

Environmental Tools:

Challenge Regulations

What are challenge regulations?

Challenge regulations are a policy tool where government challenges a target group of enterprises (usually defined by sectors) to lead in the design and implementation of a program for meeting environmental or resource conservation goals. The government indicates that if the goal is not reached, they will impose mandatory regulatory requirements. This approach is usually configured under the following key elements:

- Government establishes clear, measurable targets (either risk-based or technology-based) with a reasonable timetable for implementation;
- The targets are usually defined for multiple sources, usually at the industry sector or geographical level (rather than for individual facilities), but could include multiple sectors;
- The sources are given the collective responsibility for design and implementation of a program that will meet the targets and is acceptable to government; and,
- Government specifies a credible alternative program (through regulation) or sanction, which will be imposed should progress toward the target(s) not be satisfactory.

This tool shifts the responsibility for program development away from government toward the regulated sectors. Although challenge regulations have the potential to be a less intrusive method to achieve environmental goals, the regulated parties also accept the costs and associated administrative burdens of the program. This tool is highly results-focused, and sources are typically given wide latitude in the type of approach, including the institutional arrangements of the program.

Where are they used?

Germany's Green Dot program

In 1991, a packaging ordinance was established to reduce the volume of packaging waste and improve the overall materials policy. The government established a regulatory approach outlining industry obligations to take back packaging from customers. However, the government then gave industries opportunities to establish an alternative program of their own for meeting the targeted rates. In addition to shifting the responsibility for source reduction and recycling of packaging materials to industry, the government required them to develop a system for handling the materials entirely separate from the existing public solid waste system.

The Netherlands Nature and Environment Policy Plan (NEPP)

The Dutch government adopts medium and long-range targets and timeframes, and identifies the industry sectors or firms responsible for changes. It then asks these targeted sources, usually industry sectors, to develop implementation strategies for solving problems and enforces the targets and timeframes.

The national government usually negotiates with industry groups and often with larger individual firms to establish the implementation plans for meeting targets. These plans are

then formalized through covenants or formal, written agreements between governments and industry [see the Negotiated Agreements (Covenants) fact sheet]. The purpose of these agreements is to allow some flexibility for learning and experimentation. However, even though the approach begins as voluntary agreements, the negotiated covenants are typically enacted into law to increase the dependability of the agreements. In addition, industry must comply with local authority licensing and permitting requirements until the covenant provisions can be incorporated into the local requirements.

Tool performance:

Pros

- The government can require mandatory compliance at a later date if industries are not successful or do not cooperate.
- The potential to promote a less adversarial style among interested parties.
- Sources can choose between control equipment or process changes for emission reductions.
- Provides an opportunity for industries to find solutions and lowest control cost. It allows negotiation on the means for accomplishing goals in a way that firms believe is fair.
- Government personnel can be directed towards providing technical support and assistance; resources and time previously required for rulemaking and regulation are reduced.
- Industries can adjust strategies more quickly to new information than government agencies can. Industry expertise and networks are attuned to anticipating change or new opportunities.
- Allowing or encouraging industry collaboration may facilitate technology innovation.

Cons

- Allowing industry temporary discretion risks “lost time” toward achieving environmental goals if they fail.
- Provides no particular incentives to prefer pollution prevention over abatement technology.
- Does not provide for third party participation in decision-making that other cooperative or regulatory tools do.
- Industries may not pursue cost-effective approaches as diligently as individual firms might. Some firms, especially small ones, may not believe they are treated fairly by dominant firms in their industry.
- May require changes in antitrust rules to allow collaboration among firms.

Special Considerations:

Initial efforts to implement challenge regulations maybe difficult. Government must invest resources in designing an alternative program, as a backstop should industry fail to meet goals by the deadline.