

Stephen A. Raher

Admitted in Oregon and
Washington

sraher@pdx-law.com

P 971 867 2440

July 2, 2026

Director, Product Classification
U.S. Postal Service
475 L'Enfant Plaza, SW, Room 4446
Washington, DC 20260-5015

VIA EMAIL ONLY (PCFederalRegister@usps.gov)

Re: Ballot Mail
Proposed Modification of DMM 705

To Whom it May Concern:

I write to express my objection to the proposed rule, published on June 2, 2026, “regarding the transmission of mail-in or absentee ballots for federal elections” (the “**Proposed Rule**”).¹ The Proposed Rule is procedurally invalid, impairs the right of citizens to vote in federal elections, and exceeds the rulemaking authority of the U.S. Postal Service (“**USPS**”). Given the injunction recently entered by the U.S. District Court for the District of Massachusetts,² it appears that the USPS can no longer take steps to implement the Proposed Rule; however, because the USPS has issued no notice indicating an intent to comply with the court’s order, I submit these comments out of an abundance of caution.

I. Statement of Interest

By way of background, I am an attorney admitted to practice in Oregon and Washington. My practice involves communication law, including telecommunications and postal matters. I am a resident of, and registered elector in, the State of Oregon. Oregon law requires all elections to be conducted by mail.³ Accordingly, my ability to vote is threatened by the Proposed Rule’s interference with the ability of Oregon election officials to mail me a ballot.

II. The Proposed Rule is Procedurally Invalid Due to Inadequate Notice

In promulgating the Proposed Rule, the USPS has failed to follow two applicable procedural requirements, thus rendering the rule invalid.

¹ 91 Fed. Reg. 32915 (Jun. 2, 2026).

² *California v. Trump*, Case No. 1:26-cv-11581, Memorandum & Order (ECF No. 191) (D. Mass., Jun. 25, 2026).

³ Or. Rev. Stat. 254.465.



First, it does not appear that the USPS has sought an advisory opinion from the Postal Regulatory Commission (“**PRC**”) as required by 39 U.S.C. § 3661(b). That statute requires the opportunity for hearings before the PRC when: (1) there is a “change,” (2) “in the nature of postal services,” (3) which affects service “on a nationwide or substantially nationwide basis.”⁴ The Proposed Rule meets all three of these criteria. First, as the USPS admits, the Proposed Rule makes substantial changes that will significantly impact mailers, requiring new practices to incorporate “technical instructions regarding barcode creation, service type identifiers, acceptance processes, file preparation, documentation submission, and entry of data into the proposed portal.”⁵ Second, the Proposed Rule is clearly in the nature of postal services because it impacts the ability of state officials to send, and voters to receive, mailed matter.⁶ Finally, the Proposed Rule would impact service on a nationwide basis because “[a]ll states and territories and the District of Columbia offer at least some of their citizens the opportunity to cast their ballots by mail in federal general elections.”⁷ Failure to initiate the procedure required under § 3661(b) is grounds for an injunction restraining non-compliant changes in mail processing.⁸

Second, the 30-day comment period applicable to the Proposed Rule violates Executive Order 12866 (“**EO 12866**”). According to the USPS, the Proposed Rule is enacted pursuant to the USPS’s rulemaking authority and is meant to “regulate the mails.”⁹ The Proposed Rule thus qualifies as a “regulation”¹⁰ and the USPS is an “agency” for purposes of EO 12866.¹¹ Under EO 12866, agencies are responsible for giving the public at least 60 days’ notice of proposed regulations, to ensure “meaningful participation in the regulatory process.”¹² The Proposed Rule is of immense importance and complexity, and is being proposed within five months of a general election, promising to cause chaos and confusion. Despite the high stakes, the USPS has only given interested parties 30 days to submit comments. This is too important of an issue to countenance derogation of EO 12866’s directive to provide a meaningful comment opportunity.

⁴ 39 U.S.C. § 3661(b); *Buchanan v. USPS*, 508 F.2d 259, 262-263 (5th Cir. 1975).

⁵ Proposed Rule, 91 Fed. Reg. at 32917.

⁶ *See id.* at 32918, proposed DMM § 705.24.6 (“This rule relates . . . to the use of the U.S. Mail.”).

⁷ U.S. Election Assistance Comm’n, *Election Administration and Voting Survey 2022 Comprehensive Report* at 72 (Jun. 2023), available at https://www.eac.gov/sites/default/files/2024-11/2022_EAVS_Report_508c.pdf.

⁸ *Buchanan*, 508 F.2d at 266-267.

⁹ Proposed Rule, 91 Fed. Reg. at 32915.

¹⁰ Executive Order 12866, 58 Fed. Reg. No. 190 § 2(d) (“Oct. 4, 1993”) (“‘Regulation’ or ‘rule’ means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice of an agency.”).

¹¹ EO 12866 § 2(b) (incorporating the definition of “agency” from 44 U.S.C. § 3502(1); *compare* 44 U.S.C. § 3502(1) (agency includes “any . . . establishment in the executive branch of the Government”) *with* 39 U.S.C. § 201 (the USPS is “an independent establishment of the executive branch of the Government of the United States”).

¹² EO 12866 § 6(a)(1).





III. The Proposed Rule is *Ultra Vires* Because Voting is a “Major Question” and There is No Clear Delegation of Authority to the USPS to Regulate Elections

The Proposed Rule exceeds the USPS’s authority. Under the “major questions doctrine” articulated in *West Virginia v. EPA*,¹³ a government agency lacks rulemaking authority when: (1) the underlying claim of authority concerns an issue of “vast . . . political significance;” and, (2) there is no clear delegation of authority over the issue.

Under the first prong of the major-questions doctrine, it cannot be doubted that control over the distribution of ballots is a matter of vast political significance.¹⁴ On the second prong, the authorities cited by the USPS do not grant the agency the power to promulgate or implement the Proposed Rule. The USPS cites 39 U.S.C. §§ 401 and 404, as well as Executive Order 14399 (“**EO 14399**”) as the relevant authorizations for the Proposed Rule. As explained below, none of these provisions empower the USPS to implement the Proposed Rule.

A. Section 401 is Inapplicable Because No Other Law Grants the USPS Authority to Conduct Elections

With respect to 39 U.S.C. § 401, the USPS cites two subsections as purported authority for the Proposed Rule, but neither of these provisions bestow upon USPS the power that it claims. First, section 401(2) grants the USPS the power “to adopt . . . such regulations . . . as may be necessary in the execution of its functions under this title and such other functions as may be assigned to the Postal Service under any provisions of law outside this title.”¹⁵ The Proposed Rule’s provisions requiring pre-mailing enrollment and voter verification (proposed DMM sections 705.24.4 and 24.5) are completely untethered to any lawful grant of authority to the USPS—under title 39 or otherwise. The USPS’s statutory mandate is to deliver mail.¹⁶ The Proposed Rule seeks to impose separate mailing standards applicable only to mailed ballots—standards which have nothing to do with deliverability, and which force mailers to disclose sensitive information that is unrelated to transmitting mail from point to point. This impermissibly inserts the USPS into the substantive conduct of elections by arrogating to the agency the power to determine who may receive a ballot.¹⁷

¹³ 597 U.S. 697 (2022).

¹⁴ See *Watson v. Republican Nat’l Comm.*, 609 U.S. ___, slip op. at 7 (2026) (“From time immemorial . . . an election to public office has been in point of substance no more and no less than the expression by qualified electors of their choice of candidates.” (quoting *U.S. v. Classic*, 313 U.S. 299, 318 (1941) (internal quotation marks omitted))); *Georgia v. Ashcroft*, 539 U.S. 461, 483 (2003) (“[I]n a representative democracy, the very purpose of voting is to delegate to chosen representatives the power to make and pass laws. The ability to exert more control over that process is at the core of exercising political power.”).

¹⁵ 39 U.S.C. § 401(2).

¹⁶ See 39 U.S.C §§ 401-404.

¹⁷ See *West Virginia*, 597 U.S. at 721 (“It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme. Where the statute at issue is one that confers authority upon an administrative agency, that inquiry must be





No statute gives the USPS this authority, and the Constitution expressly reserves the *manner* of conducting elections to the states.¹⁸ To the extent that the USPS believes that EO 14399 “assigns functions” to the USPS for purposes of § 401(2), such theory is untenable, both because an executive order is not a law¹⁹ and because the President has no direct supervisory authority over the USPS.²⁰

Second, section 401(10) grants the USPS “all other powers incidental, necessary, or appropriate to the carrying on of its functions or the exercise of its *specific* powers.”²¹ The statute’s reference to specific powers is telling—the USPS’s “specific powers” are enumerated in 39 U.S.C. § 404, a statute that is almost entirely focused on the delivery of mail.²² Under the major questions doctrine, the USPS may not use its powers related to mail delivery to grant the agency a role in determining which electors may receive ballots.²³

B. The Proposed Rule Does Not Fit Within Any of the Powers Enumerated in Section 404

Section 404 of title 39 lists the specific powers of the USPS. None give the USPS a role in adjudicating elections, and the only subsection specified by the USPS concerns the power “to provide for the collection, handling, transportation, delivery, forwarding, returning, and holding of mail, and for the disposition of undeliverable mail.”²⁴ This grant of authority over *transmission* of the mail does not allow the USPS to exercise authority over the *contents* of mail, and certainly does not grant the USPS a role to play in substantive election administration. Any reliance on section 404 is unavailing for two reasons.

First, section 404 is an enabling statute that is focused on the collection and delivery of mail as well as directly related matters such as postal rates and the maintenance of postal facilities. While

shaped, at least in some measure, by the nature of the question presented—whether Congress in fact meant to confer the power the agency has asserted.” (citations and internal quotation marks omitted))

¹⁸ U.S. Const., art. I, § 4, cl. 1 and art. II, § 1, cl. 2; *accord Watson*, supra note 14, slip op. at 1-2.

¹⁹ *Sierra Club v. U.S. Dept. of Energy*, 134 F.4th 568, 573 (D.C. Cir. 2025) (“an executive order is not ‘law’ within the meaning of the Constitution” (citation and internal quotation marks omitted)).

²⁰ 39 U.S.C. § 202(a)(1) (“The exercise of the power of the Postal service shall be directed by a Board of Governors”); *Governors of the USPS v. U.S. Postal Rate Comm’n*, 654 F.2d 108, 114 (D.C. Cir. 1981) (the Board of Governors is vested with “exclusive authority to manage the Postal Service”).

²¹ 39 U.S.C. § 401(10) (emphasis added).

²² The only provision in section 401 that does not pertain to delivery of mail is found in 39 U.S.C. § 401(e), pertaining to nonpostal services. This provision provides no authorization for the Proposed Rule, since the statute does not authorize the USPS to offer nonpostal services (*see* § 401(e)(2)) and generally prohibits the offering of nonpostal services that have not been approved by the PRC (*see* § 401(e)(4)).

²³ *West Virginia*, 597 U.S. at 723 (“Extraordinary grants of regulatory authority are rarely accomplished through modest words, vague terms, or subtle devices. Nor does Congress typically use oblique or elliptical language to empower an agency to make a radical or fundamental change to a statutory scheme.”).

²⁴ 39 U.S.C. § 404(a)(1).





section 404 allows the USPS to prescribe general rules—such as formatting requirements—it says nothing about allowing the agency to determine a mail recipient’s legal authority to vote, which is precisely the intent of the Proposed Rule.²⁵ Thus the Proposed Rule exceeds the authority granted by section 404 because “enabling legislation is generally not an open book to which the agency may add pages and change the plot line.”²⁶

Second, to the extent that the USPS seeks to ground the Proposed Rule in its power to investigate postal offenses, such theory is not supported by the content of applicable criminal law. The USPS’s announcement of the Proposed Rule cites two relevant criminal statutes.²⁷ The first such statute, 52 U.S.C. § 10307, as relevant here, penalizes the knowing or willful giving of “false information as to [a person’s] name, address, or period of residence in [a] voting district for the purpose of establishing his eligibility to register or vote.” The Proposed Rule does not reasonably relate to this statute because the rule governs the transmission of mail *from* election officials *to* electors, while the statute addresses the submission of false information *by* putative electors *to* election officials.

The other criminal statute cited by the USPS, 52 U.S.C. § 20511, as relevant here, penalizes the knowing and willful “procurement, casting, or tabulation of ballots that are known by the person to be materially false, fictitious or fraudulent under the laws of the State in which the election is held.” This statute provides no support for the Proposed Rule because it targets voting that is prohibited under state law. By sending a ballot to a recipient, a state voting official has—by definition—made a determination that the recipient is a lawful elector. The USPS has no authority to second-guess that determination, nor does the Proposed Rule in any way facilitate determinations of elector eligibility by reference to *state* law.

IV. Conclusion

The conduct of elections is a fundamental cornerstone of our democracy. The USPS plays an important role in this process by delivering mail on behalf of electors and election officials. No law gives the USPS a role in determining who is eligible, under substantive non-postal law, to receive or cast a ballot. The Proposed Rule seeks to claim such power without any statutory basis, which amounts to the proverbial hiding of an elephant in a mousehole.²⁸

²⁵ See Proposed Rule, 91 Fed. Reg. at 32915 (“The regulations as proposed . . . can provide information regarding the sending of ballots through the mails that would be available for use by law enforcement.”).

²⁶ *West Virginia*, 597 U.S. at 723 (citation, alteration, and internal quotation marks omitted).

²⁷ Notably, EO 14399 cites two *additional* criminal statutes that the USPS does not rely on. Specifically, EO 14399 cites 18 U.S.C. §§ 1341 and 1708. See EO 14399 § 3(a). That the USPS does not reference these statutes in its notice of the Proposed Rule indicates an implicit acknowledgment by the agency that there is no non-frivolous reading of the statutes that apply to an election official who mails a ballot to someone not entitled to vote.

²⁸ See *Whitman v. Am. Trucking Ass’n*, 531 U.S. 457, 468 (2001) (“Congress . . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions – it does not, one might say, hide elephants in mouseholes.”).





July 2, 2026
Page 6 of 6

A court of competent jurisdiction has already determined that the Proposed Rule cannot move forward. The USPS must rescind its notice of rulemaking and put this ill-conceived rule to rest once and for all.

Sincerely,

A handwritten signature in purple ink that reads "Stephen Rahe".

Stephen A. Rahe

