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Integrating Sustainability into Transportation Contracts: A Guide for Shippers

OCTOBER 29, 2024

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As concerns about environmental degradation and climate change intensify, shippers across a wide variety of industry verticals are seeking ways to make their supply chain operations more environmentally sustainable. With greater focus on emissions, or those resulting from assets not under a shipper's direct ownership or control (i.e., scope 3 emissions), many shippers are placing greater focus on the sustainability practices of their motor carriers, brokers, and other transportation service providers (collectively "Transportation Service Providers"). By including specific sustainability requirements in their shipping contracts, shippers can require their Transportation Service Providers to adopt or otherwise utilize more environmentally friendly processes when providing their services.

This article provides shippers with ways to contractually incorporate environmentally conscious policies and sustainability requirements within their Transportation Services Provider contracts.

Why should shippers integrate sustainability into their transportation agreements?

Shippers are facing increasing pressure from federal and state governmental entities, as they are now targeted to comply-and ensure their Transportation Service Providers comply-with environmental laws and regulations. In addition, the consumers of a shippers' goods influence the shipper behavior as they align with generally accepted global climate goals and expend substantial efforts and resources to reduce their own carbon emissions. Implementing sustainability initiatives via contract with their Transportation Service Providers also helps shippers improve efficiency and reduce costs by minimizing fuel consumption and maximizing container/trailer space; enhance brand reputation and customer loyalty through a demonstrated commitment to sustainable practices; and possibly create a market differentiator for the shipper vs. its competition.

Key Strategies for Including Sustainability Requirements in Shipping Contracts

1. Setting Clear Performance Targets. A key step for shippers to promote sustainability through their contracts with their Transportation Service Providers is by establishing clear sustainability performance targets. Such targets should be quantifiable and aligned with the shipper's broader sustainability goals. For example, a shipper could contractually require a motor carrier to:

- **Reduce Fuel Usage**. Reduce fuel consumption by a certain percentage over a specific period.
- **Utilize Alternatives to Diesel Fuel.** Require Transportation Service Providers to utilize alternatives such as biodiesel, renewable natural gas, or hydrogen in a specific portion of their fleet or with their third-party motor carriers.

- **Utilize Zero-Emission Vehicles.** Commit to using zero-emission vehicles for a minimum percentage of shipments. Although not common in agreements now, this requirement will become more common as states adopt laws and regulations to transition heavy-duty vehicles to clean energy.

A shipper including these quantifiable goals not only holds the Transportation Service Provider accountable, but also signifies the shipper's serious commitment to reducing the environmental impact within its supply chain.

2. Incentive Use of Green Technology. The continuous development of new technology to improve fuel efficiency across all modes of transportation permits shippers to encourage motor carriers to transition toward green technologies or provide greater visibility to potential opportunities for further reducing carbon emissions. Shippers are even including specific clauses in their contracts to prompt Transportation Service Providers to adopt these new technologies. For example, some shippers include clauses within their Transportation Service Provider agreements to require the following:

- **Access to Data/Business Intelligence**. Shippers may request access to real-time data on vehicle or route performance for the purposes of seeking opportunities to optimize routes, improve fuel efficiency, and reduce idle time.
- **Aerodynamic Enhancements.** With respect to motor carriers and their vehicles, these enhancements often include wheel covers, trailer skirts, air deflectors, trailer tails, and other devices on the truck or trailer to reduce fuel consumption.
- **Electric and Hybrid Vehicles.** By using monetary incentives, shippers encourage Transportation Service Providers to transition to electric, low-emissions, and/or hybrid vehicles as they become available at an increasing rate.
- **Driver-Assist Systems.** Shippers often require Transportation Service Providers to use or implement technology that improves driving behavior, such as adaptive cruise control and lane assist or automatic transmission, which can help reduce fuel consumption.

3. Require Adherence with Generally Accepted Standards or Certifications. Another possible lever that shippers can pull to drive sustainable practices among their Transportation Service Providers is to require compliance with certain environmental standards or certifications. Examples include:

- **EPA's SmartWay Program.** This is a voluntary program that helps both shippers and Transportation Service Providers advance supply chain sustainability. The SmartWay Program measures and benchmarks Transportation Service Providers for the purpose of improving freight transportation efficiency. Shippers can require that Transportation Service Providers participate in the SmartWay Program and/or meet or exceed certain performance thresholds.

- **ISO 14001 Certification.** This standard provides a framework for effective environmental management systems. Although an uncommon approach, a shipper requiring Transportation Service Providers to achieve ISO 14001 certification demonstrates a shipper's commitment to pushing sustainable practices among its Transportation Service Providers.

4. Integrate Sustainability into Bid Process or Selection Criteria. While contractually requiring Transportation Service Providers to incorporate sustainability standards is effective at driving sustainable practices within the shipper's supply chains, there may be circumstances that may prevent a shipper from being able to take this approach. As an alternative, shippers can integrate similar sustainability initiatives into their broader procurement, bid, and Transportation Service Provider selection process. Shippers can request information from their prospective Transportation Service Providers at the procurement or bid stage, and then utilize this information when deciding which Transportation Service Providers should receive bid awards. Some potential areas for shippers to assess during the award/selection process include:

- The Transportation Service Provider's use of the aforementioned eco-friendly technologies and fuel-efficient vehicles.
- The Transportation Service Provider's participation in programs like SmartWay.
- The Transportation Service Provider's willingness to provide business intelligence and data for the purposes of seeking initiatives to utilize more sustainable practices.

By considering sustainability in the selection process, shippers signal that environmental performance is an important factor in their business when making bid awards or Transportation Service Provider selections.

5. Collaboration on Sustainability Initiatives with Multi-Mode Transportation Service Providers. Shippe and larger and/or multi-mode Transportation Service Providers have greater opportunity to collaborate on driving sustainable practices that can be a win-win for both sides. These efforts can take many forms, including:

- **Route Optimization Efforts.** Working with Transportation Service Providers to develop more efficient routes that reduce miles traveled and fuel consumption.
- **Greater Sharing of Data and Insights.** Sharing information and strategic insights on energy consumption, vehicle performance, and emissions so both parties can identify opportunities for improvement.
- **Mode Conversion Opportunities.** Working with Transportation Service Providers to seek out opportunities that are both cost-effective and environmentally efficient, such as converting over-the-road shipments into intermodal shipments, converting contracted lanes into a dedicated transportation model, or consolidating multiple less-than-truckload shipments to maximize utilization of trailer space.

- **Incentive Programs**. Incentivizing Transportation Service Providers to meet or exceed sustainability goals by offering bonuses and/or preferential treatment for future contracts. Further, for dedicated arrangements, there could possibly be cost-sharing arrangements for utilizing zero- or low-emission vehicles that could be attractive for both parties.

Monitoring and Enforcing Sustainability Requirements

An important aspect of any contract clause is the ability to actually enforce the clause. Contractual clauses addressing sustainability requirements among Transportation Service Provider are no different. Accordingly, it is imperative that the shipper be able to ensure that its Transportation Service Providers are actually meeting their sustainability commitments. Below are some ways in which shippers can ensure such compliance:

- **Reporting and Auditing.** Agreements should require the Transportation Service Provider to submit regular reports on its environmental performance. These reports could include data on fuel consumption, emissions, and the adoption of green technologies. Shippers should also retain the right to audit the Transportation Service Provider's operations to verify the accuracy of these reports and assess compliance with sustainability requirements.
- **Performance Reviews and Continuous Improvement.** In addition to monitoring compliance, shippers should schedule regular performance reviews with their Transportation Service Provider to assess progress toward sustainability targets and identify areas for improvement. If a Transportation Service Provider consistently fails to meet its sustainability commitments, the shipper may need to consider penalties, contract renegotiation, or, in extreme cases, termination of the agreement.
- **Require Proof of Compliance.** Shippers can require and request the applicable permits, certificates, and/or applicable documentation demonstrating the Transportation Service Provider's compliance with the applicable environmental laws and regulations. This could include emissions test results, maintenance records, or certifications of compliance with certain federal or state standards.

Conclusion

As shippers across all industry verticals seek ways to "green" their external supply chain by incorporating sustainability requirements into their contracts, shippers can effectively reduce their environmental impact and drive efficiency within their supply chain. When taking this approach, the shipper's overall goal should be to set clear, measurable performance goals, encourage the adoption of sustainable technologies, and foster collaboration with strategic Transportation Service Providers to achieve sustainability objectives that can benefit both parties.

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