

United States Senate

COMMITTEE ON INDIAN AFFAIRS

WASHINGTON, DC 20510-6450

AMBER EBARR, MAJORITY STAFF DIRECTOR
JENNIFER ROMERO, MINORITY STAFF DIRECTOR

July 27, 2026

The Honorable Michael Selig
Chairman
Commodity and Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Prediction Markets; Public Interest Determinations - Proposed Rulemaking (RIN 3038-AF65)

Dear Chairman Selig:

We write to request the Commodities Futures Trading Commission (CFTC) conduct robust and meaningful government-to-government consultation with Tribes regarding the proposed rule, “Prediction Markets; Public Interest Determinations,” (RIN 3038-AF65)¹ and to immediately extend the current July 27, 2026, comment deadline. At a minimum, the CFTC should extend the comment period by 60 days to allow for formal Tribal consultation to take place and for Tribal Nations to have adequate time to fully evaluate the effects of this complex proposed rulemaking on Tribal governmental, economic, and regulatory interests.

This proposed rule raises consequential questions about the regulation of event contracts involving gaming and sporting events. Among other provisions, the CFTC proposes to define “gaming,”² establish factors for determining whether gaming-related event contracts are contrary to the public interest,³ and indicate that certain contracts based on the aggregate outcomes of professional and collegiate sporting events are unlikely to be contrary to the public interest.⁴ The proposal also asserts the CFTC’s exclusive jurisdiction over event contracts traded as swaps or futures contracts.⁵ These determinations could have substantial effects on Tribal governmental interests, Tribal gaming regulatory systems under the Indian Gaming Regulatory Act (25 U.S.C.

¹ Prediction Markets; Public Interest Determinations, 91 Fed. Reg. 35806 (proposed Jun. 12, 2026) (to be codified at 17 C.F.R. pt. 40).

² Id. at 35861, 35863-35864.

³ Id. at 35870-35871.

⁴ Id. at 35869-35871.

⁵ Id. at 35859 (“However the Proposal involves event contracts traded as swaps or futures contracts, which are subject to the Commission’s exclusive jurisdiction.”).

2701 *et seq.*), and the rights and responsibilities established through federally approved Tribal-State gaming compacts.

The CFTC recognizes in this proposal that IGRA establishes a comprehensive federal framework for gaming on Indian lands, that Tribal-State compacts govern Class III gaming, and that gaming revenue is important to Tribal governments and Tribal self-sufficiency.⁶ The Commission also expressly invites comments concerning potential effects on Tribal governmental, economic, and regulatory interests.⁷ We appreciate these acknowledgments by the CFTC and see them as demonstrative that the proposed rule has Tribal implications and that formal consultation is warranted.

We also appreciate that CFTC staff have met with representatives of some Tribal governments.⁸ Those meetings, however, are not a substitute for the formal government-to-government consultation process. Similarly, providing Tribal Nations the same opportunity as the general public to submit written comments does not constitute Tribal consultation. Meaningful consultation requires a timely, two-way exchange in which Tribal governments receive information, have a genuine opportunity to influence the agency's decision-making, and receive an explanation of how their concerns were considered.

While we are aware that as an independent agency the CFTC is not directly subject to Executive Order 13175 requiring the establishment of regular and meaningful consultation and collaboration with tribal officials when developing Federal policies with Tribal implications; the EO does specifically encourage independent regulatory agencies to comply with the consultation requirements⁹ including "recogniz[ing] the right of Indian tribes to self-government"¹⁰ and "support[ing] tribal sovereignty and self-determination."¹¹ The CFTC also acknowledges the existence of the trust relationship between the United States and Tribes in the notice of proposed rulemaking, agreeing there is a unique legal relationship between Tribal governments and the United States.¹² This unique relationship is defined through the "numerous statutes and numerous [promulgated] regulations that establish and define a trust relationship with Indian tribes."¹³ As an independent agency of the federal government, the CFTC also has a duty to maintain the trust relationship.

The trust relationship is served by robust and meaningful tribal consultation on proposed rules that will affect Tribes and their exclusive jurisdictions. Tribal consultations by agencies of the federal government during the current administration have been officially announced by Dear Tribal Leader letters. They have included opportunities for in-person discussions between

⁶ Id. at 35858-35859.

⁷ Id. at 35859.

⁸ Id.

⁹ Exec. Order No. 13,175 § 8. 65 Fed. Reg. 67249 (Nov. 6, 2000).

¹⁰ Id. at § 2(b).

¹¹ Id. at § 2(c).

¹² 91 Fed. Reg. 35806, 35858 (citing to Exec. Order 13,175).

¹³ Exec. Order No. 13,175, § 2(a).

gathered Tribal Leaders, agency officials, and agency staff; virtual opportunities for Tribal leaders to discuss proposed rules and actions with agency officials and staff when those leaders are unable to attend in person opportunities provided by agencies for consultation; and meaningful time to provide written comments after in-person and/or virtual tribal consultation is conducted.¹⁴

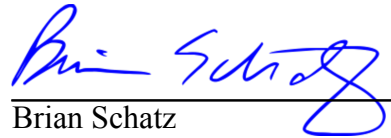
We therefore respectfully request the CFTC to provide for formal Tribal consultation on this proposed rule – “Prediction Markets; Public Interest Determinations” (RIN 3038-AF65), and extend the comment period deadline by 60 days. The CFTC should not finalize this rule until it has completed these requested actions. Doing so without taking these actions, risks adopting a regulatory framework with significant consequences for Tribal Nations without their informed participation.

Thank you for your attention to this matter. We look forward to your prompt response.

Sincerely,



Lisa Murkowski
United States Senator
Chairman,
Committee on Indian Affairs



Brian Schatz
United States Senator
Vice Chairman,
Committee on Indian Affairs

¹⁴ See, e.g. Public Notice, FCC Announces Tribal Consultation on Comprehensive Review of the FCC’s National Environmental Policy Act Rules (Sep. 5, 2025) https://docs.fcc.gov/public/attachments/DA-25-821A1_Rcd.pdf; Letter from Linda E. McMahon, Sec’y of Educ., U.S. Dep’t of Educ., to Tribal Leaders (Jan. 9, 2026), <https://www.ed.gov/media/document/letter-tribal-leaders-january-9-2026-consultation-interagency-partnerships-between-united-states-departments-of-education-interior-and-labor-january-9-2026.pdf>.