The EPA Was Not Transparent About Changes Made to a Long-Chain PFAS Rule After Administrator Signature

What We Found

The EPA did not follow all applicable policies, procedures, and guidance when making changes to the Long-Chain Perfluoroalkyl Carboxylate and Perfluoroalkyl Sulfonate Chemical Substances, or LCPFAC, Significant New Use Rule after the administrator signed it and before it was published in the Federal Register. Specifically:

- Although the Agency identified changes made to the Significant New Use Rule in a postsignature change memorandum, which was signed by the administrator, as required by the EPA’s Changes to Rule Documents Prepared for the Administrator’s Signature procedures, the EPA did not docket that memorandum, as stipulated in the EPA’s Creating and Managing Dockets: Frequently Asked Questions for EPA Action Developers guidance.

- Because the request for changes was communicated via telephone, we could not identify the origin of the requested changes and could not determine whether the EPA complied with the transparency provisions of Executive Order 12866, Regulatory Planning and Review.

By not following all docketing procedures, the EPA did not meet transparency expectations and risked compromising the public’s trust in the rulemaking process. However, the Agency followed the Office of the Federal Register’s Document Drafting Handbook guidance for requesting changes to the final rule.

Recommendations and Planned Agency Corrective Actions

We recommend that the assistant administrator for Chemical Safety and Pollution Prevention update the LCPFAC Significant New Use Rule docket by posting the postsignature change memorandum that outlines the changes made to the final rule after the administrator signed it but before it was published in the Federal Register. We also make two recommendations to the associate administrator for Policy, which include updating the applicable policies, procedures, and guidance regarding making changes to a regulatory action after it is submitted to the Office of Information and Regulatory Affairs for review and before it is published in the Federal Register. The Agency agreed with our first two recommendations and provided acceptable corrective actions. The first recommendation is completed, and the second is resolved with corrective actions pending. The Agency disagreed with our third recommendation, and it remains unresolved.