

advertising claims substantiation data or, where appropriate, plain language summaries thereof.

## 2. Rules and Regulations

Witnesses noted that a move away from the criminal law power to the trade and commerce power as the jurisdictional basis for misleading advertising law would allow for the creation of rules and regulations concerning advertising practices.

In the United States, the FTC issues both industry guides and trade regulation rules pursuant to its authority to regulate deceptive advertising. Industry guides are non-binding and are issued when it appears that "guidance as to the legal requirements applicable to particular practices would be beneficial in the public interest and would serve to bring about more widespread and equitable observance of laws administered by the Commission."<sup>22</sup>

The *Federal Trade Commission Act* also gives the FTC authority to prescribe "rules which define with specificity acts or practices which are unfair or deceptive ..."<sup>23</sup> These so-called trade regulation rules are legally enforceable. Elaborate procedures for their creation, which include formal hearings and public comment, are prescribed by law.

After examining the FTC's rule-making authority, the 1976 CCAC Study concluded that it possessed the following benefits: first, rule-making creates an "even-handed" approach to enforcement — a rule applies in the same manner to all persons engaged in a particular conduct; second, rules are the result of a public process which deals with a number of issues and ensures input from all interested persons; and finally, rules benefit industry by elaborating upon and clarifying the law.<sup>24</sup>

In discussions with the Committee, Federal Trade Commissioner Mary Azcuenaga noted a number of advantages and disadvantages of the FTC's rule-making procedure. Among the advantages are the assurance of a broad range of evidence and the ability to deal with widespread practices in the marketplace. On the negative side, the Commissioner described the rule-making procedure as cumbersome and too demanding of resources.

In the U.S., trade regulation rules can deal with practices common to several industries, or specific to one industry. The Committee recognizes that