

# CFTC Issues Proposed Rule Regarding Prediction Markets

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On June 10, 2026, the Commodity Futures Trading Commission (CFTC) issued a [proposed rule](#) regarding the types of event contracts that can be listed on CFTC-registered prediction markets. This Legal Sidebar provides an overview of the existing regulatory framework governing prediction markets, discusses the key elements of the CFTC’s proposed rule, and highlights issues that may be of interest to Congress.

## Background

### Derivatives Markets

A [derivative](#)—such as a future, option, or swap—is a financial contract whose value is derived from one or more underlying assets or variables. For example, a wheat futures contract—a contract to deliver wheat at a given price on a certain future date—derives its value from the price of wheat. Historically, U.S. derivatives markets [consisted](#) primarily of contracts involving agricultural commodities. Today, derivatives also [reference](#) a wide range of intangibles, including financial variables such as interest rates, securities indices, and inflation metrics. In addition, the [Commodity Exchange Act](#) (CEA)—the primary federal statute regulating derivatives markets—appears to [contemplate](#) that certain [events](#) may constitute “commodities” that underly derivatives.

Derivatives are [used](#) by both hedgers and speculators. Hedgers use derivatives to protect themselves against price movements. For example, an airline might [enter](#) a futures contract to lock in the price at which it can purchase jet fuel. Speculators, in contrast, trade derivatives to [profit](#) from anticipated price movements. A speculator might, for instance, use a derivative to bet that the price of jet fuel will decline. In addition to serving a hedging function, many derivatives produce [socially valuable information](#). For example, derivatives trading can [inform](#) the pricing of cash-market transactions involving an underlying commodity or generate other information that can be used in economic decisionmaking.

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## The Growth of Prediction Markets

Prediction markets are online platforms that specialize in offering [event contracts](#)—contracts that allow traders to bet on whether an event will occur. Typically, event contracts have a [binary payoff structure](#) and are presented as “Yes/No” [questions](#). For example, a trader who buys a “Yes” contract may [receive](#) a payout of \$1 if the underlying event occurs before the contract’s expiration date, but nothing if the event does not occur before that date. Conversely, a trader who purchases a “No” contract may receive a payout of \$1 if the underlying event does not occur before the contract’s expiration date, but nothing if the event does occur before that date. In liquid markets, the price of an event contract is generally [regarded](#) as reflecting the market’s assessment of an event’s probability at a given point in time. For example, a “Yes” contract that pays \$1 if an event occurs and trades at \$0.60 is commonly [viewed](#) as suggesting that the market believes there is a 60% chance that the event will occur.

Several prediction markets have [registered](#) with the CFTC as “designated contract markets” (DCMs)—a type of derivatives exchange. As mentioned, the CEA appears to [contemplate](#) that certain events may constitute “commodities” that underly derivatives. The CFTC has also taken the [position](#) that event contracts are “[swaps](#)” within the meaning of the CEA, which gives the CFTC “[exclusive jurisdiction](#)” over swaps traded on registered DCMs.

CFTC-registered DCMs have [listed](#) event contracts since the 1990s. The first event contracts offered by registered exchanges were [based](#) on outcomes such as regional insured property losses, counts of bankruptcies, corporate mergers, and corporate credit events. During the 1990s, exchanges also [developed](#) contracts based on the yields of specific agricultural products and various weather developments, including temperature fluctuations, precipitation levels, and wind-related events.

While event contracts are not a new phenomenon, the growth of prediction markets has accelerated sharply since 2021. Between 2006 and 2020, DCMs [listed](#) an average of five new event contracts each year. In 2021, that figure [rose](#) to 131. New listings remained around that level until 2025, when they again [spiked](#) to approximately 1,600. Event contracts now [involve](#) a diverse array of events, including geopolitical developments, natural disasters, the release dates for video games and musical albums, Oscar award winners, political elections, and sports events. Event contracts based on sports events have proved particularly popular, reportedly [accounting](#) for more than 85% of trading volume on Kalshi, a leading prediction market. Some analysts [forecast](#) that trading in sports event contracts may surpass \$1 trillion annually by 2030. The growth of sports event contracts has generated controversy, with many state gaming authorities [attempting](#) to regulate such contracts as a form of gambling. As discussed below, those efforts have resulted in [litigation](#), which remains ongoing.

## Statutory and Regulatory History

### The CFMA, Dodd-Frank, and CFTC Rule 40.11

The regulatory framework governing event contracts has been shaped by the [Commodity Futures Modernization Act of 2000](#) (CFMA). Before the enactment of the CFMA, DCMs needed to obtain [CFTC approval](#) before listing new futures contracts. Specifically, the CEA required that DCMs [demonstrate](#) to the CFTC that trading in a new contract would not be “contrary to the public interest.” The CFTC interpreted this public-interest standard to include an “economic purpose” test under which the agency [evaluated](#) whether it was reasonable to expect that a contract would be used for hedging or price basing “on more than an occasional basis.” The CFMA [eliminated](#) the public-interest standard for futures contracts and the requirement that DCMs obtain CFTC approval before listing new contracts. Under the CFMA, DCMs may [certify](#) that new contracts are compliant with the CEA and CFTC regulations and list them without CFTC review. Alternatively, DCMs may [voluntarily](#) seek CFTC approval of new contracts.

The [Dodd-Frank Act](#), which Congress enacted in 2010, further influenced event-contract regulation. Dodd-Frank [overhauled](#) the regulation of swaps and, in so doing, added a broad definition of “[swap](#)” to the CEA. Prediction markets and state gaming authorities are currently engaged in [litigation](#) over whether event contracts qualify as “swaps” under this definition and the jurisdictional consequences of that status. The CFTC has [sought](#) to intervene in several of the relevant lawsuits in support of the prediction markets and filed [lawsuits](#) of its own arguing that states lack authority to regulate prediction markets.

Dodd-Frank also included a “special rule” directed specifically at event contracts. That rule, which is codified in [Section 5c\(c\)\(5\)\(C\) of the CEA](#), reads as follows:

**(C) Special rule for review and approval of event contracts and swaps contracts**

**(i) Event contracts**

In connection with the listing of agreements, contracts, transactions, or swaps in excluded commodities [a category that includes certain events] that are based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of [certain specified commodities]), by a [DCM] . . . the [CFTC] may determine that such agreements, contracts, or transactions are contrary to the public interest if the agreements, contracts, or transactions involve—

- (I)** activity that is unlawful under any Federal or State law;
- (II)** terrorism;
- (III)** assassination;
- (IV)** war;
- (V)** gaming; or
- (VI)** other similar activity determined by the [CFTC], by rule or regulation, to be contrary to the public interest.

DCMs [may not list](#) event contracts that the CFTC has determined to be contrary to the public interest.

In 2011, the CFTC finalized [Rule 40.11](#) pursuant to its authority under Section 5c(c)(5)(C) of the CEA. By its terms, Rule 40.11 categorically [prohibits](#) DCMs from listing contracts based upon an excluded commodity that involve, relate to, or reference the categories enumerated in Section 5c(c)(5)(C). The rule’s [text](#) does not condition this prohibition on the CFTC’s determination that specific contracts falling within the enumerated categories are contrary to the public interest. As discussed below, whether Section 5c(c)(5)(C) authorizes categorical prohibitions of the enumerated types of contracts is a contested question. In Rule 40.11’s adopting release, the CFTC [agreed](#) with comments arguing that the term “gaming” required further clarification, observing that the term “is not susceptible to easy definition.” While the final rule did not define “gaming,” the CFTC [indicated](#) that it might define the term in a future rulemaking.

## **Rule 40.11 in Practice**

Since the enactment of Dodd-Frank, the CFTC has utilized its authority under Section 5c(c)(5)(C) of the CEA to initiate several reviews of event contracts. In 2020, the CFTC [initiated](#) review of contracts based on the moneyline, point spread, and total points scored in National Football League (NFL) games. During the review process, CFTC staff [proposed](#) an order finding that the contracts could not be listed because they involved “gaming” and were contrary to the public interest. Before the CFTC voted on whether to issue the order, the exchange offering the contracts [withdrew](#) its self-certification. In January 2025, the CFTC [initiated](#) review of two other contracts involving sports: one based on which team would win the championships in certain professional and collegiate sports and another based on which hometown would host a celebration for a sports title holder on a given date. The exchange that self-certified the contracts

[refused](#) the CFTC's request that it suspend trading in the contracts during the review period. Ultimately, the CFTC did not take action to bar the listing of the contracts.

Other instances in which the CFTC conducted Rule 40.11 reviews involved contracts that were based on the outcomes of political elections. In both [cases](#), the CFTC [determined](#) that the contracts could not be listed. The more recent of these reviews concerned contracts with payouts based on which political party would control the U.S. House of Representatives and Senate on specific future dates, which had been self-certified by [Kalshi](#). After reviewing these "congressional control" contracts, the CFTC [barred](#) Kalshi from listing them based on the agency's findings that they (1) involved "gaming" and activity that is unlawful under state law, and (2) were contrary to the public interest.

In finding that the congressional control contracts involved gaming and unlawful activity, the CFTC [rejected](#) Kalshi's argument that an event contract "involves" an activity enumerated in Section 5c(c)(5)(C) only if the contract's *underlying event*—in that case, congressional control—relates to that activity. Instead, the CFTC [concluded](#) that a contract may "involve" an enumerated activity if *trading in the contract* amounts to the enumerated activity. Based on that premise, the CFTC [determined](#) that the Kalshi contracts involved "gaming" because trading the contracts involved staking something of value on the outcome of elections, which amounts to gaming. Similarly, the CFTC [found](#) that the contracts involved unlawful activity because trading the contracts amounted to wagering on elections, which many states prohibit.

Like the previous [instance](#) in which it issued a Rule 40.11 order, the CFTC did not end its analysis after finding that the Kalshi contracts involved an enumerated activity. Rather, despite Rule 40.11's categorical prohibition of contracts involving the enumerated activities, the agency proceeded to [analyze](#) whether the contracts were also contrary to the public interest. In operationalizing the public-interest standard, the CFTC [concluded](#) that Congress intended the agency to consider "a form of" the pre-CFMA economic-purpose test in administering Section 5c(c)(5)(C) of the CEA. Applying that test, the CFTC [determined](#) that the Kalshi contracts lacked utility for hedging and did not serve a pricing function. Based on these findings and a separate concern that the contracts could undermine [election integrity](#), the CFTC deemed the contracts contrary to the public interest.

Kalshi challenged the CFTC's order in federal court. In 2024, the U.S. District Court for the District of Columbia [held](#) that the CFTC exceeded its authority in prohibiting the contracts. The court [agreed](#) with Kalshi that an event contract "involves" an enumerated activity only if the event underlying the contract relates to that activity, rejecting the CFTC's view that a contract may "involve" an enumerated activity based on the nature of trading in the contract. With this understanding of Section 5c(c)(5)(C), the court [concluded](#) that the Kalshi contracts did not "involve" gaming or unlawful activity; instead, they "involved" matters such as "elections, politics, Congress, and party control." As a result, the court [held](#) that the CFTC erred in barring the listing of the contracts.

In 2024, while the *Kalshi* case was being litigated, the CFTC proposed a rule that would have [defined](#) "gaming" to include event contracts based on political elections. The 2024 proposed rule also would have [amended](#) Rule 40.11 to specify that contracts involving the enumerated activities are categorically contrary to the public interest and may not be listed on registered exchanges. Thus, the 2024 proposed rule would have dispensed with the CFTC's practice of making contract-specific public-interest determinations.

The CFTC's posture toward prediction markets shifted after the 2024 presidential election and a change in the agency's leadership. In 2025, the CFTC [dropped](#) its appeal of the *Kalshi* litigation. In 2026, it [withdrew](#) the 2024 proposed rule. As discussed, the agency has also filed [lawsuits](#) arguing that the CEA preempts state efforts to regulate sports event contracts. Under current leadership, the CFTC has not initiated a Rule 40.11 review of any event contracts.

## The 2026 Proposed Rule

On June 10, 2026, the CFTC issued a new [proposed rule](#) regarding event contracts. The 2026 proposed rule includes substantive changes to Rule 40.11 and a new procedural framework that would govern the agency’s exercise of its authority under Section 5c(c)(5)(C) of the CEA. The procedural changes would [include](#) a requirement that the CFTC provide prediction markets with a written determination outlining the factors warranting review and [rights](#) for prediction markets to submit written [responses](#) to CFTC concerns. The subsections below discuss the proposed rule’s substantive elements.

### Codification of Contract-Specific Approach to Public-Interest Determinations

The CFTC’s 2026 proposed rule would [amend](#) Rule 40.11 to codify the CFTC’s contract-specific approach to determining whether event contracts involving the enumerated activities are contrary to the public interest. The proposal would [provide](#) that the CFTC “may determine” that event contracts involving the enumerated activities are contrary to the public interest, removing the categorical prohibitions in the [existing rule](#). The question of whether Section 5c(c)(5)(C) authorizes categorical public-interest determinations has been a [disputed](#) issue for some time. As discussed, in February 2026, the CFTC [withdrew](#) a 2024 proposed rule that would have specified that contracts involving the enumerated activities are categorically contrary to the public interest. The CFTC’s notice of proposed rulemaking (NPRM) for the 2026 proposed rule [indicates](#) that the agency preliminarily believes that Section 5c(c)(5)(C) does not authorize categorical public-interest determinations.

### Contracts That “Involve” an Enumerated Activity

The 2026 proposed rule would address what it means for an event contract to “involve” an enumerated activity. Specifically, the proposal would [amend](#) Rule 40.11 to provide that a contract “involves” an enumerated activity if its settlement is “determined by an occurrence, extent of an occurrence, or contingency in the activity.” In other words, under the proposal, analysis of whether a contract “involves” an enumerated activity would turn on the nature of the event underlying the contract, as opposed to the nature of trading in the contract. This interpretation tracks the district court’s [reasoning](#) in the *Kalshi* litigation and departs from the CFTC’s position in that case.

### Definition of “Gaming”

Perhaps the most significant element of the 2026 proposed rule is its definition of the term “[gaming](#).” The proposal would define “[gaming](#)” to mean any activity that (1) one or more participants typically engage in for purposes of recreation or to entertain others; (2) is governed by rules; and (3) includes measurable occurrences or outcomes that depend on the participants’ luck, skill, or athletic ability during the activity. Thus, while contracts involving [sports events](#) would typically involve “gaming,” contracts involving [political elections](#) and [awards](#) would not. As discussed below, in providing that sports contracts come within the ambit of Section 5c(c)(5)(C) and Rule 40.11, the proposed rule would depart from the position advanced by certain [prediction markets](#) and the [CFTC itself](#) in recent litigation.

### Factors to Guide Rule 40.11 Reviews

The proposed rule would identify factors that the CFTC would consider in determining whether event contracts “[involve](#)” the enumerated activities and whether such contracts are contrary to the [public interest](#). The discussion of public-interest considerations includes a review of factors that would apply to all covered event contracts and factors that would apply to contracts involving specific enumerated activities.

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### ***Generally Applicable Public-Interest Considerations***

In addressing generally applicable public-interest considerations, the 2026 proposal [rejects](#) the CFTC’s previous view that Section 5c(c)(5)(C)’s public-interest standard incorporates the pre-CFMA economic-purpose test. Under the 2026 proposed rule, a contract’s “reasonable potential” to serve a hedging or pricing function would be a “[significant factor](#)” against finding that the contract is contrary to the public interest. The absence of a hedging or pricing function would not, however, necessarily render a contract [impermissible](#). Rather, the proposal indicates that event contracts may serve the public interest in ways other than providing hedging or pricing utility, such as by “[yielding](#) economically useful or otherwise meaningful information.”

In identifying this additional function, the CFTC contends that event contract prices may [inform](#) economic decisionmaking on matters beyond the pricing of an underlying commodity. For example, contracts involving a sports team could reflect market assessments that may be [useful](#) to hotels and restaurants in a certain geographic area. The proposal also [highlights](#) information aggregation as a separate benefit that may flow from event contracts. By “harnessing the wisdom of the crowds,” the proposal [says](#), event contracts may produce information that is both useful and more reliable than other forecasting methods.

Under the 2026 proposal, the CFTC would also [analyze](#) whether an event contract promotes responsible innovation and fair competition. With respect to innovation, the proposed rule [explains](#) that certain event contracts—for example, those referencing the timing or content of legislative or regulatory actions—may give businesses the opportunity to mitigate risk more effectively than the imprecise hedges offered by other instruments. In evaluating fair competition, the CFTC would [assess](#) whether prohibiting a contract would be likely to push trading to less regulated overseas markets.

The 2026 proposed rule also identifies generally applicable considerations that would support a finding that an event contract is contrary to the public interest. Here, the CFTC [explains](#) that event contracts may be deemed contrary to the public interest if they present a “particular risk” of manipulation or market disruption, exhibit settlement integrity deficits (e.g., a lack of clear and objective resolution criteria), create “particular risks” of information leakage or exploitation of material nonpublic information by insiders, or would challenge a DCM’s self-regulatory tools or compliance infrastructure.

### ***Public-Interest Considerations for Event Contracts Involving Specific Enumerated Activities***

The 2026 proposed rule proceeds to highlight public-interest considerations applicable to event contracts involving specific enumerated activities. The proposal [states](#) that the CFTC would “likely” deem contracts involving unlawful activity to be contrary to the public interest unless they involve crime rates in a general area over an extended period. Similarly, the proposal [explains](#) that contracts involving terrorism, assassination, and war would be “highly likely” to be against the public interest.

The 2026 proposed rule is more favorable to certain types of contracts involving gaming. Gaming contracts are likely to be contrary to the public interest, the CFTC [indicates](#), if they involve games of random chance, as trading in such contracts would not provide useful or meaningful information. That a contract involves the outcome of a sports event, however, would [militate](#) against a finding that the contract is contrary to the public interest. In the CFTC’s view, [such contracts](#) “may serve price discovery functions and provide meaningful information.” The proposal further [explains](#) that such contracts are unlikely to raise heightened concerns of market manipulation, information leakage, or settlement ambiguity. Where a contract involves a sport with an “established integrity framework,” including a governing body or integrity unit and published rules of competition, that factor would [weigh against](#) a

finding that the contract is contrary to the public interest. Similarly, an [information-sharing agreement](#) between a prediction market and a recognized athletic governing body would cut against such a finding.

While the 2026 proposed rule is broadly receptive to sports event contracts, it [identifies](#) several categories of sports contracts that would likely be contrary to the public interest: those that settle based on player injuries, officiating decisions, a “discrete action, event, or occurrence” in a sports event (e.g., a specific play call or the outcome of a specific pitch), physical altercations or fights, or games in which participants are below the collegiate level.

## Considerations for Congress

Prediction markets raise foundational questions regarding the regulation of speculative trading—an issue that has figured [prominently](#) in the history of derivatives law. The pre-CFMA economic-purpose test required proof that futures contracts could serve specified functions based in part on [concerns](#) regarding excessive speculation. By its own lights, the CFTC’s 2026 proposed rule does not amount to an endorsement of purely speculative event contracts; contracts based on [games of random chance](#), for example, would be disfavored. The 2026 proposed rule does, however, reflect the view that some event contracts may generate social benefits that may not be cognizable under the traditional economic-purpose test—for example, the production of information that is economically [useful](#) for purposes beyond hedging or the pricing of an underlying commodity. This theoretical move creates space for sports event contracts.

Critics of the CFTC’s current posture toward prediction markets [argue](#) that many event contracts—including sports contracts—are purely speculative and lack redeeming value. Others have raised separate concerns about specific categories of contracts. For example, some—including [the CFTC](#) under previous leadership—have [worried](#) that event contracts involving political elections threaten to compromise election integrity. These issues have attracted considerable congressional interest. Several [bills](#) in the 119th Congress would [create](#) *per se* rules against the listing of certain categories of event contracts. For an overview of the relevant legislation, see [CRS In Focus IF13207, \*Prediction Markets Legislation in the 119th Congress\*, by Karl E. Schneider and Alexander H. Pepper \(Apr. 21, 2026\)](#).

While some early commentary [interprets](#) the CFTC’s 2026 proposed rule as broadly favorable to prediction markets, a final rule defining “gaming” to encompass sports events may lead to litigation. Some prediction markets have [argued](#) that the term “gaming” in Section 5c(c)(5)(C) of the CEA does not encompass sports. During an April 2026 oral argument before the U.S. Court of Appeals for the Ninth Circuit, the CFTC [endorsed](#) that position. A final rule that tracks the NPRM may also face legal challenges from [plaintiffs](#) seeking to prohibit DCMs from listing sports event contracts. The regulatory landscape for prediction markets—which is already the subject of [extensive litigation](#)—may thus remain in flux even if the CFTC finalizes the proposed rule or similar regulations.

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