one of four reasons. One reason is that the congressional delegation of legislative authority in the enabling act was unconstitutional because it was too vague and did not properly limit the agency's actions in any way. A second claim is that an agency action violated a constitutional standard, such as the right to be free from unreasonable searches and seizures under the Fourth Amendment. For example, if an agency, such as OSHA, promulgated a rule that allowed its inspectors to search a business property at any time without permission from the owners and without an administrative search warrant, this law would be struck down as a violation of the Fourth Amendment.

A third alternative is to show that the act of an agency was beyond the scope of power granted to it by Congress in its enabling legislation. In other words, the agency passed a rule that it had no authority to mandate. Finally, a party could demonstrate that the agency did not follow the proper procedures in promulgating the rule. For example, the agency was required by its enabling statute to engage in formal rule making but instead followed informal rule-making procedures.

You are correct if you believe that these four circumstances seem highly unlikely. It is very unusual for a court to strike down an administrative rule. Despite the low success rate of such challenges, firms continue to challenge agency rules. Even if such a challenge is not successful, it still buys time for the firm. The firm may be able to get a temporary injunction prohibiting enforcement of the law until there is a final decision in the case. Many times, the appeals process will last for years; the resulting delay can save a firm a substantial amount of money, especially when the cost of compliance is high.

REGULATED NEGOTIATION The exceedingly large number of challenges to regulations, as well as a growing belief that structured bargaining among competing interest groups might be the most efficient way to develop rules, has stimulated a number of agencies to adopt a relatively new form of rule making, often referred to as reg-neg. Each concerned interest group and the agency itself sends a representative to bargaining sessions led by a mediator. After the parties achieve a consensus, that agreement is forwarded to the agency. The agency is then expected to publish the compromise as a proposed rule in the *Federal Register* and follow through with the requisite rule-making procedures. The agency, however, is not bound to do so. If it does not agree with the proposal the group negotiated, the agency is free to try to promulgate a completely different rule or a modification of the one obtained through the negotiation.

The reasoning behind reg-neg is similar to that supporting the increased use of mediation. If the parties can sit down to try to work out a compromise, that solution is much more likely to be accepted than one handed down by some authority. The parties who hammered out the agreement now have a stake in making it work because they helped to create it.

Admittedly, reg-neg is not possible in all situations. If, for example, there were an unmanageably large group of interests that would have to be represented, or if any possible compromise would come as a result of one group backing away from a fundamental principle, or if two groups feel so antagonistic toward each other that they are unable to sit down and talk rationally, reg-neg would probably not even be worth trying.

PROBLEMS ASSOCIATED WITH RULE MAKING Although there is an expediency associated with administrative rule making, critics are quick to point out that there are some problems with it. Agency employees are not subject to the same political pressures as legislators, but they are not necessarily unbiased "scientists." Many of the people with the necessary expertise to regulate specific areas come from the industry they are now going to be regulating. Many believe that it will be difficult for regulators to ignore their past and potential ties to industry and pass the regulations that are in the public interest, especially when the regulations would increase costs to the industry or are opposed by the industry for other reasons. When people are discussing an agency in which they believe this problem exists, they will often refer to the agency as being a "captured" agency. The counterargument is that those who have been deeply involved in an industry know it best.

Rule making in the environmental area is especially difficult, because there is so much uncertainty surrounding the causes and consequences of pollution. There is often a significant time lag between exposure and the resultant detrimental health effects or ecological changes, making it difficult to ascertain the impact of a given pollutant. There is very little agreement as to how much certainty is needed before a regulation should be imposed. Even when we have a little knowledge about a single pollutant's effects, we know less about synergistic effects (i.e., the effects brought about by the interactions of various pollutants).

Another problem associated with environmental rule making is that although many of the costs of regulation are borne immediately, the benefits flow primarily to future generations. Thus, many people question how much the present generation can be asked to sacrifice for future generations. This question becomes complicated by the fact that sometimes those costs are borne by those with the least economic and political power.

Regulators in the environmental arena are confronted with a difficult task. They must balance the risk to society with the cost of expenditures for pollution-control equipment with respect to almost every standard they set. They know that almost every one of those standards is going to be challenged in court by the regulated industries, which will see the standards as too stringent, and the environmental groups, which will see them as too weak.

An issue that has been increasingly arising in debates over environmental policies is the impact that the costs of compliance will have on the competitiveness of U.S. firms in a global economy. Yet, the effects of pollution-control compliance on global competitiveness are unknown. We can gather data on the costs of pollution-control equipment in the United States, but we do not know how much other nations' industries spend. Nor do we know how much increased efficiency the pollution-control equipment generates.

As you will read in Chapter 11, differences in environmental regulation have become an issue in trade agreements. We know that some firms have left the United States to go to less developed countries, where there are less stringent pollution-control regulations. But not all firms that move do so just to avoid environmental regulations; some may also be seeking cheaper labor or materials.

Finally, regulators must be sensitive to the role the economy plays in the public's willingness to accept or support environmental regulations. When the economy is flourishing and unemployment is low, there is much greater acceptance of