



Sustainability in Action

October 13, 2022

CARB Board Members
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Submitted Electronically

Subject: Proposed Advanced Clean Fleets (ACF) Regulation

Dear Chair Randolph, Vice Chair Berg, and CARB Board Members:

On behalf of Republic Services, I would offer our appreciation for this opportunity to comment on the California Air Resources Board's (CARB) proposed Advanced Clean Fleets (ACF) regulation. Republic Services (RSG) manages a significant share of solid waste and recycling services throughout California. We are striving to be early adopters of zero emission technologies. Republic has deployed five ZEV collection vehicles in (Hickory, NC and Boise, ID) and the Boise operation will scale to 10 electric refuse trucks by the end of 2025. Our first deployment in Anaheim, CA of three electric refuse trucks will occur in early 2023.

We have consistently supported California's efforts to develop leading-edge policies to address climate change and health-based air quality mandates. We also support efforts to achieve California's aggressive climate goals. We recognize that to achieve those goals, CARB must maximize efforts to increase fleet deployment of ZEVs statewide. Republic Services is committed to supporting that effort as long as the path to compliance achieves the following objectives:

1. The rule allows for a reasonable transition from our existing renewable natural gas and diesel fueled fleet and encourages early adopters.
2. ZEV truck performance can meet the service obligations of the communities we serve.
3. Charging infrastructure can be developed and installed in a manner that allows us to effectively transition our fleet to meet the specified milestones.

Republic Services has made significant investments in ZEV technical staffing, strategic partnerships with truck manufacturers as well as infrastructure vendors. This investment has yielded a significant amount of knowledge on how integration of ZEV trucks into our existing fleet will occur as well as revealing significant obstacles to an effective alignment of our business obligations with the timelines established in the proposed regulation.

While we support the draft ACF regulations in general, the staff proposal that will come before you in October is in need of several key modifications to ensure effective implementation. We are concerned that supply chain issues will intensify affordability concerns, that infrastructure readiness hurdles have not been addressed and that regulatory requirements limit compliance flexibility. We believe these regulations can only be effectively implemented if access to charging infrastructure aligns with truck technology and service delivery obligations.

Due to these obstacles, we believe that it is improbable that our company can achieve the fleet conversion timelines outlined in the proposed rule. This would be unfortunate as we have invested a significant amount of effort into assembling a competent leadership team and worked diligently towards establishing strategic partnerships with equipment and infrastructure vendors to achieve the mandates. The end result of this outcome would be potential interruption of an essential service required by all communities within the state.

Republic Services is supportive of your efforts and our following comments are intended to encourage greater flexibility for reasonable implementation that will continue to allow us to provide a critical public service. The regulations will require a significant transition in our industry away from diesel and RNG fleets and infrastructure to full electrification in a very brief timeframe. That timeframe can only work if truck technology can meet service demands and we can remove our existing fueling infrastructure, install new charging infrastructure and the utilities provide prompt access to the power grid. These requirements will help ensure that the regulation does not fail due to lack of flexibility and consideration of obstacles being faced by our industry.

Our specific comments fall into several categories as outlined below:

- 1) **Incentives:** Incentives should not only reward early adopters but also accelerate market penetration and increase long term financial viability to ensure that the costs of this transition not fall heavily on the rate payers. The cost of compliance with the proposed rule throughout the state is significant and not commercially reasonable without adequate incentives. The vast majority of our work in California is through municipal franchises and without incentives, the cost impact to rate payers will be significantly higher than otherwise necessary. **Therefore, we recommend the removal of restriction on ZEV's receiving incentives from counting towards compliance thresholds.**

- 2) **Exemptions:** As we have explored siting ZEV trucks at our facilities, the feedback we have received from utilities is that some of the most advantageous locations for truck deployment (DAC, route mileage, terrain, service type) cannot be prioritized by the utility for charging infrastructure deployment. **When power supply availability and associated costs are uncertain, the alignment of truck purchase schedules is virtually impossible.**

More specifically, the majority of the exemptions only apply if a ZEV truck has been purchased a year in advance. The information we are receiving from utilities at this point relative to timing is incredibly uncertain and at times ranges from a clear negative response to timeframes three or more years away before they can begin contemplating the infrastructure transition. Purchasing multiple \$650,000 vehicles a year or more in advance that may be rendered inoperable due to charging infrastructure uncertainty isn't plausible from a business planning or capital deployment standpoint.

Therefore, we are recommending several edits that will provide greater flexibility to staff in the review and authorization of extensions. **The edits focus on ensuring that infrastructure placement is reasonably assured prior to purchase and designation of vehicles for deployment to a specific location.**

3) **Administrative:**

- **Hiring of Compliant Fleets:** We have privacy concerns with the contracted fleet requirement. Our contracts often contain proprietary information and would recommend that only excerpts of contracts that are relevant to regulatory compliance be made available.
- **Mergers and Acquisitions;** The 30-day requirement to bring an acquired fleet into compliance is impossible. Acquisitions require significant due diligence and if new ZEV trucks are required and charging infrastructure must be installed, several years will be needed.

We have attached suggested edits to the language of the proposed rule in redline format to reflect these concerns. Please note that only those pages where edits have been proposed have been included for ease of review.

In closing, Republic Services appreciates the opportunity to comment on the proposed ACF Regulations. As noted above, we are in support of the objectives of the Air Resources Board and California's climate protection goals. However, we want to make sure that every facet of this initiative has been carefully evaluated so that it can be successfully and durably implemented.

The regulations are complicated and will have a significant impact on our industry. To ensure that all stakeholders and community voices are heard, and that all viable options for action have been considered, we urge the Board to conduct more than one hearing and to allow at least one Supplemental 15 Day Notice before final adoption of these regulations.

Making the assumption that industry will adjust and create bridges for the items noted above is not necessarily prudent in this case. This is especially true when the greatest hurdle may be completely out of the control of those that are required to comply (i.e., infrastructure deployment).

We appreciate continued dialogue with staff on this matter and look forward to finalizing a regulation that contains achievable and durable milestones that can meet the stated objectives. We would welcome the opportunity to discuss these comments further with you.

Sincerely,



Chuck Helget
Director Government Relations - CA

cc: Dr. Steven Cliff, Executive Officer
Craig Segall, Deputy Executive Officer

- (i) Newly Formed Fleet. Any fleet that is newly formed on or after January 1, 2024 and meets the applicability criteria specified in section 2015(a)(1) must comply with the requirements of either section 2015.1 or 2015.2 within 30 calendar days of newly adding vehicles to the California fleet. Within 30 calendar days, the fleet owner must meet the reporting requirements specified in section 2015.4 and recordkeeping requirements specified in section 2015.5.
- (j) Newly Affected Fleet. For any fleet that existed prior to January 1, 2024, and newly meets the applicability criteria specified in section 2015(a)(1) at any point on or after January 1, 2024, the fleet owner must do all the following:
 - (1) Within 30 calendar days of the change, meet the reporting requirements specified in section 2015.4 and recordkeeping requirements specified in section 2015.5.
 - (2) Within 30 calendar days of the change, notify CARB of the month and year that the fleet newly became subject to the regulation.
 - (3) Within two years of the change, meet all requirements of the regulation.
- (k) Mergers and Acquisitions. For any entity that merges with another entity or acquires vehicles as part of the merger on or after January 1, 2024, the fleet owner must do the following within 30 calendar days from the date the merger or acquisition occurs:
 - (1) Provide a schedule to bring the entity being acquired into eCompliance compliance with the requirements of either section 2015.1 or 2015.2 within a time frame that is commensurate with the availability of vehicle or required infrastructure improvements but no longer than 3 years.
 - (2) Verify whether any previously granted exemption or extension still apply based on the exemption or extension criteria for the newly formed fleet;
 - (3) Meet the reporting requirements specified in section 2015.4 and recordkeeping requirements specified in section 2015.5.
- (l) Fleets No Longer Affected. Any fleet subject to the regulation that no longer meets the applicability criteria specified in section 2015(a)(1) for two consecutive calendar years shall no longer be subject to the regulation requirements, until such time as the fleet again is affected per the applicability criteria specified in section 2015(a)(1).
- (m) Reporting and Recordkeeping Requirement. Beginning January 1, 2024, fleet owners must meet reporting requirements as specified in section 2015.4 and keep and provide records as specified in section 2015.5.

Commented [CM1]: The ACF regulation may cause entities to choose to divest of assets and operations that are not in compliance and the request centers upon CARB staff allowing the acquiring entity to provide a viable timeline for achieving compliance. Given some of our comments relative to charging infrastructure and truck availability, acquisition of a company that may be out of compliance with the ACF rule and then bringing them into compliance within 30 days would not be realistic.

~~(n) Vehicles Acquired with Incentive Funds. Beginning January 1, 2024, if a fleet owner receives California State provided incentive funding for ZEVs or NZEVs and the funding program guidelines specify the vehicle cannot be used to count toward determining compliance with the general requirements section of 2015(d), the vehicle will not be counted as a compliant vehicle during the funding contract period. The fleet owner must meet the reporting requirements specified in section 2015.4(c)(2)(O).~~

~~(n)~~ Certificate of Reported Compliance and Compliant Fleet List. If the requirements of sections 2015 through 2015.6 are met and the required reporting is received to demonstrate compliance, the fleet owner will be provided with a Certificate of Reported Compliance. The CARB Advanced Clean Fleets webpage will list the CARB-issued ID number, motor carrier number if applicable, fleet name, and whether the fleet is recognized as a "ZEV Fleet" per section 2015(p) for compliant fleets that have received a Certificate of Reported Compliance. Fleets that do not comply with either compliance path of sections 2015.1 or 2015.2 will not be listed.

~~(p)(o)~~ "ZEV Fleet" Recognition. Fleet owners may optionally elect to be recognized as a "ZEV fleet" beginning January 1, 2024. A fleet will be recognized as a certified "ZEV fleet" on the CARB Advanced Clean Fleets webpage if it meets or exceeds all the following criteria regardless of the compliance path being used:

- (1) The number of ZEVs in the California fleet meets or exceeds the fleet ZEV Milestones in section 2015.2;
- (2) The California fleet must have at least one ZEV;
- (3) The California fleet consists of at least 5 percent ZEVs; and
- (4) The fleet owner meets the reporting requirements of 2015.4 and record keeping requirements of a section 2015.5.

Note: Authority cited: Sections 38505, 38510, 38560, 38566, 39010, 39500, 39600, 39601, 39602.5, 39650, 39658, 39659, 39666, 39667, 43013, 43018, 43100, 43101, 43102, and 43104 Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38560, 38566, 38580, 39000, 39003, 39010, 39500, 39600, 39601, 39602.5, 39650, 39658, 39659, 39666, 39667, 39674, 39675, 43000, 43000.5, 42400, 42400.1, 42400.2, 42402.2, 42410, 43013, 43016, 43018, 43023, 43100, 43101, 43102, 43104, 43105, 43106, 43153, 43154, 43211, 43212, and 43214 Health and Safety Code.

Adopt Section 2015.1 of title 13, California Code of Regulations, to read as follows:

Commented [CM3]:

We request that this item be given further consideration. We believe that every ZEV placed into operation should receive full credit for compliance with the ACF Regulations. This may entail adjustments to some of the provisions of the CA State provided incentive funding options. However, implementation and the economics of compliance with the ACF regulations will be a challenge without the added layer of some vehicles being barred from consideration due to source of funding. This rule will be considered a Change in Law in our Franchise Agreements and the associated costs will be a pass through to rate payers. Lessening the impact to residents of communities we serve should be a priority. We realize this may require adjustments to provisions of Incentive Policy but removing the restriction from this regulation allows for that to take place without having to amend the ACF policy.

50 Milestone Group 2 vehicles and 2 backup vehicles that are excluded from the calculation:

Milestone Group 1: 100 vehicles x 50% = 50 ZEVs

Milestone Group 2: 50 vehicles x 25% = 12.5 ZEVs

Total ZEV Milestone = 62.5 (rounds up to 63 ZEVs)

- () Any ZEVs Count for Compliance. Any ZEV from any Milestone Group may be used to count toward the fleet's ZEV Milestone requirement. For example, a fleet with box trucks and day cab tractors can meet the initial ZEV fleet milestone with ZEV tractors instead of ZEV box trucks.
- (a) Rental Vehicle Provision. In lieu of counting all rental vehicles that operate in California, interstate rental fleet owners may choose to report the average number of rental vehicles that are operated in California. To use this option, four quarterly snapshots of the number of rental vehicles operated in California must be taken on the first Monday after January 1, April 1, July 1, and October 1. Rental vehicles operated in California are those that are under contract to leave California, to be picked up and dropped off in California, and those that are not under contract while in California on the date of the snapshot. In lieu of counting rental vehicles under contract, rental fleet owners must supply telemetry data showing each rental vehicle that is in California on the snapshot dates. Each vehicle should only be counted once for purposes of each snapshot. Fleet owners utilizing this provision must report the average number of rental vehicles per section 2015.4(h) and keep records of snapshots taken and supporting documents per section 2015.5(h).
- (b) Exemptions and Extensions. A fleet owner complying with section 2015.2 may utilize the following exemptions and extensions:
 - (1) Backup Vehicle Exemption. Fleet owners may exclude a vehicle from the ZEV milestone calculation of section 2015.2(b) if it is designated as a backup vehicle as specified in section 2015.3(a) and may exclude mileage accrued when the vehicle is operated in support of a declared emergency event as specified in section 2015.3(f)(1).
 - (2) Daily Usage Exemption. Fleet owners shall receive a one-year exemption to purchase a new ICE vehicle and exclude it from the ZEV milestone calculation of section 2015.2 if a new ZEV is available, but it cannot be placed anywhere in the California fleet while meeting the daily usage

Commented [CM4]: See comments in Section 2015.3(a)

needs of any existing vehicle in the fleet provided the criteria specified in section 2015.3(b) are met.

- (4) Infrastructure Construction Delay Extension. Fleet owners are excused from taking immediate delivery of an ordered ZEV for one year and may count the vehicle to be replaced as a ZEV when determining compliance with section 2015.2(b) until the ZEV is delivered if the criteria described in section 2015.3(c) are met.

Commented [CM5]: See comments in Section 2015.3(c)

- (5) Vehicle Delivery Delay Extension. Fleet owners may count a vehicle to be replaced as a ZEV when determining compliance with the ZEV milestone calculation of section 2015.2(b) if a new ZEV is ordered one year in advance of the compliance date for the ICE vehicle being replaced and the newly purchased ZEV will not be delivered by the compliance deadline for reasons beyond the fleet owner's control. Fleet owners must meet criteria of section 2015.3(d) to qualify.

Commented [CM6]: See comments in Section 2015.3(d)

- (6) ZEV Unavailability Exemption. Fleet owners may purchase a new ICE vehicle and exclude it from the ZEV milestone calculation of section 2015.2 if the fleet owner can demonstrate that all the remaining ICE vehicles in the fleet that are not already using an exemption or extension cannot be replaced with a ZEV or NZEV of the needed configuration because they are not available to purchase, and the conditions of section 2015.3(e) are met. Additionally, if the only remaining ICE vehicles in the fleet cannot be replaced with a ZEV or NZEV of the needed configuration because they are not available to purchase, and the conditions of section 2015.3(e) are met, those ICE vehicles are excluded from the ZEV milestone calculation.

- (7) Exemptions Pursuant to Declared Emergency Events. Fleet owners may purchase a new ICE vehicle and exclude it from the ZEV milestone calculation of section 2015.2(b) for up to 25 percent of the fleet if the vehicles are needed to provide emergency response services and the conditions of section 2015.3(f) are met.

Note: Authority cited: Sections 38505, 38510, 38560, 38566, 39010, 39500, 39600, 39601, 39602.5, 39650, 39658, 39659, 39666, 39667, 43013, 43018, 43100, 43101, 43102, and 43104, Health and Safety Code. Reference: 38501, 38505, 38510, 38560, 38566, 38580, 39000, 39003, 39010, 39500, 39600, 39601, 39602.5, 39650, 39658, 39659, 39666, 39667, 39674, 39675, 43000, 43000.5, 42400, 42400.1, 42400.2, 42402.2, 42410, 43013, 43016, 43018, 43023, 43100, 43101, 43102, 43104, 43105, 43106, 43153, 43154, 43211, 43212, and 43214, Health and Safety Code.

Adopt Section 2015.3 of title 13, California Code of Regulations, to read as follows:

Section 2015.3 High Priority and Federal Fleets Exemptions and Extensions

Fleet owners may claim or apply for the following exemptions or extensions if the California fleet complies with the requirements that are in effect, and it would otherwise be impossible to comply with the next upcoming regulation requirement. Fleet owners requesting or utilizing any exemptions or extensions must meet applicable reporting and recordkeeping requirements for each exemption or extension as specified in sections 2015.4 and 2015.5. Any exemptions or extensions approved for a fleet owner are not transferrable to another fleet owner. The Executive Officer will respond to exemption requests as described in section 2015.4(k).

- (a) Backup Vehicle Exemption. Fleet owners may designate vehicles as backup vehicles during the reporting period and renew the designation annually if the fleet owner meets each of the following requirements:
 - (1) The vehicle is operated less than ~~51,000~~ 5000 miles per year excluding any mileage travelled under contract while performing emergency operations in support of a declared emergency event.
 - (2) The fleet owner must report the vehicle as a backup vehicle and must submit odometer readings per section 2015.4(f).
 - (3) Backup vehicles must immediately stop being operated and must be removed from the California fleet if the vehicle exceeds the allowed number of annual miles travelled and the vehicle is out of compliance with section 2015.1, or the fleet is out of compliance with section 2015.2.

- (b) Daily Usage Exemption. Fleet owners may apply for an exemption to replace vehicles with a GVWR greater than 14,000 lbs. if at least ten percent of their California fleet is comprised of ZEVs or NZEVs. Fleet owners may not apply for a vehicle configuration that is commercially available as: an NZEV; a hydrogen fuel cell ZEV; a Class 7 or 8 ZEV tractor or ZEV three-axle bus with a rated energy capacity of at least 1,000 kilowatt-hours; a Class 4 through 6 ZEV with a rated energy capacity of at least 325 kilowatt-hours; or a Class 7 or 8 ZEV that is not a tractor or three-axle bus with a rated energy capacity of at least 450 kilowatt-hours. The Executive Officer will approve the exemption based on their good engineering judgement in determining that the criteria specified in section 2015.3(b) have been met. The fleet owner must submit all of the following by email to TRUCRS@arb.ca.gov to apply:
 - (1) The make, model, weight class, configuration, and photograph of the ICE vehicle to be replaced.

Commented [CM3]: Republic maintains several vehicles in their fleet that are designated for seasonal work such as Christmas tree and bulky item collection. The 1000 mile limit will not allow us to complete these activities and we are requesting a slightly expanded mileage limit to accommodate the service needs within the communities we serve.

(c) Infrastructure Construction Delay Extension. A fleet owner may apply for this extension if they experience construction delays beyond their control on a project, or multiple projects, to purchase ZEVs and install ZEV charging or fueling stations. The Executive Officer will grant a single extension per project to delay the vehicle delivery for one year an agreed upon time frame if they determine the fleet owner satisfies the criteria for the delay, based on the information submitted below and the exercise of good engineering judgment. The fleet owner must submit all of the following by email to TRUCRS@arb.ca.gov to apply:

Commented [CM8]: Republic will comply with the ACF Regulation using a wholistic statewide approach at multiple locations. Flexibility regarding the structure of any application for extension would be appreciated as it would be more applicable to the determination of whether our fleet in CA has met the required milestone. Republic's compliance with the regulation will not be measured on a location by location basis – it will be statewide due to how our fleet is viewed under CARB reporting regulations

- (1) Documentation showing the ~~executed contract~~ fleet owner's application filed with the utility for ~~the~~ infrastructure installation with an estimated construction project start date, at least one year prior to the next immediately applicable compliance date for the purchased vehicle.
- (2) Documentation showing the delay is a result of any of the following circumstances beyond the fleet owner's control, including but not limited to, after obtaining construction permits: change of a general contractor; delays obtaining power from a utility; delays due to unexpected safety issues; discovery of archeological, historical, or tribal cultural resources described in the California Environmental Quality Act, Public Resources Code Division 13, Section 21000 et. seq.; or natural disasters.
- (3) A letter to CARB from the responsible official explaining the reason for the delay, why retail infrastructure cannot be used, the estimated completion date of the project, and documentation supporting the reason for the delay from the licensed contractor performing the work, related utility, building department, or other organization involved in the project.
- (4) Documentation showing the executed ZEV purchase agreement.

Commented [CM9]: The process for selection of where vehicles will be placed is highly dependent upon availability of infrastructure. Placement of orders for vehicles occurs once there is reasonable surety around infrastructure availability. Having the applicability of the extension be time bound by a compliance date or vehicle being ordered over 1 year prior to the compliance date puts the cart before the horse.

Commented [CM10]: Part of the entitlement process with the utilities includes review of plans and approval by their internal design review teams. Construction permits for this type of work are typically not granted until all affected parties, including the utilities have signed off and granted access to their infrastructure. The qualifier of having these criteria apply only after construction permits are granted places the fleet owner in a difficult situation.

(d) Vehicle Delivery Delay Extension. If ZEVs or NZEVs are ordered at least one year prior to the next compliance date, fleet owners may submit the information below to receive an extension and continue to remain in compliance.

Commented [CM11]: To be discussed – Determination of availability of charging infrastructure and power is the first element in selection of where to place EV trucks. We are purchasing EV trucks on a national basis and they will be directed towards CA if charging infrastructure is available.

- (1) Fleet owners may claim this extension by emailing the following information to TRUCRS@arb.ca.gov during the annual reporting period:
 - (A) Identify the VIN of the vehicle that is to be replaced by the forthcoming ZEV or NZEV.
 - (B) Submit the purchase agreement showing the new ZEV or NZEV was ordered at least one year prior to the next compliance date to

Commented [CM12]: To be discussed - Republic has not edited this section but see prior comments about truck placement being dependent upon availability of infrastructure. Compliance with the terms of this section will not be possible without clear knowledge of where charging infrastructure can and will be installed. With this in mind – compliance with the provisions of 2015(3)(d) would be not plausible. We have not redlined the text as we believe it would be better to discuss how to address our concern first then to craft language that reflects a general understanding of the parties on this topic.

publicly issued bids and requests for information, and letters used to support their request and qualifications for the exemptions.

- (h) Rental Vehicle Provision Records. Interstate rental fleet owners utilizing section 2015.2(d) must keep and provide all documents, records, contracts, global positioning system data, rental vehicle snapshots, or other data used to support their reported annual average number of rental vehicles in the California fleet.
- (i) Hiring Entity Documentation. Hiring entities that are subject to the regulation per section 2015(a)(3) must keep and provide certificates of reported compliance or signed statements received from hired fleets used to verify that hired fleets are compliant with the applicable regulations. Additionally, hiring entities must keep and ~~provide upon request, make available for review, applicable sections of copies of~~ contracts with hired entities that include the disclosure of regulation applicability required by section 2015(g)(2).
- (j) ZEV Unavailability Documentation. Fleet owners utilizing the ZEV Unavailability exemption must keep and provide purchase agreements and photographs submitted per section 2015.4(i), and a copy of the specifications sheet or a list of the specifications for the vehicle and if applicable, the body installed for ICE vehicles purchased pursuant to the exemption.
- (k) Retention of Records. Records of reported information required in reporting section 2015.4 and documentation required in record keeping section 2015.5 must be kept by the fleet owner and made available to CARB staff for audit for a period of eight years from the date the information is used to demonstrate compliance.

Commented [CM13]: Contracts of this nature contain proprietary pricing and business term language that is unrelated to verification of compliance with ACF regulations. This edit should allow for provision of the documentation of compliance and the wording "applicable sections" refers to having only those sections of the agreement applicable to compliance with the ACF regulation becoming part of the public record.

Note: Authority cited: Sections 38505, 38510, 38560, 38566, 39010, 39500, 39600, 39601, 39602.5, 39650, 39658, 39659, 39666, 39667, 43013, 43018, 43100, 43101, 43102, and 43104, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38560, 38566, 38580, 39000, 39003, 39010, 39500, 39600, 39601, 39602.5, 39650, 39658, 39659, 39666, 39667, 39674, 39675, 43000, 43000.5, 42400, 42400.1, 42400.2, 42402.2, 42410, 43013, 43016, 43018, 43023, 43100, 43101, 43102, 43104, 43105, 43106, 43153, 43154, 43211, 43212, and 43214, Health and Safety Code.

Adopt Section 2015.6 of title 13, California Code of Regulations, to read as follows:

Section 2015.6 High Priority and Federal Fleets Enforcement

- (a) Severability. If any subsection, paragraph, subparagraph, sentence, clause, phrase, or portion of this regulation is, for any reason, held invalid, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision, and