R S.—

“(1) W A I V E R T H R O U G H S H I P P I N G R E G I S T R Y D U E D I L I G E N C E.—The President may waive the listing of a vessel that would otherwise be listed due to meeting the risk factor described in subsection (b)(3), or the listing of a person pursuant to subsection (d)(2)(B), if the President certifies to the appropriate congressional committees that the government of the country with which the relevant vessel is registered—

“(A) has agreed to authorize United States naval or coast guard vessels to board any vessel registered under the flag of such country on the high seas upon notification by appropriate United States officials to such government describing reasonable grounds to believe that the vessel is engaged in an activity in violation of an applicable United Nations Security Council resolution or is operating without the use of the maritime navigation safety communications system described in subsection (a)(5);
“(B) is monitoring vessels registered under the flag of such country and has committed to informing appropriate United States officials if any such vessel is operating without the use of the maritime navigation safety communications system described in subsection (a)(5);

“(C) has terminated the registration of any vessel otherwise listed pursuant to subsection (a) that was registered under the flag of such country and implemented measures to avoid the registration of any other such vessel in the future;

“(D) has implemented effective measures to fulfill the cargo inspection requirements described in applicable United Nations Security Council resolutions; and

“(E) has agreed to cooperate and share information with the United States and with United Nations Panels of Experts established under applicable United Nations Security Council resolutions in order to enable the effective enforcement of such resolutions.

“(2) WAIVER THROUGH TRANSPARENCY IN CORPORATE REGISTRATIONS.—The President may waive the listing of a vessel that would otherwise be
listed due to meeting the risk factor described in subsection (b)(4) if the President certifies to the appropriate congressional committees that the government of the country with which the relevant vessel is registered—

“(A) implemented adequate due diligence and Know-Your-Customer regulations to prevent misuse of the government’s corporate registry by the Government of North Korea or by persons acting on its behalf for the activities described in sections 104(a) or 104(b) or to evade any prohibition under section 104(f); and

“(B) is cooperating and sharing information with the United States and with United Nations Panels of Experts established under applicable United Nations Security Council resolutions in order to enable the effective enforcement of such resolutions.

“(3) WAIVER THROUGH DUE DILIGENCE AND SUFFICIENCY OF CARGO INSPECTIONS BY PORTS.—
The President may waive the listing of a vessel that would otherwise be listed due to meeting the risk factor described in subsection (b)(6) if the President certifies to the appropriate congressional committees that the director of the high-risk port concerned has
ensured compliance with the cargo inspection, search, and seizure requirements of all applicable United Nations Security Council resolutions.

“(4) GENERAL WAIVER AUTHORITY.—The President may waive the listing of any vessel or person if the President certifies to the appropriate congressional committees that such vessel or person no longer poses a significant risk of evasion or attempted evasion with regard to—

“(A) any provision of this Act;

“(B) any provision of chapter 53 of title 31, United States Code;

“(C) an applicable Executive Order; or


“(g) DEFINITIONS.—In this section:

“(1) HIGH-RISK CARGO.—The term ‘high-risk cargo’ means—

“(A) fish, crustaceans, molluscs, and other seafood, classifiable under chapter 3 of the Harmonized Tariff Schedule of the United States (HTS);

“(B) ores or concentrates, classifiable under chapter 26 of the HTS;
“(C) coal, classifiable under chapter 27 of the HTS;

“(D) petroleum, oil, mineral fuels, mineral oils, and other petroleum products, classifiable under chapter 27 of the HTS;

“(E) base metals, including iron, copper, lead, vanadium, gold, silver, or rare earth minerals, classifiable under any of chapters 72 through 83 of the HTS;

“(F) industrial machinery, classifiable under chapters 84 or 85 of the HTS; and

“(G) transportation vehicles, including industrial and commercial vehicles, passenger vehicles, and aircraft, classifiable under any of chapters 86 though 89 of the HTS.

“(2) HIGH-RISK PORT.—The term ‘high-risk port’ means—

“(A) Bayuquan, Dandong, Dalian, Longkou, Nantong, Penglai, Rizhao, Shanghai, Qingdao, and Yingkou, in China;

“(B) Abadan, Bandar-e-Abbas, and Khorramshahr, in Iran;

“(C) Nakhodka, Vanino, Kholmsk, and Vladivostok, in Russia;

“(D) Latakia and Tartous, in Syria;
“(E) Rangoon, also known as Yangon, in Burma; and

“(F) any other port the President determines to be deficient—

“(i) in its due diligence efforts to inspect cargo in transit to or from North Korea; and

“(ii) in its efforts to prevent violations of applicable United Nations Security Council resolutions.”