

12394 COMPETITIVE PROBLEMS IN THE DRUG INDUSTRY

41. See City of Chicago v. FPC, 458 F.2d 731, 743, 745 (D. C. Cir. 1971), cert. denied, 405 U. S. 1074 (1972); Greater Boston Television Corp. v. FCC, 444 F.2d 841, 850 (D. C. Cir. 1970), cert. denied, 403 U. S. 923 (1971) ("the agency's evidentiary fact findings [must] ... provide rational support for the agency's inferences of ultimate fact").
42. Nor have such findings been made by the Secretary in proposing the MAC regulation. While the preamble describes FDA's quality assurance program and suggests that it "will assure safe and effective drugs of consistently high quality," this does not purport to be and certainly does not constitute a reasoned finding based upon consideration of relevant evidence. In any event, it does not deny the possibility that drugs may vary significantly in quality and therapeutic effectiveness from one supplier to another.
43. Cf. Greater Boston Television Corp. v. FCC, supra, 444 F.2d at 851.
44. Id., p. 851.
45. (40 FR 3219), January 20, 1975.
46. See Hess & Clark, Division of Rhodia, Inc. v. FDA, 495 F.2d 975, 983 (D. C. Cir. 1974).
47. Gonzalez v. Freeman, 334 F.2d 570, 574 (D. C. Cir. 1964).
48. Id., p. 578.
49. See Weinberger v. Hynson, Westcott & Dunning, Inc., 412 U. S. 609, 622 (1973).
50. Greater Boston Television Corp. v. FCC, supra, 444 F.2d at 851.
51. Cf. Hess & Clark, Division of Rhodia, Inc. v. FDA, supra, 495 F.2d at 983 (basic fairness requires that affected parties have adequate notice of the issues involved so that they can know what factual showings will be material).
52. See Mobil Oil Corp. v. FPC, 483 F.2d 1238, 1251 (D. C. Cir. 1973).
53. See id., p. 1253.
54. See, e.g., American Airlines, Inc. v. CAB, 359 F.2d 624, 632 (D. C. Cir.) (en banc), cert. denied, 385 U.S. 843 (1966).
55. National Air Carrier Ass'n v. CAB, 436 F.2d 185, 191 (D. C. Cir. 1970). See generally Marine Space Enclosures, Inc. v. Federal Maritime Commission, 420 F.2d 577, 585-86, n. 22, 589 n. 36 (D. C. Cir. 1969).